

SUPREME COURT OF APPEALS OF WEST VIRGINIA

C.C. and J.C., as next friends of the minor child M.C. v. Harrison County Board of Education

No. 20-0171 · No. No. 20-0171 · Decided June 17, 2021

SUMMARY

Justice Armstead concurred in part and dissented in part regarding claims against the Harrison County Board of Education arising from alleged harassment and bullying by an assistant principal. The dissent would affirm dismissal of the negligence per se claim in Count 5 and the negligent retention claim in Count 6, concluding that governmental immunity and insufficient pleading defeated those claims. It agreed with affirmance of the dismissal of the negligent hiring and negligent supervision claims.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Armstead
JURISDICTION	West Virginia
DECIDED	June 17, 2021
DOCKET	No. 20-0171
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners appealed the circuit court's dismissal of their complaint under West Virginia Rule of Civil Procedure 12(b)(6), limiting the appeal to negligence per se claims in Count 5 and negligent hiring, supervision, and retention claims in Count 6.
STANDARD OF REVIEW	De novo review of a Rule 12(b)(6) dismissal; allegations must state a claim upon which relief may be granted. The opinion also discusses heightened pleading requirements when qualified or statutory immunity is asserted.
PRECEDENTIAL VALUE	Separate dissenting opinion; nonbinding
PARTIES	C.C. and J.C., as next friends of the minor child M.C. v. Harrison County Board of Education

TOPICS

[municipal liability](#)[negligent supervision](#)[negligent retention](#)[motions to dismiss](#)[statutory interpretation](#)

PRACTICE AREAS

governmental immunity

tort law

education law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board was immune from the negligence per se claim in Count 5 because the claim rested on statutory responsibilities to adopt or implement an anti-harassment policy.
2. Whether the negligence per se allegations in Count 5 merely restated a negligent supervision claim based on intentional conduct by the assistant principal.
3. Whether petitioners adequately pleaded negligent retention against the Board, including a foreseeable injury caused by retaining an unfit employee.
4. Whether the complaint satisfied the heightened pleading requirements applicable when a governmental defendant asserts qualified or statutory immunity.

HOLDINGS

1. In the dissent's view, the Board was immune from the negligence per se claim because the alleged duties to adopt or maintain an anti-harassment policy fell within West Virginia Code section 29-12A-5(a)(4), and the cited anti-harassment statutes imposed responsibilities rather than expressly imposed liability.
2. In the dissent's view, the allegations that the Board failed to act to address the assistant principal's conduct alleged negligent supervision rather than negligent retention, and they failed because the assistant principal's alleged acts were intentional rather than negligent.
3. In the dissent's view, petitioners failed to state a negligent retention claim because they did not allege specific facts showing that retention of an unfit employee caused a reasonably foreseeable injury.

KEY QUOTATIONS

"The . . . claim of negligent supervision must rest upon a showing that the [employer] failed to properly supervise [its employee] and, as a result, [the employee] committed a negligent act which proximately caused the appellant's injury." (at 4)

"Liability shall not be construed to exist under another section of this code merely because a responsibility is imposed upon a political subdivision or because of a general authorization that a political subdivision may sue and be sued." (at 6)

"to prove that a clearly established right has been infringed upon, a plaintiff must do more than allege that an abstract right has been violated." (at 9)

"Cases implicating immunity . . . are subject to a somewhat heightened pleading standard." (at 10)

FACTUAL BACKGROUND

The minor child allegedly encountered inappropriate and intentional conduct by an assistant principal in a school bathroom on November 27, 2018, and allegedly encountered the assistant principal again at a concession stand on December 6, 2018. School officials and the parties apparently met on January 11, 2019, after which the

superintendent agreed to ensure that the assistant principal would have little or no interaction with the child. The Board initially voted not to renew the assistant principal's contract during the week of March 20, 2019, but later reversed that decision and renewed the contract. Petitioners alleged that the assistant principal later appeared in the school lunchroom to intimidate, harass, or bully the child, but the dissent characterized the allegations as conclusory and lacking specific facts showing further interaction or misconduct.

PROCEDURAL HISTORY

The circuit court dismissed the complaint, including the claims in Counts 5 and 6, based in part on governmental immunity and failure to state a claim. The separate opinion concurs in affirming dismissal of the negligent hiring and negligent supervision claims but dissents from the majority's reversal of dismissal of the negligence per se claim and negligent retention claim.

DISPOSITION

other

CASES CITED

- Taylor v. Cabell Huntington Hosp. Inc., 208 W. Va. 128, 538 S.E.2d 719 (2000)
- McCormick v. W. Va. Dep't of Pub. Safety, 202 W. Va. 189, 503 S.E.2d 502 (1998)
- R.Q. v. West Virginia Div. of Corrections, No. 13-1223, 2015 WL 1741635 (W. Va. Apr. 10, 2015)
- W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B., 234 W. Va. 492, 766 S.E.2d 751 (2014)
- West Virginia Regional Jail & Correctional Facilities Authority v. Grove, 244 W. Va. 273, 852 S.E.2d 773 (2020)
- Hutchinson v. City of Huntington, 198 W. Va. 139, 479 S.E.2d 649 (1996)
- Doe v. Logan County Board of Education, 242 W. Va. 45, 829 S.E.2d 45 (2019)