

YOU AND THE LAW

California Student Drowns

John J. Miller

Curry v. San Ramon Valley Unified School District,
Aaron Becker, et al., 2018

On November 27, 2018, a lawsuit was filed in the Superior Court of California against the San Ramon Valley Unified School District (hereafter referred to as the School District) school and physical education teacher as a result of a 15-year-old boy drowning in a fourth-period physical education class. The parents of a 15-year-old student (Curry) brought the lawsuit, alleging that the teacher was looking at his cell phone and not paying attention to the class of 57 students treading water. As a result, the teacher (Becker) was negligently supervising the class. He was willfully and knowingly disregarding the rights and safety of the decedent plaintiff, and the School District was negligent in the hiring, supervising, retaining, and training the instructor.

Complaint

The complaint indicated that the plaintiffs asked for general (non-economic) damages, punitive damages against Becker, special (economic) damages, as well as hospital, medical, professional, and incidental expenses incurred by the plaintiffs.

Background of the Case

According to the complaint, Curry and 56 other students were told to tread water for 3 minutes at the end of class. According to the lawsuit, Becker instructed the students to tread water for 3 minutes

John J. Miller is a visiting associate professor, School of Marketing, University of Southern Mississippi. Please send author correspondence to John.J.Miller@usm.edu

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and told his students that if they touched the lane ropes he would extend the time for them to tread water (Gafni, 2018). The time stamps from the surveillance video indicate the students were treading water for closer to 4 minutes than 3 minutes and 30 seconds. Curry slipped under the water and drowned after Becker added 30 more seconds of treading water. The school's video surveillance, according to the lawsuit, revealed that Becker was standing on a diving board and looking at his cell phone, about 15 feet from Curry, while the students were supposed to be treading water.

The trial transcript indicated that at the end of class, Becker dismissed the students without taking roll or checking the pool, leaving Curry's body in the water with his clothing and cell phone still sitting nearby on the pool deck. Following fourth period, the students went to lunch before going to their fifth-period class. Curry's body was not discovered until students returned from lunch for the fifth-period physical education class. Samantha Libby, the teacher for the fifth-period class, discovered Curry "at the bottom of the pool" about an hour later, recovered his body, and tried to resuscitate him (Gafni, 2018).

Analysis of the Court

According to the court records, the plaintiffs brought three causes of action against the defendants. The first cause of action was a wrongful death alleging negligence against all defendants. The plaintiffs perceived that the School District and its employees owed a duty of care stemming from a special relationship between the School District, Becker, and Curry (as an invitee) to supervise, protect, assist, and control. Further, the plaintiffs asserted that the School District and Becker breached their responsibility to provide reasonable protective measures to ensure Curry's safety, protect him from foreseeable conduct, or permit him to participate in dangerous activities during school. As a result, it is alleged that the School District and Becker were the direct, legal, and proximate cause of the fatal injuries sustained by Curry.

The second cause of action contended that the School District was negligent and reckless in hiring, training, supervising, and retaining an employee they knew or should have known was unfit to teach swimming. It should be noted that Becker had minimal water safety experience and his lifeguard certification expired 2 months

before Curry's drowning. Moreover, there were no other lifeguards at the pool to help Becker supervise the 57 students. Additionally, the district had no rules or regulations in place to guide Becker on instruction of the swim class. The plaintiffs claimed that the School District breached their duty to their son, Ben Curry, by carelessly and negligently training and supervising Becker. Moreover, the school district breached its duty to Curry by failing to supply any guidelines, policies, procedures, rules, or regulations regarding the class sizes or lesson plans for swimming activities. As a result, it was alleged that the School District was vicariously liable for the negligent acts and omissions of Becker and such omissions resulted in the direct, legal, and proximate cause of the fatal injuries sustained by Ben Curry.

The third cause of action asserted willful misconduct on the part of Becker. According to the court record, Becker was aware of the dangers to the 57 students, including Curry, of treading water in 12 feet of water. Regardless of the likely danger, Becker willfully and consciously disregarded the safety of Curry and other students by looking at his cell phone and taking no action as Curry became exhausted and slipped under the water. Finally, when Becker dismissed the class he left the pool area without checking the class roster.

Adding to the incident, students at San Ramon Valley High School, as well as local media, suspected that Curry had committed suicide. In fact, subsequent to Curry's death, classmates conjectured that Curry killed himself as he supposedly battled mental illness and bullying (McBride, 2018). Furthermore, the school did very little to respond to the inaccurate speculations despite being in possession of the surveillance tape of the accident as well as Curry being present during swim class when the accident happened (Gafni, 2018). As a result, the school district superintendent stated, "Neither the Contra Costa County coroner's report, nor the Danville Police investigation, indicated that Benjamin caused or contributed to his death" (McBride, 2018, para. 16).

Risk Management Discussion

School districts and districtwide physical education coordinators/supervisors need to be very conscious of negligence activity, negligent hiring, negligent supervision, negligent training, reckless

misconduct, and respondeat superior when dealing with professional personnel. The following provides a quick reminder of important concepts.

Negligence is an unintentional tort in which the alleged wrongdoer does not intend the consequences to injure another person (Miller & Schoepfer, 2018). Negligence reflects whether acts of omission or commission existed that resulted in the harm of another person. The commission of an act is one in which a person instructs another to commit an action that causes harm to that person or others (Miller & Schoepfer, 2018). For example, in this case, Becker may be negligent by an act of commission when he required the class to tread water for an additional 30 seconds. It is during these 30 seconds that Curry slipped, without notice, underwater and never resurfaced. On the other hand, if a person could have prevented an action from occurring but chose not to, it would be perceived as an act of omission. In this case, it could be perceived that Becker was negligent because he omitted properly supervising the class or checking the class roster to ensure that all students had exited the pool.

Since physical education teachers are hired because of their experience and knowledge of the sport, courts have imposed a heightened duty of care on them, especially when those individuals are responsible for teaching a dangerous activity such as swimming (*Kahn v. East Side Union High School District*, 2003; *Knight v. Jewett*, 1992). According to the Centers for Disease Control and Prevention (CDC, 2016), drowning is the second leading cause of death of minors in the United States. More specifically, between 2005 and 2014, an average of 3,536 fatal unintentional, non-boating drownings occurred every year in the United States (CDC, 2016). This figure equates to almost 10 deaths per day over the 10-year period. To ensure that the student is adequately prepared to perform an action, an instructor has a duty to properly teach the elements of progression and to consider the complexity of the action, athlete readiness, and safety. An instructor may be found to have breached a duty of care to a student if the instructor engages in conduct that is reckless in the sense that it is “totally outside the range of the ordinary activity” involved in teaching or coaching the sport (*Knight v. Jewett*, 1992, p. 318).

Negligent hiring happens when the employer (i.e., School District) knew or should have known that an employee was

unqualified, before hiring the employee (*Garcia v. Duffy*, 1986). Conversely, negligent retention occurs when, during the course of employment, the employer (i.e., School District) becomes aware or should have become aware that an employee was unqualified for the assignment (i.e., Becker's lack of lifeguarding or water safety certification) and does not discharge or reassign the employee (*Garcia v. Duffy*, 1986).

Negligent supervision occurs when there is a duty to supervise and a reasonable person would recognize that an incident could happen (i.e., drowning) and take appropriate steps to prevent it (i.e., keep an eye on all students in the pool at all times). The standard of care increases when a minor (i.e., 15 years old) is involved and a potentially dangerous condition exists that the supervisor (i.e., Becker) should be aware of such as drowning (*Knight v. Jewett*, 1992). Additionally, the School District may have been negligent in this matter as they knew or should have known about Becker's deficiencies in water safety and lifeguard training and assigned one or more individuals to help supervise the class, especially a class the size identified in the lawsuit.

Negligent training allegations are usually brought in conjunction with negligent hiring, retention, and supervision claims, but can be brought independently. Negligent training emphasizes the legal duty an employer owes to provide reasonable care in training, that the lack of training proximately caused the injury, and that the plaintiff suffered financial or physical injury damages because of the lack of training (Miller & Schoepfer, 2018). In this case, the School District owed Curry, as well as the other students, the duty to ensure that Becker possessed up-to-date lifeguarding and water safety certification.

Reckless Misconduct—Expressions such as gross negligence, willful or wanton misconduct, and reckless conduct disregard the foreseeable risks that may be employed in determining the difference between negligence and reckless misconduct (Dobbs, 2000). Reckless misconduct requires that the defendant's actions were either reckless or intentionally injurious. It requires a conscious choice or a course of action, either with knowledge of the seriousness of the danger to others. In determining whether the defendant acted recklessly, the

trier of fact will have to consider both the nature of the risk and the totality of circumstances surrounding the action.

Respondeat Superior—Often, the employer of the person who allegedly committed an offense will be named in the lawsuit under the theories of respondeat superior and vicarious liability (McCaskey & Biedzynski, 1996). Central to vicarious liability is the form of strict liability imposed upon a third party for the acts of individuals whom the third party has the right, ability, or duty to control (*Christensen v. Swenson*, 1994). Respondeat superior is a type of vicarious liability, which allows a third party to be held liable for a defendant's negligence in some cases, even if the third party was not present when the injury occurred or directly caused the injury.

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