

## YOU AND THE LAW

**Negligent Supervision**

*Tonya L. Sawyer and Thomas H. Sawyer*

Meyers, Anderson, Sestrom, & Anderson  
v. Ferndale School District & Klein & Klein  
Court of Appeals, Division I, State of Washington  
No. 79655-1-1, 2/10/2020

According to a summary of the trial transcript, Gabriel Anderson (Plaintiff) was killed while walking on the sidewalk near the school with his class when Mr. Klein (Defendant), who fell asleep behind the wheel of his motor vehicle, hit him.

**Background of the Case**

The Plaintiff was a student at the Ferndale School District's Windward High School during the 2014–2015 school year. According to court records, the Plaintiff was a student at Windward High School in teacher Evan Ritchie's physical education class. On June 10, 2015, Ritchie decided to take Anderson's class for a walk off the school's campus grounds without proper permission being granted.

Windward High School was ostensibly a modified closed campus school and Ferndale had specific policies in place during the 2014–2015 school year regarding taking students off campus on field trips or excursions. Ferndale required teachers to obtain the permission of a student's parent or guardian before taking them off campus for a

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field trip or excursion. All parties agreed that Ritchie did not follow these policies prior to taking Anderson's class off campus. Instead, Ritchie asserted that only minutes prior to the outing he sought and obtained the approval of Windward High School's then principal, Tim Kiegley, to take his class for a walk off campus.

Without securing any additional adult supervision, Ritchie then proceeded to take his students off campus, walking west on the sidewalk along the north side of West Smith Road past the school safety zone to a section of the road where motor vehicles were permitted to travel at speeds of up to 40 miles per hour. The trial record indicated that at times during the walk, some students were up to 200 meters away from Ritchie. To return to the school, the students were explicitly granted permission to cross West Smith Road to reach the south side of the road at locations other than at designated crosswalks, and they did so.

Returning to the school, the students crossed the street and walked along the sidewalk on the south side of West Smith Road, with their backs to oncoming traffic. The trial record indicated that at a point outside of the school safety speed zone, just before the intersection of Graveline Road and West Smith Road, Anderson and several other students were struck by William Klein's sport utility vehicle. Klein had fallen asleep at the wheel and driven off the road and onto the sidewalk. Anderson and one other student were killed. Two other students were grievously injured.

## **Complaint**

Meyers, as personal representative of Anderson's estate, filed suit against the Ferndale School District (Ferndale) and William Klein (Defendant). Meyers asserted that the Plaintiff's death was the result of Ferndale negligently removing the Plaintiff from the safety of his high school campus. Ferndale's actions, Meyers asserted, exposed the Plaintiff to the negligent driving of Defendant Klein, who fell asleep behind the wheel and drove his motor vehicle onto the sidewalk, killing the Plaintiff.

Ferndale then moved for summary judgment dismissal of Meyers' claims against it on the grounds that (1) the collision that killed Anderson was not foreseeable—thus, Ferndale had no duty to take steps to prevent it and (2) even if Ferndale breached a duty, such breach was not the proximate cause of Anderson's death.

## **Trial Court's Action**

The trial court agreed with Ferndale that the collision was not foreseeable and issued an order granting summary judgment and dismissing Meyers' claims against Ferndale on that basis.

## **But the Appellate Court Reversed the Trial Court's Action**

The trial court granted Ferndale's subsequent motion for summary judgment and dismissed Meyers' claims against Ferndale, concluding—as a matter of law—that the collision was not reasonably foreseeable and that Ferndale therefore had no duty to take steps to prevent its occurrence. In its order, the trial court improperly based its determination of foreseeability on the specific harm that occurred, rather than on the general field of danger created when Ferndale staff took Anderson off campus for a walk along a public roadway. Because evidence in the record established a genuine issue of material fact regarding whether it was foreseeable that Anderson could be struck by a motor vehicle while walking along a public roadway, the Court of Appeals of the State of Washington reversed the trial court's ruling and ruled in favor of the Plaintiff.

## **Risk Management Discussion**

It is important that policies and procedures that have been developed to protect students are followed. Making last-minute changes in plans and not following policies and procedures can compromise students' safety. There are good reasons why policies and procedures have been put into place. The policies and procedures can be reviewed and changed if necessary.

This case is a perfect example of what can happen when policies and procedures are not followed. Taking a simple walk ended up in the deaths of two students and serious injuries to others. Even if the policies and procedures had been followed, the same end result may have occurred, or maybe better planning would have been put into place such as two supervisors, one in the front of the class and another at the end of the class, to guide them during the walk.

## **Instructions for Authors** *The Physical Educator*

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Manuscripts must be double spaced in Times New Roman 12-point font in a Microsoft Office Word document. Number the lines of the manuscript, including the references. Manuscripts should be 25 pages or fewer in length, including charts, graphs, graphics, pictures, and tables. Please follow APA 7th edition style guidelines consistently throughout the manuscript.

The first page of the manuscript must include the title of the article only. Do not include your name, affiliation, or other identifying information. An abstract must accompany each manuscript.

Label all charts, graphs, and tables and place them on separate pages. Submit all images 300 dpi with appropriate captions. Number the pages beginning with the title page followed by text, references, figure captions, tables, and figures. Figures must be clean and legible. Freehand art or lettering is not acceptable.

Carefully check references to ensure they are correct, included only when they are cited in the text using APA 7th edition style guidelines. Only include references that have been published or accepted for publication.

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