



N.N., PARENT AND NATURAL  
GUARDIAN:K.W., A MINOR

Plaintiffs

v.

THE SCHOOL DISTRICT OF PHILADELPHIA,  
SANDRA S. WILLIAMSON AND  
DAVID T. JOHNSON

Defendants

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NOVEMBER TERM, 2021  
NO. 01055

**OPINION**

**Johnson, J.**

**INTRODUCTION**

On March 10, 2020, Minor-Plaintiff, who is mentally disabled and at the time was in the seventh grade but educationally on a first-grade level, was sexually assaulted by another minor while on the school bus. Plaintiffs allege while riding a school bus, owned and operated by The School District of Philadelphia, Minor-Student D.L., who is also a special needs student and had known behavioral problems, sexually assaulted and raped Minor-Plaintiff for at least twenty-two minutes. Defendant, David T. Johnson, who is an employee of the School District of Philadelphia, was the bus driver and Defendant, Sandra Williamson, who is also an employee of The School District of Philadelphia, was the bus aid/attendant. Both Minor-Plaintiff and Minor-Student were sitting directly behind driver, Defendant Johnson, and five rows away from Defendant Williamson. Plaintiffs allege that Defendant Williamson was in eye view of Minor-Plaintiff; however, Defendant was on the phone throughout the entire assault. During the twenty two minute long assault, some of the actions that took place were the following: Plaintiffs allege Minor-Plaintiff can be heard groaning, Minor-Student removed his shirt, Minor-Student placed

Minor-Plaintiff on his lap and thrusts/humps Minor-Plaintiff, and Minor-Student penetrated Minor-Plaintiff's anus with his penis. After the assault was over, Minor-Plaintiff reported the incident to both Defendant Johnson and Defendant Williamson. Both Defendants allegedly questioned why Minor-Plaintiff did not report the incident while it was either taking place or Minor-Student was on the bus. Due to the incident, Plaintiffs allege that Minor-Plaintiff suffered significant behavioral setbacks that include compulsive sexual behavior and inappropriate touching.

On November 12, 2021, Plaintiffs filed a negligence case against the above-named Defendants and other Defendant, The School District of Philadelphia, for failure to protect Minor-Plaintiff from the sexual assault that took place on the school bus. On December 10, 2021, Defendants, The School District of Philadelphia, Sandra S. Williamson, and David T. Johnson, filed a Preliminary Objection arguing that though Plaintiffs are seeking to hold Defendants liable for unlimited monetary damages under the sexual abuse exception to the Political Subdivision Tort Claims Act (hereinafter PSTCA), PSTCA does not apply to this matter because Plaintiff's injuries were not committed by an employee of the School District. Therefore, Defendants claim that they are protected by governmental immunity. On December 30, 2021, Plaintiffs answered Defendants' Preliminary Objection by rebutting Defendants' argument stating that their argument fails under the plain language of the statute by trying to narrowly interpret 42 Pa. C.S. § 8542(b)(9) by stating that the sexual abuse had to be perpetrated by an agency's own employee. Further, both parties filed additional briefs to support their position. On January 18, 2022, this Court was assigned Defendants' Preliminary Objections. On February 3, 2022, this Court overruled Defendants' objections.

As a result of the Court's findings, Defendants filed a Motion to Amend and Certify the Court's Order. Defendants asked the Court to amend its Order with the following language, "It is the opinion of this court that the within order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of this matter." Defendants are of the opinion that because this matter does not deal with sexual assault perpetrated by an employee, and no Pennsylvania trial court or appellate court has decided an issue like this before, there is a difference of opinion on the interpretation of the law, and an immediate appeal from the Order "may materially advance the ultimate termination of the matter." The Court denies Defendants' Motion and attaches this Opinion to the Court's Order.

#### FACTS

On December 10, 2021, Defendants, The School District of Philadelphia, Sandra S. Williamson, and David Johnson, filed a Preliminary Objection under Rule 1028(a)(4) arguing that based on Plaintiffs' negligence claims against Defendants, Defendants could not be held liable because Defendants qualify under governmental immunity. Under the PSTCA, a governmental entity or an employee of the entity cannot be sued for tort claims unless the claim falls within an exception. Under the (b)(9) sexual abuse exception, a governmental entity will not be covered under the privilege if Plaintiff's injuries were caused by actions or omissions of the local agency which would constitute negligence. Defendants allege that this Court must adhere to the words as written and not reach a conclusion that would provide for a remedy that the General Assembly never intended. Thus, Defendants maintain because Plaintiff's injuries were committed by another minor and not by the School District nor its employees, they cannot be held liable for

Plaintiff's injuries. Further, Defendants stress that the exception statute only covers harm when the sexual assault is committed by an employee of that governmental entity.

Plaintiffs completely rebuts Defendants' argument. Plaintiffs assert that Defendants are asking for a requirement within the statute that simply does not exist. Further, the language of the statute does not require that the injuries from the sexual assault must be perpetrated by the agency's own employee. Additionally, Plaintiffs maintain that the Defendants' argument fails under the plain language of the legislation. Moreover, Plaintiffs proclaim that the statute acts much like *respondeat superior* where an employer is not held liable for willful or criminal acts of its employees but liable for the negligent acts of its employees. Similarly, the language within the act makes it clear that immunity does not protect against acts that are negligent in nature.

However, Defendants argue that Minor-Student's culpability as a special needs child would render him incapable of having the needed level of culpability and/or capacity to commit a crime under Section 5551(7), which Plaintiff finds is completely irrelevant to the matter at hand because the minor having special needs does not cut off Defendants' liability within the statute. Notably, Plaintiffs stress that Defendants are making multiple arguments to this Court which go beyond reading the statute and the language of the statute. Therefore, based on Defendants' arguments, the Court should deny Defendants' Preliminary Objection. After consideration of both Plaintiffs' and Defendants' argument, this Court overruled Defendants' Preliminary Objections.

#### **DISCUSSION**

This Court rejected Defendants' Preliminary Objections argument that the sexual assault must be committed by an employee of the governmental entity and thus governmental immunity applies to Defendants. Under 42 Pa. C.S.A § 8542(a), the statute states the following:

(a) Liability imposed.--A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and

(2) The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). As used in this paragraph, "negligent acts" shall not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

42 Pa. Stat. and Cons. Stat. Ann. § 8542 (West). The exception to the statute at hand in this matter is 42 Pa. C.S.A § 8542 (b)(9) which states, "Sexual abuse.--Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or **OMISSIONS** of the local agency which constitute negligence." 42 Pa. Stat. and Cons. Stat. Ann. § 8542 (West). Moreover, 42 Pa. C.S.A §5551(7) states the following:

An offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses), or a conspiracy or solicitation to commit an offense under any of the following provisions of 18 Pa.C.S. if the offense results from the conspiracy or solicitation, if the victim was under 18 years of age at the time of the offense: Section 3011(b) (relating to trafficking in individuals). Section 3012 (relating to involuntary servitude) as it relates to sexual servitude. Section 3121 (relating to rape). Section 3122.1 (relating to statutory sexual assault). Section 3123 (relating to involuntary deviate sexual intercourse). Section 3124.1 (relating to sexual assault). Section 3124.2 (relating to institutional sexual assault). Section 3125 (relating to aggravated indecent assault). Section 4302 (relating to incest).

42 Pa. Stat. and Cons. Stat. Ann. § 5551 (West). When interpreting statutes, the Court is to “ascertain and effectuate the intention of the general assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa. Stat. and Cons. Stat. Ann. § 1921 (West). Further, when the language of the statute is “clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. Stat. and Cons. Stat. Ann. § 1921 (West).

Here in this matter, Defendants argue that Defendants could not be held liable because Defendants qualify under governmental immunity because Plaintiff’s injuries were committed by another minor and not by the School District nor its employees. Further, Defendant stresses that the exception statute only covers harm when the sexual assault is committed by an employee of that governmental entity. However, Plaintiff completely rebuts Defendants’ argument. Plaintiffs assert that Defendants are asking for a requirement within the statute that simply does not exist. Moreover, the language within the act makes it clear that immunity does not protect against acts that are negligent in nature. Similarly, Defendants’ argue that Minor-Student’s culpability as a special needs child would render him incapable of having the needed level of culpability and/or capacity to commit a crime under Section 5551(7), which Plaintiff finds is completely irrelevant to the matter at hand because the Minor-Student having special needs does not cut off Defendants liability within the statute. Notably, Plaintiffs stress that Defendants are making multiple arguments to this Court which go beyond reading the statute and the language of the statute.

The Court agrees with Plaintiff. The plain language of the statute states, “Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which

constitute negligence.” 42 Pa. Stat. and Cons. Stat. Ann. § 8542 (West). The Black’s Law Dictionary defines “Omission” as the “failure to do something; esp., a neglect of duty.” OMISSION, Black’s Law Dictionary (11th ed. 2019). Nowhere in the plain language of the statute does the legislature state or hint that the conduct must be committed only by an employee of a governmental agency. Moreover, Representative Rozzi’s words completely negate Defendants’ argument. Representative Rozzi states:

Much has happened over the years to bring attention to the hidden epidemic of childhood sexual abuse. Besides the 2005 and 2011 grand jury reports from the Philadelphia Archdiocese, the conviction of Jerry Sandusky and Monsignor Lynn on the same day in 2012, the Solebury School grand jury report, the Boy Scouts "perversion files," the 2016 Altoona-Johnstown Diocese grand jury report, and last summer's statewide grand jury investigation of the six remaining Catholic dioceses by our Attorney General, we now know, without any doubt, the extent of the abuse and cover up that has plagued our State and that the statute of limitations reform must move forward. It is what our citizens demand and it is what victims need – past, present, and future....HB 962 will prospectively increase the statute of limitations for civil claims of childhood sex abuse to age 55 and eliminate the statute of limitations for criminal offenses involving childhood sexual abuse. It will also waive sovereign immunity for public entities guilty of covering up childhood sexual abuse. HB 962 provides for absolute parity in the handling of sexual abuse claims between public and private institutions. HB 963 proposes a constitutional amendment to provide a 2-year window for victims of childhood sexual abuse whose limitations period has expired.

House Bill 926, Session of 2019, 203D of the General Assembly, Plaintiffs’ Ex. A, at 510. It is clear that the legislature’s intent is to protect children from being sexually abused and from the inaction by institutions regarding the sexual abuse faced by children. For Defendants, whose job is to protect, educate, and inspire our youth, to add language that is simply not there or argue that they have no duty to protect against their agents’ acts of omission in protecting children is extremely problematic. Further, in Doe by Brown v. Harrisburg Sch. Dist., because of the school district and its agent’s failure to act, a student was sexually abused by another student. Doe by



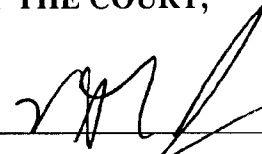
Brown v. Harrisburg Sch. Dist., No. 1:19-CV-1027, 2020 WL 4584372 (M.D. Pa. Aug. 10, 2020). Herein, the District Court opines through the facts that the matter squarely falls within the sexual abuse exception which “the district did not argue otherwise.” Doe by Brown v. Harrisburg Sch. Dist., No. 1:19-CV-1027, 2020 WL 4584372, at \*5 (M.D. Pa. Aug. 10, 2020).

Here, the Court finds that the language clearly states that governmental immunity is waived when there is an omission by the agents of the government. It is clear, based on the alleged facts, that during the twenty-two minute sexual assault, the assault happened directly behind the bus driver, who is an employee of The School District of Philadelphia, and in the vicinity of a bus attendant, who is also an employee of the School District of Philadelphia, who was on her cell phone during the entire incident. Plaintiffs allege, because the employees’ failure to act, Minor-Plaintiff has suffered significant behavioral setbacks that include compulsive sexual behavior and inappropriate touching. Thus, because the intent of the legislature was to protect children from abuse, the Court found that governmental immunity was waived because Plaintiffs’ injuries happened due to an omission of action by agents of a local agency.

### CONCLUSION

For the aforementioned reasons, the Court will not be modifying its Order because the statute and the legislative intent is clear as to governmental immunity and the protection of children from sexual abuse.

BY THE COURT,



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VINCENT L. JOHNSON, J.

**Date: March 14, 2021**

**PROOF OF SERVICE**

I hereby certify that I am on this 14<sup>th</sup> day of March 2022, serving the foregoing Opinion on the persons indicated below, by first class mail:

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