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Law 10

Team Presentation/Torts

- 1.) 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.

- 2.) 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?

- 3.) 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.

- 4.) "A **proximate cause** is an event which is *closest* to, or immediately responsible for causing, some observed result". Proximate cause requires a consideration of whether the cause is, in the usual judgment 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 about the result; and whether there was a natural and continuous sequence between the cause and the result.
- 5.) "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.
- 6.) 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 comments that could have 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.
- 7.) 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.
- 8.) 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.