



Attorney for Plaintiff: Richard Grungo, Jr.
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\$26,184,095 TOTAL VERDICT - ALLEGED NEGLIGENT HIRING OF EDUCATIONAL THERAPIST - ALLEGED FAILURE OF PARENTS TO WARN OF THERAPIST'S FORMER HEROIN ADDICTION - AUTISTIC PRE-SCHOOL CHILD SUBJECTED TO PHYSICAL AND SEXUAL ABUSE - SEVERE PTSD.

Morris County, New Jersey

This case involved physical and sexual abuse of a pre-school autistic child who was provided educational therapy to supplement the in-school program. The therapy was provided by an organization that previously had worked with the child under the New Jersey Early Intervention Program for special needs children. The parents of the child requested that the same organization continue to work with the child and the Board of Education entered into a one year contract. After the contract had expired, the parents privately hired one of the therapists to work with the child after the school's summer program. The evidence disclosed that two months later, the parents became suspicious and installed a secret surveillance camera that captured the abuse, which included the assailant placing her hand inside the child's trousers, kissing the child on the mouth and also pulling the child's hair, on tape. The abuser was addicted to heroin and the tape also showed her injecting herself. The abuser was arrested and spent four years in prison.

The plaintiff contended that the Board of Education inappropriately failed to follow Administrative Code regulations, including regulations then in effect which mandated gaining the approval of the County Superintendent of Education before signing the contract with the employer. Among additional criticisms, the plaintiff also contended that the school Principal/Coordinator of Special Services did not have the required certification. This individual was eligible for such certification. The plaintiff's educational expert contended that the failure of the Board of Education to follow the regulations increased the risk to the child. The expert conceded on cross-examination that the assault was not a foreseeable event and the defendant's motion for a directed verdict was granted. The plaintiff further named the assailant's parents as defendants, contending that they should have warned the employer of her history. The assailant lived with the parents who continued to support her, paid for her car and her automobile insurance. The evidence reflected that the parents discovered the heroin addiction approximately six months earlier, placing the assailant in a detoxification program and were aware that she was providing psychological services to disabled children. The plaintiff contended that in view of such factors, the parents had a duty to warn.

The parents denied that they had such a duty, especially since the drug rehabilitation center was aware of her job and had not recommended that she cease working in this area. These defendants also pointed out that the autistic child's parents had always been very happy with the work done by the defendant assailant until they realized that the child was being abused. The Court granted the assailant's parents motion for Summary Judgment some months before trial. The plaintiff had also named the employer as a defendant on a negligent hiring/negligent retention theory, and this aspect settled prior to trial for approximately \$75,000.

The plaintiff's psychiatric expert would have maintained that the abuse caused severe PTSD and that the fact that it occurred in what otherwise would be the safe haven of home heightened the reaction. The psychiatrist would have testified that when the child is exposed to normal things, like a particular toy

with which he used to play with the assailant, hears a song she used to frequently sing to him or sees a TV show the two often watched together, he becomes extremely upset and has temper tantrums. The expert would have related that because of the autism and extensive communication difficulties suffered by the child, the treatment was significantly more complicated than would otherwise be the case. The psychiatrist would have indicated that if not for such communication difficulties, a typical therapeutic modality would entail attempting to desensitize the patient to the things that prompted a reaction. The psychiatrist would have testified that because of the autism, such modalities will not be successful and treatment must concentrate on attempting to prevent the child from being exposed to the stressors and by administering medication.

The jury rendered an award of \$26,184,095, including \$6,184,095 in compensatory damages and \$20,000,000 in punitive damages against the assailant only. The Court granted the parents' Motion for Summary Judgment and also granted the school board's motion for a directed verdict on the issues of proximate cause and foreseeability.

Reference

Plaintiff vs. Defendants, 12-14-09.

Attorney for plaintiff: Richard Grungo Jr. of Archer & Greiner, PC in Princeton, NJ. Attorney for defendant Board of Education: William C. Carey of McElroy Deutsch Mulvaney & Carpenter, LLP in Morristown, NJ.

Commentary

The plaintiff had named the assailant's parents as defendants on a negligence theory, arguing that in view of the parents' knowledge that the assailant, who resided at their home and who was furnished a car by them, was addicted to heroin, and was working in a position in which she provided counseling to disabled youngsters in their homes, the parents had a duty to warn the employer. The court rejected this theory, held that the parents did not have such a duty, especially since the rehabilitation facility which treated the assailant was aware of the type of work in which she was engaged and had not recommended any changes. The Court concurred on the issue of duty and granted the parents' motion for Summary Judgment.

The plaintiff had also maintained that the Board of Education should be liable, pointing out that Administrative Code regulations then in effect, including regulations that required obtaining the approval of the County Superintendent of Education before signing a contract with the employer, were not followed, and that the school principal/Coordinator of Special Services, who was eligible for required certifications, did not actually become fully certified. In this regard, although the plaintiff's expert had concluded that such failures increased the risk to the child, he conceded on cross-examination that an assault on a disabled child was not a foreseeable consequence of the alleged school board failures, prompting the Court to grant this defendant's motion for a directed verdict.

Regarding damages, the plaintiff emphasized because of the underlying severe autism in and of itself, the potential treatment for the PTSD was very limited and that the attempts to help desensitize the child to stressors that bring on temper tantrums, such as hearing a song the assailant used to sing to him, cannot be made, and that the treatment must focus on medication and keeping such reminders away from the child.