FILED
COURT OF APPEALS
DIVISION II
2016 MAY -5 PM 3:42
STATE OF WASHINGTON
BY DEPUTY

No. 48063-8-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

MISTI BELL, individually and as Guardian for her daughter, C.B., a minor; and SCOTT BELL, individually,

Appellants/Plaintiffs,

vs.

BETHEL SCHOOL DISTRICT, a public corporation, individually; NORTHWEST SCHOOL OF INNOVATIVE LEARNING; BHC FAIRFAX HOSPITAL, INC.; a Tennesse for profit corporation d/b/a FAIRFAX HOSPITAL BEHAVIORAL HEALTH SERVICES; and UNIVERSAL HEALTH SERVICES, INC., a Delaware for profit corporation,

Respondents/Defendants,

APPELLANTS' OPENING BRIEF

Thomas B. Vertetis, WSBA No. 29805
Loren A. Cochran, WSBA No. 32773
Elizabeth P. Calora, WSBA No. 42527
Counsel for Appellants

PFAU COCHRAN VERTETIS
AMALA, PLLC
911 Pacific Avenue, Suite 200
Tacoma, Washington 98402
(253) 777-0799

TABLE OF CONTENTS

I. INTRODUCTION 1

A. Assignments of Error 3

No. 1 The trial court erred in granting summary dismissal of all claims against NWSOIL on October 10, 2014. 3

No. 2 Whether the trial court erred in summarily dismissing Respondent/Defendant NWSOIL on the basis that it no longer had a duty to protect its student, C.B., once she was placed on a bus operated by the Bethel School District, even though : 1) the bus had not left the school's loading area, 2) NWSOIL's counselors were fully aware that special needs student C.B. was in a crisis while she was on the bus, 3) the bus driver warned NWSOIL's counselors that a problem was going to occur, and 4) both C.B. and the bus driver tried to gain reentry to NWSOIL in order to prevent further problems, but NWSOIL staff refused to unlock the school's doors 4

No. 3 Whether the trial court erred in summarily dismissing the appellants' claims where there were mixed issues of law and fact requiring the trier of fact to weigh the evidence in order to decide if custody and therefore a legal duty had be transferred from the respondent/defendant NWSOIL to Bethel? 4

No. 4 Whether the trial court erred in summarily dismissing appellants' claims where the respondents, who ran a private, hospital-run, special needs school, had a non-delegable duty *in loco parentis* to protect its minor student C.B. from foreseeable harm? 4

No. 5 Whether summary judgment dismissal was appropriate when the sexual assault of C.B., if she was left unsupervised, was within the general field of foreseeable danger based on the respondents/defendants knowledge of C.B.'s mental health history? 5

No. 6 Whether the trial court erred in summarily dismissing the

appellants' claims when there was clear evidence that Respondent/Defendant NWSOIL breached its *in loco parentis* duty to C.B.? 5

No. 7 Whether factual issues existed such that proximate cause was an issue which should have been decided by the trier of fact? 5

No. 8 Whether C.B.'s alleged contributory negligence could be a superseding intervening cause where NWSOIL had a duty to protect its special needs student? 5

II. STATEMENT OF THE CASE 6

A. Relevant Facts 6

1. C.B. was a special needs student with a long history of medical needs and mental illness well-known to Respondent NWSOIL 6

2. Bethel School District Enrolls C.B. in Fairfax Hospital's Northwest School of Innovative Learning 7

3. March 19, 2012 -- the Bethel Bus 9

4. Sexual Assault 12

5. C.B.'s Mental Health Deteriorates Even More After Sexual Assault 16

B. Relevant Procedural History 17

III. ARGUMENT 18

A. Standard of Review 18

B. The Trial Court Erred In Dismissing Appellants Claims For Lack of Duty Owed by NWSOIL to Its Special Needs Student C.B. 20

C. The Trial Court Erred in Granting NWSOIL Summary Dismissal when NWSOIL Knew that a Sexual Assault of C.B. Was within the General Field of Foreseeable Danger if Special

Needs Student C.B. Was Left Unsupervised. 23

D. The Trial Court Erred in Granting NWSOIL Summary Dismissal when Appellants Presented Evidence of NWSOIL's Breach of Its *In Loco Parentis* Duties to C.B. 28

1. NWSOIL had staff trained to intervene but failed to diffuse the growing tension, because they said it wasn't their jurisdiction 29

2. C.B. Did Not Choose to or Voluntarily Leave the Bus, Given the Context of the Video and the Knowledge of C.B. Mental Health 33

E. The Trial Court Erred in Granting NWSOIL Summary Dismissal when Appellants Presented Evidence that C.B.'s Injuries Were Proximately Caused by NWSOIL's Negligence. 35

F. The Trial Court Erred in Granting Summary Dismissal Because C.B.'s Alleged Contributory Negligence Is Not an Applicable Superseding Intervening Cause 37

IV. CONCLUSION 39

TABLE OF AUTHORITIES

CASES

Atherton Condo. Apartment-Owners Ass'n Bd. Of Dirs. v. Blume Dev. Co.,
115 Wn.2d 506, 799 P.2d 250 (1990) 20

Babcock v. State,
116 Wn.2d 596, 809 P.2d 143 (1991) 19

Barber v. Bankers Life & Cas. Co,
81 Wn.2d 140, 500 P.2d 88 (1972) 19

Bernethy v. Walt Failor's Inc.,
97 Wn.2d 929, 653 P.2d 280 (1982) 35

Carabba v. Anacortes School Dist. No. 103,
72 Wn.2d 939, 435 P.2d 936 (1967) 24

Christensen v. Royal Sch. Dist. No. 160,
156 Wn.2d 62, 124 P.3d 283 (2005) 20, 24, 39

Doherty v. Municipality of Metropolitan Seattle,
83 Wn. App. 464, 921 P.2d 1098 (1996) 35

Federal Way Sch. Dist. No. 210 v. State,
167 Wn.2d 514, 219 P.3d 941 (2009) 20

Gordon v. Deer Park School Dist. No. 414,
71 Wn.2d 119, 426 P.2d 824 (1967) 21

Hartley v. State,
103 Wn.2d 768, 698 P.2d 77 (1985) 35

Hertog v. City of Seattle,
138 Wn.2d 265, 979 P.2d 400 (1999) 35

Hutchins v. 1001 Fourth Ave. Assocs.,
116 Wn.2d 217, 802 P.2d 1360 (1991) 38

J.N. v. Bellingham Sch. Dist.,
74 Wn. App. 49, 871 P.2d 1106 (1994) 20, 21, 24, 25

Johnson v. State,
77 Wn.App. 934, 894 P.2d 1366, 1371 (1995) 25

Jones v. Allstate Ins. Co.,
146 Wn.2d 291, 45 P.3d 1068 (2002) 18

Lauritzen v. Lauritzen,
74 Wn. App. 432, 874 P.2d 861, *review denied*, 125 Wn.2d 1006 (1994) 37, 38

McCoy v. American Suzuki Motor Corp.,
136 Wn.2d 350, 961 P.2d 952 (1995) 36

McLeod v. Grant County Sch. Dist. No. 128,
42 Wn.2d 316, 255 P.2d 360 (1953) 3, 20, 21, 24, 26, 27, 36

N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints,
175 Wn. App. 517, 307 P.3d 730 (2013) 24

Niece v. Elmview Group Home,
131 Wn.2d 39, 929 P.2d 420 (1997) 24

Owen v. Burlington Northern and Santa Fe R.R. Co.,
153 Wn.2d 780, 108 P.3d 1220 (2005) 19

Peck v. Siau,
65 Wn. App. 285, 827 P.2d 1108 (1992) 20, 24

Petersen v. State,
100 Wn.2d at 426, 671 P.2d 230 (1983) 38

Rice v. Offshore Sys., Inc.,
167 Wn. App. 77, 272 P.3d 865 (2012) 19

Schooley v. Pinch's Deli Mkt., Inc.,
134 Wn.2d 468, 951 P.2d 749 (1998) 35

Seven Gables Corp. v. MGM/UA Entm't Co.,
106 Wn.2d 1, 721 P.2d 1 (1986) 19

Snyder v. Med. Serv. Corp.,
145 Wn.2d 233, 35 P.3d 1158 (2001) 20, 40

Webstad v. Stortini,
83 Wn. App. 857, 924 P.2d 940 (1996) 38

Whitaker v. Coleman,
115 F.2d 305 (5th Cir.1940) 19

Young v. Key Pharm., Inc.,
112 Wn.2d 216, 770 P.2d 182 (1989) 19

OTHER AUTHORITIES

PROSSER AND KEATON ON THE LAW OF TORTS 21

Restatement (Second) of Torts § 315 (1965) 38

CASES FROM OTHER STATES

Chainai by Chainai v. Board of Educ.,
N.Y.2d 370, 663 N.E.2d 283 (1995) 22

Harker v. Rochester City Sch. Dist.,
241 A.D.2d 937, 661 N.Y.S.2d 332 (1997) 22, 23

I. INTRODUCTION

C.B. was a 15 year-old student with a long history of mental illness and behavioral disorders well-known to Respondent BHC Fairfax Hospital and its locked-down, special needs school, Northwest School of Innovative Learning ("NWSOIL"). In March 2012, C.B. was constructively kicked off a bus in the school's loading area in downtown Tacoma, more than 20 miles away from her rural home in Roy. At the time of her expulsion from the bus, C.B. was in the midst of a full-blown mental health crisis, defiantly arguing with other students on the bus and with the driver.

After exiting the bus and unable to regain entry inside the school, special needs student C.B. wandered Tacoma's streets and ultimately sought help from a stranger, 53 year-old Michael Bond. Bond led C.B. back to his apartment promising bus tickets and a way home. Bond gave C.B. drugs and alcohol, then forcibly held C.B. against her will and ultimately sexually assaulted her. C.B. was finally able to escape later that same evening. Once Bond had passed out intoxicated, C.B. used his cell phone to call for help and was rescued by officers from the Tacoma Police Department.

The bus C.B. was on was operated by the Bethel School District ("Bethel") pursuant to an agreement between NWSOIL and Bethel as a part of C.B.'s special needs schooling. Neither C.B. nor her parents were a party to the operating agreement. Further, as the record shows, the Bethel bus had not left school grounds, but instead was still in the NWSOIL loading

area at the time C.B. went into a crisis. C.B. and the bus driver tried to obtain help from the school and its trained mental health school counselors in preventing the crisis, but NWSOIL staff failed to effectively intervene. And when C.B. and her bus driver tried to get back into the school so that the crisis could be averted, NWSOIL shut them out, leaving C.B. and the bus driver no other option than to re-enter the bus.

The trial court dismissed C.B.'s claim against Respondent NWSOIL concluding that the private, hospital-run, alternative school had no legal duty to C.B. because she was no longer in the custody of the NWSOIL at the point she boarded the bus. C.B. appeals this summary dismissal, arguing that NWSOIL did not discharge its non-delegable duty owed to C.B. simply by placing her on a bus, especially under the factual circumstances here, where: 1) the bus had not left the school's loading area, 2) NWSOIL's counselors were fully aware that special needs student C.B. was in a crisis while she was on the bus, 3) the bus driver warned NWSOIL's counselors that a problem was going to occur, and 4) both C.B. and the bus driver tried to gain reentry to NWSOIL in order to prevent further problems, but NWSOIL staff refused to unlock the school's doors telling the bus's dispatch operator that once C.B. was on the bus, she became the school district's problem.

In the alternative, Appellants argue that the question of custody is a highly fact-dependent question which requires a trier of fact to evaluate the evidence, and is therefore not proper basis for dismissal at summary judgment. In addition, in this *de novo* review of the trial court's grant of

summary judgment to respondent/defendant NWSOIL, appellants put forth the evidence they presented to the court opposing summary judgment.

Washington law is clear under *McLeod* and its progeny that a school owes a duty *in loco parentis* to a student from the point the child is picked up for school in the morning to the point she makes it home and back into the care of her parents or guardians. *McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d 316, 321, 255 P.2d 360 (1953). In this case, C.B. was under the dual custody of both NWSOIL and Bethel when she became angry and defiant, behaviors which were entirely consistent with her mental health history, her I.E.P. and her past conduct. C.B. did not voluntarily leave the school bus, and she was not dropped off at a prior designated stop somewhere close to home.

For these reasons, more fully explained below, Scott and Misti Bell, and Misti Bell on behalf of her then-minor child C.B., respectfully ask this court to reverse summary dismissal of this case and remand for trial.

A. Assignments of Error

Assignment of Error

No. 1 The trial court erred in granting summary dismissal of all claims against NWSOIL on October 10, 2014.

Issues Pertaining to Assignment of Error

No. 2 Whether the trial court erred in summarily dismissing Respondent/Defendant NWSOIL on the basis that it no longer had a duty to protect its student, C.B., once she was placed on a bus operated by the Bethel School District, even though : 1) the bus had not left the school's loading area, 2) NWSOIL's counselors were fully aware that special needs student C.B. was in a crisis while she was on the bus, 3) the bus driver warned NWSOIL's counselors that a problem was going to occur, and 4) both C.B. and the bus driver tried to gain reentry to NWSOIL in order to prevent further problems, but NWSOIL staff refused to unlock the school's doors.
(Assignment of Error No. 1)

No. 3 Whether the trial court erred in summarily dismissing the appellants' claims where there were mixed issues of law and fact requiring the trier of fact to weigh the evidence in order to decide if custody and therefore a legal duty had be transferred from the respondent/defendant NWSOIL to Bethel?
(Assignment of Error No. 1)

No. 4 Whether the trial court erred in summarily dismissing appellants' claims where the respondents, who ran a private, hospital-run, special needs school, had a non-delegable duty *in loco parentis* to protect its minor student C.B. from foreseeable harm?

(Assignment of Error No. 1)

No. 5 Whether summary judgment dismissal was appropriate when the sexual assault of C.B., if she was left unsupervised, was within the general field of foreseeable danger based on the respondents/defendants knowledge of C.B.'s mental health history?
(Assignment of Error No. 1)

No. 6 Whether the trial court erred in summarily dismissing the appellants' claims when there was clear evidence that Respondent/Defendant NWSOIL breached its *in loco parentis* duty to C.B.?
(Assignment of Error No. 1)

No. 7 Whether factual issues existed such that proximate cause was an issue which should have been decided by the trier of fact?
(Assignment of Error No. 1)

No. 8 Whether C.B.'s alleged contributory negligence could be a superseding intervening cause where NWSOIL had a duty to protect its special needs student?
(Assignment of Error No. 1)

II. STATEMENT OF THE CASE

A. Relevant Facts

1. C.B. was a special needs student with a long history of medical needs and mental illness well-known to Respondent NWSOIL

C.B. had a long history of mental illness and behavior disorders that was well-known to Respondent NWSOIL.[1] NWSOIL acknowledged that C.B. has been diagnosed by medical doctors, psychologists and special education educators as suffering from Attention Deficit Hyperactivity Disorder, bi-polar disorder, borderline personality disorder, oppositional defiant disorder, anxiety disorder and depression.[2] C.B. had years of Individualized Education Plans (IEP) documenting her mental illness and acknowledging her special needs by including in her plans services like Emotional or Behavioral Disorder (EBD) placement, alternative class scheduling, and even a 1:1 special education bus attendant.[3] On top of her extensive mental health history and behavioral disorders, C.B. has also suffered from pancreatic cancer, undergoing extensive surgeries and chemotherapy over several years of her short life.[4]

Less than a year before the sexual assault at issue here, Fairfax Hospital, NWSOIL's parent company, provided lockdown, in-patient psychiatric care to C.B. in its Adolescent Psychiatric Inpatient Unit after a suicide attempt when she was 14 years-old.[5] According to Fairfax

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[1] CP 299-303.

[2] CP 591-599.

[3] CP 659-677.

[4] *Id.*

[5] CP 679-87.

Hospital's own records upon discharge:

> This 14-year-old had just recently gotten discharged from Children's Hospital in Seattle after a two-week stay. Right up (sic) discharge, the patient went home and took an overdose of Tylenol PM and Marinol. The patient states, "I hate my life. I hate myself. I have a rare form of pancreatic blastoma.(") The patient says, "It means I'm going to die. They have already done everything." Prior to all of the recent hospitalizations, the patient had been engaged in some highly risky activities with sexual acting out activities."[6]

2. Bethel School District Enrolls C.B. in Fairfax Hospital's Northwest School of Innovative Learning

In or about February of 2012, Scott and Misti Bell were presented an option by Bethel to transfer C.B. to a school out of the district that the Bells were assured would better fit C.B.'s particular challenges:

> Q. How did that come about, the discussion – the decision to send her to Northwest SOIL come about?
> A. She was not doing well in LSA, and Northwest SOIL was offered.
> Q. Who first brought that up?
> A. [Bethel Special Education Director] Sonja Hemmerling, I believe.
> Q. And how was Northwest SOIL presented to you? You know, as what type of institution?
> A. That it was a locked facility that was a safe place for Caitlyn. They had more individual, you know, teacher-to-student ratio, and that it was ran by Fairfax Hospital.[7]

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[6] CP 679.

[7] CP 689-90.

Concerned about the potential dangers of a school located in downtown Tacoma, Scott and Misti Bell were adamant with both Bethel and NWSOIL that C.B. needed to be in a safe school and needed safe transportation to and from their home.[8]

> Well, at Northwest SOIL they showed us the security system. How all the doors were locked down. Cameras. Their system of having guards that take the kids to the buses and when the buses show up in the morning, walk the kids into the class.
>
> They had metal detectors. They wanded all the kids. Went through their bags before they were allowed in the door. It seemed like a secure place.[9]

According to a Memorandum of Understanding between Bethel and NWSOIL, Bethel paid NWSOIL $4600.00 per month to provide C.B. with services outlined in the entities' master agreement, referred to as a Contract for Educational Services.[10] Among the services NWSOIL was obligated to provide for C.B. under the contract:

> Provide a facility that meets the minimum state and local requirements for health and fire safety and which is acceptable to the District. **Operate a program to ensure the health and safety of each student.** Fire and life safety and health/safety inspections must be current with all noted findings corrected.

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[8] CP 692.

[9] *Id.*

[10] CP 694.

> Provide a signed agreement between the appropriate law enforcement jurisdiction and the Agency which describes protocols for responses to behavioral incidents which occur at the Agency location.[11]

Neither the Memorandum of Understanding regarding C.B. nor the Contract for Educational Services refers to the transportation of C.B.[12] In addition, there is no contract, waiver, agreement or other form of acknowledgment between the Bell and NWSOIL or Bethel indicating that transportation of C.B. would be the sole responsibility of Bethel or NWSOIL.

3. March 19, 2012 -- the Bethel Bus

On March 19, 2012, after just over a month at NWSOIL, C.B. boarded a Bethel bus waiting in the loading zone outside the school at the end of the school day.[13] On board were Bethel employees Norma Henderson, the bus driver, and bus assistant Kathy Valencia.[14] The last student on the bus was C.B.[15] C.B. boarded the bus in an obviously agitated state.[16] C.B. argued with another student on the bus and then with Henderson.[17] Soon a NWSOIL employee, Shelby, a secretary in the front office, approached the bus to ask what was going on, on the bus.[18]

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[11] CP 696-700.
[12] CP 694, 696-700.
[13] CP 703.
[14] CP 7.
[15] *Id.*
[16] CP 703.
[17] CP 7.
[18] *Id.*

Henderson responded that C.B. was not in a good mood, and Henderson thought there was going to be a problem.[19]

Shortly after the conversation between Henderson and NWSOIL employee Shelby, James Tate, a Behavior Intervention Specialist (BIS) with NWSOIL, walked up to the front steps of the bus and engaged C.B. and the other student in conversation.[20] According to Tate, it was not unusual for NWSOIL to have BIS staff out interacting with students as they boarded buses for home.[21]

> Q If this happened in a NWSOIL classroom, would you remove either one or both of the students that you viewed to be aggressors in this situation?
> A First I would try what I'm doing now. If that just totally didn't work, then, yes, I would remove the more aggressive one and maybe go back to the other one later.[22]

Tate said that three (3) BIS staff were at the Bethel bus along with the secretary Shelby and a school liaison named Melissa.[23] But because the students were on the Bethel bus, neither Tate nor any of the other NWSOIL staff removed C.B. or the other student.[24] Then, despite the tension, Tate and the other NWSOIL staff left.[25]

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[19] *Id.*
[20] CP 705-08.
[21] CP 710.
[22] CP 712.
[23] CP 714-16.
[24] CP 718-23.
[25] CP 7.

Norma Henderson continued to engage with C.B., ultimately agreeing to allow C.B. to return to NWSOIL so that she could call her father for a ride.[26] C.B. walked off the bus and attempted to re-enter the school.[27] Norma Henderson walked behind C.B. to the doors of the school; however, no one from the school would open the doors.[28] According to a memorandum from the Bethel bus dispatcher at the time, NWSOIL employee Shelby, who had witnessed the earlier confrontation on the bus, was on the phone with the dispatcher and said, "... once [C.B.] is on the bus it is a district issue and the driver needed to handle it. Shelby never offered to take [C.B.] off the bus she wanted us to do what needed to be done to handle the problem."[29]

After unsuccessfully attempting to get into the school to call her father, C.B. re-boarded the bus, with Henderson following.[30] More arguing ensued. Henderson then told C.B. that she would follow protocol which was that C.B. could either sit down and buckle up or Henderson would call 911.[31] C.B. then asked Henderson to call Catholic Community Services (CCS) to contact her social worker, but Henderson again says she will not call anyone but 911.[32] At that point C.B. says she is walking, begins to

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[26] *Id.*
[27] CP 7, 703.
[28] *Id.*
[29] CP 725.
[30] CP 7.
[31] CP 7.
[32] CP 7.

leave the bus and Henderson says, "Get your bag."[33] C.B. then exited the Bethel bus.[34]

4. Sexual Assault

At 7:52 pm that evening, a 911 call was received by the South Sound 911 Communications Center from a 15 year-old-girl.[35] The girl frantically advised the 911 operator that she was being held against her will by a man in his fifties that had raped her.[36] Tacoma Police Officers Redda, Moses, Deccio and McKenzie were dispatched to 821 Yakima Avenue to assist the 15 year old rape victim.[37] At the scene the offices found a young female on the corner of S. 9th and Yakima visibly upset and shaking.[38] She was hysterical.[39] The 15 year-old kept repeating that "she wants to go home and asking where her Mom was."[40] The Tacoma Fire Department was dispatched to examine and treat the 15 year old.[41] She was having a hard time gathering her thoughts and speaking clearly.[42] However, the officers were advised that she had escaped from her captor's apartment with his

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[33] *Id.*
[34] *Id.*
[35] CP 735-36, 740-41, 749-51.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*

cellular telephone and contacted her mother who in turn advised her to call 911 immediately.[43]

The Tacoma Police Officers learned the 15 year old was C.B.[44] C.B.'s name was familiar to the officers because at 3:18 pm that day a dispatch was radioed to the Tacoma Police Officers that C.B. was reported as a missing child.[45] C.B. was last observed walking off the school bus at the Northwest School of Innovative Learning (NWSOIL) and travelling northbound near 220 Tacoma Ave.[46] At the time the officers were advised of C.B.'s age, dress and mental health disorders.[47] During the nearly five hour period of time in which C.B. was missing the Tacoma Police Department and her parents were combing the streets of Tacoma trying to find her.[48]

Shortly after C.B. left the Bethel bus, Cliff Stickler, a Bates College student who was waiting for the bus and observed C.B. near the corner of 10th and Yakima.[49] Stickler witnessed a young teenage "heavyset girl with freckles and shoulder length hair" lost and asking for directions.[50] Stickler talked with C.B. who advised him that she lived in Bonney Lake and needed

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[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] CP 774-75.
[50] *Id.*

a ride home.[51] As Stickler was talking with C.B., he observed African-American man in his 50s man approach C.B.[52] Stickler later identified this individual to the Tacoma Police Department as the perpetrator, Michael Bond.[53] Stickler advised that he found Michael Bond's conversation with him as "weird."[54] Stickler recalls Michael Bond advising him he would take care of C.B.[55] Stickler left the bus stop for college with a strange uneasy feeling about the situation.[56] He distinctly remembered C.B. saying she did not have a cell phone or any way to communicate with her parents.[57]

When Tacoma Police Officers Moses, Deccio and MacKenzie entered the apartment, they found and arrested Michael Bond, a 53 year-old prior felon with a long arrest history.[58] As he resisted arrest and fought the arresting officers he exclaimed that he wasn't "trying to hit that."[59] This statement was apparently a reference to his belief he was being arrested for his sexual assault upon C.B.[60] Bond was arrested and charged with: unlawful imprisonment; child molestation; and resisting arrest.[61] The Tacoma Police Department and Pierce County Prosecutor's Office launched

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[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] CP 782-84.
[59] CP 740.
[60] *Id.*
[61] CP 786-87.

an investigation to determine how a 15 year-old mentally ill, special needs student was held against her will in a Tacoma apartment by a 53 year-old felon, sexually assaulted and threatened with gang rape.

Michael Bond lured C.B. back to his apartment with the promise of a bus ticket and some alcohol and marijuana.[62] Upon her arrival at Bond's apartment, C.B. quickly learned she was in serious danger. Unbeknownst to C.B., Bond had called a number of his adult male friends over to party with C.B.[63] C.B. wanted to leave but he would not let her go.[64] Bond casually tossed a few condoms over to C.B. and advised her to sit down on the couch.[65] Despite repeatedly asking to leave, Michael Bond would not let her go.[66] Bond continued to drink and became more aggressive.[67] Bond physically assaulted and sexually assaulted C.B.[68] He digitally penetrated C.B. and forced C.B. to perform fellatio upon him.[69]

As the hours passed Bond became more inebriated.[70] His adult friends elected to leave the apartment.[71] When Bond began to pass out due to his alcohol consumption C.B. seized her chance to escape.[72] She grabbed

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[62] CP 789-812.
[63] *Id.*
[64] *Id.*
[65] CP 805.
[66] CP 789-812.
[67] *Id.*
[68] CP 808-09.
[69] *Id.*
[70] CP 808-811.
[71] CP 806.
[72] CP 810-11.

Michael Bond's phone and called her mother.[73] C.B.'s mother then called 911, and C.B. ran to the street corner.[74]

5. C.B.'s Mental Health Deteriorates Even More After Sexual Assault

The evening C.B. was rescued by Tacoma Police from Michael Bond's apartment, C.B. attempted suicide, a pattern that increased in number and severity of attempts after she was sexually assaulted. "[A]fter March 19, 2012, I had several more like the next -- the same night that I came home from the hospital I had a suicide attempt, and then I had several -- like many suicide attempts after that and it was just one after another and they were very frequent, more so than it was before."[75]

As her father described it, after the sexual assault, "The actions she took were more severe and more life threatening."[76] "I think it fractured her psyche. It -- it put her into a tailspin of suicide attempts and not wanting to live anymore and untrusting and anger and just not being able to process it."[77]

On March 3, 2014, not even two years after the incident, in an inpatient psychiatric facility in Syracuse, Utah, the then 17 year-old described the trauma she endured in the two years since the assault by Michael Bond. She ran away far more often, leaving for days and weeks at

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[73] *Id.*

[74] CP 811-812.

[75] CP 814.

[76] CP 816.

[77] CP 818.

a time. Increasingly she used more drugs, she was homeless and she even engaged in prostitution.[78]

B. Relevant Procedural History

The complaint for damages was filed in Pierce County Superior Court on August 15, 2013.[79] C.B.'s claims were brought by her mother Misti Bell, who also filed claims for the loss to the parent-child relationship along with C.B.'s father, Scott Bell.[80] C.B. alleged negligent and grossly negligent supervision of student C.B. and negligent and grossly negligent hiring, retention, training and supervising of employees and agents, against NWSOIL and its owner, BHC Fairfax Hospital, Inc., and also against the Bethel School District.[81] Respondent NWSOIL answered, raising affirmative defenses of comparative fault and foreseeability, among others.[82]

NWSOIL moved for summary dismissal of all claims on September 12, 2014.[83] The motion was heard on October 10, 2014.[84] At oral argument, the trial court sought arguments all counsel solely on the issues of custody and legal duty.[85] NWSOIL argued that custody had been delegated to

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[78] CP 820-30.
[79] CP 365.
[80] CP 365-66.
[81] CP 371-74.
[82] CP 389-90.
[83] CP 589.
[84] VRP 1.
[85] VRP 4,7.

Bethel once C.B. stepped aboard the bus.[86] Appellants/Plaintiffs argued that custody and duty were non-delegable duties of both NWSOIL and Bethel based upon the contract entered into by C.B.'s parents, Scott and Misti Bell; the particular knowledge NWSOIL had of C.B. and her special needs; and the specific circumstances of that day.[87]

At the conclusion of oral argument, the trial court summarily dismissed the claims against NWSOIL.[88] Misti and Scott Bell eventually settled the remaining claims against the Bethel School District before trial.[89] Bethel was dismissed out of the suit on September 10, 2015.[90] Once dismissal was entered, Appellants timely filed their notice appealing the trial court's summary judgment ruling in favor of Respondent NWSOIL.

III. ARGUMENT

A. Standard of Review

"The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court." *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is appropriate only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). "Summary judgment procedure . . . is a liberal measure, liberally designed for arriving at the truth. Its purpose is not to cut

[86] VRP at 8-11.

[87] VRP 16-22.

[88] CP 589-591.

[89] CP 910.

[90] CP 912-914.

litigants off from their right of trial by jury if they really have evidence which they will offer on a trial, it is to carefully test this out, in advance of trial by inquiring and determining whether such evidence exists." *Owen v. Burlington Northern and Santa Fe R.R. Co.*, 153 Wn.2d 780, 787, 108 P.3d 1220 (2005) (quoting *Whitaker v. Coleman*, 115 F.2d 305, 307 (5th Cir.1940)); *see also Barber v. Bankers Life & Cas. Co*, 81 Wn.2d 140, 144, 500 P.2d 88 (1972) ("The object and function of summary judgment procedure is to avoid a useless trial. A trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact."); *Babcock v. State*, 116 Wn.2d 596, 599, 809 P.2d 143 (1991) ("Summary judgment exists to examine the sufficiency of legal claims and narrow issues, not as an unfair substitute for trial.").

In a summary judgment proceeding, the burden is on the moving party to show an absence of evidence supporting the nonmoving party's case. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). After the moving party meets this burden, the nonmoving party must set forth specific facts rebutting the moving party's contentions and demonstrating that a genuine issue of material fact exists. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). "Circumstantial, indirect, and inferential evidence will suffice to discharge the plaintiff's burden" under summary judgment. *Rice v. Offshore Sys., Inc.*, 167 Wn. App. 77, 89, 272 P.3d 865 (2012). The trial court views the facts and any reasonable inferences from those facts in the light most favorable to the nonmoving party. *Federal Way Sch. Dist. No. 210 v. State*,

167 Wn.2d 514, 523, 219 P.3d 941 (2009). "The moving party is held to a strict standard. Any doubts as to the existence of a genuine issue of material fact is resolved against the moving party." *Atherton Condo. Apartment-Owners Ass'n Bd. Of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

B. The Trial Court Erred In Dismissing Appellants Claims For Lack of Duty Owed by NWSOIL to Its Special Needs Student C.B.

At issue here is whether NWSOIL owed a duty, and if so, whether the alleged conduct and damages fell within the scope of that duty. "The existence of a legal duty is a question of law and 'depends on mixed considerations of "logic, common sense, justice, policy, and precedent."' *Id.* at 67 (quoting *Snyder v. Med. Serv. Corp.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001)).

It is well-established in Washington "that a school district has an enhanced and solemn duty to protect minor students in its care." *Christensen v. Royal Sch. Dist. No. 160*, 156 Wn.2d 62, 67, 124 P.3d 283 (2005); *accord McLeod* 42 Wn.2d 316 at 319; *J.N. v. Bellingham Sch. Dist.*, 74 Wn. App. 49, 57, 871 P.2d 1106 (1994); *Peck v. Siau*, 65 Wn. App. 285, 293, 827 P.2d 1108 (1992), *rev. denied* 120 Wn.2d 1005 (1992).

This duty exists, in part, because:

> It is not a voluntary relationship. The child is compelled to attend school. He must yield obedience to school rules and discipline formulated and enforced pursuant to statute. (citations omitted). The result is that the protective custody of teachers is mandatorily

> substituted for that of the parent [in loco parentis].

McLeod v. Grant County School Dist. No. 128, 42 Wn.2d at 319.

In this case, NWSOIL had a duty to exercise reasonable care to protect its student, C.B., from reasonably foreseeable dangers. *J.N. v. Bellingham Sch. Dist.*, 74 Wn. App. at 57.

Reasonable or ordinary care is that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances or conditions. *Gordon v. Deer Park School Dist. No. 414*, 71 Wn.2d 119, 122, 426 P.2d 824 (1967). Whether a risk of harm is reasonably foreseeable "under the same or similar circumstances" depends upon the particular defendant's characteristics and experience. *See Gordon, 71 Wn.2d at 125* (foreseeability of injury to a child during supervised baseball game on school premises evaluated in the light of the instructor's "experience in playing baseball,"); *see generally* W. PAGE KEETON ET AL., PROSSER AND KEATON ON THE LAW OF TORTS § 32, at 175, 185 5th ed. 1984) (and persons must use all care which is consistent with particular knowledge, experience, or skills).

NWSOIL had an extensive and well-documented knowledge of the precise characteristics and experience of student, C.B., on the day she was assaulted. NWSOIL knew that she had a pattern of fight or flight behaviors. It knew that she was likely to become confrontational. And it knew that if she was without supervision, her mental illness and behavior disorders were likely to leave her in a dangerous position.

NWSOIL pointed to cases outside Washington, particularly New York, where trial courts have limited the scope of the *in loco parentis* duty with regard to actions or activities outside the school. The trial court apparently adopted this outside jurisprudence in finding that NWSOIL transferred custody to Bethel and therefore no longer owed C.B. a duty of care, despite the specialized nature of the school, the school's knowledge of C.B.'s mental and behavioral health, and despite knowledge of a critical situation unfolding in its loading area.

With *Harker v. Rochester City Sch. Dist.*, 241 A.D.2d 937, 661 N.Y.S.2d 332 (1997), NWSOIL attempted to analogize a case in which a student of the Rochester School District slashed another student with a razor five houses away from a designated bus stop.[91] In addition to the obvious difference of the private, hospital-run specialized nature of NWSOIL and NWSOIL's equally specialized and challenging nature of its students, the *Harker* case involved an attack at a bus stop. The operative fact here, *the failure to properly supervise and protect C.B.*, occurred in the loading area and outside the school doors of NWSOIL. And without that supervision, C.B. did exactly what a locked, secure school for students with special needs would anticipate, she walked into the inviting arms of a predator.

NWSOIL's attempt to analogize the combined New York appeals of *Chainai by Chainai v. Board of Educ.*, N.Y.2d 370, 663 N.E.2d 283 (1995), equally fails.[92] In these cases, students were struck by motor

[91] CP 350-52.

[92] CP 354-63.

vehicles after departing school buses at bus stops outside the "physical custody or "orbit of authority" of the school. Again, like *Harker* and unlike C.B.'s circumstance, the supervision and protection of these students in the midst of a known-mental health crisis while in the loading area and outside the doors of the school was not at issue. C.B.'s case is unique because of what NWSOIL knew about C.B., what it knew about C.B.'s crisis at the time it was occurring, and what NWSOIL knew would happen if it did not either open its doors or intervene on her behalf.

In sum, these cases are distinguishable because they do not involve children with special needs, like C.B. and her fellow students attending NWSOIL have, and they do not involve transport to an alternative school outside the district. The better approach is that consistent with Washington precedent linking duty with the foreseeability of the harm.

C. The Trial Court Erred in Granting NWSOIL Summary Dismissal when NWSOIL Knew that a Sexual Assault of C.B. Was within the General Field of Foreseeable Danger if Special Needs Student C.B. Was Left Unsupervised.

Although it was not specifically addressed by the trial court, because review of summary judgment is *de novo*, Plaintiffs also presented evidence of the foreseeable danger that NWSOIL knew C.B. was in if left unsupervised.

Well-settled Washington law regarding the general duty to protect others from sexual assault by a third party and a school district's specific, heightened duty to protect minor students in its care from harm should govern the issues of foreseeability in this case. First, "A duty to protect

another from sexual assault by a third party may arise where the defendant has a special relationship with the tortfeasor which imposes a duty to control the third person's conduct, or it may arise where the defendant has a special relationship with the other which gives the other a right to protection." *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 525-526, 307 P.3d 730 (2013), *review denied*, 179 Wn.2d 1005 (citing *Niece v. Elmview Group Home*, 131 Wn.2d 39, 929 P.2d 420 (1997)). "The requirement for prior specific knowledge of the tortfeasor's dangerous propensities applies to the first type of special relationship identified in *Niece* but not to the second." *N.K.*, 175 Wn. App. at 526. It is well settled that the existence of a duty predicated on a protective relationship requires knowledge only of the "general field of danger" within which the harm occurred. *Id.* (citing *McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d 316, 321, 255 P.2d 360 (1953)).

Second, it is well-established in Washington "that a school district has an enhanced and solemn duty to protect minor students in its care." *Christensen v. Royal Sch. Dist. No. 160*, 156 Wn.2d 62 at 67; *accord McLeod*, 42 Wn.2d at 319; *J.N. v. Bellingham Sch. Dist.*, 74 Wn. App. 49, 57, 871 P.2d 1106 (1994); *Peck v. Siau*, 65 Wn. App. 285, 293, 827 P.2d 1108, *rev. denied*, 120 Wn.2d 1005 (1992). This duty includes anticipating dangers and taking precautions. *Carabba v. Anacortes School Dist. No. 103*, 72 Wn.2d 939, 955, 435 P.2d 936 (1967). In executing their duties, Washington holds school districts to a heightened "reasonableness"

standard of care in light of their employees' particularized training and experience. *J.N.*, 74 Wn. App. at 57, 61.

NWSOIL argued at summary judgment that it could not be responsible for the damages suffered by C.B. because of the criminal acts of perpetrator, Michael Bond. But in Washington law, a "criminal act may be considered foreseeable if the actual harm fell within a general field of danger which should have been anticipated," and generally "the foreseeability of the criminal act is a question for the trier of fact." *Johnson v. State*, 77 Wn.App. 934, 942, 894 P.2d 1366, 1371 (1995).

In order to establish foreseeability the "harm sustained must be reasonably perceived as being within the general field of danger covered by the specific duty owed by the defendant." *J.N.*, 74 Wn. App. at 57. The focus is not on a specific harm or action that occurred (although knowledge of a specific risk may require the taking of specific actions for supervision or protection), rather the focus is on the "general field of danger." As the court in *J.N.*:

> The pertinent inquiry is not whether the actual harm was a particular kind which was expectable. Rather, the question is whether the actual harm fell within a general field of danger which should have been anticipated.

74 Wn. App. at 57.

J.N. involved sexual assault upon a first grade student in an unsupervised restroom during recess by a fourth grade student. In

determining that the general nature of this occurrence was "foreseeable," the court held:

> Here, the general field of danger - - harm to a pupil caused by another pupil – flowed from the arguably inadequate recess supervision and the presence of nearby, assessable, and generally unsupervised restrooms. It is irrelevant to the inquiry on summary judgment that the particular injury that in fact occurred was a criminal assault or that it was sexual in nature. All that is required is evidence that the district knew or in the exercise of reasonable care should have known of the risks that resulted in the harm's occurrence.

In *McLeod v. Grant County School Dist., supra*, the Supreme Court reversed the trial court's dismissal of plaintiff's complaint on the allegations that plaintiff was forcibly raped by fellow students during a noon recess in a dark, unlocked room adjoining the school gymnasium. In analyzing the test of foreseeability, the *McLeod* court defined the general field of danger as follows:

> Considering all of the allegations of the complaint, we believe that here the general field of danger was that the darkened room under the bleachers might be utilized during periods of supervised play for acts of indecency between school boys and girls. If the school district should have reasonably anticipated that the room might be so used, then the fact that the particular harm turned out to be forcible rape rather than molestation, indecent exposure, seduction, or some other act of indecency, is immaterial. Had the school children been safeguarded against any of these acts of indecency, through supervision or the locking of the door, it would have been protected against all such acts.

Whether the acts complained about were "foreseeable" was determined to be a question for the jury. *McLeod*, 42 Wn.2d at 324.

No credible argument can be made that C.B.'s mental illness and behavior disorders were not well known NWSOIL before she was sexually assaulted on March 19, 2012. As it admitted, and as is reflected in their own documentation, C.B. was well-known to each for having self-destructive tendencies and self-injurious behaviors. This is precisely the reason the Bell's enrolled C.B. in a secure, locked, hospital-run facility: so that she was be supervised at all times. The harm C.B. suffered—the luring and sexual assault when she should have been either safely back in her school or transported home on a bus—was within the general field of danger and fell within the scope of the NWSOIL's duty of care to Plaintiffs. While in their custody and control, and still back in the loading area of the school, NWSOIL staff watched and did nothing as C.B.'s behaviors escalated to the point of being forced off the bus and into a highly foreseeable and highly dangerous position of wandering the streets of Tacoma without supervision. NWSOIL knew, as a special needs student at its school and from its extensive knowledge of C.B.'s medical and psychiatric history, that left unsupervised, C.B. was in a position where she was likely to be harmed by a predator. The risk that was created here is no different than failing to supervise the dark area under bleachers that gave rise to a duty in *McLeod.* As Plaintiffs' expert in education administration and special education, Dr. Edward Dragan, opined after reviewing the materials in this case:

> "[B]oth the Bethel School District and the Northwest School of Innovative Learning fell below the accepted standard of care in its transportation and safety responsibilities to

> C.B. Both defendants were well aware that C.B. was a minor with a history of mental illness and a working psychiatric diagnosis, and was a student at a school run by Fairfax Hospital, a hospital which provides behavioral healthcare treatment to its patients. Further, both defendants were aware of C.B.'s mental health condition and propensities which included suicidal attempts, elopement, sexual promiscuity, as well as other psychiatric manifestations of her disability. This actual knowledge places a direct burden and responsibility on both defendants to address C.B.'s manifestations so as to protect her and others from harm that may come as a result of her incapability to make rational decisions regarding her own safety."[93]

In sum, NWSOIL negligently breached its duties to supervise C.B. and ensure her safe transport home despite knowing that she was in the midst of a mental health crisis and a great danger to herself based on her existing medical and psychiatric challenges.

D. The Trial Court Erred in Granting NWSOIL Summary Dismissal when Appellants Presented Evidence of NWSOIL's Breach of Its *In Loco Parentis* Duties to C.B.

Dr. Dragan also opined that NWSOIL (and Bethel) fell below the standard of care with regard to protecting C.B. from a risk of harm that was reasonably foreseeable under the same or similar circumstances.[94]

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[93] CP 837-38.

[94] CP 837-41.

1. NWSOIL had staff trained to intervene but failed to diffuse the growing tension, because they said it wasn't their jurisdiction

NWSOIL argued at summary judgment that it ceded custody of C.B. when it sent her to the school bus on March 19, 2012. Because it no longer had custody, NWSOIL argued, it had no duty to C.B. But NWSOIL provided no evidence indicating as a matter of law that a reasonable alternative school in the same or similar circumstances would not have recognized that its duty to protect C.B. was much more than just loading her onto the bus in this situation. In his deposition, NWSOIL Behavioral Intervention Specialist James Tate acknowledged that he came to the bus to investigate the argument between C.B. and another child on board. He also agrees that despite having training using de-escalation techniques on NWSOIL students, no policy or practice was in effect to help either C.B. or the Bethel Driver, even though the bus was still in the loading area and hadn't left the school:

> [Q] Do you have an understanding one way or another what a NWSOIL staff member was supposed to do if made aware of a conflict involving a NWSOIL student on a bus that was still in the NWSOIL loading area?
>
> A No.
>
> Q But you had training if there was conflict with a NWSOIL student inside the school, right?
>
> A Correct.
>
> . . .
>
> [Q] There were various practices and procedures that you were taught to deal with NWSOIL students who were having a conflict within the school campus, correct?

A Correct.

MS. MERRINGER VEAL: Same objection.

Q You talked about before looking for triggers as an EA, right?
A Yes.
Q And you talked before about what you understood your responsibilities as a BIS were, right?
A Correct.
Q And some of those things were to talk students down, right?
A Correct.
Q To make sure that they were no longer agitated; is that right?

MS. MERRINGER VEAL: Object to the form.

Q Was that a part of it, to talk a student down from whatever state of conflict they were in?
A To try, yes.
Q And the whole point of it was to keep the student from blowing up, right?
A Yes.
Q And as you testified before, if a student blows up, that's a danger to not only a student, but other staff members, correct?
A Correct.
Q But you testified that you received no training if there was a situation involving a NWSOIL student on a bus in the loader area of NWSOIL; is that right?
A Correct.
...
Q Did anyone ever tell you, Mr. Tate, if something happens on a bus you're

> not to get involved because that's not NWSOIL property?
>
> A I can't recall.
>
> Q Do you remember anything to that effect?
>
> A Not that I can remember. I mean, it kind of -- no. I don't know.[95]

Education expert Dr. Dragan opined that, "A reasonable school administrator or educator, including the Northwest School of Innovative Learning administrators and employees responsible for student transition onto the buses, have a duty to interact with the bus drivers and ensure their students are safely transitioned from the school to the bus so that the bus may leave the school and begin the designated route."[96]

> In my review of the March 19, 2012 video, it is clear that representatives of Northwest School of Innovative Learning were aware of C.B.'s decompensating on the bus and failed to intervene to deescalate the situation or assist the bus driver and aide in resolving the incident. A review of the video demonstrates that C.B. and the bus driver had agreed that C.B. could remain at the school and have her father retrieve her from the office. Unfortunately, the school door was locked and no administrator or employee allowed C.B. to reenter the school premises or provided further assistance. In my professional opinion, the standard of care required representatives of the Northwest School of Innovative Learning to monitor and provide assistance to the bus driver until the bus departed.[97]

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[95] CP 718-721.

[96] CP 840.

[97] *Id.*

Even the Bethel Director of Transportation, Karen Campbell, while accepting that the district's drivers are responsible for students when they board the bus, acknowledged the lack of action by NWSOIL when C.B. and driver Norma Henderson exited the bus in an attempt to go back inside the school to contact C.B.'s father.

> [Q] If Shelby or any other employee of Northwest SOIL knew that Caitlyn was out there wanting to come in, having a problem on the bus, but they refused to let her in, would that be reasonable to you?
>
> MS. MERRINGER VEAL: Objection.
>
> A No.
> Q You would expect that if Northwest SOIL knew she was out there, that they would let her in, right?
>
> MS. MERRINGER VEAL: Same objection.
>
> A I'm going to say I don't know their protocols with her either and her ways there. That makes it difficult. I don't -- I know how Caitlyn presents on the bus and I know how she can manipulate and change things and work it around. I don't know what Northwest does for her in the school environment, it's different, and how they set choices for her. Would I like help if they're there and available? Absolutely. But can I say what they did was right, wrong, or other, not having all the facts, I don't know.
> Q But if they knew she was there --
> A Would I like help? Yes.[98]

[98] CP 832-33.

NWSOIL breached its duty to C.B. by acknowledging a growing problem on the bus, while the bus was still in the loading area, and failing to do anything to ensure C.B. remained safe. C.B. and the Bethel bus driver even attempted to re-enter the school to end the conflict and prevent serious harm, but the school's reaction was to keep the doors closed. In NWSOIL's view, once C.B. was loaded onto the bus, she was the district's problem.

2. C.B. Did Not Choose to or Voluntarily Leave the Bus, Given the Context of the Video and the Knowledge of C.B. Mental Health

NWSOIL also argued that it's *in loco parentis* duty ended, because its custody of C.B. ended when C.B. "chose to leave her school bus."[99] The operative phrase for Plaintiff's expert Dragan is Bethel's characterization that there was any choice or anything voluntary about C.B. leaving:

> [I]t is my professional opinion that the defendant's characterization of C.B. leaving the bus following the bus driver's ultimatum to either sit down and buckle up or leave as a "choice" is inaccurate and violates the Bethel School District's to attempt to de-escalate confrontational episodes. In my professional opinion, C.B. did not "choose" to walk off the bus. She was placed in a situation by the district, through its administration's failure to train its employees, including the bus driver and aide. She did not leave the bus after making a reasonable and logical assessment. She left because the bus driver failed to interact with her in an appropriate and reasonable manner and could have done so but deliberately ignored C.B.'s behavior plan. This is similar to "constructive

[99] CP 610.

> eviction" from the bus. The interaction between C.B. and the bus driver created a situation within which C.B., because of her emotional and psychiatric issues, was not able to reasonably "voluntarily" exit the bus. C.B. did not leave the bus willingly. She left in a retreat from an unreasonable interaction between her and the bus driver. In this regard the district, through its administration (failure to train), and/or other employees, specifically the bus driver, failed to employ ordinary care to anticipate reasonable foreseeable dangers such as were clearly articulated in C.B.'s school records, including suicide attempts, elopement and sexual behavior, to protect C.B. from such dangers. Further, it was below the accepted standard of care for both the bus driver and aide to invite C.B. to leave the bus without attempting to accompany her until law enforcement arrived or an alternative transportation solution was determined.[100]

For Dr. Dragan, the act of releasing minor C.B. from the bus, and even prompting her departure ("Get your bag."[101]), ignores the particular characteristics of this student under these circumstances. "The defendants fail to recognize that, by releasing C.B. from the bus, they were stranding a minor with a psychiatric disorder in an area with which she was unfamiliar, with no money, cell phone, or experience navigating the public transit system."[102]

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[100] CP 839.

[101] CP 7.

[102] CP 839-40.

At an absolute minimum, the voluntariness of C.B.'s leaving, taking into consideration her age, her special needs, including mental health and behavior disorders, and the location of the school so far away from her home in rural Pierce County, is a question of fact that the jury must be allowed to decide.

E. The Trial Court Erred in Granting NWSOIL Summary Dismissal when Appellants Presented Evidence that C.B.'s Injuries Were Proximately Caused by NWSOIL's Negligence.

Proximate cause has two elements: cause in fact and legal cause. *See Hartley v. State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). The first prong of proximate cause is cause in fact. *Schooley v. Pinch's Deli Mkt., Inc.*, 134 Wn.2d 468, 478, 951 P.2d 749 (1998). "Cause in fact concerns 'but for' causation, events the act produced in a direct unbroken sequence which would not have resulted had the act not occurred." *Hertog v. City of Seattle*, 138 Wn.2d 265, 282-83, 979 P.2d 400 (1999).

Washington courts have "consistently held" that "the question of proximate cause is for the jury, and it is only when the facts are undisputed and the inferences therefrom are plain and incapable of reasonable doubt or difference of opinion that it may be a question of law for the court." *Bernethy v. Walt Failor's Inc.*, 97 Wn.2d 929, 935, 653 P.2d 280 (1982) Bernethy, 97 Wn.2d at 935, 653 P.2d at 283 (citations omitted). A determination of proximate cause is only to be taken away from a jury in the rare case where "the causal connection is so speculative and indirect that reasonable minds could not differ." *Doherty v. Municipality of Metropolitan Seattle*, 83 Wn. App. 464, 469, 921 P.2d 1098, 1101 (1996).

It is not a valid argument that C.B. being lured into the apartment of a stranger and sexually assaulted was an unforeseeable intervening act that breaks the causal chain. The question is not whether there was an intervening act, but whether that act was foreseeable. "[T]he defendant's actions are the cause in fact of plaintiff's injuries if the defendant's wrongdoing produced the injuries complained of and any intervening cause was reasonably foreseeable." *McCoy v. American Suzuki Motor Corp.*, 136 Wn.2d 350, 358, 961 P.2d 952 (1995). Whether an independent cause is reasonably foreseeable is generally a fact question for the jury. *McCoy*, 136 Wn.2d at 358; *see McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d at 322.

Here, as Appellants/Plaintiffs' expert Dr. Dragan opined, the risk to this particular student based on the location of the school, the symptoms of her psychiatric disorder, her emotional condition at the time, and her distance away from home all need to be considered by the trier of fact in order to determine the foreseeability of the harm to C.B.[103]

Based on NWSOIL's well established duty in *loco parentis* to protect the very foreseeable minor victim C.B., legal causation is well supported. Perhaps C.B. herself said it best at her deposition, "I feel like they shouldn't have let me off the bus. I feel like that should be like something that would just be common sense. You have a bus full of kids with behavior problems, a bus full of kids that are challenged in certain

[103] CP 839-41.

ways and, you know, don't always make the best decisions. Would you open the door to a bus or would you let -- let those kids off the bus when you know that they have destructive tendencies and you know that they could get hurt?"[104]

F. The Trial Court Erred in Granting Summary Dismissal Because C.B.'s Alleged Contributory Negligence Is Not an Applicable Superseding Intervening Cause

NWSOIL also argued that the harm suffered by C.B. was superseded by her own negligent conduct. "C.B.'s behavior after she left the bus was so highly extraordinary and unexpected that it cannot be described as reasonably foreseeable.... [T]his is a case of a teenage girl of high intelligence making several choices over a significant period of time, choosing not to call her parents and instead willingly following a stranger to his apartment, willingly remaining there for some time, and participating in illegal activity prior to being assaulted."[105]

In addition to blatantly ignoring all of the medical and psychiatric evidence it so carefully detailed in page after page of its brief, NWSOIL attempted to shift the burden of care to C.B., where the school has a solemn duty to protect the minor plaintiff entrusted to its care. Washington recognizes a duty of care where "a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party's conduct." *Lauritzen v. Lauritzen*, 74 Wn. App. 432, 438, 874 P.2d 861, *review denied*, 125 Wn.2d 1006 (1994). "When a 'special relationship'

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[104] CP 835.

[105] CP 616-17.

exists, one person may have a duty to foresee that the risk of harm exists as to the other." *Webstad v. Stortini*, 83 Wn. App. 857, 868, 924 P.2d 940 (1996). The "special relationship" that triggers a duty of care is described in the Restatement (Second) of Torts § 315 (1965), which provides as follows:

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
>
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
>
> (b) ***a special relation exists between the actor and the other which gives to the other a right to protection.***

Petersen v. State, 100 Wn.2d at 426, 671 P.2d 230 (1983) (quoting with approval § 315 of Restatement (Second) of Torts) (emphasis added).

"Those relationships between a defendant and a foreseeable victim that have been previously recognized by Washington courts as 'special,' and, therefore, giving rise to a legal duty to protect the victim from foreseeable criminal acts of third parties, have been described as 'protective in nature, historically involving an affirmative duty to render aid.'" *Lauritzen*, 74 Wn. App. at 438 (quoting *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 228, 802 P.2d 1360 (1991)). In cases where Washington courts have acknowledged a special relationship, the "relationship involved situations where one party was, in some sense, entrusted with the well-being of another." *Id.* at 440. "The entrustment

aspect is what appears to us to underlie the imposition of the additional duty to protect someone from foreseeable criminal acts of third parties." *Id.*

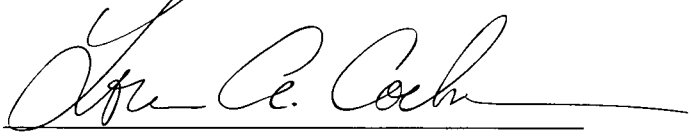
In this case, NWSOIL assured Scott and Misti Bell that C.B. would be carefully supervised and protect C.B. from harm.[106] This special relationship with C.B., as well as her parents, was implied, inherent, and actual promises to them that NWSOIL would act reasonably while entrusted with C.B.'s wellbeing. In short, contributory negligence is simply inapplicable when a defendant school has a duty to protect based on entrustment. *See Christensen v. Royal School Dist.*, 156 Wn.2d at 67.

IV. CONCLUSION

For the foregoing reasons, the appellants/plaintiffs, Scott and Misti Bell, individually and based on their then-minor child C.B., respectfully ask this court to reverse summary dismissal and remand the case for trial.

RESPECTFULLY SUBMITTED this 5th day of May, 2016.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: 

Thomas B. Vertetis, WSBA No. 29805
Loren A. Cochran, WSBA No. 32773
Elizabeth P. Calora, WSBA No. 42527
PFAU COCHRAN VERTETIS AMALA, PLLC
911 Pacific Avenue, Suite 200
Tacoma, Washington 98402
(253) 777-0799

[106] CP 690.

FILED
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DIVISION II
2016 MAY -5 PM 3:43
STATE OF WASHINGTON
BY DEPUTY

CERTIFICATE OF SERVICE

Kim Snyder, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on May 5, 2016, I personally delivered, a true and correct copy of the above document, directed to:

Timothy L. Ashcraft
Attorney at Law
1301 A Street, Suite 900
Tacoma, WA 98402-4299

VIA ABC LEGAL MESSENGER

DATED this 5th day of May, 2016.

Kim Snyder
Kim Snyder
Legal Assistant

4815-3345-8993, v. 3