

SUPREME COURT OF NEBRASKA

Bell v. Grow With Me Childcare & Preschool

299 Neb. 136 (2018) · No. No. S-16-678 · Decided March 2, 2018

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of negligence claims against two childcare centers arising from the fatal abuse of an infant by a former employee. The court held that, under the Restatement (Third) of Torts, the centers' alleged failure to report the former employee's abuse did not create a general duty to protect the infant from risks created by a third party, and no applicable special relationship imposed such a duty on the facts presented.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	March 2, 2018
DOCKET	No. S-16-678
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Bells appealed from a directed verdict dismissing their negligence claims against two childcare centers and their directors. The childcare centers cross-appealed the district court's ruling that they owed a legal duty and breached that duty. The Nebraska Supreme Court granted a joint motion to bypass and moved the appeal to its docket.
STANDARD OF REVIEW	A directed verdict at the close of all the evidence is proper when reasonable minds cannot differ and can draw only one conclusion from the evidence. Whether a legal duty exists is a question of law dependent on the facts, which the appellate court independently resolves.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Christopher Bell, as Special Administrator for the Estate of Cash Bell, et al. v. Grow With Me Childcare & Preschool LLC, et al., La Petite Academy, Inc., Lisa Hampson, Jennifer Schmaderer

TOPICS

duty of care negligence appellate procedure standard of review proximate cause

PRACTICE AREAS

negligence torts wrongful death appellate procedure evidence

QUESTIONS PRESENTED

1. Whether the childcare centers owed Cash or the Bells a legal duty to protect them from the criminal acts of Cullen, a former employee.
2. Whether the centers' failure to report or alleged concealment of Cullen's prior abuse created a risk of physical harm sufficient to trigger a duty under Restatement (Third) of Torts §§ 7 and 37.
3. Whether a former employer-employee relationship supported an affirmative duty under Restatement (Third) of Torts § 41(b)(3).
4. Whether the remaining assignments concerning breach, proximate cause, and evidentiary rulings needed to be reached after resolving the duty issue.

HOLDINGS

1. Restatement (Third) of Torts § 7 imposes a general duty of reasonable care only when the actor's affirmative conduct creates a risk of physical harm; it does not impose a universal duty of reasonable care to all others in all circumstances.
2. The failure to rescue, protect, or report another person's dangerous conduct is not, standing alone, conduct creating a risk of harm under § 7 and does not give rise to a duty of care under that section.
3. The childcare centers' prior employer-employee relationship with Cullen did not create an affirmative duty to protect Cash or the Bells from Cullen's later criminal acts after her employment ended.
4. The directed verdict for the childcare centers was affirmed because, as a matter of law, the centers owed no legal duty to Cash or the Bells.

KEY QUOTATIONS

“Section 7 of this Restatement states the general principle that an actor has a duty of reasonable care when the actor’s conduct creates a risk of physical harm to others. [Section 37] states a complementary principle: there is no duty of care when another is at risk for reasons other than the conduct of the actor, even though the actor may be in a position to help.” (299 Neb. at 153)

“The failure to rescue or protect another from harm is not conduct creating a risk of harm under § 7 and does not give rise to a duty of care under that section.” (299 Neb. at 155)

“Because there can be no liability in tort in the absence of a legal duty, we must affirm the trial court’s decision to direct a verdict in favor of the childcare centers.” (299 Neb. at 159)

FACTUAL BACKGROUND

Christopher and Ashley Bell hired Sarah Cullen as an in-home nanny for their infant son, Cash, after a background check revealed no concerns. Cullen had previously worked at La Petite and Grow With Me, where coworkers observed conduct the Bells characterized as abusive; the centers investigated but did not report the conduct to authorities. After Cullen fatally injured Cash, the Bells alleged that timely reporting by the centers would have prevented Cullen from obtaining the nanny position or would have led to her earlier placement on the child-abuse registry.

PROCEDURAL HISTORY

The Bells sued the nanny for battery and sued La Petite Academy, Grow With Me, and related directors for negligently failing to report the nanny's alleged child abuse while she was employed at the centers. The district court directed a verdict for the childcare centers at the close of the Bells' evidence, primarily finding that the alleged causal chains were too speculative to establish proximate cause. The court affirmed on the alternative threshold ground that the childcare centers owed no legal duty to protect Cash or the Bells from the nanny's later criminal acts.

DISPOSITION

affirmed

CASES CITED

- State v. Cullen, 292 Neb. 30, 870 N.W.2d 784 (2015)
- A.W. v. Lancaster Cty. Sch. Dist. 0001, 280 Neb. 205, 784 N.W.2d 907 (2010)
- United Gen. Title Ins. Co. v. Malone, 289 Neb. 1006, 858 N.W.2d 196 (2015)
- McReynolds v. RIU Resorts & Hotels, 293 Neb. 345, 880 N.W.2d 43 (2016)
- Durre v. Wilkinson Development, 285 Neb. 880, 830 N.W.2d 72 (2013)
- Blaser v. County of Madison, 285 Neb. 290, 826 N.W.2d 554 (2013)
- Osantowski v. Osantowski, 298 Neb. 339, 904 N.W.2d 251 (2017)
- O'Brien v. Cessna Aircraft Co., 298 Neb. 109, 903 N.W.2d 432 (2017)
- Ashby v. State, 279 Neb. 509, 779 N.W.2d 343 (2010)
- Olson v. Wrenshall, 284 Neb. 445, 822 N.W.2d 336 (2012)
- Riggs v. Nickel, 281 Neb. 249, 796 N.W.2d 181 (2011)
- McReynolds v. RIU Resorts & Hotels, 293 Neb. 345, 880 N.W.2d 43 (2016)
- Kimminau v. City of Hastings, 291 Neb. 133, 864 N.W.2d 399 (2015)
- Rodriguez v. Catholic Health Initiatives, 297 Neb. 1, 899 N.W.2d 227 (2017)
- Thomas v. Board of Trustees, 296 Neb. 726, 895 N.W.2d 692 (2017)
- Martensen v. Rejda Bros., 283 Neb. 279, 808 N.W.2d 855 (2012)
- Peterson v. Kings Gate Partners, 290 Neb. 658, 861 N.W.2d 444 (2015)
- Ginapp v. City of Bellevue, 282 Neb. 1027, 809 N.W.2d 487 (2012)
- State v. Jedlicka, 297 Neb. 276, 900 N.W.2d 454 (2017)

- State v. Botts, 25 Neb. Ct. App. 372, 905 N.W.2d 704 (2017)
- Papillion Rural Fire Prot. Dist. v. City of Bellevue, 274 Neb. 214, 739 N.W.2d 162 (2007)

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