

SUPREME COURT OF VERMONT

Zachariah Blondin v. Milton Town School District et al.

2021 VT 2 · No. 2020-031 · Decided January 15, 2021

SUMMARY

The Vermont Supreme Court affirmed a judgment arising from a high-school football player's negligent-supervision claim against the Milton Town School District after he was assaulted by teammates at an off-campus team dinner. The court addressed preservation of challenges to the denial of summary judgment and judgment as a matter of law, foreseeability and school duties, comparative negligence, damages, evidentiary issues, the Vermont Public Accommodations Act, and punitive damages.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Cohen, J.; Reiber, C.J.; Robinson, J.; Eaton, J.; Carroll, J.
JURISDICTION	Vermont
DECIDED	January 15, 2021
DOCKET	2020-031
DISPOSITION	affirmed
PROCEDURAL POSTURE	Both parties appealed after a jury trial and post-trial rulings in a negligent-supervision and Vermont Public Accommodations Act action. The District appealed the judgment and rulings concerning duty, preservation, comparative negligence, and damages; plaintiff cross-appealed rulings concerning evidence, the VPAA claim, and punitive damages.
STANDARD OF REVIEW	The court treated preservation issues under Vermont Rules of Civil Procedure 50 and 50(b); reviewed denial of a new-trial motion for abuse of discretion; reviewed judgment as a matter of law under the same standard as the trial court, viewing the evidence in the light most favorable to the nonmoving party and excluding modifying evidence; and reviewed evidentiary rulings for abuse of discretion resulting in prejudice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Milton Town School District v. Zachariah Blondin

TOPICS

appellate procedure

preservation of error

negligent supervision

comparative fault

civil rights

PRACTICE AREAS

torts

civil procedure

civil rights

municipal law

QUESTIONS PRESENTED

1. Whether the District could appeal the denial of summary judgment based on its fact-dependent argument that Blondin's assault was unforeseeable and therefore gave rise to no duty.
2. Whether the District preserved its challenge to the denial of judgment as a matter of law by failing to renew its motion after the jury verdict under Vermont Rule of Civil Procedure 50(b).
3. Whether the trial court properly set aside the jury's comparative-negligence finding and granted a new trial or additur.
4. Whether the trial court properly interpreted the jury's \$280,000 damages award as already reflecting the comparative-negligence calculation.
5. Whether admission of excerpts from Blondin's school disciplinary records warranted a new trial.
6. Whether Blondin was entitled to judgment as a matter of law or a new trial on his Vermont Public Accommodations Act claim based on the jury instructions and the evidence.
7. Whether punitive damages were available against a municipally funded school district.

HOLDINGS

1. A party generally may not appeal the denial of summary judgment after a full jury trial when the asserted error depends on disputed facts; the District's foreseeability and duty argument was fact-dependent and therefore not reviewable.
2. Under Vermont Rule of Civil Procedure 50(b), renewal of a motion for judgment as a matter of law after entry of judgment is necessary to appeal from denial of the pre-verdict motion; the District's failure to renew its motion foreclosed appellate review of its lack-of-duty arguments.
3. The trial court properly set aside the jury's comparative-negligence finding because no reasonable jury could conclude from the evidence that Blondin was contributorily negligent in attending the team dinner or in failing to anticipate the sexual assault.
4. The trial court reasonably determined that the jury's \$280,000 award already incorporated the jury's comparative-negligence calculation, and the court properly granted an additur of \$186,666 for a total judgment of \$466,666 after setting aside the comparative-negligence finding.
5. The trial court did not abuse its discretion by admitting selected excerpts from Blondin's school disciplinary records to rebut his testimony that the assault changed him from a sweet child into a mean person.
6. The trial court did not err in denying Blondin judgment as a matter of law on his VPAA claim or in instructing the jury on the claim; viewed favorably to the District, a reasonable juror could find that the

assault was not based on Blondin's gender or perceived sexual orientation.

7. Punitive damages are unavailable against a municipally funded school district absent a clear legislative directive authorizing them.

KEY QUOTATIONS

“a party generally cannot appeal from the pretrial denial of a motion for summary judgment” (¶ 17)

“Renewal of the motion is necessary to appeal from a denial of or a failure to grant a motion for judgment as a matter of law.” (¶ 20)

“The District’s reliance on Tate v. Board of Education, Prince George’s County, 843 A.2d 890 (Md. Ct. Spec. App. 2004), is entirely misplaced.” (¶ 31)

“The heart of that holding is that punitive damages are not available against municipalities because it would not further the goals of deterring and punishing the wrongdoers.” (¶ 65)

FACTUAL BACKGROUND

Blondin was a freshman on the Milton High School football team in 2012. At an off-campus team dinner at a player's home, teammates dragged him to a basement, held him down, and forcibly inserted a pool cue into his rectum. The District allegedly knew of prior harassment and hazing within the football program, including a similar assault at an earlier team dinner, but the timing and extent of school officials' knowledge were disputed. A jury found the District negligent and awarded damages, but found no violation of the Vermont Public Accommodations Act.

PROCEDURAL HISTORY

Blondin sued Milton Town School District in April 2017 for negligent supervision and violation of the Vermont Public Accommodations Act arising from a 2012 assault by football teammates at an off-campus team dinner. The trial court denied the District's motion for summary judgment and both parties' motions for judgment as a matter of law. After a jury found the District negligent, attributed sixty percent of the negligence to the District and forty percent to Blondin, and awarded \$280,000, the trial court granted Blondin a new trial unless the District accepted an additur, resulting in a \$466,666 judgment. Both parties appealed, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Stopford v. Milton Town Sch. Dist., 2018 VT 120, 209 Vt. 171, 202 A.3d 973
- Stratton Corp. v. Engelberth Constr., Inc., 2015 VT 69, 199 Vt. 289, 123 A.3d 393
- Lofts Essex, LLC v. Strategis Floor and Décor Inc., 2019 VT 82, 224 A.3d 116
- Ortiz v. Jordan, 562 U.S. 180, 190-91 (2011)

- *Foster v. Bittersweet Experience, Inc.*, 173 Vt. 617, 619, 796 A.2d 483, 487 (2002)
- *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 401, 407 (2006)
- *Doherty v. City of Maryville*, 431 F. App'x 381, 385 (6th Cir. 2011)
- *Belk, Inc. v. Meyer Corp.*, 679 F.3d 146, 160-61 (4th Cir. 2012)
- *Linden v. CNH Am., LLC*, 673 F.3d 829, 832-33 (8th Cir. 2012)
- *Frank C. Pollara Grp., LLC v. Ocean View Inv. Holding, LLC*, 784 F.3d 177, 187-88 (3d Cir. 2015)
- *In re Robinson/Keir P'ship*, 154 Vt. 50, 54, 573 A.2d 1188, 1190 (1990)
- *Barber v. LaFromboise*, 2006 VT 77, ¶ 7, 180 Vt. 150, 908 A.2d 436
- *Johnson v. UPS*, 2006 VT 57, ¶ 10, 180 Vt. 513, 904 A.2d 1089 (mem.)
- *Washington v. Pierce*, 2005 VT 125, 179 Vt. 318, 895 A.2d 173
- *Venturella v. Addison-Rutland Supervisory Union*, 2010 VT 115, 189 Vt. 553, 12 A.3d 558 (mem.)
- *Gero v. J.W.J. Realty*, 171 Vt. 57, 59, 757 A.2d 475, 476 (2000)
- *State v. Morse*, 2019 VT 58, 219 A.3d 1309
- *State v. McAllister*, 2018 VT 129, 209 Vt. 60, 202 A.3d 989
- *Young v. Rabideau*, 821 F.2d 373, 380 (7th Cir. 1987)
- *Shahi v. Madden*, 2008 VT 25, ¶ 14, 183 Vt. 320, 949 A.2d 1022
- *In re Town Highway No. 20*, 2012 VT 17, 191 Vt. 231, 45 A.3d 54
- *Baird v. Town of Berlin*, 126 Vt. 348, 352, 231 A.2d 110, 113 (1967)

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