IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REBER YOUNG,	:	NO. 04-00,394
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION
SUSQUEHANNA VALLEY VELO CLUB	:	
and USA CYCLING,	:	
Defendants	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendants' Motion for Summary Judgment, filed December 16, 2004. Argument on the motion was heard February 2, 2005.

As Plaintiff was crossing Walnut Street in the City of Williamsport on September 1, 2003, he was struck by a bicyclist who was participating in a race sponsored by Defendants. Plaintiff then instituted the instant action, alleging negligence on Defendants' part in failing to take sufficient measures to keep pedestrians from being struck. In the instant motion for summary judgment, Defendants argue Plaintiff's claim is barred by application of the doctrine of assumption of the risk.

In a negligence action, whether a litigant has assumed the risk is a question of law to be determined by the Court; the Court must review the factual scenario and determine whether under the facts of the case, the defendant, as a matter of law, owed no duty to the plaintiff. Staub v. Toy Factory, Inc., 749 A.2d 522 (Pa. Super. 2000). Assumption of the risk has also been described as a form of estoppel: even assuming that the defendant was negligent, and at least partly responsible for the injury sustained, nevertheless, given the circumstances in which the injury was sustained, the plaintiff is essentially "estopped" from pursuing an action against the defendant because it is fundamentally unfair to allow the plaintiff to shift the responsibility for the injury to the defendant when the risk was known, appreciated and voluntarily assumed by the plaintiff. Bullman v. Giuntoli, 761 A.2d 566 (Pa. Super. 2000). Assumption of the risk is thus established as a matter of law where it is beyond question that the plaintiff voluntarily and knowingly proceeded in the face of an obvious danger. Staub, supra. A failure to

apprehend that danger, however, presents a different scenario. While such failure may be negligence, it is not assumption of the risk. Bullman, supra. Only an apprehension of a danger, followed by a conscious decision to tempt fate and accept what fate may bring, which then occasions injury, is assumption of the risk, and a complete bar to recovery. Id.

In support of their position, Defendants point to evidence that Plaintiff knew a bicycle race was in progress, that he had seen hay bales at the intersection of Walnut and Third Streets, but that he nevertheless jaywalked across Walnut Street, rather than crossing at the intersection with the assistance of a police officer. This evidence, Defendants argue, supports a finding that "Plaintiff proceeded in the face of a known risk." The Court does not agree. Instead, the Court believes the instant situation falls into the category of failing to apprehend the danger. The evidence shows Plaintiff looked before crossing and did not see any bicycles approaching. He did not know that they were apparently about to turn the corner onto Walnut Street as he began to cross. Had he seen the bicycles approaching but stepped into the street nevertheless, Defendants argument would hold more weight. As it is, however, while Plaintiff's actions may very well constitute negligence on his part, they cannot be said to constitute "assumption of the risk" as defined by our appellate courts. Summary judgment is thus not appropriate.

ORDER

AND NOW, this day of February 2005, for the foregoing reasons, Defendants' Motion for Summary Judgment is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson