

WASHINGTON CASE UPDATE

School District Owes Duty to Student Not in School's Custody

case in point...

From the Desk of Thomas McCurdy: A school district has a duty to protect its students from foreseeable risks of harm. But is an off-campus rape of one student by another foreseeable to the school district? In this case, the Washington Supreme Court evaluates the scope of this duty.

Claims Pointer: In this case arising out of the rape of a junior high student by a high school student, the Supreme Court was asked to determine the scope of duty owed by a school district to its students. The Court reinforced its long held position that schools have a solemn duty to protect its students from foreseeable harms. In rejecting a bright line rule that a school's duty is limited to situations where the injury occurs while the victim is in its custody, the Court held that the location of an injury is relevant, but not determinative. Rather, the critical factor in the liability analysis is the location of the negligence, not the location of injury.

N.L. v. Bethel School District, No. 91775-2, Washington Supreme Court (September 1, 2016).

Nicholas Clark (Clark), an 18-year-old registered sex offender, ran track for Bethel High School's varsity team, although his coaches were not aware of his status as a sex offender. The varsity team shared the track field with Bethel Junior High School, where a 14-year-old minor student, NL, also ran track. Clark allegedly acted as a coach and mentor to the younger students of both schools. During practice, a mutual friend introduced Clark to NL, and the two exchanged phone numbers and started texting one another. Clark told NL he was 16 years old, and he invited NL to lunch. The next day, the two skipped practice to go to lunch at a nearby Burger King. Instead, however, Clark drove past the restaurant, took NL to his house, and raped her.

At the time, Clark already had an extensive disciplinary history, including a 2004 sexual assault against another student at Bethel Junior High School. He later pleaded guilty and was sentenced to 12 months of community custody, and he was required to register as a level one sex offender. The Pierce County sheriff later notified the principal of Bethel High School that Clark was a registered sex offender. However, evidence in the record indicated that the principal did not inform Clark's teachers, coaches, or relevant staff of

Clark's status despite a district policy requiring the principal to do so.

NL sued the Bethel School District (the District) for negligence, alleging it had failed to take reasonable precautions to protect her from a known registered sex offender. The District moved for summary judgment on two grounds: that it had no duty to NL because she was not actually in its custody at the time she was raped, and 2) that NL's decision to skip practice and leave campus with Clark were independent acts that broke the chain of causation. The trial judge agreed, granting summary judgment. The Court of Appeals reversed, holding that the District did have a duty of reasonable care to NL and there was a genuine issue of fact as to whether any breach of the duty was a proximate cause of NL's injury. The District appealed to the Washington Supreme Court.

Generally, there is no affirmative duty to prevent a third person from causing physical injury to another absent a special relationship. However, Washington courts have long held that school districts have "an enhanced and solemn duty" of reasonable care to protect their students, including a duty to protect their students from the foreseeable risk of harm the students may inflict on one another. The District argued that its duty was limited to situations where the student was injured while in its custody. The Supreme Court disagreed, stating that while the District's duty to exercise



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reasonable care may have ended when the student left its custody, its liability for breaching a duty while the student was in its custody was not necessarily cut off merely because the harm occurred after the student left campus.

According to the Court, the District's duty arose while NL and Clark were in the District's custody. The alleged breach—failing to take adequate steps to protect students from a registered sex offender—occurred while the students were all still in the District's custody. While the location of the injury was relevant, the mere fact the injury occurred off campus was not determinative. Rather, it was the location of the negligence, not the injury, that mattered.

The District further argued that even if it did breach its duty to protect its students from a foreseeable risk of harm, such a breach did not result in Clark's raping NL given she left campus with him and he was an independent actor. The Court noted that law enforcement was authorized to notify the community of a registered sex offender when necessary to protect the public, and the Pierce County sheriff did exactly that. Given these circumstances, the Court refused to say as a matter of law that the District's failure to take any action after being notified that Clark was a registered sex offender did not cause NL's injury. Sexual assault by a registered sex offender is foreseeable. So, too, is the fact that a much younger student can be convinced to leave campus by an older one. The Court also noted that students often skip class, and student-on-student rape was foreseeable.

The Court determined that NL had produced sufficient evidence to overcome summary judgment on causation, commenting that if the track coach had known that Clark, a registered sex offender, was previously convicted of sexually assaulting a younger girl, steps could have been taken to keep Clark away from the junior high students and out of a mentor role.

The Court of Appeals was affirmed, and the case was remanded to the trial court for a jury trial.

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