IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REBER YOUNG,	:	NO. 04-00,394
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION
SYSQUEHANNA VALLEY VELO CLUB	:	
and USA CYCLING,	:	
Defendants	:	Petition for Reconsideration

OPINION AND ORDER

Before the Court is Defendants' Petition for Reconsideration, filed March 23, 2005. Defendants ask the Court to reconsider its Order of February 28, 2005, in which Defendants' Motion for Summary Judgment was denied. Defendants had argued that Plaintiff's claim of negligence is barred by application of the doctrine of assumption of the risk.[1] The Court did not agree, finding that 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. Defendants now point to Rauch v. Pennsylvania Sports and Enterprises, Inc., 81 A.2d 548 (Pa. 1951), for the proposition that a person who enters an environment and is aware of activities taking place on the grounds should not be allowed to proceed in the face of those activities and then allege that a third party is liable for his injuries. The Court believes Rauch is distinguishable on its facts, however.

As stated in this Court's Opinion of February 28, 2005, assumption of the risk is 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 v. Toy Factory, Inc., 749 A.2d 522 (Pa. Super. 2000). 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, however. Bullman v. Giuntoli, 761 A.2d 566 (Pa. Super.

[1] 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.

2000). While the Court in Rauch found such an apprehension of danger and conscious decision to tempt fate, this Court does not believe the facts of the instant case support such a finding. In Rauch, the Court detailed the plaintiff's apprehension of danger as follows:

> The testimony clearly establishes that the wife-appellee was fully cognizant of the very conditions which she asserts in her endeavor to hold appellant responsible for the injuries and damage which she and her husband sustained. Four times within half an hour after she and her children entered upon the ice, she and her daughter left in order to keep from being bumped into and knocked down. She observed that many skaters moved clockwise, contrary to the flow, "cut across the ice and back into you, in all directions"; that "There were a lot of them doing that. All evening they were cutting in." On the fourth occasion, her daughter was almost knocked out of her hands. She complained to the guard of this dangerous conduct. She and her daughter left the ice for ten or fifteen minutes. Conditions looked "a little better" and they returned to the ice. They again skated for approximately half an hour and the situation did not improve. She stated, "They started to skate in and out in the wrong direction and I was afraid,...". She told her daughter that when they saw her brother he was to take her off the ice. She nevertheless remained and "skated toward the center" where she had observed the unremitting dangers of which she complained.

The Court then concluded that "[o]bviously, Mrs. Rauch chose to match her skill as a skater against what to her was a manifest danger. When she reentered this area of danger, she deliberately exposed herself to the risk of injury happening in the very manner which she had anticipated all evening, and of which she was so acutely aware that she had sent her children from the rink. She had knowledge of the conditions, realized and voluntarily assumed the risk involved." Rauch, supra, at p.549. In the instant case, as noted in this Court's Opinion of February 28, 2005, although Plaintiff was aware that a race was in progress, he looked before crossing and did not see any bicyclists approaching. He cannot be said, therefore, to have had "knowledge of the conditions" and the danger of being hit by a bicyclist cannot be said to have been "manifest". The Court thus does not believe the holding in Rauch requires it to reconsider its prior Order.

ORDER

AND NOW, this **4th** day of April 2005, for the foregoing reasons, Defendants' Petition for Reconsideration is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson