

PRO FOOTBALL

Football's Brain Injury Crisis Lands in Family Court

By **KEN BELSON** MARCH 5, 2018



John Orsini at the Upper St. Clair High School football field. Credit Ross Mantle for The New York Times

PITTSBURGH — In this city with a deep and proud relationship with football, a custody dispute has pushed the debate about the sport's safety into a new arena: family court.

A father, John Orsini, has gone to court to prevent the youngest of his three sons from playing high school football because, he said, scientific studies have revealed the perils of repeated blows to the head — especially for an athlete, like his son, who has a history of concussions.

The boy's mother, Mr. Orsini's ex-wife, believes he should be allowed to continue playing because he understands the risks.

"You always heard it sometimes, when one parent would say I don't want him doing that because he might get hurt," said Allan E. Mayefsky, a leading divorce lawyer and the former president of New York chapter of the American Academy of Matrimonial Lawyers. "Usually, we thought the parent was just overprotective. Now, it's more of a real medical issue."

In the decade since scientists began to link football to long-term brain damage, the debate over the future of the sport has moved from research laboratories to the halls of Congress, to locker rooms and owners' suites. Families, too, have grappled with the question of how dangerous the game is — and now parents' concerns are surfacing in legal battles between divorced couples, leading to an increase in fights over whether to amend custody orders to prevent their children from playing the game.

It is impossible to say precisely how many disputes over football are occurring in family courts. Most records are sealed and disputes often settle before they go to trial. But Joe Cordell, the founder of Cordell & Cordell, which specializes in divorce law, said that about a third of the 270 lawyers at his firm, which is spread across 40 states, said that they have seen an increase in custody battles over whether a child should be allowed to play football. In some parts of the country, football has replaced hockey as the sport at the center of custody battles, other lawyers said.

Most of the disputes over football are occurring in states where football remains very popular, like Texas, Oklahoma and Ohio, places Mr. Cordell described as "heavy football states." In states where football appears to be on the wane, including those in Northeast, disputes are less common because both parents have already decided that the game is too dangerous for their child to play.

One of those football-heavy states is Pennsylvania, where Mr. Orsini, a musician and former lawyer, went to court last summer to prevent his youngest son from playing tackle football. The case will likely result in a trial.

Like many fathers of his generation, Mr. Orsini, 66, was for years an enthusiastic supporter of football. He played the game in grade school and rooted for the hometown Steelers. He enrolled his sons in youth tackle football leagues when they were as young as five years old, including his youngest son. Mr. Orsini said he attended their practices and games, including in the years after he and his ex-wife, Janice, divorced in 2004. Their oldest son, Giuseppe, who is now 21, plays football at Case Western University in Cleveland.

Mr. Orsini's view of the game changed when his youngest son, 17, suffered three sports-related concussions. The first was in 2013, when he was hit in the head with a metal baseball bat while not wearing a helmet. He took a battery of tests at the University of Pittsburgh Medical Center and, after several weeks, was allowed to resume playing sports.

The second and third concussions were in 2015 and 2016 during football games. Orsini said that afterward, his son was sensitive to light and noise, experienced headaches and was lethargic. His son, he recalled, sat slumped at the table during meals. Again, within a few weeks, doctors cleared him to return to play. Orsini said that when he asked the doctor whether his son should stop playing football, he was told there was no medical evidence that he should not.

"The moment for me started when he repeatedly got diagnosed with concussions and the doctors kept telling me there was no reason for him to not keep going," Mr. Orsini said. Having worked as a plaintiff's attorney, he was alarmed. "His mother didn't question the doctors, but in my profession it is an impossibility."

Mr. Orsini said he was surprised that his son's doctors appeared to be sanguine about the dangers of the sport. So he began doing his own research and found, among other things, studies by researchers at Boston University that said that boys who began playing tackle football before the age of 12 [had more behavioral](#) and cognitive problems later in life than those who began playing the sport in their teenage years.

Mr. Orsini said he tried unsuccessfully to discuss these findings with his ex-wife. She told him their son, then 16 and finishing his sophomore year of high school, was mature enough to understand the risks of the game and to make up his own mind. The doctors, she noted, had declared him symptom-free of the concussions, and the school's coaches were well-trained at spotting and caring for concussed players.

"The truth is, this young man loves to play football and understands the dangers, and based on the science now, his mom thinks the benefits are worth the risks," said John Demas, a lawyer representing Mrs. Orsini, who declined to be interviewed.

In late July, just before his son was to start practicing for his junior season, Mr. Orsini told his school that he did not want his son playing. He had joint legal custody, so the school complied.

"I cannot speak to an individual student's circumstance, but generally in custody disputes, the terms are spelled out and we follow them," said Patrick O'Toole, the superintendent of the Upper St. Clair School District, about 10 miles south of Pittsburgh.

“If there’s a dispute, the parents tell us what to do.”

The case then moved to family court. In early August, Mrs. Orsini filed an emergency request to let her son play, as he had for more than a decade. Mr. Orsini argued that while he had supported his son’s right to play for years, he was now aware of new, worrying research about the safety of the game.

“Playing football cannot be considered status quo when the Child has now suffered three concussions,” Mr. Orsini’s lawyer wrote in a court filing. Common sense dictates that “the best interest and general health welfare of the Child is protected by not permitting Child to participate in football.”

The judge allowed the ban to stand. But two weeks later, Mrs. Orsini filed a petition to gain “sole legal custody” related to “the child’s participation in extracurricular activities.” The judge agreed to let the boy resume playing football while she decided on whether to approve the change to the custody order.

Despite a flurry of motions over the next few months, Mr. Orsini was unable to persuade the judge to stop his son from playing, and the boy completed his junior season without any concussions. The court case has strained Mr. Orsini’s already contentious relationship with his ex-wife and his sons, who rarely speak with him.

The growing number of disputes over the long-term consequences of football has put family court judges in the awkward position of having to pick sides on a hotly debated issue. In most states, judges are charged with ruling in the best interests of a child’s health. In the case of sports like hang gliding or rock climbing, the dangers may be self-evident.

But the science around the long-term cognitive and neurological damage caused by football is still emerging. Judges who side with parents trying to prevent their sons from playing tackle football end up endorsing the view that the sport is too risky, a stance that might be unpopular with voters who elect them. Judges who side with parents who want their son to play, on the other hand, risk being accused of not being prudent enough if the boy is injured.

“I’ve had custody officers say they won’t touch the issue,” said Mark R. Ashton, a family law attorney at Fox Rothschild in Exton, Penn. “If a kid is seriously injured playing sports, the court gets blamed.”

The Orsinis have entered a court-mandated mediation program, but the two sides are no closer. Their next mediation, which will be in front of the judge, is later this month. If neither side budge, Mr. Orsini said he is prepared to go to trial, an expensive and time-consuming process that will likely require, among other things, that the boy be deposed.

His fear, though, is that the case will drag on until November, when his son will turn 18, and Mr. Orsini will be powerless to stop him from finishing his senior season, or from playing in college.

“If I can’t stop him now, he’s on track to have a lot more damage done,” he said.