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Tort Liability of School Districts, Officers, and Employees

BARTELL V. PALOS VERDES PENINSULA SCH. DIST. 83 CAL. APP.3D 492 (1978)

GENERAL RULE OF LAW: A school district does not owe a general duty to supervise all persons who utilize its playground or to secure the premises against persons who may enter and injure themselves therein.

PROCEDURE SUMMARY:

Plaintiffs: The Bartell family, on behalf of their dead son (P)

Defendant: Palos Verdes Peninsula School District (School District) (D)

State Trial Court Decision: Dismissed for failure to state a cause of action

State Appeals Court Decision: Affirmed

FACTS: The Bartells' (P) 12-year-old son and a friend gained access to a playground at Lunada Bay Elementary School through either an unlocked gate or hole in the fence. The boy sustained fatal injuries from playing a dangerous game while on school grounds. The Bartells (P) sought recovery from the School District (D) on the basis that (1) the School District (D) maintained a dangerous condition, and (2) the School District (D) negligently failed to supervise and maintain the school property or to notify parents of the dangerous condition. The trial court dismissed for failure to state a cause of action. The Bartells (P) appealed.

ISSUE: Does a school district owe a general duty to supervise all persons who utilize its playground or to secure the premises against persons who may enter and injure themselves therein?

HOLDING AND DECISION: (Fleming, J.) No. A school district does not owe a general duty to supervise all persons who utilize its playground or to secure the premises against persons who may enter and injure

themselves therein. A school district's duty to supervise its playground depends upon the existence of a special relationship between the school and its students. Here, the Bartells (P) did not claim that their son's presence on school grounds was in connection with a school activity, which qualifies as such a relationship. Whether a duty exists requires a consideration of several factors, including the risk of harm, burden on defendant, connection between the defendant's conduct and victim's injury, moral blame, and prevention of future harm. To impose the burden of around-the-clock supervision of its playground on the School District (D) would impose a severe financial burden. Furthermore, there exists no special circumstance imposing a duty upon the School District (D) to supervise and control activities unrelated to school functions. Affirmed.

COMMENT: Under California Government Code § 835, a public entity is liable for an injury caused by a dangerous condition on its property if the plaintiff can show that the property was in dangerous condition at the time of the injury; that the dangerous condition proximately caused the injury; that the type of injury sustained was reasonably foreseeable; and that either the dangerous condition was created by the negligence or wrongful act or omission of an employee of the public entity within the scope of his employment, or the public entity had actual or constructive notice of the condition and sufficient time in which to have taken measures to guard against it. The defect present on the property must create a substantial, and not minor, risk of injury. Liability for injury requires harmful conduct that is directly related to the physical defect. Here, the defect was not inherently dangerous. Although the School District (D) may have been aware that the grounds were being utilized for such dangerous games, the defect in the fence merely afforded children access to school property and did not create the dangerous condition. The Bartells' (P) son sustained injuries as the result of his own conduct and not due to the dangerous condition of the property. The Bartells (P) failed to demonstrate that a dangerous condition existed for which the School District (D) was liable.

Discussion Questions

1. Was the injury sustained by Bartell a direct result of a dangerous condition of the playground and reasonably foreseeable by the School District?
2. Was the Palos Verdes Peninsula School District required to notify parents of a potentially dangerous condition of its playground?
3. Does a school district owe a general duty of supervision to all who frequent its premises for their own purposes after school hours?

BROSNAN V. LIVONIA PUBLIC SCHOOLS
123 MICH. APP. 377, 333 N.W.2D 288 (1983)

GENERAL RULE OF LAW: A school district's administration and supervision of a speech therapy program is a governmental function, thereby entitling the school district to immunity from tort liability.

PROCEDURE SUMMARY:

Plaintiffs: The father and mother of Maureen Brosnan and Bridget (P)

Defendants: Livonia Public Schools, Livonia Board of Education, school principal, school psychologist, and school speech therapist (D)

State Trial Court Decision: Affirmed in part and reversed in part

FACTS: Maureen Brosnan (P) was given a speech evaluation test prior to entering kindergarten. She was diagnosed as having a "delayed articulation" problem and began receiving training and therapy. The therapy lasted for a period of two years, after which it was discovered that she instead suffered from a language impairment. Her parents, individually, and Bridget (P), as a next friend, brought suit against the school district (D), board of education (D), the school principal (D), school psychologist (D), and Thompson (D), the speech therapist, alleging they failed to use reasonable care in diagnosing Maureen (P). The trial court granted a motion for summary judgment and held the school system (D) and board of education (D) immune from liability under the doctrine of governmental immunity. The court did not hold the other defendants immune. The Brosnans (P) and individual defendants appealed. The appeals were consolidated.

ISSUE: Is a school district's administration and supervision of a speech therapy program a governmental function, thereby entitling the school district to immunity from tort liability?

HOLDING AND DECISION: (Riley, J.) Yes. A school district's administration and supervision of a speech therapy program is a governmental function, thereby entitling the school district to immunity from tort liability. Courts have held the operation of a public school to constitute a public function. State statute provides immunity from tort liability to governmental agencies engaged in the exercise or discharge of a governmental function. Three distinct tests exist for determining whether a particular activity constitutes a governmental function. First, under the "sui generis" test, the term "governmental function" has been defined to include those activities that are essential to governing. Under the "sui generis" test, those activities that can only be performed by a governmental agency are entitled to immunity. Second is the "common good of all" test, which requires the court to determine whether the activity is intended to promote the general public health and is exercised for the common good. Third, a variation of the "sui generis" test is whether the purpose, planning, and carrying out of the activity can be accomplished only by the government. In determining whether a particular activity constitutes a governmental function, the court must examine the particular activity engaged in and not the entity's general function. Under the various tests, the school district's (D) administration of speech therapy constitutes a governmental function. The examination, diagnosis, and treatment of students at a public school is clearly an activity for the common good. Furthermore, under the "sui generis" test, the government plays a significant role in providing education to the public. Thus, the board of education (D) and the school system (D) were properly entitled to governmental immunity. The trial court erred in denying the individual defendants' motion for summary judgment. Affirmed in part and reversed in part.

COMMENT: Jurisdictions are divided as to the proper test to be employed in determining whether a government employee is entitled to immunity for his or her actions. Some jurisdictions hold a public employee immune from tort liability if the action is discretionary and not ministerial. Others relieve an employee from liability if he or she is acting within the scope of his or her employment. Here, the court declined to resolve the issue of which test was proper, holding that under either, the individual defendants were entitled to governmental immunity.

Discussion Questions

1. What are the tests a jurisdiction might use when determining whether an employee is entitled to immunity?
2. Why is it important whether the administration of a speech therapy program is or is not a governmental function?
3. Why was the administration of the speech therapy program considered to be a governmental function?

CAREY V. PIPHUS
435 U.S. 247, 98 S. CT. 1042 (1978)

GENERAL RULE OF LAW: In the absence of proof of actual injury, a violation of procedural due process entitles a plaintiff to nominal damages only.

PROCEDURE SUMMARY:

Plaintiffs: Piphus and several other school students (P)

Defendants: Carey and various other Chicago school officials (D)

U.S. District Court Decision: Held for plaintiffs, but no damages were awarded

U.S. Court of Appeals Decision: Plaintiffs were entitled to recover substantial compensatory damages, absent proof of actual injury

U.S. Supreme Court Decision: Reversed

FACTS: In a pair of consolidated, unrelated cases, certain Chicago school district students were suspended. Piphus (P) was suspended for 20 days for smoking an "irregularly shaped cigarette." The principal smelled the odor of burning marijuana. Brisco (P) was suspended for 20 days for violating a school rule prohibiting male students from wearing earrings. The earring rule was based on its being a gang emblem. The plaintiff refused to remove the earring, stating that it was a symbol of black pride. In both cases, the Chicago Board of Education policy limited a suspended student's appeal to issues *not* related to guilt or innocence. The students filed actions under 42 U.S.C. § 1983, contending that they had been denied procedural due process. The Seventh Circuit Court of Appeals held that the students (P) were entitled to substantial compensatory damages, even if they were unable to show actual damages. The Supreme Court granted review.

ISSUE: Does a violation of procedural due process entitle a plaintiff to substantial compensatory damages, absent proof of actual injury?

HOLDING AND DECISION: (Powell, J.) No. In the absence of proof of actual injury, a violation of procedural due process entitles a plaintiff to nominal damages only. Section 1983 creates an action "at law."

From this, it can be concluded that the section incorporated common law rules regarding damages. One such rule is that for more than nominal damages to be awarded, proof of actual injury must be demonstrated; damages are not presumed. For this reason, damages may not be presumed for violations of procedural due process. Absent such proof, only nominal damages may be awarded. Reversed.

COMMENT: The common law does provide one exception to the general rule against damages absent actual injury, in actions for defamation. This exception is based on the notion that defamation almost certainly leads to actual damages, while at the same time presenting serious proof problems. The Court declined to find the present situation analogous to defamation per se, which can be defined as defamation likely to endure, such as writing that harms a person's business reputation. Therefore, a plaintiff whose constitutional rights have been violated must prove any damage claim. A victim is compensated for actual, proven detriment and denial caused by a denial of due process. The burden is on the shoulders of a plaintiff to prove injuries. Here, the plaintiff failed to prove any loss or injury needing compensation and therefore received only nominal damages.

Discussion Questions

1. Explain why the Fourteenth Amendment is important to this case.
2. In the Court's decision "it was held that, in the absence of proof of actual injury, the students were entitled to receive only nominal damages, not to exceed one dollar, from the school officials." Do you think this was fair? Why or why not?
3. Since the plaintiffs were denied a due process hearing, should the plaintiffs still carry the burden of proof? If so, what type of proof?

DAILEY V. LOS ANGELES UNIFIED SCHOOL DISTRICT 2 CAL.3D 741, 470 P.2D 360 (1970)

GENERAL RULE OF LAW: School personnel supervising the conduct of students must exercise the degree of care a person of ordinary prudence charged with comparable duties would exercise.

PROCEDURE SUMMARY:

Plaintiffs: Daileys, parents of a deceased high school student (P)

Defendant: Los Angeles Unified School District (District) (D)

State Trial Court Decision: Held for the District (D), finding no negligence on its part

State Supreme Court Decision: Reversed

FACTS: During recess, Michael Dailey, a 16-year-old student at Gardena High School, was "slap boxing" with another student in the boys' gymnasium. They "boxed" for 5 to 10 minutes. A crowd of approximately 30 students gathered to watch. Suddenly, after being slapped, Michael fell backward and fractured his skull on the pavement. The Daileys (P), Michael's parents, filed a wrongful death action for damages, alleging

that the District's (D) failure to supervise the students caused their son's death. The physical education department was responsible for supervising the gymnasium. The chairman of that department stated that he did not know he was to assign a teacher to supervise on any particular day, that there was no formal schedule of supervision times, and that supervision was left to whomever was in the gym office. At the time of the incident, the chairman was in the office playing bridge. The trial court granted the District's (D) motion for a directed verdict, and Dailey (P) appealed.

ISSUE: Are school personnel supervising the conduct of students required to exercise the degree of care a person of ordinary prudence charged with comparable duties would exercise?

HOLDING AND DECISION: (Sullivan, J.) Yes. School personnel supervising the conduct of students must exercise the degree of care a person of ordinary prudence charged with comparable duties would exercise. There is enough evidence here for a jury to find that the District (D) failed to meet this standard. The responsible department failed to develop a comprehensive schedule of supervising assignments. Those who did supervise were not informed of their specific duties. The person in the gym office at the time of the incident did not attempt to maximize his ability to oversee students' activities. From these facts, a jury could reasonably find that the school personnel failed to satisfy their duty of care, causing Michael's death. The directed verdict was therefore improper. Reversed.

COMMENT: *Dailey* illustrates one of many contexts in which courts are increasingly willing to impose a duty of care upon defendants to protect from harm those with whom they are in a special relationship. The duty may be imposed and the defendant found negligent even when, as here, an intervening negligent or intentional act appears to be the traditional "proximate" cause of the injury. Notice that the reversal did not mean that the Daileys (P) automatically won their case; the court, on appeal, simply found that a triable issue of fact existed, and since the jury, not the judge, is the trier of fact, the judge erred by not letting the jury decide whether the District (D) was negligent. Thus, the Daileys (P) won a new trial.

Discussion Questions

1. In the *Dailey v. Los Angeles Unified School District* case, was adequate supervision provided by the school employees? Why or why not?
2. What was the standard of care imposed upon the school personnel carrying out this duty to supervise?
3. Is negligent supervision still the proximate cause of Michael's death even though a third party (other student) was involved?

FAZZOLARI V. PORTLAND SCHOOL DISTRICT NO. 1J, 303 ORE. 1, 734 P.2D 1326 (1987)

GENERAL RULE OF LAW: A history of violence among students might call for extensive security measures within a school, while due care upon learning of occasional assaults at dispersed locations might be fully satisfied by precautionary warnings.

PROCEDURE SUMMARY:

Plaintiff: Tammy Fazzolari, student injured on school premises (P)

Defendant: Portland School District (School District) (D)

State Trial Court Decision: Granted the School District's (D) motion for directed verdict in their favor at the end of trial

State Appellate Court Division Decision: Reversed

State Supreme Court Decision: Affirmed and remanded to trial court

FACTS: On May 21, 1982, a 15-year-old high school student (P) was about to enter her school building a few minutes before 7:00 a.m. when an unknown assailant grabbed her from behind and dragged her to some nearby bushes, where he beat and raped her. In an action against the School District (D) to recover damages for her injuries, Tammy (P) claimed that school administrators were negligent in failing to provide proper supervision of students on the school's grounds during hours when the school was open to students, in failing to provide security personnel when district administrators knew of previous similar attacks and could have foreseen the danger of such attacks on students at Tammy's (P) school, in failing to warn students after similar attacks had been perpetrated in the area near the school, and in failing to trim or remove bushes offering concealment to an assailant. The state trial court let the case go forward but granted the School District's (D) motion for a directed verdict at the end of Tammy's (P) evidence. On her (P) appeal from the resulting judgment, the court of appeals reversed and remanded the case for a new trial. The state supreme court affirmed the decision of the court of appeals.

ISSUE: What safeguards does a school district need to take to ensure its students' safety in light of a recent attack on school premises?

HOLDING AND DECISION: (Linde, J.) A defendant can be expected to argue that no one could have foreseen exactly what happened to the plaintiff in this case, (i.e., that Tammy Fazzolari would be attacked on the schoolhouse steps and raped at 6:50 a.m. on May 21, 1982). A plaintiff's definition of what a responsible defendant should foresee can be expected to encompass all the animate and inanimate sources of injury in a dangerous world. But foresight does not demand either the precise mechanical imagination of a Rube Goldberg or a paranoid view of the universe. Here, there was evidence that a woman reportedly had been sexually assaulted on the school grounds 15 days before the attack on the plaintiff, and the plaintiff attempted to introduce evidence of various other kinds of attacks. Obviously, a school's responsibility for students' safety against assault is not limited to the risk of rape, and evidence of foreseeability will differ depending on whether the risk of injury is claimed to be specific to a school, or schools generally, or a neighborhood, or a class of potential victims such as women or particular ethnic groups. Also, the character and probability of the risk that is claimed to be foreseeable bears on the steps administrators reasonably should take to avert it. A history of violence among students might call for extensive security measures within a school, while due care upon learning of occasional assaults at dispersed locations might be fully satisfied by precautionary warnings. We think that a school principal's failure to take any precautions whatever, if that was unreasonable, is not an exercise of policy discretion, though a school board's choice between expenditures on security personnel or other types of safeguards might be.

COMMENT: This case speaks to a general propensity for violence of not just one student, but the student population generally. This violence and growing tendency to more and more school violence is an ongoing

concern. If the student population has a propensity for violent behaviors, a duty to take precautions will be imposed upon the school district. A school district may then, if appropriate measures are not taken, be liable to a student for injuries sustained as a result of an attack by other students. As the wave of school violence continues to grow, the duty of care level is raised, and school districts must take more aggressive steps to protect students as well as to limit their exposure.

Discussion Questions

1. Should a school limit the hours that students can report to campus?
2. What steps should a school take when presented with a situation such as the one described in this case?
3. Do you think that a verbal warning in such a case would be sufficient? As a principal, what precautions might you take when presented with the above situation?

JOHNSON V. PINKERTON ACADEMY 861 F.2D 335 (1ST CIR. 1988)

GENERAL RULE OF LAW: A private school does not constitute a "state actor" for purposes of 42 U.S.C. § 1983.

PROCEDURE SUMMARY:

Plaintiff: Kenneth Johnson, a teacher at the Academy (P)

Defendant: Pinkerton Academy, a private school (Academy) (D)

U.S. District Court Decision: Held in favor of defendant

U.S. Court of Appeals Decision: Affirmed

FACTS: Johnson (P) was hired as a teacher by the Academy (D) on a one-year, renewable contract. Johnson (P) agreed to abide by the Academy's (D) rules of conduct, which prohibited teachers from wearing beards. After many discussions with his classes, he decided to grow a beard as a means of asserting his civil rights and was terminated from his position. Johnson (P) commenced suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief and money damages. The district court held in favor of the Academy (D). Johnson (P) appealed.

ISSUE: Does a private school constitute a "state actor" for purposes of 42 U.S.C. § 1983?

HOLDING AND DECISION: (Aldrich, J.) No. A private school does not constitute a "state actor" for purposes of 42 U.S.C. § 1983. In asserting an action under Section 1983 against a private institution, the plaintiff must show that the state is responsible for the conduct to which the plaintiff objects. In determining whether a private school is a state actor, the court must determine whether the private entity is performing a function that is traditionally the exclusive prerogative of the state. An "exclusive function

of the state" means that the state could not delegate its responsibility for discharging that function. The education of children has not been traditionally a public function in the state of New Hampshire, even though state law requires children to attend school until they reach a certain age. Furthermore, the district court erred in construing a state statute as conferring upon the district a responsibility over the operation of private academies. The legislative history of the statute showed that it was intended to relieve districts from liability for the tuition of students who chose to attend schools without town contracts. The district court erred in its findings of state action. Dismissal affirmed.

COMMENT: On appeal, Johnson (P) also contended that the Academy (D) constituted a state actor due to its teachers' participation in a pension program pursuant to New Hampshire statute. The court held that the statute failed to demonstrate state control in respect of the defendant. Rather, it only served to relieve the defendant of its pension obligations.

Discussion Questions

1. What is the importance of a private school not being a state actor?
2. Private schools operate under the principles of contract law. What does this mean regarding employment and termination practices?
3. If a private school has a policy regarding dress and grooming, what impact does this have on a teaching employee of the school?

RALEIGH V. INDEPENDENT SCHOOL DISTRICT NO. 625 275 N.W.2D 572 (MINN. 1979)

GENERAL RULE OF LAW: A school district with knowledge of conditions that present foreseeable student misconduct has a duty to protect other students from that misconduct by exercising ordinary care.

PROCEDURE SUMMARY:

Plaintiff/Respondent: Cynthia Raleigh, high school student by her mother and natural guardian, Lauretta Raleigh (P)

Defendant/Appellant: Independent School District No. 625 (School District) (D)

Respondent: Orpheum-St. Paul Cinema Corp. (D)

State District Court Decision: Dismissed defendant theater and subsequently found school district negligent

State Supreme Court Decision: Affirmed

FACTS: Cynthia Raleigh (P), a white high school senior, was required to attend a school-sponsored showing of the documentary film "KING, A Filmed Record, Montgomery to Memphis," during Afro-American History Week. Attendance of students from Cynthia's (P) school and other high schools was required because of the high percentage of minority students enrolled in those schools. No parental consent was

obtained. It was known that the film contained scenes of racial violence. There was also racial tension in Cynthia's (P) school at the time. Cynthia (P) sat in the balcony where, during the film, obscene racial comments were made by blacks and whites. Cynthia (P) made no such remarks but testified there was a significant tension in the theater at the end of the movie. Although the school district dictated a student/teacher ratio of 35:1, this was not required at the showing. Further, the students were not assigned seats, nor supervised after the movie. As Cynthia (P) moved through the lobby toward the exit, she was pushed from one side, looked down at her wrist and saw blood, and then saw two black girls running away from her with her purse. A fellow student came to her aid and then went to find a teacher. Although no exact amount of time was given, Cynthia (P) said a teacher came to help "after a while." The teacher later testified that he saw nothing to make him concerned that trouble had or would occur as he watched the students move through the lobby. The trial court permitted evidence of a similar assault occurring in the theater's ladies room at the same time as the assault on Cynthia (P). The trial court dismissed Orpheum Theater (D) but not the School District (D). The jury returned a verdict for Cynthia (P). The School District (D) appealed.

ISSUE: Is a school district liable for a sudden, unanticipated misconduct of a student if there were foreseeable conditions existing under which such an act might occur?

HOLDING AND DECISION: Yes. The supreme court held that the jury was justified in finding the School District's (D) negligent supervision and organization of students at the school-sponsored showing of the documentary film caused the plaintiff's injuries. Furthermore, the trial court properly exercised its discretion in admitting evidence of a similar but unrelated incident that occurred at about the same time. The School District's (D) argument, that the slashing of Cynthia's (P) wrist was sudden and unanticipated, was not supported by the jury. The issue of whether an intervening event was the cause is an issue for a jury. In this case, the jury did not feel that the intervening event was controlling.

COMMENT: Knowing that the film shown contained violent racial scenes, and that there was at that time racial tension at the plaintiff's school, the School District (D) had knowledge of foreseeable misconduct. In the testimony given, there was no indication that students were seated according to their own schools or that teachers were strategically placed in the theater to monitor the students. In addition, there was no organized exit plan for the students after the showing of the film. The evidence permitted regarding the incident in the ladies room that occurred at about the same time that Cynthia Raleigh (P) was assaulted further demonstrates the lack of organization and supervision of students by the School District (D). Clearly, mandatory attendance in an off-campus activity such as a field trip or excursion, to include interscholastic activities such as athletics or debate, imposes upon the school a similar duty of care to prevent injury as if the students were on campus.

Discussion Questions

1. How important is the fact that the school could have anticipated (foreseen) some type of confrontation and difficulty at the assembly?
2. Would the school district have been supported—even if there had been violence—if there had been a reasonable safety plan and adequate supervision?
3. Is unremitting supervision necessary in this age of increasing school violence and student difficulties? How much supervision is required?

RUDD V. PULASKI COUNTY SPECIAL SCHOOL DISTRICT 341 ARK. 794, 20 S.W.3D 310 (2000)

GENERAL RULE OF LAW: A school district has no special relationship with a student that imposes a duty upon the school to protect him from violent acts by another student.

PROCEDURE SUMMARY:

Plaintiff: Joe Rudd, administrator of the estate of the victim, Earl Routt, deceased (P)

Defendant: Pulaski County Special School District (School District) (D)

State Trial Court Decision: Granted summary judgment in favor of School District (D)

State Appellate Court Division Decision: Summary judgment in favor of School District (D)

State Supreme Court Decision: Affirmed

FACTS: Earl Routt was a student at Jacksonville High School and regularly rode a school bus owned and operated by the appellee, Pulaski County Special School District (D). W. J., another student at Jacksonville High School, also rode the school bus. W. J. and the victim frequently had confrontations, and the bus driver had admonished both boys on previous occasions. While W. J. was enrolled as a student at Sylvan Hills Junior High School, his disciplinary record showed several offenses that included the following: expulsion from school for bringing a knife to school and assaulting another student with that knife on a school bus, an action which Sylvan Hills Junior High School Principal Sue Clark noted as a "substantial risk"; fighting in class; disorderly conduct; roughhousing in class; being a member of a gang that had violent initiation rites; and persistent disregard for school rules and authority. Ms. Clark testified in her deposition that the disciplinary records "do not follow a student from one school to another. . . . The disciplinary records are closed, terminated, resolved, and we just follow the records retention policy for those." These incidents occurred approximately seven months prior to the October shooting at Jacksonville High School. According to appellants, the records were kept in the ordinary course of business by officials of the school district that operates many schools, including those of Sylvan Hills and Jacksonville. On October 9, 1996, W. J. brought a handgun to Jacksonville High School and kept it in his locker. On the day of the shooting, another student advised one or more of his teachers that he overheard a conversation concerning W. J., a gun, and something that was going to happen after school. According to the other student, two searches occurred on that day, but neither search turned up a weapon. That afternoon, while riding on the school bus, W. J. pulled out the hidden handgun and fired it numerous times at the victim, who died as a result of the shooting.

ISSUE: Under the Arkansas Civil Rights Act, did the school have a special relationship with the victim, thereby imposing a duty upon the school to protect him from violent acts by another student?

HOLDING AND DECISION: (Thorton, J.) No. A custodial relationship exists between the government and felons in custody. The custodial relationship between the inmate and the state imposes a duty upon the state to protect third persons from injury inflicted by an inmate who escapes from custody; the failure to maintain such restraints may result in liability for injuries to third persons under the Arkansas Civil Rights

Act. The court must reject a broad view of "custody" based on state compulsory school attendance, as argued here by the plaintiff. That view would expand constitutional duties of care and protection to millions of schoolchildren. School officials would be subject to Section 1983 liability anytime a child skinned his knee on the playground or was beat up by the school bully, so long as the requisite "state of mind" was shown. More seriously, with the epidemic of deadly violence on many school campuses today, teachers would be constitutionally obliged to assume roles similar to policemen or even prison guards in protecting students from students. The precise contours of an affirmative duty to care and protect would be much more difficult to define in public schools. The district court concluded that no special relationship giving rise to a duty to protect against harm from private individuals existed by the state's action of putting the two students in contact with one another, despite the state's knowledge of W. J.'s violent propensities. Although the school district had knowledge of W. J.'s propensities during his previous academic year at Sylvan Hills Junior High School, appellants presented no evidence of similar behavior while W. J. was enrolled at Jacksonville High School. We conclude that no special relationship was shown to exist between the victim and the state that imposed a duty upon the state, under the provisions of the Arkansas Civil Rights Act, to protect the victim from harm.

COMMENT: As this case illustrates, absent a special relationship to the student, a school district has no duty to protect one student from the violent acts of another. There was no special duty imposed on the school district merely for putting two students together. One student choosing to act violently toward another did not implicate the school district as a responsible party. Even though a student may have shown a propensity to act violently in previous situations outside his conduct at school, a special relationship of the school district was not created.

Discussion Questions

1. If the court decided differently, how would this change the role of a teacher in schools?
2. Does the school have any duty to protect a student from another student's violent behavior?
3. If this incident happened during a school day, do you think that the verdict would be different?

RUPP V. BRYANT
417 SO.2D 658 (FLA. 1982)

GENERAL RULE OF LAW: Public officials or employees and the government entity under which they function may not be entitled to assert immunity from personal tort liability if they fail in their ministerial duties resulting in a tortious act.

PROCEDURE SUMMARY:

Plaintiff/Appellees: Glen Bryant, a high school student, and his father, Leroy Bryant (P)
Defendant/Appellants: Robert E. Rupp, high school teacher and club adviser; Ray R. Stasco, high school principal; and school board of Duval County (D)

Lower Court Decision: Dismissed for failure to state a cause of action

State District Court of Appeal Decision: Reversed, review granted

FACTS: While attending a meeting of the school-sanctioned Omega Club, Glenn Bryant (P), a student at Forest High School in Jacksonville, Florida, suffered a neck injury causing paralysis. The injury was allegedly the result of hazing activities, which were specifically prohibited by school board policy. There was no school official at the meeting when the injury occurred. Robert Rupp (D), high school teacher, had been assigned as faculty adviser to the club by Ray Stasco (D), the school principal. Rupp (D) had attended the first meeting of the club but had no knowledge of the second meeting at which the injury occurred. The Omega Club was reputed for conducting activities that violated school board policy. The Bryants (P) brought the suit for gross and reckless negligence on the part of Rupp (D), Stasco (D), and the school board (D). Due to the reputation that the Omega Club had for breaking school board policies, the Bryants (P) felt it was the responsibility of the defendants to closely supervise the Omega Club. The lower court dismissed the suit, citing a failure to show a cause of action. The District Court of Appeals reversed and a review was granted.

ISSUE: May a school board and its employees be granted retroactive immunity from charges of negligence, and of wanton and willful negligence, if no cause of action is found?

HOLDING AND DECISION: Affirmed in part, reversed in part. Rupp (D) and Stasco (D) were not entitled to assert immunity as public employees under the circumstances of the case. The legislature's attempt to shield them from personal tort liability by retroactive application of Section 768.28(9) Florida Statutes (1980), which states that no government employee may be held liable in tort unless such employee acted in bad faith or with malicious purpose, was unconstitutional because it violated due process. Thus, the Bryants (P) successfully stated a cause of action of negligence against all the defendants. The Bryants (P) failed to state a cause against Rupp (D) and Stasco (D) for wanton and willful negligence. The teacher (D) and principal (D) were found to be negligent in failing to supervise school club activities resulting in an injury during a hazing incident. The court held that the school had violated a duty of supervision that had been established by school board policy when the club adviser was appointed.

COMMENT: The defendants based their case for immunity on a legislative amendment passed in 1980, even though the Bryant (P) incident occurred in 1975. They argued that the amendment passed in 1980 retroactively gave them special immunity. The court decided that the defendants had a "special duty" to the plaintiff; the duty was ministerial as opposed to discretionary because it was school board policy to supervise the club, and the injury occurred in the course of the defendant's ministerial duty to Bryant (P). The court also ruled that to allow the 1980 amendment to retroactively apply to the 1975 injury would unconstitutionally deprive Bryant (P) of his right to recovery for the defendants' negligence. However, the court found that the facts could not support a charge of intentional or conscious indifference and therefore failed to state a case for exemplary damages. One justice dissented, arguing that the 1980 amendment was made to enable public employees to vigorously pursue their duties, free from the fear of negligence actions, while at the same time allowing redress through governmental assumption of liability to persons injured by the ordinary negligence of government employees. In regard to the negligent supervision issue, the court felt that the incident would not have occurred if the adviser had been present. The discretionary/ministerial distinction is interesting. Generally, the qualification of immunity is limited to discretionary acts. Discretionary acts are those decisions that leaders must make to govern, while ministerial acts are those

that do not involve governing, but merely following procedures. The focus is not on whether the actor was a public servant or a public employee. Immunity is determined based on the type of act.

Discussion Questions

1. What is the standard to which public employees are held to win immunity from personal tort liability?
2. What is meant by wanton and willful negligence?
3. Why would a government body want public employees to remain immune from lawsuits unless they acted with malice or in bad faith, even if they were negligent?

SKINNER V. VACAVILLE UNIFIED SCHOOL DISTRICT 37 CAL. APP.4TH 31, 43 CAL. RPTR.2D 384 (1995)

GENERAL RULE OF LAW: Statutes may impose an affirmative duty to inform faculty of a student's violent past to prevent injury to other students.

PROCEDURE SUMMARY:

Plaintiff: Tracy Rea Skinner, student injured (P)

Defendant: Vacaville Unified School District (D)

State Trial Court Decision: Trial court found in favor of the injured student (P)

State Appellate Court Division Decision: Reversed

FACTS: The incident occurred on October 2, 1990, during a volleyball game in a physical education class at Will C. Wood High School in Vacaville, California. A single teacher was responsible for supervision of play. During the first game, Carlos, a freshman member of Tracy's (P) team, angered his teammates by playing to lose. Another teammate recalled that Tracy (P) "asked him if he wasn't going to play right to not play at all." About 10 to 15 minutes into the period, the teams reported the score of their first game to the physical education teacher and switched sides. Soon thereafter, Carlos hit Tracy (P) twice on the jaw, breaking it in two places and inflicting severe and permanent injuries. She (P) was required to undergo reconstructive surgery and a prolonged and painful convalescence. At the time of trial, she also suffered from chronic facial pain and headaches as a result of the injury. Although school officials knew of his propensity for violence, none of the incidents appeared on Carlos's disciplinary record. Nevertheless, Carlos had previously been involved in three fights as well as bumping and pushing incidents, all of which resulted in physical injury. The vice principal, Geivett, said that he never made a point of warning teachers of Carlos's behavior, although he did discuss Carlos's behavior with certain teachers, particularly in connection with the Opportunity Program.

ISSUE: Does the school have a duty to warn every teacher of a student's past disciplinary problems to prevent harm to other students?

HOLDING AND DECISION: (Newsom, J.) No. California law has long imposed on school authorities a duty to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary for their protection. The standard of care imposed upon school personnel in carrying out this duty to supervise is identical to that required in the performance of their other duties. This uniform standard to which they are held is that degree of care "which a person of ordinary prudence, charged with [comparable] duties, would exercise under the same circumstances." Education Code Section 49079 may impose on a school district a mandatory duty to inform teachers of a student's record of physical violence. The statute, first enacted in 1989, was greatly expanded by 1993 amendments. As it read in 1990, subdivision (a) of the statute provided, in pertinent part, "(a) A school district shall inform the teacher of every student who has caused, or who has attempted to cause, serious bodily injury or injury, as defined in paragraphs (5) and (6) of subdivision (e) of Section 243 of the Penal Code, to another person. The district shall provide the information to the teacher based on any written records that the district maintains or receives from a law enforcement agency regarding a student described in this section." Carlos had not inflicted physical injury on other students, but still had shown an inordinate tendency to engage in mutual combat that often led to injuries. Nevertheless, giving full latitude for a jury to draw all reasonable inferences from the evidence, we conclude that the evidence would support a finding that the school administrators breached their duty of care toward students under their supervision by failing to notify the physical education teacher of Carlos's record of fighting. It may be true that some knowledge of a student's potential for troublemaking can aid a teacher in maintaining order, but the teacher's opportunity to intervene in advance of fighting may still be limited, and advance knowledge of student propensities is only one of many factors that may enable him or her to forestall trouble. Where a claim of liability is premised on the administration's failure to inform a teacher of a student's disciplinary record, the finder of fact must engage in a difficult inquiry into whether the teacher's lack of this specific information was a substantial factor in bringing about the harmful conflict.

COMMENT: The court examined all the relevant legislation as it evolved over the past years. Education Code 49079 was greatly expanded to include greater specificity. As you saw in the case, these amendments were enacted in 1993. Surprising enough, these amendments were not the result of the Columbine shootings, which happened on April 20, 1999. Administrators need to pay close attention to the situations discussed above, which impose a duty upon school administrators to inform teachers and administrators of a student's propensity toward violence or violent behaviors.

Discussion Questions

1. Does your state have a law similar to California's?
2. If a student does not have a criminal record, but has assaulted students in the past, what steps should a school take?
3. Is this "type" of situation becoming more common? Why?

TANARI V. SCHOOL DIRECTORS OF DISTRICT NO. 502 69 ILL.2D 630, 14 ILL. DEC. 874, 373 N.E.2D 5 (1977)

GENERAL RULE OF LAW: A school employee injured during a school function need not show willful misconduct to maintain an action thereon.

PROCEDURE SUMMARY:

Plaintiff: Tanari, a school bus driver (P)

Defendant: Local school authorities (District) (D)

Trial Court Decision: Case dismissed

State Appeals Court Decision: Affirmed

State Supreme Court Decision: Reversed

FACTS: Tanari (P) had been a school bus driver for many years. For as long as she had been employed, she had been given free passes to attend local football games; this was not a part of her official compensation. During one game, she was injured by some students who were engaged in horseplay. She sued the District (D), contending negligent supervision. The trial court dismissed, holding that Tanari (P) could not show willful misconduct, a requisite for liability on the part of the District (D). The state appellate court affirmed, and the state supreme court accepted review.

ISSUE: Must a school employee injured during a school function show willful misconduct to maintain an action thereon?

HOLDING AND DECISION: (Underwood, J.) No. A school employee injured during a school function need not show willful misconduct to maintain an action thereon. Willful misconduct must be shown for a student to prevail against a school district. This is so because this standard exists for children to recover against parents, and a school district stands in the shoes of parents with respect to its students. However, this "in loco parentis" relationship does not exist with respect to school employees. As to them, regular rules of negligence apply. This being so, whether or not the District (D) was negligent was a question of fact for the jury. Reversed.

COMMENT: The court spent some time ascertaining the status of Tanari's (P) presence on school grounds. The District (D) contended that she was a licensee; the court concluded she was an invitee. At common law, these distinctions made a difference as to the level of care owed to another on one's property. An invitee is one who is invited onto land for a particular purpose, usually to the economic advantage of the possessor of the land. A licensee is one who is permitted to enter but whose entry provides no economic benefit

to the possessor. At common law, a possessor of land owed a greater duty of care to an invitee. In most states, the emerging tort standard of recovery in a negligence case depends upon whether the tortfeasor acted "reasonably" under the circumstances.

Discussion Questions

1. Explain why the courts hold differing rules of negligence for a school district's employees and for the students within the district.
2. What procedures should a school district have in place, or what steps should it take, to provide a safe environment during extracurricular activities, bus loading and unloading, and other instances when students are present on school grounds but not actively being instructed?
3. Explain what the phrase "in loco parentis" means and how it may be applied differently by a school administrator, depending on the situation.

TEXAS STATE TEACHERS ASSN. V. GARLAND INDEPENDENT SCHOOL DIST. 777 F.2D 1046 (5TH CIR. 1985)

GENERAL RULE OF LAW: A party prevailing on a significant issue in an action is a prevailing party under 42 U.S.C. § 1988 and, thus, is entitled to attorney fees.

PROCEDURE SUMMARY:

Plaintiff: Texas State Teachers Association (Union) (P)

Defendant: Garland Independent School District (District) (D)

U.S. District Court Decision: Held Union (P) did not prevail on the central issue of the action and, thus, was not a prevailing party entitled to attorney fees under 42 U.S.C. § 1988

U.S. Court of Appeals Decision: Affirmed

U.S. Supreme Court Decision: Reversed and remanded

FACTS: The Union (P) filed suit challenging several District (D) policies, and one in particular which limited the ability of the Union (P) to communicate with teachers concerning employee organization. The District (D) moved for summary judgment, which the court granted on most of the claims. The court of appeals reversed as to the limiting communications claim and affirmed as to the rest. The Union (P) then sought attorney fees under 42 U.S.C. § 1988, arguing that they were due based on the Union's (P) having prevailed on this issue. The district court held that the Union (P) was not a prevailing party under

Section 1988 because it had not prevailed on the central issue of the action. The court of appeals affirmed, indicating that the Union (P) had been successful only on significant secondary issues, not on the central issue. The U.S. Supreme Court granted review.

ISSUE: Is a party who prevails on a significant issue in an action a prevailing party under Section 1988 for purposes of qualifying to recover attorney fees?

HOLDING AND DECISION: (O'Connor, J.) Yes. A party who prevails on a significant issue in an action is a prevailing party under Section 1988 for purposes of qualifying to recover attorney fees. Under this standard, a party must show, at a minimum, a resolution of the action that materially altered the parties' legal relationship in a manner intended by Congress. The lower courts' "central issues" test is directly contrary to *Hensley v. Eckerhart* (1983), in which the Court did not establish a particular standard but indicated that the degree of a party's success is a critical factor in determining a reasonable fee.[1] That the prevailing party is entitled to recover attorney fees is a given; there is no question as to whether the party is entitled to a fee at all. The "central issues" test is also contrary to the clear legislative intent that fee awards be available to parties who only partially prevail in civil rights actions. Further, such a test too heavily relies on the subjective intent of the parties. Reversed and remanded.

COMMENT: This case is a substantial victory for plaintiffs in civil rights actions. Requiring success on significant issues, as opposed to success on the central issue, clearly gives greater incentive for plaintiffs to bring and attorneys to accept civil rights actions. Though this plaintiff was a teachers union, the rule established applies to other potential plaintiffs against school boards and districts, such as student groups or individual students. However, the rule of this case is not limited to cases involving suits brought against educational institutions. It should be noted that attorney fees are only recoverable where provided by law; attorney fees are otherwise not compensable, no matter how malicious the losing party's conduct may have been.

Discussion Questions

1. What is the standard to allow recovery of attorney fees? What is the reasoning behind establishing this standard?
2. Why is the central issues test, in this case, contrary to the legislative intent?
3. Why is this case a particularly important victory for plaintiffs in civil rights actions in terms of setting precedent?

NOTE

1. Hensley v. Eckerhart, 461 U.S. 424 (1983).