Case No. 33889-4-III

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

MICHELE ANDERSON, a single person, Individually and as the Administrator of THE ESTATE OF SHEILA ROSENBURG,
Appellants,

v.

SOAP LAKE SCHOOL DISTRICT, et al.,
Respondent.

Appeal From An Order Of The Grant County Superior Court
Case No. 14-2-00502-1

APPELLANT'S REPLY BRIEF

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I. APPELLANT'S REPLY

This Court is presented with two major issues in this case. First is whether or not a contract existed between Soap Lake, Sheila Rosenberg and her mother Michele Anderson. Second is whether or not Soap Lake owed a duty to Sheila Rosenberg and her mother. Based on the law in Washington and the facts of this case, this Court can be confident that the answer to both questions is in the affirmative.

A. No Matter What Term Is Used as Its Title, The "Activities Code" Is a Contract

The three Zuver factors[1] determine for us that this "Activities Code" is a contract. Despite this, Soap Lake continues to maintain that the "Activities Code," which students are forced to sign or forfeit their right to play extracurricular activities, is not a contract.

In an unbelievable deviation from common sense, logic and contract law, Soap Lake cries that if this Court were to consider the Activities Code what it is, a contract, the results would be "unwieldy." In their Response Brief, the first example of the unwieldy results: Soap Lake would need to prevent Catholic students from using wine during communion.

[1] Zuver v. Airtouch Communications, Inc., 103 P.3d 753, 153 Wn.2d 293 (Wash. 2004)

Ignore the fact that religious practices are generally protected pretty strictly under the First Amendment, and the fact that communion hasn't ever—at least to the limited knowledge of counsel—gotten two teenagers so intoxicated that they crash their car at high speeds and die from trauma after being ejected from the vehicle. Consider this: the priest providing communion has been hired by the school district to provide communion to its Catholic students. The school district requires the priest to enter into an "Activities Code" with the student and the school district prohibiting the consumption of alcohol. The priest, through text messaging and phone calls, contacts several Catholic students and organizes a communion service. At communion, the priest provides wine to several students and the students become intoxicated. After communion, the priest allows the students to drive home, and two of them die in a car accident.

Anyone with a basic understanding of the case law in Washington can see that the priest and the school would be liable. Yet Soap Lake continues to disagree in the instant case.

The disagreement is compounded by Soap Lake ignoring Ms. Rosenberg's argument as it relates to Wagenblast v. Odessa School District, 758 P.2d 968, 110 Wn.2d 845 (Wash. 1988), which held that conditioning participation in public school interscholastic athletics on

releasing the school district from all potential future negligence claims violated public policy. Soap Lake conditioned Sheila's participation in basketball upon her signing their contract. CP 00199 to CP 00200. Had Wagenblast never occurred, the judicial system would likely be watching counsel for Soap Lake waiving the "Activities Code" contract in the air, screaming that Sheila violated their contract and thus they cannot be liable. The only reason that isn't happening now is because Wagenblast made those liability waivers illegal. Because it does not suit them, Soap Lake makes no mention of it. However, the "Activities Code" has all of the elements of a contract and was enforced as a contract because of a very simple reason: it was a contract.

B. When Should Schools Be Held Liable?

Ms. Anderson is not requesting the Court impose school supervision upon students "literally twenty-four hours per day, seven days per week" as Soap Lake bemoans. Response, Page 3. She is however requesting this Court impose liability on a school district when they do things that are worthy of an imposition of liability, such as violating their own contract, getting their students intoxicated and placing those students behind the wheel of a car where they could get killed. When students are with school district staff or faculty at an event planned and organized by staff or faculty, the students should be kept safe and their welfare should

be looked after by the school district. That's been the status of the law in Washington since 1967 under Chappel v. Franklin Pierce School District 402, 71 Wn.2d 17, 20-24, 426 P.2d 471 (1967).

Soap Lake contends that the event at Coach Lukashevich's house was not a school sanctioned event and the District never knew about it. However, Mr. Kevin Kemp (the school district's athletic director and principal) testified that the district never knew the details of any events that Coach Lukashevich conducted outside school hours and that Coach Lukashevich did not need to ask for permission before organizing any events. He had Soap Lake's tacit approval to do just about anything relating to enforcement of the "Activities Code, including inviting basketball players to his house. CP 00087. On the night of February 18, 2012, Coach Lukashevich was the representative of the school district and his authority carried the weight of the district. He could have stopped the events of that evening just as easily as he allowed them to continue. His negligence in that regard is the school district's negligence as well.

Does the mere presence of a school employee automatically make an event come under the school's authority, and thus, liability? No, and that simple reason should not attach liability. But when the school employee is the planner of the event, the supplier of the beverages at the event, the host of the event and the sole motivating factor behind the event

occurring, the event becomes a school sanctioned event. Soap Lake runs from the ten Chappel factors because any application of those factors favors Ms. Anderson and her deceased daughter's Estate and places liability on the school district.

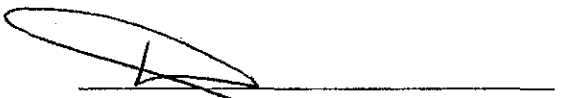
Further, Soap Lake did nothing to ensure they were hiring a basketball coach with experience or one that would ensure the safety and welfare of their students, even if the scope is applied to during school hours (which would be impossible to impose since basketball events and activities, including social get-togethers like pizza nights as testified to by the school's athletic director and principal Kevin Kemp, often occurred outside of normal school hours). CP 00368, CP 00369. Mr. Kemp knew nothing of the hiring or supervision of Coach Lukashevich's employment even though Mr. Kemp was the person who hired him. CP 00361, CP 00369 to CP 00372, CP 00393. Had Mr. Kemp properly supervised Coach Lukashevich he might have learned that Coach Lukashevich often had student athletes over to his house and that they drank alcohol in violation of the school's contract.

II. CONCLUSION

This Court has the opportunity to hold responsible those adults in Sheila's life who helped cause her horrific death, and these adults include Coach Lukashevich and his employer, Soap Lake School District. Most

importantly, this Court should clearly establish that contracts purporting to require behavior by students and school districts will be enforced as to all parties entering into such agreements, as such agreements advance the public need to protect student athletes.

Respectfully submitted this 5th day of July, 2016.



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PROOF OF SERVICE

I, Branden R. Gradin, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action and make this declaration upon personal knowledge. I am employed as a Paralegal at Phelps & Associates, P.S., and in that role I caused to be served a true and correct copy of the Brief of Appellant to the following individuals in the manner indicated below, with costs prepaid:

COURT OF APPEALS – DIVISION III 500 North Cedar Spokane, WA 99201	[x] Hand Delivered
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SIGNED AND DATED at Spokane, Washington this 5th day of July, 2016.

Branden R. Gradin

BRANDEN R. GRADIN