



air shield for other students. Approximately 6 or 7 students stood in a staggered line holding air shields while students with batons struck each air shield in turn. There were two instructors for the class of 21 students.

{¶ 3} While plaintiff was holding an air shield, another student, Kyle Hendren, struck it and knocked her off balance, causing her to fall to the floor and become injured. Plaintiff alleges that defendant was negligent in failing to properly train the instructors, failing to supervise the exercise, and failing to provide floor mats or other protective gear to protect her from injury.

{¶ 4} Plaintiff testified that she had not taken any self-defense classes prior to the Monadnock class which was taught by Robert Roe and Stacey Pack. Plaintiff explained that during the class, she was instructed to assume a defensive stance to hold the air shield, which she described as standing with legs shoulder-width apart with the dominant leg behind the weak leg and with body weight distributed evenly for balance. She further testified that a couple of students knocked her off balance before Hendren knocked her to the floor, but that she had not been told that she was in the wrong stance. Plaintiff also stated that Hendren asked her if she was ready before he administered the middle strike. Plaintiff noted that no floor mats or protective headgear were used during the exercise and that she was not able to complete her training due to the injuries she sustained.

{¶ 5} Plaintiff added that on the day prior to the class, when she was working at Bax Global Shipping, a box weighing approximately two pounds fell and hit her head but that she did not report that incident to Roe or Pack.

{¶ 6} Kyle Hendren testified that when he administered the middle strike, he used an outward and upward motion; that the

batons used in class were not padded or wrapped in plastic; and that when plaintiff fell, she landed on her buttocks and caught herself with one hand.

{¶ 7} Donald Bottles testified that he worked part-time as a commander at defendant's university; that he was not present when the incident occurred; and that the materials that are used for the class are provided by the Ohio Peace Officers Training Academy (OPATA). Bottles further stated that instructors observe students during the exercises to ensure that the correct striking techniques and stances are being used.

{¶ 8} Robert Roe, a detective in the City of Sylvania Police Department, testified that in 2000, he had taken a 16-hour course to become certified as an instructor/trainer for the Monadnock baton. Roe explained that he had taught the course at least three times at the Sylvania Police Department before plaintiff's incident and that no one had been injured in those classes. However, Roe acknowledged that the course in which plaintiff was injured was the first time where he was the lead instructor at defendant's college.

Roe further stated that he chose Stacey Pack as an assistant because she had assisted him with baton courses at the Sylvania Police Department.

{¶ 9} Roe explained that the middle strike is the most powerful baton technique; that he taught the students the middle strike with an "outward and upward" motion; and that the defensive stance to use while holding the air shield is different from a general stance. Roe described the general stance as standing with legs shoulder-width apart, with knees relaxed and body weight evenly distributed. In contrast, Roe described the defensive stance as being alert, standing with legs shoulder-width apart or wider with the dominant leg to the rear with the knee either bent or locked to give support, and leaning forward with weight on the front leg.

Roe also stated that he did not observe plaintiff's fall but that plaintiff told him that she had hit her head when she fell to the floor. Roe added that he has witnessed other falls, but those involved students who were holding air shields while in the wrong stance.

{¶ 10} Roe further testified that the drill was performed on a carpeted floor; that he was aware that floor mats were available but that he did not use them because they created problems with movement, that students tended to trip over them, that ankle injuries can occur, and that he knew of one student who broke his leg on a mat. Roe did state that he used floor mats in the advanced course where students were required to take subjects down to the floor, but reiterated that floor mats were not appropriate to use during this course.

{¶ 11} Roe also stated that plaintiff had not informed him that a package had struck her on the head the previous day but that had he known that, plaintiff would not have been allowed to participate that day.

{¶ 12} Stacey Pack, a patrol officer with the Sylvania Police Department since 1997, testified that she had assisted with "Asp" (another brand of baton) training within the police department before March 13, 2002. She stated that Roe demonstrated a good defensive stance and that she was working with another student when she was informed that plaintiff had fallen.

{¶ 13} Plaintiffs presented the testimony of Mary Ann Robinson, who stated that she had been a deputy sheriff in Wood County, Ohio since 1989; that she was an instructor in Asp training; that she used floor mats during training; and that she covered the batons with Styrofoam for protection during the course. Robinson opined that using floor mats was safer than not using floor mats. On cross-examination, Robinson stated that she had

last conducted Asp training in 1996 and that she had never taken a course in Monadnock training.

{¶ 14} Plaintiffs' expert, Philip Messina, testified that he was the president of Modern Warrior Defense Tactics Institute, which provides police and civilian self-defense training; that he was a former member of the New York City Police Department and that he was a certified Monadnock instructor.

{¶ 15} Messina opined that the middle strike technique taught by defendant was not a proper Monadnock training method; that the proper technique for the middle strike is to push out and down because its purpose is to make subjects bend forward so that they can be handcuffed. Messina further stated that the outward and upward technique was a martial arts technique which would knock the person holding the air shield off of his or her feet. Messina further opined that floor mats should have been used; that there should have been at least three instructors for a class size of 20 students and that other safety equipment could have been used in addition to the air shields. Messina also opined that instructors, not students, should have held the air shields because students have no way to anticipate the amount of force that is coming at them; that the air shields used were inadequate for "thrusting" moves because they bend easily and could knock the air shield holder in the face; and that the air shield holder needed to be in a "front brace stance," which is a wide stance with hips and shoulders pushed forward.

{¶ 16} Cynthia Maxwell testified that she was a student in the course when plaintiff was injured and that before class, plaintiff mentioned to her that she had a headache and blurred vision because the night before she had been hit in the head by a falling box. (See Defendant's Exhibit I.)

{¶ 17} Justin Hite testified that he also participated as a student in the class; that he was first in line after Hendren and that he noticed that plaintiff was not standing in the proper defensive stance before the strike. (See Plaintiff's Exhibit 41.)

Hite further stated that he did not warn plaintiff that she was in the wrong position because he believed that she would get into the correct position before Hendren administered the strike. He also testified that plaintiff did not hit her head on the floor.

{¶ 18} Defendant's expert, Timothy Lynch, testified that he had 30 years of experience in law enforcement; that he had become a Monadnock-certified trainer in 1975; and that he had developed some of the Monadnock training materials. Lynch opined that plaintiff's injuries would have been avoided if she had stood in an appropriate defensive stance; that the air shield was appropriate for students to use during the exercise; that it was appropriate not to use floor mats because the flooring was carpeted and because the students were progressing to multiple targets throughout the exercise; that the student/teacher ratio of 10 to 1 was appropriate; and that adequate supervision was provided.

{¶ 19} On cross-examination, Lynch testified that his belief that plaintiff was in the wrong stance was based on Hite's statement; that the outward and upward strike posed a greater risk of injury to the air shield holder than an outward strike; that the air shield holder should lean forward, not distribute his or her weight evenly on both legs; that he has been propelled backwards while holding the air shield and that it was foreseeable that plaintiff could have fallen since others had fallen before.

{¶ 20} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson*

(1981), 67 Ohio St.2d 282, 285. Plaintiff was a student at the college and, therefore, her legal status was that of a business invitee. *Baldauf v. Kent State University* (1988), 49 Ohio App.3d 46. Accordingly, defendant owed to plaintiff the common law duty of reasonable care. *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718. Reasonable care is that which would be utilized by an ordinarily prudent person under similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310.

{¶ 21} A Monadnock training video was shown to the class. (Plaintiffs' Exhibit 16.) In the "middle strike" portion of the video, the movement demonstrated is an outward motion, not an outward and upward motion. The court finds that Messina's testimony that the outward and upward motion would have caused Hendren to strike plaintiff's air shield in a higher position and knock her backwards was credible. Furthermore, the court finds that Hite's testimony regarding plaintiff's inappropriate stance was unpersuasive; plaintiff testified that Hendren was the third person to administer the middle strike to her and that although she was forced backwards by the other two students, she did not fall. The court finds that plaintiff's testimony that she was standing in a proper defensive stance was credible. Based upon the testimony of Messina, the court finds that defendant failed to properly teach the middle strike as recommended by the Monadnock course, and that such failure proximately caused plaintiff's injuries.

{¶ 22} Roe testified that floor mats were available for use but were not used. Roe further testified that he had witnessed other students fall in classes similar to this one. The court finds that it was foreseeable that students holding the air shields would fall during the exercise. Therefore, the court finds that defendant failed to use ordinary care when it failed to use floor

mats during the exercise. Accordingly, plaintiffs have proven their claim of negligence by a preponderance of the evidence.

{¶ 23} The court further finds that although plaintiff was struck in the head by a falling box the day before the class, her testimony was credible that she did not find the incident significant enough to seek medical attention and that it did not affect her performance in class the following day.

{¶ 24} On October 22, 2001, plaintiff signed a "training liability release agreement" in order to attend the peace officer basic training course. (Defendant's Exhibit H, p. 5.) The release states as follows:

{¶ 25} "IN CONSIDERATION FOR RECEIVING PERMISSION TO ATTEND PEACE OFFICER BASIC TRAINING AT OWENS COMMUNITY COLLEGE BETWEEN THE DATES OF JANUARY 7, 2002 AND JULY 31, 2002, EACH OF THE UNDERSIGNED, HIS HEIRS, HIS REPRESENTATIVES AND ASSIGNS HEREBY: RELEASES, REMISES AND FOREVER DISCHARGES AND AGREES TO SAVE, HOLD HARMLESS AND INDEMNIFY THE OHIO PEACE OFFICER TRAINING COMMISSION AND ITS EXECUTIVE DIRECTOR, INSTRUCTORS, ALL STATE TRAINING AGENCIES AND RELATED PERSONNEL, THE OHIO PEACE OFFICER TRAINING ACADEMY AND THE STATE OF OHIO, *OF AND FROM LIABILITY CLAIMS, DEMANDS, CAUSES OF ACTION AND POSSIBLE CLAIMS WHATSOEVER, ARISING OUT OF OR RELATED TO ANY LOSS, DAMAGE OR INJURY THAT MAY BE SUSTAINED BY PERSONS OR PROPERTY THAT MAY OTHERWISE ACCRUE TO ANY OF US, OUR RESPECTIVE HEIRS OR REPRESENTATIVES WHILE IN, EN ROUTE TO, FROM OR OUT OF OHIO PEACE OFFICER TRAINING COMMISSION TRAINING LOCATIONS OR RESULTING DIRECTLY OR INDIRECTLY FROM ANY TRAINING RECEIVED OR OFFERED BY THE OHIO PEACE OFFICER TRAINING COMMISSION INCLUDING BUT NOT LIMITED TO ANY TRAINING CONDUCTED AT OWENS COMMUNITY COLLEGE AND AT ANY AND ALL STATE TRAINING LOCATIONS FROM ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE.*" (Emphasis added.)

{¶ 26} "[C]ontract clauses, which relieve a party from its own negligence, are generally upheld in Ohio. In fact, a 'release of a cause of action for damages is ordinarily an absolute bar to a later action on any claim encompassed within the release.'" *Jacob v. Grant Life Choices Fitness Ctr.* (June 4, 1996), Franklin App. No. 95APE12-1633, citing *Haller v. Borrer Corp.* (1990), 50 Ohio St.3d 10. "[C]ontracts purporting to relieve a party for his or her negligence must be expressed in terms that are clear and unequivocal or they are unenforceable." *Thompson v. Otterbein College* (Feb. 6, 1996), Franklin App. No. 95APE08-1009, citations omitted.

{¶ 27} The court finds that although plaintiff signed the release, the release was not expressed in terms that were clear and unequivocal. The court finds that the language of the release is too general to be enforceable because it purports to release defendant from any type of misconduct, whether it be negligent, wanton or willful misconduct. See *Thompson, supra*. Such a general release has been held to be meaningless. See *Tanker v. N. Crest Equestrian Ctr.* (1993), 86 Ohio App.3d 522, 526. Therefore, the court finds that plaintiffs' claims of negligence are not precluded by the release that plaintiff signed on October 22, 2001.

{¶ 28} For the foregoing reasons, the court finds that plaintiffs have proven their claims of negligence by a preponderance of the evidence and accordingly, judgment shall be rendered in favor of plaintiffs. Plaintiffs may present testimony regarding Steven Wheeler's loss of consortium claim at a trial on the issue of damages.

**IN THE COURT OF CLAIMS OF OHIO**

DIANA L. WHEELER, et al. :

