

# WASHINGTON CASE UPDATE

## School District May Owe Duty to Student's Parents for Negligent Hiring, Retention, Supervision, and Training

case in point...

**From the Desk of Thomas McCurdy:** An employer has a duty to prevent its employee from endangering others and will be liable under negligent hiring, retention, supervision, and training theories when the employer knows or has reason to know the employee presented a risk of danger to others. In this case, the Washington Court of Appeals analyzed who is owed this duty. The Court determined that because a school district owes a duty to foreseeable victims of an employee's misconduct under those theories, a parent of a student could conceivably be a foreseeable victim.

**Claims Pointer:** In this case arising out of a sexual relationship between a minor student and a school security guard, the Washington Court of Appeals analyzed whether a student's parent could pursue her own claims against the school district. The issue was whether a parent could be a foreseeable victim of an employee's misconduct. The court determined that a parent could conceivably be a foreseeable victim, and because the issue was fact-based, dismissal of the negligent hiring, retention, supervision, and training claims was inappropriate. The case establishes a foundation for parents to pursue damages for harm to their relationship with their child based on theories of negligent hiring, retention, supervision, and training, provided they can establish they are foreseeable victims of an employee's misconduct.

Evans v. Tacoma School District No. 10, No. 47612-6-II, Washington Court of Appeals (July 12, 2016).

Jesse Brent (Brent), a security guard for Tacoma School District 10 (the District), allegedly engaged in a sexual relationship with a minor student, JM. Angela Evans (Evans), JM's mother, brought multiple claims against the District to recover her own damages rather than JM's damages—JM was not included as a plaintiff, and Brent was not named as a defendant. Evans alleged that Brent sexually groomed and had a sexual relationship with JM, that Brent and JM had exchanged thousands of text messages, that Brent statutorily raped JM, and that Brent had impregnated JM. Evans further alleged that several District staff members had observed an inappropriate relationship between JM and Brent and had failed to report the relationship or take any other action. Evans brought claims for: 1) seduction of a child; 2) alienation of a child's affections; 3) negligent failure to report child abuse; and 4) negligent hiring, retention, supervision, and/or training.

The trial court dismissed Evans' claims for seduction of a child and alienation of a child's

affections, ruling that such claims could only be brought against Brent and not against the District. The trial court also dismissed Evans' claim for negligent hiring, training, supervision, and/or retention, ruling that the District owed a duty to JM as a student, but not to Evans as her parent. After the parties conducted discovery, the trial court granted summary judgment in favor of the District on Evans' claim for negligent failure to report child abuse, ruling that the District did not owe Evans a duty and therefore could not be liable for failure to report. Evans appealed each of these rulings.

The Washington Court of Appeals held that the District could not be liable for the seduction of a child or for alienation of a child's affections based on its own conduct, and further that it could not be held vicariously liable for Brent's actions because his conduct was for his own personal reasons and therefore outside the scope of his employment.

Next, the Court reviewed whether the District failed to report child abuse, holding that the relevant statute did give rise to an implied cause of action for parents and that the District could be held vicariously liable for its employees' failure to report child abuse.



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However, because Evans only presented evidence that District employees were aware Brent was flirting with and paying inappropriate attention to JM, but no evidence that Brent was sexually abusing, exploiting, or otherwise injuring JM, there was no issue of fact as to whether District employees had reasonable cause to believe JM had suffered abuse, and summary judgment was proper.

Finally, the Court reviewed Evans' claim for negligent hiring, retention, supervision, and/or training. The Court noted that liability arises under this cause of action when the employer knows or has reason to know that the employee presented a risk of danger to others. The employer has a duty to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others. The Court distinguished vicarious liability claims, where employee conduct within the scope of employment can give rise to employer liability, from claims for negligent hiring, retention, supervision, and/or training, where employee conduct outside the scope of his employment can form the basis of employer liability.

Because an employer owes a duty to foreseeable victims regarding the hiring, retention, supervision, and training of its employees, the Court reviewed the alleged facts to determine if it was conceivable that Evans, and not only JM, was a foreseeable victim of the alleged negligent hiring, retention, supervision, and/or training. Because Evans alleged that the District was negligent in hiring, retaining, supervising, and/or training Brent, and that her relationship with JM had been damaged and destroyed because Brent seduced JM, the Court held that it was possible to conceive of facts under which it would be foreseeable to the District that if Brent was engaging in sexual conduct with a student, that conduct might harm the parent's relationship with the student. Such a notion was not so extraordinary that the Court could conclude as a matter of law that such harm

was unforeseeable under any circumstances. The trial court therefore erred in dismissing Evans' claim.

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