

# Stein vs. Asheville, Buncombe, and Blue Ridge

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# Explain -

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An award against a county board of education under the provisions of the Tort Claims Act... must be based on the negligent act or omission of the driver of a public school bus who was employed at the time by the county or city administrative unit of which such board was the governing body.

Tort Claims Act waives government immunity and allows for parties to file suit for injuries resulting from torts or “wrongful acts,” which include negligence by employees of government agencies. In this case it would be the bus driver Nancy Patton and the bus monitor Gail Guzman as acting employees of Asheville. Any negligence arising from Guzman and Patton would be a claimable tort but it would fall under the jurisdiction of Industrial Commission.

The negligent act in question is Guzman and Patton’s failure to disclose of such conversations between the two juveniles to any higher superior but this only gives reason and cause for the suit. Proximate cause, foreseeability and consideration would have to be determined for a successful verdict.

The problem is also that the plaintiffs’ failure to include bus driver Patton and bus monitor Guzman in the actual filing of the claim. They are mere facts of the matter but not the actual parties being included in the suit as defendants.

Plaintiffs argue that the trial court erred in granting Industrial Commission exclusive jurisdiction but the plain language in its North Carolina Statute section 143-300.1 which is shown in the slide would prove otherwise. This significance of the excerpt is that it highlights responsibilities of governing bodies and employees when tort claims are in suit.

# Explain

- Justice Cardozo stated, long ago in a case that is required hornbook law for all first-year law students, “One who seeks redress at law does not make a cause of action by showing without more that there has been damaged to his person.” Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99, 101, reh’g denied, 249 N.Y. 511, 164 N.E.564 (1928). Proof of negligence can be predicated of a given act, back of the act must be sought and found a duty to the individual complaining, the observance of which would have averted or avoided the injury.

Stating there was negligence is not enough to seek compensation. Before even establishing negligence, plaintiffs should establish which party or parties are responsible for the negligence. It appears the filings by Stein were all over the place and evident in most of them being dismissed. The plaintiffs made clear that the negligence was the non-disclosing of the conversations by the juveniles but never made the right connections to the parties who should be labeled as defendants.

Plaintiffs never established that defendants were ever even able to “avert” or “avoid” their supposed breach of duty because in their own allegations, only Guzman and Patton knew of the conversations. How are defendants to act on their duty if they had never known they had a duty to perform?

# Explain

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Presuming, as the majority's opinion contends, that plaintiffs' complaint establishes the Blue Ridge defendants owed a duty to plaintiffs and breached that duty, the complaint fails to allege that such breach proximately caused plaintiffs' injuries.

Majority held the opinion, as it is assumed as true in the absence of proof to the contrary, that the Stein's complaint shows that the Blue Ridge defendants owed a duty to the Steins, and they breached that duty. However, the complaint failed to allege that the Steins' injuries were caused immediately after the breach of such duty if it existed.

# Explain

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- Proximate cause is defined as a case which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff's injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed.



"A **proximate cause** is an event which is *closest* to, or immediately responsible for causing, some observed result", which was the plaintiff's injuries. According to Stein's, the bus driver Patton's and the bus monitor Guzman's silence and not informing anybody about the students' conversation was the proximate cause of the shooting and injuries that the Stein suffered. The defendants could not monitor the juveniles' behavior after school hours because the shooting took place after school hours. The Steins "...failed to allege any specific plans overheard by the ....defendants or their employees beyond the general comments". The juveniles conversation did not state any specific time, place, an intended victim so that the bus monitor Guzman could have foreseen a criminal act against Stein or somebody else. There is no a proximate cause in the case because the incident did not happen immediately after or in close time after overheard conversation.

# Explain -

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As “every person has the right to presume that every other person will perform his duty and obey the law,” criminal acts are not presumed to be foreseeable.

Wilkinson v. R.R., 174 N.C. 761, 766, 94 S.E 521, 523 (1917). (quoting Cyc., vol. 29, p.516;

Wyatt v. R.R., 156 N.C. 307, 313, [72 S.E. 383 (1911)]).

" It is a well settled principle of law that a person is not bound to anticipate negligent acts or omissions on the part of others; but, in the absence of anything which gives, or should give notice to the contrary, he is entitled to assume and to act upon the assumption that every other person will perform his duty and obey the law and that he will not be exposed to danger..." (Weavil v. Myers, 1956). This and 2 other citations are used in the case from similar cases to show that any person thinks that others will obey the law and do whatever they are supposed to do. The Blue Ridge defendants could not have foreseen the criminal acts planned by the juveniles.

# Explain

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In addition to foreseeability, proximate cause requires a consideration of whether the cause is, in the usual judgement of mankind, likely to produce the result; whether the relationship between cause and effect is too attenuated; whether there is a direct connection without intervening causes; whether the cause was a substantial factor in bringing the result; and whether there was a natural and continuous sequence between the cause and the result.

The law does not require a defendant to “foresee events which are merely possible but only those which are reasonably foreseeable.” The general conversation between J.B and C.N, “let’s kill somebody”, “I have the gun”, “I’ll kill them”, appear to be general, unspecific comments that could have been applied to any time, place, event or victim and is not a foreseeable crime against the plaintiffs’. Therefore, Kathlyn Stein and Michael Hootstein, could not use proximate cause against the defendants because the connection between the overheard conversation and the plaintiffs’ is too weak.

# Explain

Plaintiffs' complaint alleges Guzman overheard the conversation between the juveniles "one week prior to the March 17, 1998 shooting." Regarding foreseeability to the Blue Ridge defendants, plaintiffs' complaint fails to allege any specific plans overheard by the Blue Ridge defendants or their employees beyond the general comments, "Let's rob somebody;" "I have the gun;" and "ill kill them." these statements appear to be general threats that are not specific to any time, place, or intended victim, and are not a reasonable foreseeable criminal act against Stein. Under the majority's analysis, these statements are sufficient to establish a duty, proximate cause, and foreseeability on the Blue Ridge defendants to survive a motion to dismiss. If so, the Blue Ridge defendants would be liable to any victim, at any time or place, whom the juveniles might eventually "rob" or "kill." The majority's result establishes a duty to the whole world, imposes strict liability, and also eliminates the presumption that criminal acts are not foreseeable. See Wilkinson, 174 N.C at 766, 94 S.E. at 523. Plaintiffs also failed to allege either Patton or Guzman were aware of any specific violent acts committed by the juveniles. Williamson, 141 N.C. App. 11, 539 S.E.2d at 319.

The Blue Ridge defendants did not have custody over the juveniles nor, the ability to control them at the time Kathlyn Stein was shot. Guzman nor Patton possess or exercise any ability or have the right to control the defendants during the time, place, or manner where and when plaintiffs' were injured. The Steins' allegations do not assert that when the shooting took place, the juveniles were traveling on the school bus, attending CLC or under the supervision, custody or control of Guzman or Patton or any Blue Ridge employees. The plaintiffs' complaint fails to show a duty owed to plaintiffs' at the time of the incident.

# Who won the case and our conclusion...

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The Asheville City Board of Education, Buncombe County Board of Education and Blue Ridge Center for Mental Health, Blue Ridge Authority and defendants won the case, because the plaintiffs' did not appeal in a timely manner. Asheville gets affirmed due to the jurisdiction falling under Industrial Commission and Blue Ridge also gets dismissed because of improper defendants being filed for suit. The Plaintiff could have brought her claims against the actual individuals who caused her injuries. The basis of the cases fall upon proximate cause. The fact that the criminal acts of the juveniles occurring a week later from the actual conversations eliminates the requisite of the sub element of proximate cause. The two events are too attenuated to conclude that they are dependent of one another.