

SUPREME COURT OF NORTH DAKOTA

Richard v. Washburn Public Schools

Richard, 2011 ND 240 (N.D. 2011) · No. 20110045 · Decided December 15, 2011

SUMMARY

The North Dakota Supreme Court reviewed the dismissal of Leah Richard’s claims against Washburn Public Schools arising from alleged sexual harassment and inappropriate physical conduct by a supervisor. The court affirmed dismissal of the negligent hiring and assault-and-battery claims, but held that the Workforce Safety and Insurance Act and North Dakota Human Rights Act did not bar the negligent supervision and retention claims. The court reversed dismissal of those claims and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers, Justice; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner; Gerald W. VandeWalle, Chief Justice; Gary H. Lee, District Judge
JURISDICTION	North Dakota
DECIDED	December 15, 2011
DOCKET	20110045
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a judgment granting the defendant's motion for summary judgment and dismissing claims for negligent hiring, negligent supervision, negligent retention, and assault and battery.
STANDARD OF REVIEW	Summary judgment is reviewed de novo on the entire record. The evidence is viewed in the light most favorable to the nonmoving party, which receives the benefit of reasonable favorable inferences. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Leah Richard v. Washburn Public Schools

TOPICS

sexual harassment

negligence

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QUESTIONS PRESENTED

1. Whether Richard's negligent supervision and negligent retention claims were barred by the exclusive-remedy provisions of the Workforce Safety and Insurance Act.
2. Whether the North Dakota Human Rights Act precluded Richard's common-law negligent supervision and retention claims.
3. Whether genuine issues of material fact existed regarding foreseeability, the District's knowledge of Fuchs's misconduct, and the adequacy of the District's response.
4. Whether the district court's dismissal of the negligent hiring and assault and battery claims should be reviewed when Richard did not challenge those dismissals on appeal.

HOLDINGS

1. The Workforce Safety and Insurance Act did not bar Richard's negligent supervision and negligent retention claims because the record did not establish that she suffered a compensable injury under the Act. Her claims sought recovery primarily for nonphysical mental or psychological injuries arising from alleged sexual harassment, and the District failed to prove the applicability of the exclusive-remedy defense.
2. The North Dakota Human Rights Act did not preclude Richard's negligent supervision and negligent retention claims.
3. Summary judgment was improper on Richard's negligent supervision and negligent retention claims because genuine issues of material fact existed concerning the District's knowledge of Fuchs's conduct, foreseeability, and the adequacy of its response.

KEY QUOTATIONS

“Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law.” (¶ 9)

“In this case, even if the allegations of sexual harassment constitute an injury by accident, we conclude the District has failed to show Richard has suffered an injury that is compensable under the Act. Consequently, we conclude the exclusive remedy provisions of the Act do not bar Richard’s actions.” (¶ 19)

FACTUAL BACKGROUND

Leah Richard worked as a part-time custodian for Washburn Public Schools while she was a sixteen-year-old student. She alleged that her supervisor, Gary Fuchs, made sexual comments and engaged in several incidents of physical touching, including placing his hands around her neck, pushing her down, and putting his hands inside

the front of her pants. Richard's mother reported one incident to a school principal, and the District later took steps to restrict Fuchs's contact with Richard. Richard alleged mental and psychological injuries and sued the District for negligent hiring, supervision, and retention, and for assault and battery.

PROCEDURAL HISTORY

Richard sued Washburn Public Schools in the District Court of McLean County for damages arising from alleged sexual comments and physical touching by her supervisor. The district court granted summary judgment for the District, ruling that the negligent supervision and retention claims were barred by the exclusive-remedy provisions of the Workforce Safety and Insurance Act, that the negligent hiring claim was unforeseeable as a matter of law, and that the assault and battery claim was untimely. The North Dakota Supreme Court affirmed dismissal of the negligent hiring and assault and battery claims, reversed dismissal of the negligent supervision and retention claims, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on Richard's negligent supervision and negligent retention claims. The dismissal of the negligent hiring and assault and battery claims remains affirmed.

CASES CITED

- Loper v. Adams, 2011 ND 68, ¶ 19, 795 N.W.2d 899
- Brown v. Montana-Dakota Utils. Co., 2011 ND 38, ¶ 3, 794 N.W.2d 741
- Trinity Hosps. v. Mattson, 2006 ND 231, ¶¶ 1, 11, 723 N.W.2d 684
- Cervantes v. Drayton Foods, L.L.C., 1998 ND 138, ¶¶ 1, 6, 582 N.W.2d 2
- Zimmerman by Zimmerman v. Valdak Corp., 1997 ND 203, ¶ 26, 570 N.W.2d 204
- Mitchell v. Sanborn, 536 N.W.2d 678, 683, 686 (N.D. 1995)
- Wald v. City of Grafton, 442 N.W.2d 910, 912 (N.D. 1989)
- Schlenk v. Aerial Contractors, Inc., 268 N.W.2d 466, 468 (N.D. 1978)
- Becht v. Owens Corning Fiberglass Corp., 196 F.3d 650, 654 (6th Cir. 1999)
- Romero v. Kansas City Station Corp., 98 S.W.3d 129, 138 (Mo. Ct. App. 2003), overruled on other grounds in McCracken v. Wal-Mart Stores East, LP, 298 S.W.3d 473 (Mo. 2009)
- Smith v. Roman Catholic Diocese, 677 N.Y.S.2d 183, 184 (N.Y. App. Div. 1998)
- Ritter v. Allied Chemical Corp., 295 F. Supp. 1360 (D.S.C. 1968), aff'd, 407 F.2d 403 (4th Cir. 1969)
- Benson v. Goble, 1999 SD 38, 593 N.W.2d 402
- Brown v. Douglas Sch. Dist., 2002 SD 92, ¶ 23, 650 N.W.2d 264
- McPherson v. City of Waukegan, 379 F.3d 430, 442 (7th Cir. 2004)
- Dickert v. Metropolitan Life Ins. Co., 428 S.E.2d 700, 702 (S.C. 1993)

- Ford v. Revlon, Inc., 734 P.2d 580, 586 (Ariz. 1987)
- Coates v. Wal-Mart Stores, Inc., 976 P.2d 999, 1005 (N.M. 1999)
- Williams v. Garraghty, 455 S.E.2d 209, 218 (Va. 1995)
- Lentz v. Young, 536 N.W.2d 451, 458 (Wis. Ct. App. 1995)
- Sisco v. Fabrication Techs., Inc., 350 F. Supp. 2d 932, 943 (D. Wyo. 2004)
- Schuhmacher v. North Dakota Hosp. Ass'n, 528 N.W.2d 374, 377 (N.D. 1995)
- Koehler v. County of Grand Forks, 2003 ND 44, ¶ 28, 658 N.W.2d 741
- Nelson v. Gillette, 1997 ND 205, ¶¶ 39-41, 571 N.W.2d 332
- Gingerich v. City of Elkhart Prob. Dep't, 273 F.R.D. 532, 538 (N.D. Ind. 2011)
- Scott v. Retz, 916 N.E.2d 252, 257 (Ind. App. 2009)
- Sandage v. Board of Comm'rs of Vanderburgh County, 897 N.E.2d 507, 512 (Ind. App. 2008)
- Webb v. Jarvis, 575 N.E.2d 992, 995 (Ind. 1991)

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