2018 IL App (2d) 170693-U
No. 2-17-0693
Order filed July 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KELLI SWANSON, DONALD SWANSON, and LAURIE SWANSON, Plaintiffs-Appellants, v. CONSOLIDATED SCHOOL DISTRICT 158, KIMBERLEE HOFFMAN, JULIANN BRUNKEN, NATHAN SCHMITT, and BRUCE BLUMER, Defendants-Appellants (Lisa Nold, Accelerated Rehabilitation Centers, Ltd., and Legendary, LLC, Defendants).	)	Appeal from the Circuit Court of McHenry County. No. 11-LA-398 Honorable Michael T. Caldwell, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting certain defendants summary judgment, where there were factual issues concerning defendants' knowledge of plaintiff's injury and whether defendants engaged in willful and wanton conduct. Affirmed in part and reversed in part.

¶ 2 Plaintiff, Kelli Swanson,[1] sued defendants, Consolidated School District 158, Kimberlee Hoffman (freshman cheerleading coach), Juliann Brunken (coach), Nathan Schmitt (coach), and Bruce Blumer (athletic director), seeking compensation following three falls she sustained during cheerleading practice.[2] The trial court granted summary judgment to defendants. Plaintiff appeals, arguing that: (1) defendants were not immune from liability under sections 6-106(a) and 6-105 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/6-105, 6-106(a) (West 2010)); and (2) the question whether defendants engaged in willful and wanton conduct presents a triable issue. We affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 During the 2010-2011 school year, plaintiff was a freshman at Huntley High School, which is part of Consolidated School District 158. Hoffman was the freshman cheerleading coach, Brunken was the sophomore cheerleading coach, and Schmitt was the varsity cheerleading coach.

[1] When the complaint was originally filed, plaintiff was a minor and her parents, Donald and Laurie Swanson brought the complaint as her parents and next friends. During the course of the proceedings, plaintiff attained the age of majority. For simplicity, we refer to her as the sole plaintiff.

[2] Plaintiff also sued Lisa Nold, an athletic trainer, Accelerated Rehabilitation Centers, Ltd., Nold's employer, and Legendary, LLC, a private gym. On December 2, 2016, plaintiff's claims against Nold and Accelerated were dismissed pursuant to a settlement, and her claims against Legendary were voluntarily dismissed without prejudice, with leave to re-file within one year.

¶ 5 Plaintiff had been a cheerleader since sixth grade. Prior to the cheerleading season at Huntley, plaintiff attended a cheerleading camp at the school in July 2010. During the camp, she was provided instruction on how to execute various cheers and stunts. The camp included coaches and cheerleaders from the University of Kentucky.

¶ 6 On November 18, 2010, the date of plaintiff's first fall, plaintiff attended cheerleading practice in the central gym at Huntley. Practice began at 5 p.m. Other cheerleading teams, including the sophomore and varsity teams, were present in the gym, but they were separated from the freshman team. The freshman team practiced a stunt called a "liberty" that was going to be performed at an upcoming competition, and the team was separated into stunt groups. In plaintiff's group, plaintiff served as the "flier" who was pushed up and held by three other cheerleaders while she stood on one leg. The group performed the stunt on a mat. Hoffman was 5 to 10 feet away, working with another stunt group. Plaintiff and her team were given instruction on performing this stunt at Huntley by Hoffman. She had also been given instruction at the camp, and plaintiff had performed this stunt in eighth grade, but as a "base," not a flier.

¶ 7 During the stunt, three girls picked up plaintiff by one leg and held her there. Plaintiff estimated that her head was about 10 feet off the ground. She held the position for 10 to 20 seconds before the girls got "shaky" and dropped plaintiff, who fell to her left side. Plaintiff's head hit the mat, "knocking back." The girls caught only her leg. Plaintiff has no memory of losing consciousness. She lay on the mat for about 1½ minutes after the fall, and, when she opened her eyes, the coaches were standing over her. According to plaintiff's deposition testimony, Hoffman, Schmitt, and the trainer were standing over her. (Defendants and plaintiff's teammate, Bianca Cabrera, testified that the trainer was *not* present, and the trainer testified that she was never contacted or informed of plaintiff's falls.) Schmitt, the varsity coach, asked

plaintiff if she was okay and asked simple questions such as where she was and her name. Plaintiff responded and said that she was okay. Schmitt, according to plaintiff, did not ask plaintiff what happened or if she hit her head, nor did he examine her. Hoffman also did not ask plaintiff questions or if she hit her head, nor did she examine plaintiff. None of the coaches instructed plaintiff to let them or her parents know if she experienced concussion symptoms, nor did they inform plaintiff's parents that plaintiff hit her head. (At her deposition, Hoffman denied knowledge of any falls by plaintiff.)

¶ 8 Plaintiff sat out for five minutes and then continued with the practice as a base. During practice, plaintiff did not suffer from any headaches, dizziness, neck or back pain, or vision problems. Prior to leaving practice that day, plaintiff did not tell Hoffman that she had any physical problems; indeed, plaintiff felt fine at practice.

¶ 9 Once at home, plaintiff told her mother that she was dropped at practice, but was okay. However, plaintiff had a headache that night. She thought it was a sinus headache, because she typically had those in the fall or winter every year. She told her parents about the headache one or two days later.

¶ 10 On November 23, 2010, Donald took plaintiff to see a doctor because she was having headaches, feeling light-sensitive, and her neck hurt. The physician advised that nothing was wrong (according to Donald, X-rays were taken only of plaintiff's lower back) and that plaintiff did not have a concussion. He was aware that plaintiff was a cheerleader, but did not restrict her activities. Plaintiff's parents did not inform anyone at the school about plaintiff's symptoms or that plaintiff had received medical care. Plaintiff did not know if her parents advised her coaches or anyone else at the school that plaintiff had sought medical attention. Plaintiff herself did not tell any personnel at the school that she saw a doctor. She did not miss any school between

November 18, and November 30, 2010. Laurie testified that at no point between November 23, and 30, 2010, did plaintiff exhibit any signs or symptoms of an injury that were of concern to her.

¶ 11 On November 30, 2010, plaintiff sustained her second fall. During practice with her team, she performed a "twist down" stunt on a mat in the central gym. Plaintiff felt that she was physically capable of participating in cheerleading at this time, she had performed this stunt since seventh grade, and it was not too difficult. Hoffman and Schmitt had given instruction on the stunt. The stunt required plaintiff (as the flier) to be thrown into the air and to twist down and be caught by the cheerleaders on the ground. As performed at Huntley, a "back spot" and a "base" on each side were responsible for holding the flier's ankles during the stunt. Plaintiff's teammates caught only her feet. The back spot did not make contact with plaintiff. Plaintiff fell on her head, neck and back, with the back and left side of plaintiff's head hitting the mat. Plaintiff testified that Hoffman watched plaintiff perform the stunt, standing about five feet away. Hoffman asked plaintiff if she was okay, and plaintiff testified that she told her that she was fine. According to plaintiff, other than asking if she was okay, Hoffman did not ask plaintiff any other questions, did not examine her, did not ask if she hit her head, and did not ask what happened. Nor did she tell plaintiff to tell her parents what happened or to tell them if she experienced headaches, dizziness, or vision issues. During that practice, plaintiff did not experience a headache, blurry vision, numbness, or vomiting. Prior to leaving practice, she did not complain to Hoffman about any physical issues. Plaintiff participated in the practice that day and performed more stunts and dance routines, which she was able to do without any issues.

¶ 12 When she arrived home, plaintiff told her mother that she had fallen during practice, hit her head on the floor, and that her neck hurt. Laurie testified that she had no concerns about

plaintiff's health at that time, "[e]xcept if she got dropped again, I was concerned." Plaintiff told her father that she hit her head and, according to Donald, plaintiff said that it was not that bad. Donald shined a flashlight in plaintiff's eyes to see if her pupils dilated and asked her if she was dizzy or nauseated, which she denied. To Donald, she seemed fine, and plaintiff told him that she did not feel like she needed to sit out of cheerleading. She told him that she could deal with it. Plaintiff testified that, that evening, she had a headache, dizziness, and felt nauseated. She took Tylenol and went to bed. The following day, she had a headache and was dizzy. Plaintiff testified that she did not seek medical attention on this date because she did not think that anything was wrong. "We didn't know what concussions were and didn't know the severity of anything that had happened."

¶ 13 On December 5, 2010, after a cheerleading competition, plaintiff and her mother complained to Hoffman that plaintiff had thrown up the night before. Plaintiff could not recall if she or her mother told Hoffman that she threw up because of the previous instances of hitting her head. She and her mom assumed it was due to the flu.

¶ 14 On December 10, 2010, plaintiff sustained her third fall. Her team was practicing in the school hallway on mats. As she performed a twist down, plaintiff's back spot again failed to catch her and plaintiff's head, the left and back side of her neck, and the left side of her back hit the mat; she was nearly on her left side. Hoffman was five to seven feet away; plaintiff was unsure if Hoffman saw her fall. Plaintiff testified that Hoffman asked plaintiff how she felt, and plaintiff replied that she was okay, but that her head and neck hurt. When asked how Hoffman replied, plaintiff testified: "Well, it was time to go to the [basketball] game so we kind of just stopped then. So she didn't really say anything to me about it." Plaintiff testified that Hoffman did not ask her if she hit her head or if she had any symptoms or examine plaintiff. She did not

get the trainer, and she did not tell plaintiff to tell her parents or the coaches if she had any symptoms such as headache, dizziness, or vision issues. Plaintiff cheered (as a base) for 1½ quarters of the game and then took herself out of it because she had an "excruciating headache," her neck hurt, and it was difficult to concentrate. She sat next to Hoffman in the stands. Plaintiff testified that she told Hoffman that she did not feel well and that her neck and head hurt. Hoffman, according to plaintiff, gave plaintiff an ice pack, which plaintiff put on her neck. On that day, plaintiff did not ask to speak with an athletic trainer. Her parents were present for the game, and plaintiff advised them that her head and neck hurt. The Swansons told Hoffman that plaintiff would not be a flier anymore. According to plaintiff, Hoffman "just shrugged her shoulders and didn't say much." Donald and Laurie did not take plaintiff to get medical treatment that day. Plaintiff testified that, other than asking if she was okay, Hoffman did not examine plaintiff or ask what happened, if plaintiff hit her head, or if she had any symptoms. Nor did she tell plaintiff to tell her parents that she hit her head.

¶ 15 Plaintiff explained that, during this time, she had daily headaches, but she attributed them to sinus colds that she typically had during wintertime. She cheered with the team for the remainder of the season (through February). Plaintiff testified that, after the third fall, she told Hoffman during a few practices that she had a headache and felt that she was going to vomit (plaintiff felt nauseated and was in pain), and Hoffman had her sit to the side.

¶ 16 Plaintiff testified that Hoffman never examined her or asked any questions other than if plaintiff was okay. She did not ask what happened or how plaintiff hit her head. No one told her to let them or her parents know if she experienced headaches, dizziness, or vision issues. No coach told her to tell her parents that she hit her head. The cheerleading season ended in February 2011. Plaintiff started taking private lessons at a private gym, Legendary, LLC, to

prepare for the sophomore cheerleading season. On March 17, 2011, while attempting to perform a backflip at Legendary, plaintiff landed on her neck. She felt dazed. Plaintiff started having memory issues in April 2011. Plaintiff tried out for the sophomore team, but did not make it because she felt that her memory issues caused her to forget the cheers and that her neck and back pain made it more difficult to perform jumps.

¶ 17 Doctors have restricted plaintiff from doing contact sports or activities that involve the threat of her hitting her head. She cannot participate in cheerleading. She can swim, but cannot jump into a pool or dive. She cannot use a trampoline. Plaintiff does eye exercises. Being in the heat and sun exacerbates plaintiff's headaches. She cannot lay on her stomach due to her neck issues, nor can she bend it in a certain way because it can get out of alignment. Plaintiff has to drink extra water and have food available to alleviate headaches. It takes plaintiff much longer to complete her homework than it used to, and she is given more time to complete tests. She cannot attend events with loud noises because it exacerbates her headaches. She has also had to delay knee surgery because her doctor is concerned about her undergoing anesthesia. She still experiences nausea and dizziness. Since October 2011, plaintiff has taken Properanolol daily for her headaches, and she takes Tylenol about three to six times per week.

¶ 18 Laurie testified that she expected that plaintiff's coach would have contacted her or Donald if plaintiff's falls were bad enough. In hindsight, plaintiff did not tell her or Donald the extent of her injuries. She was passionate about cheerleading. After the November 18, 2010, fall, when plaintiff complained of a headache, Laurie thought it might have been related to the fall, but the headache was gone the following day. She did not know if the fall was the cause; it could have been. "I'm not a doctor. I don't know." "I was trusting the school who is supposed to be watching her and taking care of her to let me know how bad and severe the fall was."

Laurie did not call the school after each fall to verify plaintiff's information. No one from the school ever contacted Laurie. If she or Donald had been contacted, they would have changed their actions. If the school had contacted Laurie and told her how plaintiff struck her head and the severity of it, Laurie would have pulled plaintiff out of cheerleading. Donald testified that he found out later that plaintiff impacted her head first on all her falls.

¶ 19 Hoffman disputed plaintiff's key assertions and testified that, during the season, she was unaware that plaintiff suffered from headaches, nausea, dizziness, vision problems, balance problems, confusion, or any other injury that required medical attention. Hoffman could not recall an incident where plaintiff was dropped at practice and may have sustained an injury. Hoffman did not recall plaintiff laying on a mat due to any injury for a minute or more or where plaintiff was suspected of striking her head in any way at cheerleading practice. "What [plaintiff is] saying [about November 18] did not happen." Hoffman did not recall plaintiff withdrawing herself from any competition or practice because she was not feeling well. Nor did plaintiff report any nausea or vomiting issues to Hoffman. Hoffman also testified that plaintiff never reported to her that her head and neck hurt, nor was she given ice for her head or neck. Plaintiff's parents never reported to Hoffman that plaintiff was suffering from headaches, nausea, balance issues/dizziness, double/fuzzy vision, sensitivity to light/noise, feeling sluggish or foggy, having memory issues, or having concentration problems.

¶ 20 Hoffman further testified at her deposition that, during the 2010-2011 school year, the training she was offered on concussions was from the school's athletic director, Blumer. If a coach suspected or believed one of her athletes sustained a concussion, she was expected to go to the athletic trainer and complete an accident report. Huntley High School implemented a written concussion policy in 2011. Prior to the written policy, Hoffman was unaware of any specific

policy that a coach was expected to implement in the event of a concussion. Also prior to 2011, she was never told that an athlete should be removed from practice and competition until cleared by a physician or trainer. Hoffman could not recall if, prior to the 2010-2011 season, she was aware that even a ding or a bump to the head can be serious and that most concussions occur without loss of consciousness. However, she was aware that signs and symptoms of a concussion may appear right after the injury or take hours or days to fully appear. She was also aware that student athletes sometimes fail to report injury symptoms. However, she was not aware of a student athlete in cheerleading minimizing their symptoms and saying they are okay in order to get back into the sport. In November 2010, Hoffman followed the protocols outlined by the National Federation of State High School Associations' (NFHS) spirit guide; they were relayed to her by the head coach, Nathan Schmitt. She was unaware that NFHS had a protocol for handling concussions, which specified that any athlete who exhibits signs, symptoms, or behaviors consistent with a concussion shall be immediately removed from the contest and not return to play until cleared by an appropriate healthcare professional.

¶ 21 Schmitt, the varsity coach, testified that he was unaware that plaintiff suffered from these medical issues or suffered a concussion. Schmitt did not believe that plaintiff had suffered a serious injury. Brunken, the sophomore coach, testified that she was unaware that plaintiff had ever fallen at practice or was suffering from the above-noted symptoms. Blumer, the athletic director, was also unaware that plaintiff fell during cheerleading practice, and he was not notified that she suffered any injury.

¶ 22 Blumer testified that he was instructed on concussion symptoms, such as loss of consciousness, nausea, dizziness, disorientation, and memory. He received education about concussions from the Illinois Athletic Directors Association, the NFHS, and the Illinois High

School Association (IHSA). Blumer disseminated to the coaches NFHS and IHSA school policies and information concerning concussions.[3] Prior to the 2010-2011 school year, coaches were instructed on recognition of concussions, risk of concussions, and what to do if they believed there was a concussion. Prior to the 2010-2011 school year, the NFHS implemented a rule change on concussions that stated that any athlete who exhibits signs, symptoms, or behaviors consistent with a concussion (such as loss of consciousness, headache, dizziness, confusion, or balance problems) shall be immediately removed from the contest and shall not return to play until cleared by an appropriate health care professional. Also during this time, Huntley followed the IHSA's return-to-play policy, which provided that, if a student athlete was suspected of having sustained a concussion, they were not allowed to return to practice/play without a physician or athletic trainer clearance. Blumer further testified that, if a coach suspected an athlete had a concussion, they were expected to remove the athlete from the activity and retrieve the athletic trainer. Blumer was unaware of any injuries plaintiff sustained during cheerleading practice, nor was he given by any trainer or coach an accident report, which is required to be completed when a student athlete requires medical attention. Blumer did not have any conversations with plaintiff or her parents concerning any injuries plaintiff sustained during cheerleading practice. He would have expected that, if plaintiff sustained each fall as she alleged, the coach would have removed her from practice until she obtained medical clearance.

¶ 23 Schmitt, the head coach, testified that, during the 2010-2011 season, the coaches received "very basic" training on concussions. If they suspected an athlete sustained a concussion, they

[3] NFHS concussion policy states that, when an athlete "exhibits signs, symptoms, or behaviors consistent with a concussion," he or she "shall be immediately removed from the contest and shall not return to play until cleared by an appropriate health-care professional."

were expected to remove them from the activity and the athlete could not resume with the activity until they were cleared by a medical professional or trainer. During that season, coaches followed the NFHS spirit guide and the IHSA protocols. The athletic department circulated this information to coaches. Schmitt had no recollection of any incidents involving plaintiff being dropped during cheerleading practice. He never had any conversations with her or her parents concerning any injury plaintiff may have sustained, nor did anyone inform him that plaintiff was suffering from any concussion symptoms. If a student struck their head on a mat or other object during cheerleading practice and reported some signs or symptoms consistent with a concussion, Schmitt would expect his lower-level coaches to remove the student from participation and keep her out of it until the student was cleared by a trainer or a physician. If Hoffman had informed Schmitt that, in a 20-day period, plaintiff had suffered three incidents where she struck her head on a mat and informed him that she once reported a headache, Schmitt would have instructed Hoffman to remove plaintiff from participation until cleared by a medical professional.

¶ 24 Brunken testified at her deposition that, during the season at issue, concussion training was incorporated into first aid training. If a coach suspected that a student sustained a concussion, they were supposed to immediately contact the trainer. The trainer was responsible for filling out a student accident report; no such report was completed for plaintiff's injuries. Brunken was unaware that plaintiff had sustained any injuries during cheerleading practice or reported any concussion symptoms.

¶ 25 Nold testified that, during the relevant period, she was a certified athletic trainer at Huntley High School, working for Accelerated Rehabilitation Centers. She was expected to fill out an accident report to record any student injuries. She was familiar with IHSA and NFHS concussion protocols. The IHSA implemented a return-to-play policy for the 2010-2011 season,

which provided that, if a student athlete was suspected of having sustained a concussion, they were not allowed to return to practice/play without a physician or athletic trainer clearance. There was no written concussion policy at the school during this season.

¶ 26 Nold never filled out an accident report for any injury plaintiff sustained. Nold had no knowledge of any fall plaintiff sustained on November 18, 30, or December 10, 2010. No one requested that she check out a student on that day, nor did she evaluate plaintiff on those dates. Nold never evaluated plaintiff for any injuries at any time while she was the athletic trainer at Huntley High School. Nold was not in the gym on these dates, nor was she at the cheerleading practice in the hallway on December 10, 2010. Nold was not present at every athletic team practice, but could be reached via cell phone or two walkie-talkies. Emergency procedures at the school dictated that, if an athlete sustained an injury, the coach must contact the athletic trainer. Nold could not recall if the cheerleading coaches ever contacted her about an injury during cheerleading practice. If a coach suspected that a student sustained any degree of concussion or head injury, Nold would have expected the coach to contact her. If she was alerted about a concussion, she would have removed the athlete from the activity, checked their symptoms, spoken to the coach, contacted the parents, and completed an evaluation form and accident report. Depending on the severity of the symptoms, she may have referred them to the ER or a physician. Nold would have also educated the parents on symptoms to look for. If the student returned to school the next day, they would have been required to check in with Nold. Nold found it common for student athletes to under-report their injuries in order to return to games or practice.

¶ 27 Bianca Cabrera, a fellow cheerleader on plaintiff's team, testified that her position was base during the season at issue. She recalled plaintiff falling during practice in November of that

year. Cabrera finished her stunt with her group, turned around, and saw plaintiff laying on the mat in a awkward position; she appeared uncomfortable. "And she wasn't getting up. She laid there for a little while." Cabrera did not see the fall itself, but she heard people gasping and saw everyone crowded around plaintiff. Plaintiff sat out for a "little bit," went to get ice in the training room, relaxed for a while, and then left. Hoffman was present, asked plaintiff if she was okay, and told her to go to the athletic trainer's room, if she needed to do so, but Hoffman did not insist that plaintiff go to the trainer's room. No athletic trainer came to the gym while plaintiff was on the mat. Plaintiff seemed a little unstable when she stood up, but was fine after that. The following day, Cabrera overheard plaintiff tell Hoffman that she was not feeling the way that she normally felt. Plaintiff did not fully participate in practice that day, but she gradually resumed normal participation. Subsequently, plaintiff pulled herself out of practice at times when she would get lightheaded or have a headache. She would tell Hoffman that she was experiencing these symptoms. This occurred at least weekly. Cabrera recalled that, in December or January of the season at issue, plaintiff told her that she had been diagnosed with a concussion. Plaintiff was still participating in cheerleading at this time.

¶ 28 On November 18, 2011, plaintiff sued defendants, alleging negligence and willful and wanton conduct. Defendants raised sections 6-105 and 6-106 of the Tort Immunity Act as an affirmative defense. They also asserted that neither plaintiff nor her family or physicians informed defendants that plaintiff suffered a concussion or concussion-like symptoms during the freshman cheerleading season. Further, they did not observe such symptoms. Accordingly, defendants argued that they could not be held liable for failing to properly assess or for failing to determine that plaintiff suffered from a concussion. On January 12, 2017, defendants moved for summary judgment, arguing that: (1) plaintiff's claims were barred by section 6-105 and 6-

106(a) of the Tort Immunity Act; and (2) plaintiff failed to allege/demonstrate that defendants acted with willful and wanton conduct.

¶ 29 On April 27, 2017, the trial court granted defendants' motion for summary judgment, finding that absolute immunity applied under section 6-105 and 6-106 of the Tort Immunity Act and that the conduct alleged, "given the way in which any problems were either nonexistent, nonreported or obscured[,] really does excuse the defendants in this case from any charge of willful and wanton misconduct." The court further found no just reason to delay enforcement or appeal of the order. Ill. S. Ct. Rule 304(a) (eff. March 8, 2016).

¶ 30 On August 10, 2017, the trial court denied plaintiff's motion to reconsider. Plaintiff appeals.

¶ 31 II. ANALYSIS

¶ 32 Plaintiff argues that the trial court erred in granting defendants summary judgment because: (1) defendants are not absolutely immune from liability under sections 6-105 and 6-106(a) of the Tort Immunity Act; and (2) the question whether defendants engaged in willful and wanton conduct presents a triable issue. For the following reasons, we conclude that summary judgment on each issue was premature.

¶ 33 Summary judgment is appropriate when the pleadings, affidavits, depositions, and admissions of record, construed strictly against the moving party, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). We review *de novo* a trial court's grant of summary judgment, and we will reverse only if we conclude that there exists a genuine issue of material fact. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 34 A. Absolute Immunity under Sections 6-105 and 6-106(a) of the Tort Immunity Act

¶ 35 Plaintiff argues first that defendants are not absolutely immune from liability under sections 6-105 and 6-106(a) of the Tort Immunity Act because they undertook a duty to provide care.

¶ 36 Governmental units are liable in tort on the same basis as private tortfeasors, unless a valid statute addressing tort immunity imposes conditions on that liability. *Lloyd v. County of Du Page*, 303 Ill. App. 3d 544, 549 (1999). Under the Tort Immunity Act, the immunities afforded to units of local government "operate as an affirmative defense which, if properly raised and proven by the public entity, precludes a plaintiff's right to recover damages." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503 (2000).

¶ 37 Section 6-105 of the Tort Immunity Act provides:

> "Neither a local public entity nor a public employee acting within the scope of his [or her] employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself[/herself] or others." 745 ILCS 10/6-105 (West 2016).

"By its plain terms, section 6-105 provides immunity from liability to a local public entity and its employees who have failed to make a physical or mental examination, or who have failed to make an adequate physical or mental examination." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 505 (2000).

¶ 38 Section 6-106(a) of the statute provides:

> "Neither a local public entity nor a public employee acting within the scope of his [or her] employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental or physical illness or addiction or from failing to prescribe for mental or physical illness or addiction." 745 ILCS 10/6-106(a) (West 2016).

By its plain language, section 6-106(a) provides immunity from liability to a local public entity and its employees "for injury resulting from: (1) a diagnosis that a person is afflicted with a mental or physical illness or addiction; (2) failing to diagnose that a person is afflicted with a mental or physical illness or addiction; and/or (3) failing to prescribe for a mental or physical illness or addiction." *Michigan Avenue National Bank*, 191 Ill. 2d at 510.

¶ 39 The immunities under sections 6-105 and 6-106(a) apply to school employees and are absolute immunities. See *Grandalski ex rel. Grandalski v. Lyons Township High School District 204*, 305 Ill. App. 3d 1, 12 (1999) (section 6-105 contains no exception for willful and wanton conduct); see also *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 514 (2006) (when the plain language of an immunity provision in the Tort Immunity Act contains no exception for willful and wanton conduct, it means that the legislature intended to immunize both negligence and willful and wanton conduct).

¶ 40 Here, plaintiff argues that her allegations involve more than merely failing to diagnose a concussion. She claims that she alleged that defendants undertook a duty based on the school's concussion protocol (including the NFHS rules and the IHSA's return-to-play policy) to remove a student athlete from play when the athlete exhibits symptoms consistent with a concussion. However, they failed to follow this policy on three occasions. Thus, in her view, they are not immune under the Tort Immunity Act. Plaintiff urges that she is not arguing that defendants

failed to diagnose or adequately examine her for the purpose of determining whether she had a condition that could constitute a hazard to her health or safety, but, rather, that defendants failed to follow concussion protocol when they had actual knowledge that plaintiff fell on her head from about 10 feet high. That is, they failed to *react* to plaintiff's obvious head injury. She contends that a failure to diagnose a concussion is not necessary for a failure to follow concussion protocol. Plaintiff argues that, after her first fall, defendants knew that she required a medical evaluation prior to continued participation in cheerleading and, at that time, they should have taken action and complied with and/or enforced the policy. However, plaintiff was allowed to continue participating in cheerleading activities and she fell on her head on two subsequent occasions. Plaintiff further notes that she explicitly informed Hoffman about her head injury and symptoms after the third fall (and several times thereafter) and Hoffman failed to implement the concussion protocol.

¶ 41 Plaintiff relies on *Grant v. Board of Trustees of Valley View School District No. 365-U*, 286 Ill. App. 3d 642, 647 (1997), wherein a parent sued a school district after her son committed suicide. The student had told other students at his high school that he intended to kill himself, and he wrote suicide notes. Other students reported his intention to a school counselor, who questioned the student, but took no action other than contacting his mother and telling her that she should take her son to the hospital for drug overdose treatment (but did not mention his suicide threats). As relevant here, in assessing the parent's negligence count, the reviewing court noted that the complaint did not seek to impose liability for the district's failure to examine the student or diagnose his condition, but alleged that the district, with knowledge of the student's intent to commit suicide, failed to call for medical assistance, failed to inform his mother of his intention, and failed to implement a suicide prevention program. *Id.* at 646. Therefore, the court

determined, the district was not immunized from liability by sections 6-105 and 6-106(a) of the Tort Immunity Act. *Id.*

¶ 42 Here, plaintiff argues that she alleged that defendants repeatedly failed to follow their voluntary duty to remove her from participation in cheerleading, not that they failed to diagnose her condition. Her falling from 10 feet high on her head, she urges, is an obvious known risk to a known condition, as evidenced by the school's extensive head injury protocol. Her allegations, she notes, are critical of defendants' failure to react to a known condition after she hit her head on three occasions. Recognizing concussion symptoms and when head injuries occur, plaintiff asserts, which defendants are trained to do under their concussion protocol, is different from identifying a disease. She contends that, while the immunities would apply if plaintiff's only criticism was failure to diagnose a concussion, the circumstances here are different and warrant a different result.

¶ 43 Defendants respond that the type of conduct to which plaintiff refers—that defendants were required to observe/evaluate plaintiff and determine that any symptoms she had were consistent with a concussion—is precisely the type immunized by sections 6-105 and 6-106(a). They argue that *Grant* is distinguishable because the student's suicidal condition in that case was plainly known and, once a diagnosis is made or known, the course of treatment thereafter is not subject to immunity. Here, defendants argue, plaintiff's alleged condition of a concussion was *not* known to defendants. Defendants assert that it was unrebutted that defendants never believed that plaintiff suffered a serious injury during the school year, nor did they believe that she suffered from concussion-like symptoms. This lack of knowledge, defendants argue, is supported by plaintiff's testimony that she specifically denied suffering from concussion-like symptoms in the presence of individual defendants and denied ever informing them that she was

suffering from such symptoms. Neither plaintiff nor her parents ever advised defendants that plaintiff was suffering from any medical problems or a concussion during the cheerleading season. Indeed, they did not believe that plaintiff needed medical interventions or was incapable of continued participation in cheerleading during the season. Thus, in defendants' view, there is no evidence to support the contention that the individual defendants were aware of plaintiff's actual condition, which, by its nature, was latent, and, as such, *Grant* is distinguishable.

¶ 44 Defendants rely on *Abruzzo v. City of Park Ridge*, 23 Ill. 2d 324 (2008), and *Grandalski*. In *Abruzzo*, a mother sued a municipality, alleging that emergency medical technicians who were dispatched to her son's father's home to provide medical care to her minor son, " 'a nonresponsive child who required CPR' " and who had a history of drug abuse, left without examining him, providing any treatment, or preparing a " 'run sheet' " for the 911 call, in violation of training principles and protocols. *Id.* at 328. She alleged that her son died as a result of the city's willful and wanton misconduct. The trial court dismissed the mother's action, finding that section 6-105 and 6-106(a) of the Tort Immunity Act applied. The supreme court held that the limited immunity provision of the Emergency Medical Services (EMS) Act (210 ILCS 50/3.150(a) (West 2004)) applied over the Tort Immunity Act and reversed and remanded. *Id.* at 348. Assessing the Tort Immunity Act provisions, the supreme court concluded that they applied to the mother's complaint, because she had alleged that the city failed to evaluate or assess her son or otherwise provide any assistance. *Id.* at 333. The "plain language" of the provisions granted "immunity for failing to perform a physical examination to determine whether a person has a condition constituting a hazard to that person's health or safety." *Id.* However, ultimately, the court held that the EMS Act provisions governed over the Tort Immunity Act sections. *Id.* at 348.

¶ 45 In *Grandalski*, a student sustained injuries when she fell on her head while performing a gymnastics maneuver during a physical education class at her high school. The teacher attended to the student after the fall and summoned the nurse, who examined the student, had her transported to the nurse's office, and contacted her mother. The student was ultimately diagnosed at the hospital with having a cervical fracture and underwent a cervical fusion. The plaintiff alleged that the teacher and nurse were liable for rendering negligent medical care, including failing to immobilize the student, permitting her to lie down, permitting her to leave school without immobilizing her neck, failing to properly assess her neck injury, and failing to request appropriate medical intervention. The reviewing court affirmed the dismissal of the complaint, holding that section 6-105's immunity applied because, if true, the alleged actions "were taken in connection with an evaluation of [the student's] injuries" and because the provision "contains no exception for willful and wanton misconduct." *Id.* at 12.

¶ 46 Plaintiff replies that *Abruzzo* is distinguishable because the paramedics in that case failed to evaluate or assess the injured minor, whereas, here, plaintiff alleged that defendants failed to follow concussion protocol. Further, she argues that a failure to diagnose a concussion is not necessary for a failure to follow protocol. *Grandalski*, she asserts, is also distinguishable because the allegations centered on the teachers' and nurse's evaluation of the student's injuries. Here, plaintiff notes, she alleged that defendants were required to remove plaintiff from cheerleading until cleared by a medical professional and failed to do so on three occasions.

¶ 47 We agree with plaintiff that defendants' cases are distinguishable and that this case is more similar to *Grant*, which distinguished the failure to implement a policy (immunity provisions inapplicable) from a failure to diagnose or examine (provisions apply). The plaintiff in *Abruzzo* alleged a failure to examine, which squarely falls within the Tort Immunity Act, and

the allegations in *Grandalski* centered on a nurse's and teacher's negligent care. We disagree with defendant's assertion that plaintiff's alleged condition was *not* known to defendants. This material fact was disputed. Plaintiff testified that Hoffman and others stood over her when she lay on the mat after her first fall (though she did not testify that Hoffman saw her fall), and she testified that, after her third fall, she told Hoffman that her head and neck hurt and that later, in the stands, she again told Hoffman that her head and neck hurt and that she did not feel well, at which time Hoffman gave her an ice pack. Plaintiff also testified that, during several subsequent practices, she told Hoffman that she had headaches and felt nauseated and that Hoffman had her sit out of practice. Thus, by plaintiff's telling (elements of which were corroborated by Cabrera), after the first fall, Hoffman was aware that plaintiff sustained a fall and, after the third fall, Hoffman was aware that plaintiff's head and neck hurt following another fall. It is undisputed that concussion symptoms are not always immediately apparent. Thus, a fall to the head, in itself, can constitute sufficient notice of a potential concussion. Here, certainly after the third fall, defendants knew that plaintiff exhibited symptoms that triggered the concussion protocol.

¶ 48 We conclude that the trial court erred in granting defendants summary judgment, where a genuine material factual issue existed as to whether defendants had sufficient knowledge to trigger the concussion protocol and, thereby, were immunized under the Tort Immunity Act.

¶ 49 B. Willful and Wanton

¶ 50 Next, plaintiff argues that the question whether defendants engaged in willful and wanton conduct presents a triable issue and, thus, summary judgment was premature. For the following reasons, we agree.

¶ 51 Willful and wanton conduct is not an independent tort, but, rather, an aggravated form of negligence. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL

112479, ¶ 19. To recover damages based on willful and wanton conduct, a plaintiff must plead and prove the elements of a negligence claim: (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached that duty, and (3) that the breach was the proximate cause of the plaintiff's injury. *Id.* Additionally, a plaintiff must plead and prove willful and wanton conduct. *Id.*

¶ 52 Willful and wanton conduct means either: (1) an actual intent to harm; or, as relevant here, (2) an "utter indifference" to or "conscious disregard" for the safety of others. *Pfister v. Shusta*, 167 Ill. 2d 417, 421 (1995). Utter indifference to, or conscious disregard for, the safety of others consists of more than mere inadvertence, incompetence, or unskillfulness. *Geimer v. Chicago Park District*, 272 Ill. App. 3d 629, 637 (1995). "Under the facts of one case, willful and wanton misconduct may be only degrees more than ordinary negligence, while under the facts of another case, willful and wanton acts may be only degrees less than intentional wrongdoing." *Ziarko v. Soo Line R. Co.*, 161 Ill. 2d 267, 275-76 (1994). "[I]n addressing the question of willful and wanton conduct, factors courts have considered include whether there was: (1) a deviation from standard operating procedures or a policy violation; (2) an unjustifiably lengthy response time; or (3) an unjustifiably inadequate response to a known danger. These factors do not represent requirements for finding willful and wanton conduct, which must be based on the totality of the circumstances." (Citations omitted.) *In re Estate of Stewart*, 2016 IL App (2d) 151117, ¶ 84.

¶ 53 While the question of willful and wanton conduct is generally a question of fact for the jury to resolve, the trial court must first determine if the plaintiff has presented enough factual evidence to present the issue to the jury. *Trotter v. School District 218*, 315 Ill. App. 3d 1, 19

(2000). If the plaintiff has failed to produce any evidence of such conduct, then the court should find as a matter of law that the defendant's conduct was not willful and wanton. *Id.*

¶ 54 Plaintiff argues that defendants exhibited reckless disregard for her safety, where they had knowledge of the serious risks of head injuries, witnessed plaintiff fall on her head three times, and never removed her from cheerleading activities or sent her to the trainer (by defendants' account) or to be evaluated by a health care professional, pursuant to the concussion protocol. Although Hoffman was supposed to follow the NFHS concussion rule, she did not remove plaintiff from practice or inform plaintiff or her parents to watch for concussion symptoms. Hoffman's action rose to the level of willful and wanton conduct, plaintiff asserts, because she repeatedly displayed an utter indifference to or conscious disregard for plaintiff's safety by never removing her from participation in cheerleading. Even after she was informed that plaintiff displayed concussion symptoms such as vomiting, headaches, and was not feeling well, Hoffman never followed policies and procedures that required plaintiff to be removed from participation until cleared to play. Hoffman, according to plaintiff, did not ask plaintiff if she hit her head. Rather, she permitted plaintiff to continue practicing after her falls. By Hoffman's own admission, plaintiff notes, she was aware that student athletes do not always report their symptoms and require further examination. Plaintiff further argues that, even after her third fall, Hoffman did not remove her from play or send her to the trainer. After plaintiff informed Hoffman that her head and neck hurt, Hoffman, with deliberate indifference to plaintiff's safety and in violation of concussion protocol and IHSA return-to-play policy, instructed plaintiff (on December 10, 2010) to continue cheerleading until, ultimately, plaintiff removed herself and left. (She also never completed an accident report.) Thereafter, Hoffman still permitted plaintiff to participate in cheerleading activities through the end of the season.

¶ 55 Plaintiff relies on *Hill v. Galesburg Community Unit School District 205*, 346 Ill. App. 3d 515 (2004), and *Hadley v. Witt Unit School District 66*, 123 Ill. App. 3d 19 (1984). In *Hill*, a high school student sustained an eye injury when a beaker exploded while he performed an experiment in chemistry class. The student was not wearing eye protection. The plaintiffs alleged willful and wanton conduct by the school district, and the trial court dismissed the counts based on the Tort Immunity Act. In addressing the willful and wanton issue, the reviewing court noted that such conduct was not immune under the statute at issue in that case.[4] *Hill*, 346 Ill. App. 3d at 522. The court held that the plaintiffs' complaint sufficiently alleged a cause of action for willful and wanton conduct, because it alleged that the teacher had actual knowledge that the student was performing the experiment without wearing eye protection, had knowledge of the dangers of performing the experiment, and consciously disregarded the student's safety by permitting him to participate in the experiment without eye protection. *Id.*

¶ 56 In *Hadley*, upon which the *Hill* court relied, a high school student sustained an eye injury during an industrial arts class while hammering scrap metal through an anvil hole. The teacher had not instructed the students, who were supposed to be completing a woodworking project, to use goggles on the day of the accident, but had told them at one point to stop hammering. The reviewing court held that the question of willful and wanton conduct presented a triable issue for the jury. *Id.* at 23. The allegations and evidence that the teacher was present and observed the student hammering, knew or should have known hammered metal could splinter, failed to direct

[4] Under the Tort Immunity Act, willful and wanton conduct is defined as: "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2016).

the students to wear goggles, and failed to act in the face of a dangerous situation showed a reckless disregard for the safety of others after knowledge of the impending danger. *Id.* Here, plaintiff argues that this is not a case where the court can conclude that there is no evidence that defendants acted with reckless disregard for plaintiff's safety. Not following concussion protocol, she argues, was not only dangerous, but also reckless.

¶ 57 We agree with plaintiff that these cases are instructive. We reject defendants' contention that *Hill* and *Hadley* are distinguishable because the teachers in those cases knew of the danger and failed to act (by permitting the dangerous activities to continue without the legally-mandated safety equipment). Further, this is, as noted, a material factual question concerning defendants' knowledge of plaintiff's falls and symptoms.

¶ 58 Defendants argue that, as a matter of law, there was insufficient evidence of willful and wanton conduct. As to plaintiff's claim that defendants failed to remove her from participation when there was a possibility of a concussion, defendants argue that there was no evidence that they knew there was a known danger to plaintiff and, after knowledge of the danger, acted without reasonable precaution. Plaintiff, they note, did not testify that Hoffman or Schmitt saw her fall or saw her head strike the mat, and they both denied ever knowing that plaintiff struck her head. We reject this argument. As noted in our discussion of tort immunity, there is a factual dispute concerning defendants' (specifically, Hoffman's) knowledge of plaintiff's falls and symptoms.

¶ 59 Defendants further argue that, even if were become aware that plaintiff fell, the coaches acted reasonably: according to plaintiff, they asked plaintiff if she was okay (and she advised them that she was). See *Bielema v. River Bend Community SD 2*, 2013 IL App (3d) 120808, ¶ 19 (affirming summary judgment for the defendant school district, where the plaintiff student

slipped on a puddle of liquid inside a high school gymnasium; a school coach standing guard over the puddle was not focused on the spill and engaged in conversation with others when the plaintiff approached to greet him; district employees' actions did not show an utter indifference to or conscious disregard for the safety of others because they took action to remedy the danger posed by the spill by posting a watch over it; coach's "mere ineffectiveness" did not rise to willful and wanton conduct); *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 109, 111-12 (2008) (affirming summary judgment for defendant school and holding that the plaintiffs failed to raise material factual question as to whether school employees acted willfully and wantonly in failing to supervise during breakfast a special-needs student (who could not speak and was profoundly mentally delayed), thereby, causing him to choke and sustain injury; concluding that the school maintained close supervision of the student, which evinced a concern for his safety, including a teacher stepping away only a few feet to a sink without turning her back on the student and two teachers rushing to retrieve the student when he ran away; school also followed its policy of cutting the student's food into small pieces and sitting by him as he ate); *Stiff v. Eastern Illinois Area of Special Education*, 279 Ill. App. 3d 1076, 1081-82 (1996) (affirming directed verdict for the defendant teachers and holding that teachers' conduct was not willful and wanton, where seven-year-old special-needs student broke her leg when she fell off of a bridge during a field trip to a state park; teachers had cautioned students about trail conduct, had considered other routes, and two teachers were within inches of the student as she crossed the bridge); see also *Barr v. Cunningham*, 2017 IL 120751, ¶ 18 ("school employees who exercise[ ] some precautions to protect students from injury, even if those precautions [are] insufficient, [are] not guilty of willful and wanton conduct").

¶ 60 We find defendant's case law distinguishable because the defendants in the cases took some sort of action to remedy the danger. Here, in contrast, plaintiff's claim is centered on defendants' inaction—namely, failing, pursuant to concussion protocol, to remove her from participation in cheerleading after she sustained several falls and complained of several concussion-like symptoms to her coach. The policy clearly states that immediate removal is the proper action, not merely asking if one is okay. For this reason, we also reject defendants' argument that plaintiff's own testimony showed that she was not suffering from the signs and symptoms of a concussion while in defendants' presence. It is true that she did not report all of her symptoms to defendants, but she testified that she did so after the third fall and several times thereafter. Also, Hoffman and Nold testified that athletes often downplayed symptoms in order to continue to participate in activities. But, again, the policy contains no exception for athletes' subjective evaluations of their condition.

¶ 61 Defendants also note that case law holds that knowledge of a condition, standing alone, is insufficient to demonstrate willful and wanton conduct in the absence of knowledge that there was a danger. See *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 17 (a visitor to an indoor tennis facility owned by the defendant was injured when he ran into a steel beam that was placed at an angle and hidden by a tarp; affirming dismissal of complaint, where allegations did not rise to level of willful and wanton conduct because the defendant had no prior notice of injuries caused by the beam or that occurred in a similar manner and alleged no defective condition on the property or the removal of any known safety device); *Tagliere v. Western Springs Park District*, 408 Ill. App. 3d 235, 242-48 (2011) (affirming summary judgment for the defendant park district, where a minor sustained injuries while playing on a seesaw the district owned; the district's failure to discover and correct a defect in the seesaw,

despite repeated inspections, did not constitute willful and wanton conduct as a matter of law; district did not know of defects in the seesaw, and they were not discernable to its employees; and that it had actual or constructive knowledge of the defect and failed to correct it; district did not have constructive knowledge that the seesaw was defective); *A.D. ex rel. J.D. v. Forest Preserve District of Kane County*, 313 Ill. App. 3d 919, 923-24 (2000) (a minor was injured when he ran face first into a tree; reversing jury verdict for the plaintiff and holding that the defendant forest preserve district's conduct was not, as a matter of law, willful and wanton, where the district had no knowledge of any prior injury relating to the tree, there was no evidence that it knew the tree was unreasonably dangerous, and the tree was in plain view; fact that employee who mowed grass around tree could have left it to grow tall to act as a natural barrier/deterrent did not reflect a course of conduct demonstrating an utter indifference to or conscious disregard for the safety of others); *Brown v. Chicago Park District*, 220 Ill. App. 3d 940, 945 (1991) (affirming dismissal of complaint alleging that a minor's foot was injured when a park district public shower's mirror, which was wedged behind a pipe by an unknown third party, fell on his foot; district employees knew mirrors were in the shower rooms and that they should not have been there; concluding that district's conduct did not rise to willful and wanton misconduct, where the plaintiff did not allege any prior knowledge of injuries due to placement of mirrors and the plaintiff did not allege any intentional act or one committed with an utter indifference to or a reckless disregard for the safety of others; statutory immunity applied). Here, defendants assert that they did not understand that plaintiff was ever injured, much less that she had a concussion or that she required medical attention. This lack of knowledge, they argue, was attributable to plaintiff repeatedly reaffirming to them that, despite falling, she was okay and able to continue. Defendants contend that plaintiff did not show that there was

unmistakable notice that she was injured and needed medical treatment. Further, her parents' conduct reinforced this inference, where they allowed her to continue to participate in cheerleading, even after plaintiff provided them with more information about her symptoms than she provided to any defendant.

¶ 62 Again, we reject defendants' argument and find their reliance on the foregoing cases misplaced because their knowledge of the falls and plaintiff's symptoms is a disputed material factual issue. It is true that there was evidence that plaintiff had symptom-free periods, but she also testified that she experienced head and neck pain and, most significantly, told Hoffman about the symptoms after her third fall and several times thereafter. Finally, as plaintiff notes, unlike here, the cases upon which defendants rely involved single events in which the plaintiffs sustained injuries and there was no evidence of prior injuries.

¶ 63 Defendants also address plaintiff's assertion that there was willful and wanton conduct because NFHS policy was violated, and they assert that: (1) the failure to follow an internal rule does not constitute negligence or willful and wanton conduct; and (2) no evidence showed that the policy applied or was violated. The policy, they note, applies to officials who are officiating at matches and games and does not apply to coaches or practices. Further, defendants argue that, even if the policy applied, defendants did not violate it because none of them ever believed that plaintiff suffered a concussion and none suspected that she did. Also, none were informed by plaintiff or her parents that they suspected plaintiff suffered a concussion. Thus, the policy was never implicated.

¶ 64 We reject defendant's arguments. First, although is it not a requirement, the failure to follow internal policy is a factor upon which a jury may rely in finding willful and wanton conduct. See *Stewart*, 2016 IL App (2d) 151117, ¶ 84. Second, we agree with plaintiff that the

NFHS and IHSA protocols directly applied to coaches and practices, as evidenced by the documents themselves and Blumer's testimony that he disseminated the policies to the school's coaches, who were expected to play the lead role in recognizing concussions in all practices. Third, Blumer also testified that, even if there were no other symptoms, if an athlete struck their head, the coaches' first reaction or their first inclination should be that the athlete sustained a concussion. Fourth, the concussion protocol does not allow an athlete's parents to clear an athlete to participate in an activity after the student has been removed due to a suspected concussion. Finally, we note again that defendant's assertion that none of the coaches were informed of plaintiff's symptoms is a disputed material factual issue.

¶ 65 Defendants also maintain that plaintiff cannot refute any fact set forth to which she failed to properly respond in accordance with local rule. Specifically, they note that plaintiff simply denied numerous statements of material fact proffered by the defendants in the trial court. However, in violation of local rule, plaintiff's responses failed in many instances to contain any citation to a supporting part of the record. Thus, they should be deemed admitted. Further, defendants contend that there are numerous instances where plaintiff denied certain facts but failed to cite to record evidence that actually refuted the statement proffered by defendants. Thus, defendants argue, the assertions should be deemed admitted for purposes of this appeal and reviewing the summary judgment motion.

¶ 66 Defendants raised this issue for the first time in the trial court in their reply to plaintiff's response to defendants' summary judgment motion. The trial court never ruled on it. We decline to address it because, other than citing numerous instances of alleged rule violations, defendants do not specifically address how any of the facts they argue we should deem admitted impact our willful-and-wanton analysis. *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d

296, 297 (2010) (the appellate court is entitled to have the issues clearly defined with pertinent authority presented and coherent arguments developed; it is not a repository for a party to foist upon it the burden of argument and research); Ill. S. Ct. R. 341(e)(7) (eff. Jan. 1, 2016).

¶ 67 Finally, defendants contend that plaintiff did not dispute that Brunken and Blumer were never aware that she fell or was injured and, thus, these defendants were entitled to summary judgment. Plaintiff does not address this argument in her reply brief. We agree with defendants and affirm this portion of the trial court's order. As to the other defendants, viewing the facts in the light most favorable to plaintiff, we conclude that the issue of willful and wanton conduct is a triable issue and, thus, the trial court erred in granting them summary judgment.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, the judgment of the circuit court of McHenry County is affirmed in part and reversed in part.

¶ 70 Affirmed in part and reversed in part.