FILED

JUN 03 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 93977-2

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

**NO. 3388-9-4-III**

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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.

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# RESPONDENT'S RESPONSE BRIEF

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## I. INTRODUCTION

Sheila Rosenberg and Pavel Turchik were both tragically killed when the vehicle driven by Mr. Turchik, who was driving while intoxicated, left the roadway at nearly 100 mph, hit a culvert, and flipped numerous times. Shortly before the accident, Mr. Turchik and Ms. Rosenberg were at the house of Igor Lukashevich, who at the time was employed as a basketball coach for Soap Lake School District. Mr. Lukashevich allegedly gave Mr. Turchik alcohol while Mr. Turchik was at Mr. Lukashevich's house on the evening of the accident.

The underlying lawsuit was brought by Michelle Anderson in her individual capacity and as the Administrator of the estate of her daughter, Sheila Rosenberg, against Soap Lake School District, the Grant County Sheriff's Department and Corporal Allan Sleeper. Ms. Anderson's claim against Soap Lake School District is premised solely upon the allegation that Mr. Lukashevich supplied Mr. Turchik with alcohol prior to the accident in question.

On September 3, 2015, the trial court granted summary dismissal of all claims against the Grant County Sheriff's Department and Corporal Sleeper.[1] On October 9, 2015, the trial court granted summary dismissal of

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[1] Ms. Anderson did not appeal the dismissal of her claims against Grant County and Corporal Sleeper and they are not before this Court.

Ms. Anderson's claims against Soap Lake School District (hereinafter, "the District"). CP 79. The District's summary judgment motion was premised upon the argument that the District did not owe a duty to Ms. Rosenberg at the time of her death. CP 168-178. Specifically, the District argued that Ms. Rosenberg was not in the care, custody or control of the District at the time of the accident in question, or in the hours preceding the accident. The District further argued that the event at Mr. Lukashevich's house on the night in question was not a school sponsored, sanctioned or supervised event. As such, and because the District did not have any knowledge or notice that Mr. Lukashevich had provided alcohol to students on the night in question or at any time prior to that, Ms. Anderson's claims against the District failed as a matter of law.

On appeal, Ms. Anderson contends that the trial court erred in dismissing the claims against the District because: (1) the District owed a contractual duty to Ms. Rosenberg; (2) the District was negligent in supervising, hiring and training Mr. Lukashevich; and (3) the District is vicariously liable for Mr. Lukashevich's act of providing alcohol to Mr. Turchik. *Appellants Brief*, p. i.

As set forth herein, Ms. Anderson's position that the District had a contractual duty to protect Ms. Rosenberg while not in the care, custody and control of the District, and while not participating in a school

sponsored, sanctioned or supervised activity, is not supported by Washington law. In essence, Ms. Anderson is asking this Court to impose a duty on school districts to supervise students at all times, regardless of the lack of connection to the school district, and based solely upon an activities code signed by a student, pursuant to which the student agrees not to participate in certain conduct. Not only has no Washington court ever before recognized such a duty, but the imposition of such a duty would create endless and unlimited liability for school districts to supervise students literally twenty-four hours per day, seven days per week. That is not the law and that cannot be the law.

Ms. Anderson's argument that the District was negligent in its hiring, supervision and retention of Mr. Lukashevich is equally unavailing, as the record is totally devoid of any evidence that the District knew or should have known of Mr. Lukashevich's alleged unfitness at the time of his hiring or at any point between his hiring and the accident in question. In fact, there is no evidence that Mr. Lukashevich was in fact "unfit" at any point prior to the night of the accident.

Finally, Ms. Anderson's vicarious liability argument fails as a matter of law, as Mr. Lukashevich's alleged action in providing alcohol to Mr. Turchik was clearly intentional and/or criminal conduct outside the scope of his employment and not taken in furtherance of the District's

interests. Case law could not be any clearer that vicarious liability does not arise in such circumstances.

At the time of the accident in question, Ms. Rosenberg was not in the care, custody and control of the District. The party at Mr. Lukashevich's house was not a school sponsored, sanctioned or supervised event. The District was unaware of the party, or that Mr. Lukashevich allegedly provided alcohol to students on the night in question or at any time prior to that.

In the end, Ms. Anderson seeks to impose liability on the District based solely upon the fact that unbeknownst to the District, one of its employees acted outside the course and scope of his employment and engaged in the criminal/intentional conduct of providing alcohol to a minor. The law does not impose a duty on the District under these facts, and the District simply cannot be held vicariously liable for Mr. Lukashevich's intentional/criminal conduct.

## II. COUNTER STATEMENT OF FACTS

On February 19, 2011, at approximately 1:00 a.m., Ms. Rosenberg was a passenger in a one vehicle accident. CP 5. The driver of the vehicle, Pavel Turchik, was travelling nearly 100 miles per hour when his vehicle left the roadway, hit a culvert, became airborne and rolled numerous times. CP 5-6. At the time of the accident, Mr. Turchik had an estimated

blood alcohol level of .175 and Ms. Rosenberg had an estimated blood alcohol level of .20. CP 5-6.

Prior to the accident, Ms. Rosenberg is alleged to have been drinking at the home of Igor Lukashevich, the girls basketball coach employed by the District. CP 6. It is alleged that Mr. Lukashevich served alcohol to Ms. Rosenberg and Mr. Turchik while they were at Mr. Lukashevich's house.[2]

It is undisputed that no liability producing act occurred on District property. CP 1-10. It is likewise undisputed that Ms. Rosenberg was not in the care, custody or control of the District at the time of the events in question. CP 1-10. Similarly, Ms. Anderson does not dispute that the events at Mr. Lukashevich's home in the early morning hours of February 19, 2011 were not school sponsored or sanctioned events.[3] CP 1-10. It is

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[2] While the District disputes that Mr. Lukashevich served alcohol to Ms. Rosenberg or Mr. Turchik the fact is not material because the District's summary judgment motion was granted on the absence of a duty and not on whether there was a breach of a duty.

[3] In an effort to avoid the fatal fact that the "party" in question was not a school district sponsored, sanctioned or supervised event, Ms. Anderson argues that the "party" was a "Coach Lukashevich sanctioned activity." Brief, pg. 18. As set forth herein, this play on words is simply another way of arguing that the District is vicariously liable for Mr. Lukashevich's intentional/criminal conduct.

further undisputed that Mr. Lukashevich[4] was not acting as an agent or employee of the District at the time and place in question. In other words, the undisputed facts fail to establish the existence of a duty owed by the District to Ms. Rosenberg.

## III. STATEMENT REGARDING APPELLANTS' ASSIGNMENT OF ERRORS

Ms. Anderson's Assignment of Errors B and C are both incorrectly premised upon the position that the District contractually expanded the duty of care it owed under tort law by requiring student-athletes to sign the Activities Code. The Activities Code is best understood as a "code of conduct" with which students must abide when participating in extra-curricular activities. It is not a contract and it does not create a contractual or common law duty of care. Notably, Ms. Anderson cites to no authority, either in Washington or elsewhere, which support Ms. Anderson's novel position.

In addition, Ms. Anderson misstates the law in Assignment of Error C in arguing that the duty a school district owes to "the children

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[4] In an attempt to draw an otherwise non-existent connection between Mr. Lukashevich and the District for purposes of this non-school district sponsored or sanctioned event, Ms. Anderson repeatedly refers throughout her brief to "Coach Lukashevich." While Mr. Lukashevich was indeed a coach for the District, he certainly was not acting in that capacity on the night in question, and repeated references to him as "Coach Lukashevich" cannot change that fact.

under their charge" is to "do everything in its power to protect the children." *Appellant's Brief*, p. 13. This is not a correct statement of the duty a school district owes its students. Rather, the law is very clear that the duty owed by school districts is to protect the students in its care, custody and control, and when the student is participating in school sponsored activities and events. The scope of the duty does not change simply because a school district requires student-athletes to sign codes of conduct agreeing not to engage in certain activities. Further, as noted below, such an expansion of a duty would create an unlimited and unworkable duty to supervise students at *all times* and in *all situations* to assure that students do not engage in conduct they agreed in the code of conduct to avoid.

Ms. Anderson's reliance upon contract law to attempt to establish a tort duty underscores her inability to establish the existence of a recognized duty in this case. This Court should decline Ms. Anderson's invitation to create new law in the area of contract and tort law, and should instead affirm the trial court's dismissal of this matter.

## IV. ARGUMENT IN RESPONSE

### A. Summary Judgment Standard

An appeal from a grant of summary judgment presents a question of law that is reviewed de novo. *Denaxas v. Sandstone Court of Bellevue,*

*LLC*, 148 Wn.2d 654, 662, 63 P.3d 125 (2003). Relevant and admissible evidence is viewed in a light most favorable to the non-moving party. *Osborn v. Mason County*, 157 Wn.2d 18, 22, 134 P.3d 197 (2006) (En Banc). Summary judgment will be granted if "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id*; CR 56(c). However, "Bare assertions that a genuine material issue exists do not constitute facts sufficient to defeat a motion for summary judgment." *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014) (En Banc). Any affidavits or declarations opposing summary judgment "must (1) be made on the affiant's personal knowledge, (2) be supported by facts admissible in evidence, and (3) show that the affiant is competent to testify to the matters therein." *Id.* at 140; CR 56(e). "Evidence submitted in opposition to summary judgment must be admissible. Unauthenticated or hearsay evidence does not suffice." *Id.* at 141. An attorney's declaration is not sufficient to survive summary judgment when it attempts to authenticate documents for which the attorney lacks personal knowledge. *Id.* at 141. For example, a trial court considering a motion for summary judgment may not consider as evidence a "police report[ ] whose authenticity was sworn to by plaintiff's attorney but not by the officer who authored the report." *Id.* at 141 (*citing Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 365, 966 P.2d 921

(Div. 2 1998)); *see also Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir. 1987) ("It is well settled that unauthenticated documents cannot be considered on a motion for summary judgment.").

"The existence of duty is a question of law, not a question of fact." *Osborn v. Mason County*, 157 Wn.2d 18, 23, 134 P.3d 197 (2006). "The existence of a duty is the threshold question in a negligence action." *Johnson v. State*, 77 Wn. App. 934, 937, 894 P.2d 1366 (Div. 1 1995). "Absent a duty of care, a defendant is not subject to liability for negligent conduct." *Lauritzen v. Lauritzen*, 74 Wn. App. 432, 438 (Div. 2 1994).

In this case, Ms. Anderson has not presented evidence which shows the existence of a duty between the District and Ms. Rosenberg on the night in question. Rather, the undisputed facts establish: that (1) Ms. Rosenberg was not in the care, custody or control of the District on the night in question; (2) that Ms. Rosenberg was not participating in a school sponsored, sanctioned or supervised activity or event on the night in question; and (3) that Mr. Lukashevich was acting outside the course and scope of his employment on the night in question.

Unable to establish the existence of a duty owed, or a recognized and viable cause of action against the District, Ms. Anderson resorts to reliance upon hearsay, unauthenticated evidence and bare assertions. For example, Ms. Anderson offers a declaration from her attorney, Douglas

Phelps, which improperly seeks to authenticate police reports and witness interviews conducted by the police. In addition, Ms. Anderson offers her own declaration which offers unauthenticated text messages, hearsay and the bare assertion that the purpose of the party was to recognize Ms. Rosenberg's basketball achievements with an "ice cream" party. *Appellant's Brief*, p.4. There is no evidence to support this assertion.

The purported evidence which Ms. Anderson relies on is not only inadmissible but is also irrelevant to the issue of duty. There is no evidence which, even in the light most favorable to Ms. Anderson, establishes the existence of a duty of care owed to Ms. Rosenberg at an off-campus late Friday-night party which is unrelated to any school sanctioned activity.

**B. Soap Lake School District Did Not Owe Sheila Rosenberg A Duty On The Night In Question.**

An actionable negligence claim requires proof of the following elements: (1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) injury; and (4) that the claimed breach was a proximate cause of the resulting injury. *Webstad v. Stortini*, 83 Wn. App. 857, 865, 924 P.2d 940 (1996). If the defendant owed the plaintiff no duty, the negligence action fails. *Folsom v. Burger King,* 135 Wn.2d 658, 671,

958 P.2d 301 (1998). Whether a duty exists is a question of law. *Osborn*, 157 Wn.2d at 22–23.

In Washington, a school district has the legal duty to protect students in its custody from foreseeable injury. The Court of Appeals has articulated the scope of this duty:

> When a pupil attends a public school, he or she is subject to the rules and discipline of the school, and the protective custody of the teachers is substituted for that of the parent. *McLeod v. Grant Cy. Sch. Dist. No. 128*, 42 Wn.2d 316, 319, 320, 255 P.2d 360 (1953); *Briscoe v. School Dist. No. 123*, 32 Wn.2d 353, 362, 201 P.2d 697 (1949). As a result, a duty is imposed by law on the school district to take certain precautions to protect the pupils in its custody from dangers reasonably to be anticipated. *McLeod*, 42 Wn.2d at 320, 255 P.2d 360; *Briscoe*, 32 Wn.2d at 362, 201 P.2d 697; *Scott v. Blanchet High School*, 50 Wn.App. at 44, 747 P.2d 1124. This duty is one of reasonable care, which is to say that the district, as it supervises the pupils within its custody, is required to exercise such care as a reasonably prudent person would exercise under the same or similar circumstances. *Briscoe*, 32 Wn.2d at 362, 201 P.2d 697. The basic idea is that a school district has the power to control the conduct of its students *while they are in school or engaged in school activities*, and with that power goes the responsibility of reasonable supervision.

*Peck v. Siau*, 65 Wn. App. 285, 292, 827 P.2d 1108, *rev. denied*, 120 Wn.2d 1005 (1992) (emphasis added); *Jachetta v. Warden Joint Consolidated School Dist.*, 142 Wn. App. 819, 824, 176 P.3d 545 (2008) ("A school district must protect students in its custody from reasonably anticipated dangers."). Washington law is clear that the duty a school

district owes to its students is limited to times when the students are in the "custody" of the school district and/or engaged in a school-related activity. This supervisory duty can extend to off-campus extra-curricular activities only if those activities are under the supervision of district employees such as athletic coaches, band directors, and debate coaches. *Travis v. Bohannon*, 128 Wn. App. 231, 239, 115 P.3d 342 (2005).[5] The liability of a school is not limited to situations involving school hours, property, or curricular activities. *Sherwood v. Moxee School Dist. No. 90,* 58 Wn.2d 351, 363 P.2d 138 (1961). Extra-curricular activities under the auspices of the school also fall within a school's duty to supervise. *Carabba v. Anacortes School Dist. No. 103,* 72 Wn.2d 939, 435 P.2d 936 (1967). At some point, however, the event is so distant in time and place that the responsibility for adequate supervision is with the parents rather than the school. *Coates v. Tacoma School Dist. No. 10,* 55 Wn.2d 392, 399, 347 P.2d 1093 (1960).

### 1. Ms. Rosenberg Was Not In the Care, Custody Or Control Of Soap Lake School District On The Night In Question.

"A duty is imposed by law on the school district to take certain precautions to protect the pupils in its custody from dangers reasonably to

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[5] Contrary to Ms. Anderson's arguments, *Travis* does not hold that the presence of a school employee at an event automatically makes the event a "school-sponsored" activity.

be anticipated." *Peck*, 65 Wn. App. at 292; see also, *McLeod*, 42 Wn.2d at 320, 255 P.2d 360; *Briscoe*, 32 Wn.2d at 362, 201 P.2d 697; *Scott v. Blanchet High School*, 50 Wn. App. at 44, 747 P.2d 1124." A student is not in the custody of a school district simply because a district employee is present. *Scott v. Blanchet,* 50 Wn. App. 37, 40-41 (district not liable when teacher had sexual relationship with a student and provided alcohol to the student when the activity occurred off of school property, not during school hours, and without the knowledge of the district). The *Scott* court held the teacher's conduct was "outside the scope of the school's duty." *Id.* at 43-44.

The Washington Supreme Court explained how to determine if the activity was within the school's authority in *Chappel v. Franklin Pierce School District 402*, 71 Wn.2d 17, 426 P.2d 471 (1967). There the Court stated:

> [the] nexus between an assertion of the school district's authority and potential tort liability springs from the exercise or assumption of control and supervision over the organization and its activities by appropriate agents of the school district.
>
> Where...the evidence reveals that educational and cultural values inhere in the normal activities of an extracurricular student body organization, and the school administration has assumed supervisory responsibility over the organization which, in turn, extends tacit approval of and faculty participation in planning and supervising . . . the school district cannot relieve itself of potential tort liability . . . .

*Id.* 71 Wn.2d at 24.

In *Scott v. Blanchet High School* the court rejected the argument the district was liable simply because a district employee was present when the intentional tort was committed. 50 Wn. App. 37, 747 P.2d 1124 (1987). In *Scott* a teacher provided alcohol to, and engaged in a sexual relationship with, a student. The drinking and sexual encounters occurred off-campus and not during school hours. The court concluded the school district could not be liable for the teacher's intentional conduct because it was "outside [the school's] responsibility." *Id.* at 45. As it applies to this case, *Scott* is notable because it rejects Ms. Anderson's argument that the District is liable simply because of Mr. Lukashevich's presence.

In the present case, Ms. Rosenberg was not in the care, custody, or control of the District on the night of the accident such that "tacit approval" by the District for the party can be assumed. *See, e.g., Chappel,* 71 Wn.2d at 24. Instead, Ms. Rosenberg was at a late night weekend party that was not on school property and not connected to any school activity. As discussed in greater depth below, Mr. Lukashevich's presence does not by itself mean the District "exercised or assum[ed] control and supervision." The factors enumerated in *Chappel* are not satisfied because the party was not part of an extracurricular student body organization, the District had not assumed supervisory responsibility over the party, or

provided tacit approval of the party or faculty participation of the same. There is no evidence the party was a basketball party or that the District knew or should have known the party was to occur. The fact that the party was at Mr. Lukashevich's residence does not by itself mean that Mr. Rosenberg was in the care, custody, or control of the District, just as the student in *Scott*, *supra*, was not in the custody of the school district when she had an off-campus romantic relationship with a teacher during non-school hours.

Ms. Anderson asserts the party was a " basketball party" to eat ice-cream in order to celebrate the on-court achievements of Ms. Rosenberg. *See, e.g., Appellant's Brief, p. 4 ("Apparently, Sheila was being rewarded by Coach Lukashevich for something she had done as a member of the basketball team").* Ms. Anderson's provides no evidence to support the bare assertion that the party was either a basketball party or a party to celebrate Ms. Rosenberg's achievements. Nor is there any evidence that any other members of the basketball team were present at the party. Indeed, Ms. Anderson's Complaint describes the party as one involving Mr. Lukashevich, Ms. Rosenberg, Mr. Turchik, "and two other minors." CP 6, ln. 15. Obviously, the presence of four students of mixed gender does not evidence a basketball team party.

Unable to establish that the party at Mr. Lukashevich's residence was a school sponsored activity or event, Ms. Anderson instead argues that the event was a "Coach Lukashevich sanctioned activity," *Appellant's Brief, p. 2, 13, 18*. This argument is unpersuasive, and in reality is simply an attempt to side-step the law that precludes the imposition of vicarious liability when an employee acts outside the course and scope of his employment and acts for purely personal purposes. If Ms. Anderson's theory was the law, every employer would be vicariously liable for every criminal or intentional act of its employees, under the theory that the event was "employee sanctioned."

Ms. Anderson's repeated but unsubstantiated assertions that the party was a basketball team party to eat ice cream and celebrate Ms. Rosenberg are not supported by any evidence in the record. As a matter of law, Ms. Rosenberg was not in the care, custody and control of the District on the night in question. For this reason, the District did not owe a duty to Ms. Rosenberg at the party.

**2. The "Party" At Mr. Lukashevich's House Was Not A School District Sponsored, Sanctioned Or Supervised Activity.**

While extra-curricular activities "under the auspices of the school also fall within a school's duty to supervise," *Carabba*, 72 Wn.2d at 957, "at some point . . the event is so distant in time and place that the

responsibility for adequate supervision is with the parents rather than the school." *Scott*, 50 Wn. App. at 44. Here, there is no evidence that Mr. Lukashevich's "party" was a school sponsored event or activity.

Ms. Anderson places great reliance on *Rhea v. Grandview School Dist. No. JT 116-200*, 39 Wn. App. 557, 694 P.2d 666 (Div. 3 1985), and claims it stands for certain positions that are simply not true. For example, Ms. Anderson incorrectly states that under *Rhea*, "[a] school district can be liable for non-school sponsored activities if a school employee is present at the activity or in the planning of the activity." *Appellant's Brief 19-20*. A review of the *Rhea* opinion reveals no such language. Since Ms. Anderson places reliance on *Rhea* it is necessary to look carefully at the facts, legal rules, and holding set forth by the *Rhea* court.

In *Rhea*, the plaintiff was appealing the "summary judgment dismissal of her survival and wrongful death action against the Grandview School District." *Rhea*, 39 Wn. App. at 558. On the day prior to graduation, the graduating class held a meeting on school property during which they planned a party that was to involve alcohol. *Id.* at 559. When the faculty advisor learned of the party she admonished the students and reported the planned party to the principal. *Id.* Nevertheless, the party occurred on June 4 and no school district employees were present. *Id.* The plaintiff's daughter attended the party, consumed alcohol, and was killed

in a car accident while driving later that night. *Id.* After the accident the plaintiff brought a negligence action against the school district. *Id.*

The first question the court asked was "whether the District breached a duty to [the student] and can be held liable for negligence." *Id.* at 559. The court answered this question by noting a school district can be liable in tort only when students are in its "custody" or when "schools *supervise* and *exercise control* over extracurricular activities." *Id.* 560 (emphasis added). The court then stated: "When a school district's defense is that the off-premise activity was ultra vires the question becomes whether a tort was committed within the scope of the school's authority." *Id.* at 560 (internal citations omitted). The court then cited *Chappel v. Franklin Pierce Sch. Dist. 402*, 71 Wn.2d 17, 426 P.2d 471 (1967), to determine if an activity was within the school's authority. The Court stated:

> Where...the evidence reveals that educational and cultural values inhere in the normal activities of an extracurricular student body organization, and the school administration has assumed supervisory responsibility over the organization which, in turn, extends tacit approval of and faculty participation in planning and supervising . . . the school district cannot relieve itself of potential tort liability . . . .

*Id.* at 561 (citing *Chappel*, 71 Wn.2d at 24). The *Rhea* court concluded that the district's non-action after being told of the party did not constitute "tacit approval and faculty participation in the activity." *Id.* at 561. In

addition, the party was not within the authority of the school because no district employee was at the party or participated in its planning. *Id.* In addition a faculty advisor expressed her disapproval of the student's planned party. *Id.*

In *Chappel* the Court considered the following ten factors to determine if an activity is within the authority of a school district:

1. Whether the district accepted, authorized and sponsored the club as an extracurricular student activity;
2. Whether there was a faculty advisor assigned to the activity who regularly attended and supervised its activities and aided in planning the same;
3. Whether the activity possessed educational and cultural value;
4. Whether the district assumed and asserted authority over the activity in question;
5. Whether the faculty advisor assigned to the extracurricular activity was advised of the school's regulatory measures or if such rules were indifferently enforced;
6. Whether the faculty advisor attended and supervised prior similar events;
7. Whether the location of the event was known and discussed at the planning meeting;
8. Whether physical injury was foreseeable
9. Whether the faculty advisor failed to attend and/or supervise the event
10. Whether the lack of appropriate supervision proximately caused the injuries complained of.

*Chappel*, 71 Wn. at 22. In *Chappel*, the Court found: the extracurricular activity at which the plaintiff was injured to be authorized and sponsored by the district; the club possessed educational and cultural value; the

district assumed and asserted authority over the activity in question; the activity was previously conducted under the supervision of the faculty advisor even though the faculty advisor failed to properly supervise the event in question; the risk of injury should have been foreseen; and the lack of supervision proximately caused the complained of injury. *Id.* at 22.

The facts of *Chappel* are drastically different than the present case. In the present case, there is no testimony or other evidence, even when viewed in the light most favorable to Ms. Anderson, that the party in question was part of a school extracurricular activity. Mr. Anderson's attempts to label the party as a basket party or a "coach sanctioned" event are without any evidentiary support. Further, there is no evidence that any other member of the women's basketball team was present. It is difficult to see how a party can be a basketball party when Ms. Rosenberg was the only member of the women's basketball team present. Nor is there any evidence the District approved, authorized, or supervised the party in question, let alone knew or should have known of its existence.

There is simply no evidence which remotely suggests that the District knew or should have known of the party or that the party was sponsored, sanctioned or supervised by the District. Contrary to Ms. Anderson's argument, and absent from the *Rhea* opinion (or any other

authority), is any rule indicating the mere presence of a school employee automatically makes the event come under the school's authority.

Ms. Anderson's reliance upon the testimony of Kevin Kemp to establish that the District sponsored, sanctioned or supervised the party is unpersuasive. Mr. Kemp was the principal and athletic director at Soap Lake High School at the time of the events in question. Mr. Kemp's testimony does not remotely indicate the party was sponsored, sanctioned, or supervised by the District. Further, no testimony provided by Mr. Kemp suggests the District knew Mr. Lukashevich was social with students outside of his employment. For example, in his deposition Mr. Kemp was asked if, aside from the instance in which Mr. Lukashevich took the basketball team to pizza, he recalled "any other instances where you head of Mr. Lukashevich spending time with students outside of school?" Mr. Kemp answered: "No." CP 407, lines 16-19.

Ms. Anderson offers the following three factual assertions which she illogically claims support the argument that Mr. Lukashevich was acting "in furtherance of his employment with Soap Lake" and that the party was sponsored by the District:

1. "Mr. Kemp's deposition, where he testified that Coach Lukshevich did not need authorization to conduct an off-campus basketball activity. CP 00405, Lines 16-20; CP 00406, Lines 1-16."

2. "Coach Lukashevich did not need to obtain authorization to invite members of the basketball team over to his house for ice cream. CP 00404, Lines 5-13."

3. "Coach Lukashevich took girls on the basketball team to a pizza parlor in Ephrata, and did not need any authorization to do that. CP 00405."

*Appellant's Brief, p. 9.*[6] None of these three assertions have any logical connection to the issue of whether Mr. Lukashevich was acting "in furtherance of his employment with Soap Lake" or whether the party was supervised by the District.

The first assertion, that Mr. Lukashevich did not need authorization to conduct an off-campus activity, does not have any bearing on whether the party in question was a basketball activity. Indeed, the assertion makes no reference to the party in question. The second assertion also has no bearing on whether the party in question was a basketball party. In addition, the second assertion is a misleading summary of Mr. Kemp's deposition testimony. Mr. Kemp was asked and responded as follows:

> Q: Would he [Mr. Lukashevich] have been authorized to treat them [the women's basketball team] to an ice cream social as part of a motivational program for performing well during basketball games and practices?
> A: He had the luxury to do that, yes.

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[6] To be clear, while these three assertions cite Mr. Kemp's deposition they are not actual quotations from the same. Instead, these are paraphrases or inferences based on Mr. Kemp's deposition.

> Q: Were there any policies in place in terms of where that could be located?
> A: Not to my knowledge.

CP 404, lines 9-16. This general and vague line of questioning lacks any specific reference or implication to the party in question. Therefore, this line of questioning and the second assertion do not provide any evidence that the party in question was "an ice cream social" or a basketball party.

The third assertion, that Mr. Lukashevich had taken the basketball team to pizza in Ephrata, also provides no evidence regarding whether the party in question was a basketball party. By its plain language, it only can be used to show Mr. Lukashevich had taken the team to pizza in Ephrata at some prior time. None of the above assertions provide any evidence regarding the party in question. Ms. Anderson's claim that these three assertions show that Mr. Lukashevich was acting "in furtherance of his employment with Soap Lake" during the party in question is logically false and does not create a genuine issue of any material fact.

Ms. Anderson next suggests that Ms. Rosenberg was coerced to be at the party: "Coach Lukashevich was the head coach, he made the rules and the girls followed them. There is nothing to indicate that Sheila or Pavel could say "no" to Coach Lukashevich without having repercussions on the basketball court." *Appellant's Brief, p. 9.* Ms. Anderson offers no

citation to any evidence which supports this claim and the reality is that her arguments are based on nothing more than speculation.

In sum, there is no evidence that the District sponsored, sanctioned or supervised the party. Further, there is no evidence the District knew or should have known the party was going to occur or that Mr. Lukashevich was social with students outside of his role as a District employee. Therefore, summary judgment was properly granted because the District did not owe a duty to Ms. Rosenberg.

### 3. The Activities Code Does Not Contractually Obligate/Impose A Duty Upon Soap Lake School District To Supervise Students During Non-School-Related Activities To Assure Compliance With The Activities Code.

The duty owed by school districts to students is generally "one of reasonable care, which is to say that the district, as it supervises the pupils within its custody, is required to exercise such care as a reasonably prudent person would exercise under the same or similar circumstances." *Peck*, 65 Wn. App. at 292. The case law cited by Ms. Anderson for the proposition that the District assumed a duty under the Activities Code which imposed a higher standard of care than tort law is unpersuasive.

The Activities Code is not a contract. Rather, it is a set of rules which students are to follow while participating in athletics. For example, in addition to prohibiting alcohol, the Activities Code requires participants

to practice good sportsmanship, sets forth how students will be transported to and from contests, requires class attendance, and requires students to maintain academic eligibility. CP 86-88. There is no language in the Activities Code stating, or even hinting, that the District has manifested an intent to create legal duties to assure student compliance with the same.

Ms. Anderson's argument that a code of conduct signed by students imposed on the District tort and/or contractual duties would lead to unwieldy results. For example, such a policy would require the District to prevent its Catholic students from using wine during communion or other religious ceremonies. Further, Ms. Anderson's argument would make the District liable for not doing enough to prevent students from skipping school, engaging in unsportsmanlike conduct during competition, or not maintaining academic eligibility. This result is obviously absurd, unworkable, and not supported by any legal authority.

There is no evidence to support the assertion that the Activities Code is a contract the breach of which is recoverable in tort or contract law. Summary judgment was therefore appropriately granted on this issue.

### C. Soap Lake School District Is Not Vicariously Liable For The Alleged Intentional/Criminal Acts Of Igor Lukashevich.

The single fact that a district employee is present during an alleged tort is insufficient to impose liability on the District when the employee

was allegedly engaged in an illegal activity clearly outside the scope of his employment. *Niece v. Elmview Group Home,* 79 Wn. App. 660, 664, 904 P.2d 784 (1995) ("When an employee's intentionally tortious or criminal acts are not in furtherance of the employer's business, the employer is *not liable as a matter of law* ...." (emphasis added)), *aff'd,* 131 Wn.2d 39, 929 P.2d 420 (1997). This is true even when it is the employment situation that creates the opportunity for the wrongful acts. *Snyder v. Medical Service Corp. of Eastern Washington*, 145 Wn.2d 233, 242, 35 P.3d 1158 (2001) (En Banc). "An employee's conduct will be outside the scope of employment if it 'is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.'" *Robel v. Roundup Corp.*, 148 Wn.2d 35, 53, 59 P.3d 611 (2002) (citing Restatement (Second) of Agency § 228(2) (1958)). "The proper inquiry is whether the employee was fulfilling his or her job functions at the time he or she engaged in the injurious conduct." *Id.*

To the extent Ms. Anderson asserts the District is vicariously liable for Mr. Lukashevich's alleged actions simply for being his employer, the argument is not supported by Washington law. In the present case, Mr. Lukashevich was not engaged in serving the District's interests at the Friday night party. Ms. Anderson asserts the party was coach-sanctioned merely because the party was at Mr. Lukashevich's house. As stated

above, there are no facts indicating the party was in any way related to basketball, that other members of the basketball team were present, or that the attendees were limited to the basketball team. Mr. Lukashevich was not "fulfilling his . . . job functions at the time he . . . engaged in the injurious conduct," as the Friday night party was different from the kind of conduct he was authorized to engage in as a District employee. Further, because the conduct was "far beyond the authorized time or space limits" of his employment and because the party did not serve the purpose of the employer, the District cannot be vicariously liable.

As noted above, Ms. Anderson does not once cite to the Clerk's Papers in her Assignment of Error E. Instead, Ms. Anderson simply makes unsupported assertions in support of holding the District vicariously liable, which requires the District to highlight the factual inaccuracies asserted by Ms. Anderson.

**a. False Assertion:** "The 'ice cream' party at Coach Lukashevich's house on the night of February 18, 2011 was directly related to his role as the coach of the girl's basketball [sic] team at Soap Lake and within the scope of his employment, *as testified to by the Athletic Director and Principal, Kevin Kemp*." *Appellant's Brief, p. 19*. (emphasis added).

**Truth:** In fact, Mr. Kemp was never asked, and never testified, that the party at Mr. Lukashevich's house was directly, or indirectly, related to his

role as the coach or within the scope of his employment. Nor is there evidence to support the assertion that Mr. Lukashevich was acting within the scope of employment or that the party was basketball related.

**b. False Assertion:** "The ice cream is the reason Sheila was at Coach Lukashevich's house. Coach Lukashevich invited his basketball player to his house as a treat for her role on the basketball team . . . ." *Appellant's Brief, p. 19; p. 20*

**Truth:** This assertion is unsupported by any citation to the record. There is not even any evidence that other female basketball players were at the party.[7]

**c. False Assertion:** "The existence of alcohol at the activity was known and its potential part in the activity discussed by Coach Lukashevich, Pavel and Sheila when the activity was planned." *Appellant's Brief, p. 22.*

**Truth:** This assertion is unsupported by the record and it is unclear *who knew* alcohol would be present. Further, Ms. Anderson provides no legal theory on how a conversation between Mr. Lukashevich, Mr. Turchik, and Ms. Rosenberg makes the District vicariously liable. There is no evidence, admissible or otherwise, which even remotely suggests the District knew

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[7] That Mr. Turchik may have been on the mens basketball team and was present does not help support the argument that the party was a basketball party since Mr. Lukashevich was the girls basketball coach and Mr. Turchik was a male.

or should have known of the existence of this party or that alcohol would be served at this party.

**d. False Assertion:** "Allowing underage students to socialize with an adult school district employee . . ." *Appellant's Brief, p. 22.*

**Truth:** Ms. Anderson implies that the District affirmatively allowed Ms. Rosenberg and Mr. Turchik to allegedly drink alcohol with Mr. Lukashevich. As Mr. Kemp testified, he was not aware Mr. Lukashevich socialized with students outside of school. CP 407, lines 16-19. There is no other evidence indicating any other District employee knew or should have known Mr. Lukashevich socialized with students.

Ms. Anderson puts forth no evidence or legal theory on which Mr. Lukashevich's intentional criminal conduct can be imputed to the District. The law of agency and tort is clear that the District cannot be vicariously liable under the facts of this case.

### D. The Record Is Devoid Of Any Evidence That Soap Lake School District Negligently Hired, Retained Or Supervised Igor Lukashevich. [8]

To establish a negligent hiring claim Ms. Anderson must show the

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[8] Appellant's Assignment of Error D, or any other Assignment of Error, does not state *negligent retention* as a claim on which the Trial Court erred in granting summary judgment to the District. However, the argument contained within Assignment of Error D lays out the elements of a negligent retention claim. The District therefore responds to the negligent retention argument.

District "knew or in the exercise of ordinary care should have known that [Mr. Lukashevich] was unfit for employment" as a basketball coach. *Peck v. Siau*, 65 Wn. App. 285, 289, 827 P.2d 1108 (Div. 2 1992). To establish a negligent retention claim Ms. Anderson must show the District knew or should have known of some matter during Mr. Lukashevich's employment that made him unfit to continue working for the District. *Id.* at 290-01. Similarly, to establish a claim for negligent supervision, Ms. Anderson must show the District knew, "or in the exercise of reasonable care" should have known that Mr. Lukashevich was "a risk to its students." *Id.* at 293. In *Peck* the court considered the same evidence for both the negligent retention an supervision claims. *Id.*.

There is no evidence in the record supporting the allegation that the District was negligent in hiring, supervising or retaining Mr. Lukashevich. Prior to being hired, Mr. Lukashevich was interviewed by Mr. Kemp, had played basketball for six years, and had been the Soap Lake JV assistant coach. CP 368-369, 371. While Mr. Lukashevich was employed as the basketball coach Mr. Kemp had no knowledge that Mr. Lukashevich spent time with students outside of school. CP 407. During Mr. Lukashevich's employment Mr. Kemp met with Mr. Lukashevich on repeated occasions and dropped in on practice . CP 383, 387. In sum, Mr. Kemp's testimony provides no evidence which

supports Ms. Anderson's claims of negligent hiring, supervision, and retention.

Instead of providing actual evidence to support her claim of negligent hiring, supervision and retention, Ms. Anderson recites a list of events Mr. Kemp could not remember from four years prior to his deposition. For example, Ms. Anderson argues: "Mr. Kemp could not provide any written policies on the hiring process, nor could he recall what any of the procedures and policies were." *Appellant's Brief, p. 15.* Ms. Anderson further argues: "Mr. Kemp could not recall the practice schedule or how often he would drop in." CP 485. Other examples of such arguments include:

- "Mr. Kemp was unfamiliar with the Employee Handbook for school year 2010/2011 . . ." *Appellant's Brief, p. 15.*

- "Mr. Kemp's sole method of enforcement of the drug and alcohol free workplace policy was to have a meeting with coaches at the beginning of the season where they discussed their goals and a 'positive culture.'" *Appellant's Brief, p. 16.*

- "There were no policies regarding investigation of alleged violations of the activities code." *Appellant's Brief, p. 16.*

- "Mr. Kemp had only three scheduled meetings with Mr. Lukashevich over the course of the season." *Appellant's Brief, p. 17.*

Putting aside the issue of whether or not Mr. Kemp's memory, or lack thereof, of events that occurred four years earlier is relevant, none of these foregoing arguments are relevant to the issue of whether the District knew or should have known that Mr. Lukashevich was "unfit" to coach, either at the time he was hired or at any time prior to the accident in question. Whether or not the District could have hired a more qualified or experienced coach is irrelevant to answering that question. In addition, in the absence of evidence that Mr. Lukashevich was "unfit" to coach (i.e., he had previously ever provided alcohol to students), evidence that additional supervision could have been provided is equally irrelevant.

The District is not liable simply because an employee, acting outside the course and scope of his employment, provided alcohol to a student. Rather Ms. Anderson must establish that the District either knew that Mr. Lukashevich was providing alcohol to minors, or should have known the same. Ms. Anderson failed to establish the same, requiring dismissal of her negligent hiring and supervision claim.

There is no evidence the District was negligent in hiring, retaining, or supervising Mr. Lukashevich. Ms. Anderson attempts to create a genuine issue of material fact by listing things Mr. Kemp does not remember and by implying the things Mr. Kemp did do were insufficient. Ms. Anderson provides no explanation how Mr. Kemp's memory or the

things Mr. Kemp did do constitute negligent hiring, supervision, or retention. Therefore, the trial court properly granted the District's motion for summary judgment on these issues.

### E. The Declarations Of Doug Phelps And Michelle Anderson Do Not Create Genuine Issues Of Material Fact Precluding Summary Judgment.

Summary judgment was granted on the basis that the District did not owe a duty to Ms. Rosenberg because the late-night and off-campus party was not sponsored, sanction or supervised by the District and because Ms. Rosenberg was not in the care, custody or control of the District. The Declaration of Michelle Anderson (CP 59-78), Declaration of Douglas Phelps (CP 79-156) and the Supplemental Declaration of Douglas Phelps (CP 360-478) do not provide any facts to the contrary. Instead, the declarations offer evidence that is irrelevant, unauthenticated, hearsay, or bare assertions which have no bearing on the legal issue of duty.

Affidavits or declarations opposing a summary judgment motion, whether offered by an attorney or other witness, are not sufficient to survive summary judgment when they attempt to authenticate documents for which they lack personal knowledge. *SentinelC3*, 181 Wn.2d at 14. Instead, any affidavits or declarations opposing summary judgment "must (1) be made on the affiant's personal knowledge, (2) be supported by facts admissible in evidence, and (3) show that the affiant is competent to

testify to the matters therein." *Id.* at 140. Further, the evidence offered through a declaration or affidavit must be admissible and not present unauthenticated documents or hearsay. *See, e.g., SentinelC3,* 181 Wn.2d at 141 (a trial court may not consider as evidence a "police report[ ] whose authenticity was sworn to be plaintiff's attorney but not by the officer who authored the report.").

Except in rare circumstances, an appellant court should not "review an issue, theory, argument, or claim of error not presented at the trial court level." *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 80, 322 P.3d 6 (Div. 1 2014); *Save-Way Drug, Inc. v. Standard Inv. Co.*, 5 Wn. App. 726, 727, 490 P.2d 1342 (Div. 1 1971)("Issues not raised in the hearing for summary judgment cannot be considered for the first time on appeal.").

### 1. The Declarations of Douglas Phelps Should Not be Considered

The *Declaration of Douglas Phelps in Support of Plaintiff's Response in Opposition to Defendant Soap Lake School District' Motion to Dismiss* (CP 79-156) (hereinafter "Phelps Declaration") should not be considered by this Court to the extent it provides hearsay and unauthenticated documents. Further, it should not be considered to the extent it submits materials not relied upon by Ms. Anderson's Response In

Opposition to Soap Lake's Motion for Summary Judgment (CP 179-186). Specifically, the Phelps Declaration contains thirteen exhibits (Exhibits A-M) but only relies on four exhibits, *A*, *F*, *L* and *M*.

Exhibit A is the Activities Code of Conduct which Mr. Phelps' declaration cannot properly authenticate because he does not have firsthand knowledge of the same. *SentinelC3*, 181 Wn.2d at 141 ("It is well settled that unauthenticated documents cannot be considered on a motion for summary judgment.").

Exhibit F is a copy of a police report which Mr. Phelps' declaration cannot properly authenticate. It is well established in Washington that an "attorney cannot testify to the authenticity or the contents of [a] police report . . . ." *Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 966 P.2d 921 (Div. 2 1998); *see also, SentinelC3*, 181 Wn.2d at 141 ("trial court could not consider police report whose authenticity was sworn to by plaintiff's attorney but not by officer who authored the report.").

Exhibit L purports to be a single page from the 2014-2015 Washington Interscholastic Activities Association Handbook. Similar to above, Mr. Phelps' declaration does not properly authenticate this document. Further, the event giving rise to this litigation occurred in 2011.

Even if this document were authenticated, the 2014-2015 version of this publication is simply irrelevant to events occurring in 2011.

Exhibit M is identified in the Phelps Declaration as pages 26-29 of Ruby Langley's deposition. However, in Ms. Anderson's Response to the District's Summary Judgment Motion "Exhibit M" is identified as "Rule 18.24.0 (WIAA Handbook)." CP 181, ln. 3. It is therefore unclear what Ms. Anderson and Mr. Phelps sought to rely upon. In any event, the Phelps Declaration highlights the pertinent part of Ms. Langley's deposition testimony as "Ruby Langely also testified that Sheila generally consumed her liquor by drinking mixed drinks or "taking shots."" CP 82, lines 4-6. This offered evidence lacks any relevance to the issue of whether the District owed Ms. Rosenberg a duty on the night in question.

Further, the Phelps Declaration provides testimony about what the various exhibits state. This is hearsay offered to prove the trust of the matter asserted. ER 801-802. Should this Court consider the various exhibits it should let the exhibits speak for the themselves and not rely on the Phelps Declaration to paraphrase their contents.

The remainder of the nine exhibits offered by the Phelps Declaration are given no legal or factual analysis in Ms. Anderson's Response to the District's Summary Judgment Motion. The District and this Court are left to speculate as to how Ms. Anderson believes them to

be relevant. In any event, these exhibits are generally hearsay and unauthenticated transcriptions of interviews. Therefore, the aforementioned exhibits should not be considered by this Court. However, even if the Court considers these documents they do not create a genuine dispute of material fact which supports the existence of a duty because they do not provide any evidence that the party was sponsored, sanctioned or supervised by the District or that Ms. Rosenberg was in the care, custody or control of the District.

The *Supplemental Declaration of Douglas Phelps in Support of Plaintiff's Response in Opposition to Defendant Soap Lake School District' Motion for Summary Judgment* (CP 360-478) (hereinafter "Phelps Supplemental Declaration") should not be considered by this Court to the extent it provides hearsay testimony regarding the content of Mr. Kemp's deposition. The District objected to the Phelps Supplemental Declaration during the summary judgment proceedings at the trial court. CP 482-490. Paragraphs 1-26 of the Phelps Supplemental Declaration attempts to paraphrase the content of Mr. Kemp's deposition and then attaches the pertinent pages of Mr. Kemp's deposition. Mr. Phelps' paraphrasing of Mr. Kemp's deposition is hearsay because it is an out of court statement offered to prove the truth of the matter asserted. ER 801-802. Hearsay evidence "does not suffice" to survive a summary judgment

motion. *SentinelC3*, 181 Wn.2d at 141. The deposition of Mr. Kemp can speak for itself. Therefore, Paragraphs 1-26 of the Phelps Supplemental Declaration should not be considered on appeal.

### 2. Michele Anderson's Declaration Should Not Be Considered

Ms. Anderson submitted a declaration titled "Declaration of Michele Anderson in Support of Plaintiff's Response in Opposition to Defendant Soap Lake School District's Motion to Dismiss." CP 59-78, (hereinafter "Anderson Declaration"). As the title indicates, it was submitted in opposition to the District's Motion to Dismiss (CP 36-37) which was a wholly separate and distinct proceeding from the District's Motion for Summary Judgment (CP 166-167). The Anderson Declaration was neither re-submitted by Ms. Anderson to oppose summary judgment or relied upon in her Response to the District's Summary Judgment Motion. (CP 179- 186). In other words, Mr. Anderson's Response in Opposition to the District's Motion for Summary Judgment does not cite, reference, mention, or otherwise rely on the Anderson Declaration. As far as the District was concerned, Ms. Anderson opted not to utilize the purported evidence offered in her declaration. This was a reasonable conclusion given the Anderson Declaration only contained unauthenticated text messages and speculation made without any personal

knowledge. The result is that the Anderson Declaration was not considered by the trial court when granting the District's Motion for Summary Judgment. CP 79.

Still, Ms. Anderson's Appeal Brief improperly relies on information contained within the Anderson Declaration despite not relying on the same during summary judgment proceedings below. *See, Appellant's Brief, p. 4*. For example, Ms. Anderson's Appeal Brief references utilizing an iPhone to establish a timeline and various Facebook and iPhone text messages. *Id., p. 4*. To be sure, the text messages attached to Ms. Anderson's Declaration are unauthenticated and hearsay.[9] Since Ms. Anderson's Declaration was not offered or relied upon by Ms. Anderson during summary judgment proceedings and because it contains unauthenticated hearsay, Ms. Anderson's Declaration should not be considered by this Court. *Saveway Drug*, 5 Wn. App. at 727 ("Issues not raised in the hearing for summary judgment cannot be considered for the first time on appeal.").

Even if this Court considers the text messages, they do not create a genuine dispute of fact about whether the District owed a duty to Ms. Rosenberg on the night in question. The text messages do not suggest

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[9] The Anderson Declaration provides no testimony or "screen shots" as to any information Facebook may have contained.

the party was a basketball party to reward Ms. Rosenberg for her basketball accomplishments. Rather, they demonstrate the purpose of going to Mr. Lukashevich's house was simply, as Mr. Turchik purportedly texted Ms. Rosenberg, "to get wasted." CP 70.

## V. CONCLUSION

The trial court properly granted the District's Motion for Summary Judgment because there are no facts which indicate Ms. Rosenberg was in the care, custody or control of the District at the off campus late-night weekend party which was not sponsored, sanctioned or supervised by the District. There is likewise no evidence that prior to the night in question, the District knew or should have known that Mr. Lukashevich was "unfit: to coach. Therefore, as a matter of law, the District did not owe Ms. Rosenberg a duty sounding in tort on the night in question. Further, the District did not owe any contractual or tort duties to Ms. Rosenberg pursuant to her agreement to abide by the Activities Code.

Ms. Anderson argues the District owed a duty of care simply because a District employee was present at the party even though there is no evidence the party was a school function and it is clear Mr. Lukashevich was acting outside the scope of his employment. This is not the law and cannot be the law because it would place impossible obligations and burdens on school districts and make them the insurers of

the safety of students simply because a district employee was present without consideration to other factors and legal analysis established within the law. *See, e.g., Travis*, 128 Wn. App. at 238 ("A school district in not an insurer of the safety of its pupils.").

Finally, Ms. Anderson's argument that the District owed Ms. Rosenberg a duty pursuant to Ms. Rosenberg's agreement to abide by the Activities Guide is without support in the law. Indeed, Ms. Anderson cites to no legal authority supporting this novel legal theory.

Therefore, the District respectfully requests this Court affirm the grant of summary judgment entered by the trial court.

DATED THIS 3RD day of June, 2016.

Respectfully Submitted,

EVANS, CRAVEN & LACKIE, P.S.

By: W.B. #48610
for: MICHAEL E. McFARLAND, JR., #23000
Attorney for Respondent, Soap Lake School District

**DECLARATION OF SERVICE:**

On the 3rd day of June, 2016, I caused the foregoing document described as Respondent's Response Brief to be served via Hand Delivery at the address listed below on all interested parties to this action as follows:

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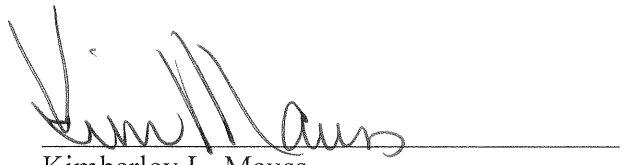

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