

**Hedderick v Palmyra-Macedon Central School
District**

2006 NY Slip Op 30173(U)

September 29, 2006

Supreme Court, Wayne County

Docket Number: 0056494/2005

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

LYNDA HEDDERICK, as Parent and
Natural Guardian of _____
Plaintiffs,

DECISION
AND
ORDER

vs.

Index No. 56494

PALMYRA-MACEDON CENTRAL SCHOOL
DISTRICT and KIMBERLY LYNCH
Defendants.

DeValk & Power, P.C.
Richard L. DeValk, Esq.
Attorney for Plaintiffs

Osborn, Reed & Burke, LLP
Aimee LaFever Koch, Esq., of counsel
Attorney for Defendant,
Palmyra-Macedon Central School

The Defendant Palmyra-Macedon Central School District (hereinafter "district") has moved pursuant to CPLR §3212 for an order granting Summary Judgment against the Plaintiff and dismissing the Complaint in its entirety. The Plaintiff has opposed the motion, maintaining that there are issues of fact which must await determination at trial. (The Court here notes that a default judgment was entered against the co-Defendant

Kimberly Lynch upon motion of the Plaintiff, and that an inquest was held before a Judicial Hearing Officer to hear and determine damages, which resulted in a judgment against Lynch in the amount of \$125,000.00, plus costs and disbursements.)

The claim arises from allegations by Plaintiff _____ that, while a _____ he was sexually abused by Kimberly Lynch, who was employed by the district as a one-on-one aide assigned to a special education classroom. The Plaintiff, who has a learning disability, maintains that he met Ms. Lynch in _____ first period vocational class for English and Math, while Ms. Lynch was assigned to another student. A relationship developed which involved episodes of kissing and sexual touching within the school building, in Ms. Lynch's van while parked in the district's parking lot, and during a time when Ms. Lynch transported _____ to a school basketball game. Between January 20, 2004 and February 10, 2004, Ms. Lynch authorized passes to _____ on six occasions, permitting him to leave his study hall, in order to go to an unoccupied room. The Plaintiff argues that the district was negligent in its supervision of _____ whereabouts and activities, and that the school breached the duty of care which it owes to its pupils.

The district maintains that the facts as alleged are insufficient to state any substantive claims against the district. It concedes that a school owes its students a duty of care, but maintains that the measure of this duty is that it exercise such care as “a parent of ordinary prudence would observe under similar circumstances.” The district also argues that the school authorities must have knowledge or notice of the conduct in question, and further, that if the breach and the notice are both established, thereby giving rise to negligence, such negligence must be the proximate cause of the injuries involved. The district asserts that it did not breach the “prudent parent” duty, that it had no notice of Ms. Lynch’s conduct, and that even if negligence were presumed for purposes of this motion, such negligence was not the proximate cause of the alleged injuries.

The Court has reviewed the affidavits and memoranda submitted by respective counsel, together with the transcripts of the examinations before trial. Based on that review, the Court finds that there are sufficient factual issues presented so as to defeat a motion for summary judgment by the district. The fact that the contact between the Plaintiff and Ms. Lynch occurred on school property and on numerous occasions, and that the contact resulted on many of those occasions as a result of Ms. Lynch’s

issuance of unauthorized passes to _____ which went unquestioned by school officials as to their purpose or propriety, gives rise to questions regarding breach of a duty to supervise, notice to district employees and proximate cause. Moreover, testimony regarding e-mail communications between _____ mother and _____ teacher establishes a genuine fact issue regarding the district's knowledge of the ongoing relationship. These allegations combine to present a sufficient question for the trier of fact.

However, the Court does agree with the district's argument that the doctrine of respondeat superior is not applicable in this action. Under that doctrine, an employer may be vicariously liable for tortious acts of its employees only if those acts were committed in the furtherance of the employer's business and within the scope of the business. The acts of Ms. Lynch toward _____ clearly depart from the scope of her employment and were unrelated to the furtherance of the district's business. Therefore, the district cannot be held vicariously liable for any injuries allegedly incurred by the Plaintiff as a result of the actions of Ms. Lynch.

Therefore, except as to any claim of liability under the doctrine of respondeat superior, the Defendant's motion for summary judgment is

denied.

This Decision constitutes the order of the Court.

Dated: September 29, 2006
Lyons, New York



Honorable Dennis M. Kehoe
Acting Supreme Court Justice

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