

prevent an injury like Gil-Perez's from occurring. But he also testified that in his extensive experience, which included treating "many" sports-injury patients, and "patients . . . with similar knee injuries as Mr. Perez'[s] which arose from playing sports," he had never treated a patient with a similar knee injury who had worn a brace:

[Counsel]: Okay. Well, have you ever treated patients in the past or provided medical care and treatment to patients with similar injuries as Mr. Perez from playing sports who were, in fact, wearing some type of protective equipment that still got injured?

[Dr. Calhoun]: I don't recall treating a patient that had an injury to the knee that was wearing a brace, a dislocation injury to the knee that was wearing a brace.

Gil-Perez was not required to show that if Southwest Key had provided protective gear his safety was "absolute" or "guaranteed." Rather, he had to show it was more likely than not that, but for Southwest Key's failure to provide safety equipment, Gil-Perez would not have dislocated his knee. Gil-Perez contends Southwest Key and its employees were negligent in allowing the boys to play full-contact tackle football without equipment when reasonable alternative activities, including soccer and touch football, were available. Gil-Perez was tackled and, as a result, suffered a dislocated knee. Given the common knowledge that tackle football is an intensely physical sport with a high risk of injury, and Dr. Calhoun's testimony that he did not recall ever treating a patient with similar injuries who had worn a brace, the jury could have concluded that Southwest Key's negligence in allowing Gil-Perez to play tackle football was a "substantial factor" in bringing about his injury. *See Lee Lewis Constr., Inc. v. Harrison*, 70 S.W.3d 778, 784 (Tex. 2001). Viewing the evidence in a light that tends to support the jury's verdict and disregarding all evidence and inferences to the contrary, *Bradford v. Vento*, 48 S.W.3d 749, 754 (Tex.

2000), I would hold the evidence legally sufficient to support the jury's causation finding. Because the Court holds otherwise, I respectfully dissent.

Harriet O'Neill
Justice

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