

IN THE CIRCUIT COURT OF PIKE COUNTY ALABAMA

**Mario Davenport and Tara Davenport as parents
And next friend and on behalf of their daughter,
Maori Davenport,**

Plaintiffs,

vs.

CASE NO.: CV19-2

**SAVARESE, STEVE, individually and as Director
of the Alabama High School Athletic Association;
and ALABAMA HIGH SCHOOL ATHLETIC
ASSOCIATION;**

Defendants.

**COMPLAINT
FOR TEMPORARY AND PERMANENT INJUNCTION AND EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER**

COME NOW the above reference Plaintiff, by and through their undersigned counsel, and in seeking Declaratory and Injunctive Relief state as follows:

PRELIMINARY STATEMENT OF FACT AS TO THE NATURE OF THE ACTION

1. Maori Davenport is an exceptional student-athlete at Charles Henderson High School in Pike County, Alabama who has been disqualified from competing in high school sports in Alabama by the defendants because she received an \$857.20 "broken time" payment from USA Basketball after representing the United States of America and winning a gold medal in the 2018 FIBA American u18 Championship in Mexico City, Mexico during the period of August 1 through August 7, 2018 as a part of "TEAM USA."
2. Maori was even named to the "All-Tournament Team," despite the fact that most of the players, including nine of the twelve members of TEAM USA were rising college players that had completed their high school eligibility.
3. The fact that most frequently the players on TEAM USA are college players is an important factor that caused USA Basketball to make a mistake of fact and send Maori the "broken time" payment. Such payments are permissible under National Collegiate Athletic Association (NCAA) rules and none of the nine recipients that were in college have lost or are in jeopardy of losing their amateur status. Maori herself is not ineligible

or in jeopardy of losing her amateur status per the NCAA. She is committed to play basketball at Rutgers University next season.

4. USA Basketball has admitted their fault in sending the check to Maori. Additionally, Maori and/or members of her family questioned the coach of TEAM USA and USA basketball as to whether the payment was permissible. They were assured at every instance that the payment was permissible, that USA Basketball as a matter of routine checks with the state governing body for high school players and does not send a check if it is not allowed, and receiving this payment would not impact Maori's eligibility.
5. Normally, a letter is sent from USA Basketball explaining the purpose of the check. This was not done. Additionally, no one from USA Basketball checked with the AHSAA.
6. The check was sent on or about August 15th. Before receiving the check, Tara Davenport specifically asked the coach of TEAM USA, Louisville coach Jeff Walz if it was permissible. She was told that it was. After receiving additional confirmation that the payment was permissible, the check was deposited.
7. Almost two months later, it was discovered by USA Basketball that the administrative assistant tasked with checking with the state governing body to ensure the three high school athletes on the team could receive the stipend check had not contacted those state governing bodies in Missouri, Illinois and Alabama.
8. It was not until mid to late November that USA Basketball was informed that the three high school players could not receive the check.
9. On November 26th, 2018, Tara Davenport is told for the first time that Maori could not accept the stipend. The next day, November 27th, Tara Davenport calls the AHSAA and self-reports the receipt of the check from USA Basketball and also makes Charles Henderson High School aware of the check. On November 28th, the money is reimbursed to USA Basketball.
10. On November 30th, the same day that USA Basketball receives the reimbursement, Steve Savarese, the Executive Director of the AHSAA unilaterally makes the decision to rule Maori Davenport ineligible for the rest of the season.
11. Administrative appeals followed that upheld the Savarese decision.
12. The end of the regular season for Charles Henderson basketball is rapidly approaching. Post-season play begins with the area tournament beginning on February 2nd, 2019 and concludes with the state championship tournament which runs from February 25th through March 2, 2019.

13. It is undisputed that the Davenports did not request the check. It is undisputed that the Davenports did not expect the check. It is undisputed that on more than one occasion, the Davenports were told that the payment was permissible. It is undisputed that the “broken time” payment was sent by USA Basketball under a mistake of fact. It is undisputed that the check was “accepted” because of a mistake of fact. It is undisputed that within 48 hours of learning that the check was not allowed, the payment was rejected and returned by the Davenports.
14. Plaintiff brings this complaint seeking a declaratory judgment and a temporary restraining order, preliminary injunction and permanent injunction against the Defendants.

PARTIES AND JURISDICTION

15. Tara Davenport and her eighteen-year-old daughter, Maori Davenport are resident citizens of Pike County, Alabama. Maori is a student-athlete at Charles Henderson High School.
16. Defendant AHSAA is an association of high schools in Alabama that governs and controls athletics of member schools. Based on information and belief, the AHSAA is a private non-profit organization, although through their conduct, they could arguably be considered a *de facto* state actor.
17. Defendant Savarese is the Executive Director of the AHSAA.
18. The Appellate Boards, their presiding officers and members have not been named as a party to this action based on the belief that those boards and members are a part of the defendant AHSAA. If the defendants or the Court believe that to be an incorrect position, and that it is necessary to make those individuals and boards parties to this suit to perfect jurisdiction for remedy, the plaintiffs can promptly amend this action.
19. Plaintiff alleges that Defendants have unlawfully caused or allowed Maori Davenport to be disqualified from participation in high school sports and caused her team to forfeit games that she participated in this season. The disqualification happened on or about November 30, 2018.
20. This Court has jurisdiction of this declaratory judgment action under Ala. R. Civ. P. 57 and Ala. Code § 6-6-222, et seq. (1975), and jurisdiction of this petition for injunctive relief under Ala. R. Civ. P. 65 and Ala. Code § 6-6-230 (1975).
21. The Alabama Supreme Court has long held that a Circuit Court may overrule the decisions of the AHSAA “if the acts of the association are the result of fraud, lack of

jurisdiction, collusion or arbitrariness” and in those cases “the courts will intervene to protect an injured parties rights.” *Scott v. Kilpatrick* 237 So. 2d 652 (Ala 1970).

ARBITRARINESS, COLLUSION AND FRAUD

22. Plaintiff asserts the decisions of the AHSAA are a result of fraud, collusion and/or arbitrariness. Additionally, plaintiff asserts that the decisions of the AHSAA are a result of incomplete information and a misunderstanding of the facts surrounding this situation. Additionally, plaintiff asserts that the decision is due to be set aside based on contract principles that illustrate the arbitrariness and fraud involved in the decision.
23. Based on information and belief, the defendants have ruled players, schools and or coaches ineligible only to reduce or suspend their punishment based on arbitrary factors. Unfortunately, many of the actions of the defendants are under a veil of secrecy, but instances of this arbitrary treatment are in the public domain. As an example, the Court can look to a case involving Muscle Shoals High School. Muscle Shoals football was banned from the post season for recruiting violations only to have the ban invalidated. The Muscle Shoals superintendent was quoted as saying that invalidating the ban was “in the best interest of the kids.”
24. An AHSAA news release on the Muscle Shoals matter indicated that Muscle Shoals took unstated corrective action. “Because of the actions taken by the schools, the board felt that lifting the probation was justified.”
www.highschoolsports.al.com/news/article/5155623963676746114/ahsaa-overturms-muscle-shoals-playoff-ban-putting-trojans-back-in-playoff-race/
25. In that same time period, one year playoff bans were reverse, rescinded or otherwise invalidated for John Carroll football, Daphne Volleyball and Murphy girls basketball.
26. There is no guidance provided by the defendants as to what a disqualified school, player or coach can do to receive the mercy of the defendants. Neither the plaintiffs nor Charles Henderson High School were given any opportunity or guidance to take any corrective action to mitigate the situation. The school and the Davenports have complied completely with the defendants.
27. This inconsistency and lack of transparency in the decision-making process is quintessentially arbitrary.
28. Within 48 hours of finding out the payment was impermissible and notifying the defendants that the payment had occurred. The payment was rejected and sent back to USA Basketball. USA Basketball is in the process of taking corrective action. Charles Henderson High School is evaluating corrective measures. Reasonable people are left to

ponder that if corrective action is what is required to garner reinstatement, what else can plaintiffs do?

29. The rule that Maori was disqualified under is not only arbitrary in its application to Maori, but arbitrary on its face. It allows for no distinction for an innocent mistake such as the case at bar and intentional payments with some intent to compensate players for play or performance. It further allows only one punishment, whether the dollar amount involved be millions of dollars or \$250, a player is disqualified for a year, and if the defendants' public pronouncements are to be believed, there is no ability to make a distinction.
30. Additionally, one of the other two players accidentally sent a check to playing for her high school team. Given that she is in the exact same circumstance as Maori and is eligible and playing, it further shows the arbitrariness of the defendants' decision.
31. Further, based on information and belief, there is ample evidence that can be presented of collusion.
32. The original decision was made by the Executive Director. Ostensibly, the appeals process is *de novo*, and not influenced by Savarese's decision.
33. Individuals present at hearings have indicated that the Executive Director was asked to go back in the room at least one of the hearings.
34. Further, there is evidence that can be presented that the Executive Director expressly stated that the Board would hear information that was completely irrelevant to Maori's eligibility, but that would have a bearing on their decision. There is only one way that information could be shared with the board, through collusion with the Executive Director.
35. The Alabama Supreme Court has previously upheld a Circuit Court finding of collusion that reinstated an athlete. See *Alabama High School Athletic Association v Rose*, 446 So. 2d 1 (Ala. 1984).
36. The defendants represent to their member schools and players that the process of appeal of a disqualification is a *de novo*, fair and impartial hearing. In reality, based on the factual averments contained in the previous paragraphs, that process is a fraudulent sham conducted in a completely arbitrary manner. This fraudulent sham is ongoing as the chorus from the defendants is that they have no discretion in this situation and that "rules are rules." In reality, Rule 1. Eligibility. Section 22 Student Restitution states what the "usual penalty" is, but further provides "This period may be determined to suit the nature of the case."

37. Further, the courts specifically state that if the acts of the association are a result of fraud the Court will intervene. Although it is an innocent fraud, there is no dispute that Maori's receipt of the payment and the defendants' resulting actions are a result of an innocent misrepresentation, by USA Basketball, and relied on by the Davenports. By definition, that is an innocent fraud, subject to intervention by the Court to correct and protect the injured party's rights.
38. Further, contractually, a contract made on the basis of a mistake of fact is not a contract. In that the entirety of this situation arises out of a mistake of fact, there could be no real "acceptance" of the money by Maori. In fact, upon being made aware of the true facts, Maori rejected the payment and promptly returned the money
39. The actions of the defendants are arbitrary, a product of collusion and fraud, and if allowed to stand, will cause irreparable harm to Maori Davenport.
40. Plaintiff has no adequate remedy at law if the defendants are not enjoined. Injunctive relief is required to prevent the irreparable harm to the plaintiff.
41. Plaintiff's counsel hereby certifies that he has notified attorneys for the defendants, by telephone today of the filing or proposed filing of this Complaint, and that he has electronically provided them copies of the documents being filed with this Court.

WHEREFORE, the plaintiff prays this Court will grant the following relief:

- A. A declaratory judgment that Saverese and/or the AHSAA's ruling against Maori Davenport is invalid; that any ruling by Savarese and/or the AHSAA is or may be ineligible to participate in the sport of basketball for the 2018-19 season is invalid; that any ruling by Savarese and/or the AHSAA against Maori Davenport is or will be contrary to the AHSAA's rules and regular practices; and that any ruling by Saverese and/or the AHSAA against Maori Davenport is or will be arbitrary, based on collusion, and/or the product of fraud;
- B. An order declaring Maori Davenport eligible;
- C. An injunction prohibiting Saverese and/or the AHSAA from disqualifying Maori Davenport from participation in the sport of basketball for the 2018-19 season;
- D. An expedited hearing due to the fact that the regular season is finite, and that post-season play in the sport of basketball begins in February of this year;

- E. A temporary restraining order, preliminary injunction, and/or other equitable relief staying any ruling by Saverese and/or the AHSAA against Maori Davenport pending final judgment.

Respectfully submitted this 10th day of January, 2019.

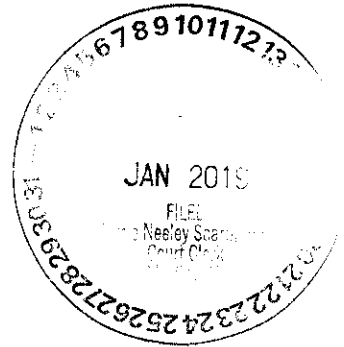
/s/CARL A. COLE, III (COL 118)
Carl A. Cole, III

/s/GRADY A. REEVES
Grady A. Reeves (REE 042)

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CERTIFICATE OF SERVICE

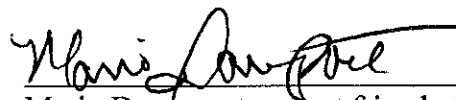
I hereby certify the foregoing was filed with the Pike County Circuit Court on January 10th and that the filing will be served on the defendants at 7325 Halcyon Summit Dr., Montgomery, AL 36124 and a copy electronically provided to Mark Bain, who customarily represent the defendants.

/s/Grady A. Reeves



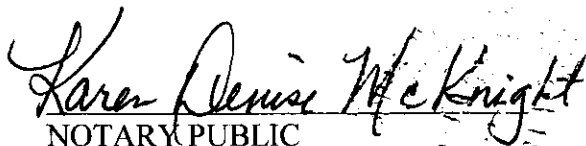
VERIFICATION

I, Mario Davenport, as father and next friend of the minor child Maori Davenport, do hereby swear and affirm that the statements set forth in the above Complaint are true and correct to the best of my knowledge, information and belief.



Mario Davenport as next friend of
Maori Davenport

SWORN TO AND SUBSCRIBED BEFORE ME THIS 10th DAY OF JANUARY,
2019.


NOTARY PUBLIC



VERIFICATION

I, Tara Davenport, as mother and next friend of the minor child Maori Davenport, do hereby swear and affirm that the statements set forth in the above Complaint are true and correct to the best of my knowledge, information and belief.

Tara Davenport
Tara Davenport as next friend of
Maori Davenport

SWORN TO AND SUBSCRIBED BEFORE ME THIS 10th DAY OF JANUARY,
2019.

Karen Denise McKnight
NOTARY PUBLIC

