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You Can't Win For Losing

Here's an idea: place a head-to-head daily fantasy sports bet through FanDuel or another similar website. If you lose, sue the winner and demand a refund!

That's what Colin Dew-Becker tried. It didn't work.

In 2016, Colin Dew-Becker placed a bet through the fantasy sports website FanDuel. His wager was a head-to-head daily fantasy sports contest against Andrew Wu.

Each player paid \$109 to FanDuel, which included a \$9 fee kept by FanDuel, and a \$100 wager against the other player, competing for a total prize of \$200. Dew-Becker and Wu each selected nine NBA players for their respective fantasy rosters. The winner of the contest would be the player whose fantasy roster scored the most points. Unfortunately for Dew-Becker, six of the nine players he selected scored a "0" and Wu won the contest and the \$200 prize.

Three days later, Dew-Becker sued Wu in Cook County seeking to recover his lost wager under Section 28-8 of the Criminal Code of 2012 (sometimes referred to as the Illinois Loss Recovery Act).

According to Dew-Becker, he was entitled to recover his lost bet from Wu pursuant to the provision of the law which provides “*any person who by gambling shall lose to any other person, any sum of money or thing of value, amounting to the sum of \$50 or more*” may “*sue for and recover the money or other thing of value . . . in a civil action against the winner thereof, with costs, in the circuit court.*” 720 ILCS 5/28-8(a).

At trial, Dew-Becker testified that he entered a head-to-head daily fantasy sports contest with Wu and chose his nine NBA player fantasy sports team hoping they would score more points than the nine NBA players Wu chose for his team. Dew-Becker said the contest constituted gambling because there were elements of the game that were completely out of the control of either party, such as a player being injured. Dew-Becker argued that it was much like betting on a horse in a horse race. Dew-Becker acknowledged that a certain level of skill was involved, but argued that both skill and luck are at play, making it “gambling” to which the Act applied.

Wu testified at trial that he did not believe the law should apply because the wagering was through FanDuel, a third-party website, and therefore the head-to-head daily fantasy sports contest was not truly a head-to-head wager, and because the contest was “not an illegal gambling situation.”

The trial court ruled in favor of Wu and against Dew-Becker. Dew-Becker appealed.

On appeal, the appellate court considered the arguments and found, initially, that the contest at issue was, in fact, a game of chance, a game of skill, or some combination thereof, and therefore qualified as gambling. Could Dew-Becker be right?

Using somewhat tortured reasoning, the appellate court concluded that the law was intended to apply to people who know one another, not to wagers placed through third-party websites such as FanDuel that allow a person to engage in head-to-head contests with a stranger. Although the court concluded that Dew-Becker and Wu knew each other when they engaged in the contest, the court reasoned that it would be absurd to apply the Act to gambling on the FanDuel website to people who know each other when it did not apply to people who are strangers. Result: Dew-Becker loses again.

Finally, the appellate court noted that the era of strong opposition to gambling in Illinois has ended. It appears likely FanDuel and other third-party fantasy sports gambling websites are here to stay. If you disagree, do you want to bet on it?