



Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: Steve Werth

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School District Not Liable for Employee's Sexual Misconduct

C.A., a minor et al., v. William S. Hart Union High School District, et al.
Court of Appeal, Second District, Division One (November 5, 2010)

This case addresses the pleading requirements for proceeding with a complaint against a school district and its employee for the alleged sexual molestation of a student.

C.A., a minor, filed a complaint through a guardian ad litem, naming as defendants the William S. Hart Union High School District (the "School District"), the head guidance counselor and advisor at the high school (an employee of the School District) and the public high school, alleging eleven causes of action, including negligence, negligent supervision, negligent hiring, sexual battery, assault, and sexual harassment. The complaint alleged that the guidance counselor sexually harassed, abused and molested C.A. on a number of occasions from January, 2007 to September 14, 2007. The complaint further alleged that the School District "knew that [the guidance counselor] had engaged in unlawful sexually-related conduct with minors in the past, and/or was continuing to engage in such conduct," but failed to take reasonable steps to prevent further unlawful sexual conduct by the guidance counselor.

The School District filed a demurrer to the complaint. The School District argued that it could not be held liable in the absence of an authorizing statute or enactment, that it could not be held vicariously liable for the guidance counselor's actions, and that allegations of negligent hiring, training, and supervision did not apply against a public entity defendant. The School District also demurred on behalf of the high school, which was not an independent public

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entity. The trial court sustained the demurrer without leave to amend.

The Court of Appeal upheld the decision of the trial court. The Court of Appeal noted that except as otherwise provided by statute, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employer or any other person. California Government Code § 815(a). The exception to this rule is set forth in California Government Code § 815.2(a), which provides that "a public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." This means that a public entity employer such as the School District is vicariously liable for the torts of its employees committed within the scope of the employment.

Here, the Court of Appeal noted that where the facts would not support an inference that the employee acted within the scope of his employment, and where there is no dispute over the relevant facts, the question of whether the employee acted within the scope of employment becomes a question of law. The Court noted that while the prospect of sexual misconduct is "conceivable," it does not satisfy the requirement of establishing foreseeability, even under the broad meaning that concept is given in the respondeat superior context. The Court of Appeal ruled that the alleged sexual misconduct of the guidance counselor could not be considered within the scope of her employment.

The Court also noted that C.A. had not set forth, or identified, any statute that would allow a direct action for negligence against the School District. Because the complaint did not allege any statutory basis for the negligence causes of action, the Court of Appeal ruled that the trial court was correct in sustaining the demurrer as to the allegations of direct, rather than vicarious, liability for negligence. C.A. relied heavily on the "special relationship" between the School District and its minor students, implying that the relationship itself created an affirmative duty. While acknowledging that a special relationship does exist, the Court of Appeal found that such a relationship does not eliminate the requirement of a statutory basis for tort liability against a public school district.

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COMMENT

While a public entity is vicariously liable for the torts of its employees committed within the scope of the employment, California courts have consistently held that acts of sexual misconduct committed by the public entity's employee fall outside the scope of employment, and do not subject the public entity to respondeat superior. Further, this case also reinforces the concept that unless the plaintiff can rely upon a statute establishing a cause of action against the public entity, the plaintiff's complaint will be susceptible to a demurrer.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B217982.PDF](http://www.courtinfo.ca.gov/opinions/documents/B217982.pdf)

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