No. 1●2239-5

SUPREME C●URT
●F THE STATE ●F WASHINGT●N

No. 8413●-1-I

C●URT ●F APPEALS, DIVISI●N I
●F THE STATE ●F WASHINGT●N

R.K.,

Petitioner,

v.

UNITED STATES B●WLING C●NGRESS, et al.,

Respondents.

PETITI●N F●R REVIEW

LAW ●FFICES ●F
JAMES S. R●GERS

By: James S. Rogers
WSBA No. 5335
Heather M. Cover
WSBA No. 52146

1500 4th Avenue, Suite 500
Seattle, WA 98101-1632
(206) 621-8525

SMITH G●●DFRIEND, P.S.

By: Howard M. Goodfriend
WSBA No. 14355
Jonathan B. Collins
WSBA No. 48807

1619 8th Avenue North
Seattle, WA 98109
(206) 624-●974

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES AND REGULATIONS

OTHER AUTHORITIES

A. Identity of Petitioner.

The petitioner is R.K., appellant in the Court of Appeals and plaintiff in the trial court. As a teenager, R.K. was a member of the Young American Bowling Alliance (YABA), the predecessor to respondent, the United States Bowling Congress (USBC). Between 1996 and 2000, R.K. was sexually molested multiple times by Ty Treddenbarger, a YABA-certified bowling coach and President of YABA's state and local subsidiary affiliate organizations, the Washington State Young American's Bowling Alliance (WSYABA) and the Greater Seattle Young Americans Bowling Alliance (GSYABA). R.K. sued the USBC for negligently failing to protect him from Treddenbarger's sexual abuse, including incidents of abuse that occurred when R.K. was a minor participating in official YABA bowling events.

B. Court of Appeals Decision.

R.K. seeks review of the Court of Appeals' July 3, 2023 published decision affirming the trial court's summary judgment dismissal of R.K.'s claims on the ground that YABA lacked a protective special relationship with R.K. and other youth bowlers participating in YABA events. *R.K. v. United States Bowling Congress*, __ Wn. App. 2d __, 531 P.3d 901, 2023 WL 4311464 (2023), cited in this petition as "Op. ¶_." A copy of the published decision is attached as Appendix A.

C. Issue Presented for Review.

Does the Court of Appeals' holding that a national youth bowling organization had no duty as a matter of law to protect its youth members participating in nationally sanctioned events from sexual abuse by a certified coach, on the grounds that it lacked "day-to-day custody and control" over its local affiliates' activities, warrant this Court's review as in conflict with the Court's decision in

H.B.H. v. State, 192 Wn.2d 154, 429 P.3d 484 (2018), and because it presents a recurring issue of substantial public concern? RAP 13.4(b)(1), (4).

D. Statement of the Case.

As this case was dismissed on summary judgment, the facts and reasonable inferences must be viewed in the light most favorable to R.K.:

1. The Young American Bowling Alliance fostered and regulated youth bowling by supervising state and local affiliate organizations.

Founded in 1982, the Young American Bowling Alliance (YABA)—predecessor to respondent United States Bowling Congress (USBC) (CP 427-28)—was "the premier international youth membership organization in the sport of tenpin bowling." (CP 453) YABA provided education, mentorship, and guidance to young bowlers by operating coaching programs and tournaments across the country. (CP 452, 461-62, 464, 589)

YABA carried out its mission as the "mother umbrella" "national organization" (CP 501) of local subsidiary affiliate organizations including WSYABA, which had little independence and functionally operated as an extension of YABA; YABA required WSYABA and all local subsidiaries to carry the YABA name, to adopt mandatory constitutional and bylaw provisions, and retained the right to approve any bylaw provisions or amendments independently proposed by WSYABA. (CP 436, 438-42, 475-83, 492-97)

"[A]ll youth bowlers must be YABA members," and were required to join a local YABA affiliate and to pay YABA dues. (CP 454) A youth bowler seeking membership applied to YABA directly, and YABA automatically assigned the new member to a local affiliate organization based on geography. (CP 443-44, 454) YABA controlled member registration and established a cap for dues. (CP 443-44, 454)

YABA required that all bowling events and tournaments comply with YABA rules and policies. (CP 455-56) While local affiliates like WSYABA could organize and manage YABA-sponsored tournaments, affiliates were required to submit their planned tournament applications to YABA for approval and certification. (CP 499-500)

YABA also required local affiliates to conduct an annual state YABA championship tournament, certifying and recording the results, so that participants "knew that it was a certified tournament." (CP 500) YABA selected the awards and medals given to tournament finalists. (CP 589)

YABA also directly controlled certification of its coaches at three different levels, and in September 1997 YABA certified Ty Treddenbarger as a Junior Olympic Level I coach. (CP 449-50, 579, 586) YABA, not the local affiliates, maintained the rules and procedures for handling violations for misconduct by adult volunteers, YABA-certified coaches, or officers. YABA reserved to itself

authority to impose final discipline and to remove local officers. Local affiliates, including WSYABA, could only receive complaints, conduct hearings, and submit recommendations; WSYABA had no authority to impose discipline or remove officers on its own. (CP 446-48, 457-59, 494, 506-14)

By the late 1990's when Treddenbarger began abusing R.K., the threat of sexual abuse of minors by adult leaders in organizations serving youth was well known.[1] YABA enacted disciplinary rules directed to the risk of sex abuse, specifically prohibiting adult leaders from engaging in "[i]nappropriate behavior or unbecoming conduct such as . . . physical, sexual, or mental abuse." (CP 458-59)

---

[1] *See, e.g.*, Nack, William, "Every Parent's Nightmare The Child Molester Has Found a Home in the World of Youth Sports, Where as a coach he can gain the trust and loyalty of kids—and then prey on them", *Sports Illustrated*, (Sept. 13, 1999), available at: https://tinyurl.com/3tpz4tup (last visited on August 1, 2023).

In 2005, YABA merged with two other nonprofit bowling organizations to form USBC, the respondent here and defendant below. (CP 427-32) USBC assumed all of YABA's liabilities and obligations, including any existing legal claims. (CP 430)

2. Ty Treddenbarger used his leadership position within YABA to groom and sexually abuse young bowlers—including R.K.—for decades.

Beginning in 1983, Ty Treddenbarger served as an officer and youth bowling coach for YABA's state affiliate—WSYABA—and the local Greater Seattle YABA affiliate, GSYABA. (CP 488-89, 568) Treddenbarger's "enthusiasm and concern for the Youth Bowler was very contagious," and he achieved near-celebrity status in the bowling community. (CP 567-68) Beginning in 1995, he served as President of both WSYABA and GSYABA. (CP 526-27, 563, 567, 579) After the 2005 merger created USBC,

Treddenbarger continued to serve as the Director for both Washington and Greater Seattle USBC affiliates. (CP 579)

Treddenbarger's position as an officer of state and local YABA affiliates and his role as a YABA-certified bowling coach put him in close contact with many youth bowlers over the years. (CP 408-11, 536-38, 570-73, 575) Treddenbarger regularly traveled to YABA-sponsored tournaments with youth bowling participants, including with R.K.. (CP 415, 419-20) It was widely known among tournament and local YABA staff that Treddenbarger shared hotel rooms with the teen competitors. (CP 536-38) Many former YABA members, including R.K., later accused Treddenbarger of sexual abuse. (CP 292)

R.K. was 16 years old when he first met Treddenbarger in the fall of 1996. (CP 73, 408-09, 412) R.K. participated in many YABA-associated events, including a local Saturday bowling league that Treddenbarger supervised and coached. (CP 100, 560)

Between 1997 and 1999, R.K. was the Youth Leader President for WSYABA and the GSYABA, working directly with Treddenbarger to organize YABA events. (CP 410-11)

Treddenbarger "routinely" sexually abused R.K. when they traveled to youth bowling tournaments out of town. (CP 556) For example, in October 1997—when R.K. was 17 years old (CP 73)—Treddenbarger sexually abused R.K. in a hotel room they shared while attending the statewide YABA jamboree in Ellensburg. (CP 118-19, 542) Treddenbarger also abused R.K. in their hotel room when they traveled to another bowling tournament in Tumwater. (CP 119-21) R.K. was subjected to similar abuse when he traveled with Treddenbarger on YABA-related trips, including an August 1997 trip taken to Las Vegas to plan a YABA event (CP 783-84), and on planning trips to Ocean Shores and Millersylvania State Park near Olympia. (CP 113-16)

Treddenbarger continued his pattern of sexual misconduct after R.K. graduated from high school when he and R.K. went on a six-week trip to bowling events in multiple states during the summer of 1998. (CP 108-10)

It took another 20 years for Treddenbarger's sexual abuse of YABA youth bowlers to come to light. In March 2017, Treddenbarger was arrested and charged in King County with sexual abuse of a 17-year-old he had coached. (CP 242) Treddenbarger later pled guilty in both state and federal courts to multiple charges arising from his sexual abuse of four minor victims between 2011 and 2015. (CP 237-55)

3. The trial court dismissed R.K.'s lawsuit against USBC on summary judgment, and the Court of Appeals affirmed, holding that YABA owed R.K. no duty of care.

Five of Treddenbarger's known victims, including R.K., sued USBC for its decades-long failure to protect minor bowlers from Treddenbarger's abuse. (CP 292) R.K.

filed his complaint against USBC and its local affiliate organizations alleging USBC's negligent investigation, hiring, retention, and supervision of Treddenbarger on September 17, 2020. (CP 1-7)

USBC moved for summary judgment, arguing that it owed R.K. no duty of care and that the statute of limitations, RCW 4.16.340(1)(c), had expired on R.K.'s claims. (CP 12-50) The trial court agreed with R.K. that the statute of limitations did not bar his claims as a matter of law. (RP 35-36) However, it dismissed R.K.'s claims on the ground that YABA lacked any special relationship with the youth bowlers entrusted to its care, even during YABA-sponsored events. (CP 813-17)

On July 3, 2023, the Court of Appeals affirmed in a published decision, holding that R.K. could not establish a special relationship with YABA that would support a common law duty of protection because YABA lacked "day-to-day" control over statewide YABA events. (Op. ¶¶17-23)

E. Reasons for Granting Review.

This Court should review the Court of Appeals' published decision holding that YABA lacked any special relationship with R.K. because it "was not involved in the day-to-day operations" of statewide YABA events. (Op. ¶20) The Court of Appeals ignored the substantial responsibility that YABA, which carried out its mission to "provide an educational program" and "adult leadership and guidance for the youth of America" (CP 461) via its officers and certified coaches through its local affiliates, owed to the youth bowlers entrusted to its care. This Court, and others, have rejected the strict requirement of "custody and control" employed by the Court of Appeals. RAP 13.4(b)(1).

Moreover, the Court of Appeals' decision involves an issue of substantial public interest insofar as it limits recovery for sexual assault survivors—contrary to the

Legislature's express policy directive—further warranting this Court's review. RAP 13.4(b)(4).

1. The decision conflicts with *H.B.H.* by requiring a victim of child sexual abuse to prove that YABA controlled the day-to-day operations of statewide YABA events to establish a special relationship duty of protection.

This Court has repeatedly affirmed that a defendant has a duty to prevent third parties from intentionally harming another when "a special relationship exists between the defendant and . . . the foreseeable victim of the third party's conduct." *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 43, 929 P.2d 420 (1997) (quoted source omitted); *see also Restatement (Second) of Torts,* § 315(b). R.K. was a foreseeable victim with whom YABA had a special protective relationship.

In *H.B.H. v. State*, 192 Wn.2d 154, 180-81, ¶45, 429 P.3d 484 (2018), this Court held that DSHS had a special relationship with dependent children placed in foster

homes, rejecting the State's contention that no duty of protection could exist because the foster parents had physical custody and controlled the children's care and supervision. The Court reasoned that "the foundation of a special relationship" giving rise to a duty of protection is "not physical custody" but "entrustment for the protection of a vulnerable victim." 192 Wn.2d at 173, ¶32. For example, "private persons entrust the care of children in their custody to schools, camps, and day care centers on a daily basis," and "[t]hese entities in turn delegate responsibilities to teachers, counselors, and caregivers," *H.B.H.*, 192 Wn.2d at 180, ¶44, just as YABA delegated responsibilities to its local subsidiary affiliates, officers, and coaches.

This Court should grant review because the Court of Appeals' published decision conflicts with *H.B.H.,* and engenders confusion regarding the responsibility of youth sports organizations to proactively protect minors from the

foreseeable harm of sexual exploitation by adults whom such organizations place in positions of trust and leadership. Here, YABA assumed responsibility for coach training and certification, proclaiming that "[c]oaching is a very important part" of the "YABA Mission." (CP 589) YABA also controlled the policies and procedures governing supervision of youth bowling events that it legitimized by certifying with its trusted name, including the statewide YABA event where Treddenbarger—then President of WYSABA and a YABA-certified coach—sexually molested R.K. (Op. ¶20)

In holding that R.K. could not establish a special relationship with YABA because it "was not involved in the day-to-day operations of WSYABA," (Op. ¶20), the Court of Appeals relied on *N.K. v. Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 307 P.3d 730, *rev. denied*, 179 Wn.2d 1005 (2013). In *N.K.*, Division One held that the Boy Scouts of

America had no duty to protect the plaintiff from a local volunteer's abuse because "an institutional defendant is not in a position to provide protection from physical danger" when it lacks "on-the-ground control of day-to-day operations." 175 Wn. App. at 535, ¶37.

But five years later, in *H.B.H.,* this Court undermined the foundation of Division One's holding that physical custody is a predicate to a special relationship. *Compare N.K.*, 175 Wn. App. at 535, ¶37 ("NK does not cite authority, and we have found none, that has allowed a case to proceed on the theory of a protective relationship in the absence of a custodial relationship between the organization and the victim"), ***with H.B.H.***, 192 Wn.2d at 173, ¶31 ("[W]e have explained that it is not physical custody that creates the special relationship."). *See also N.L. v. Bethel Sch. Dist.,* 186 Wn.2d 422, 434, ¶19, 378 P.3d 162 (2016) ("[I]t does not follow [from *N.K.*] that the victim must be in the

school's custody at the time of the injury for the duty to have existed.").

"[W]hether a relationship is deemed special is a conclusion based on reasons of principle or policy." *Restatement (Third) of Torts*, § 40, comment h. *Accord, Hertog ex. rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 284, 979 P.2d 400 (1999). Here, however, the Court of Appeals did not consider the particular policy considerations relevant to imposing on a youth sports organization a duty to protect one of its members from sexual abuse. By focusing on the fact that that YABA "did not determine which coaches had custody or supervised children" (Op. ¶22), the Court of Appeals erroneously emphasized ministerial or physical control—imposing a test more suitable to vicarious liability or the distinct duty to control the perpetrator of intentional harm, than it is relevant to a special relationship duty of protection.

The ability to control an individual who might engage in intentional misconduct controls whether the organization has a "special relationship" with the intentional tortfeasor. By contrast, the organization's duty to protect its youth participants—at issue here—is based on different considerations, involving "entrustment and vulnerability." *H.B.H.*, 192 Wn.2d at 172, ¶29 ("entrustment and vulnerability . . . are at the heart of the special protective relationship"); *compare C.J.C. v. Corp. of Cath. Bishop of Yakima*, 138 Wn. 2d 699, 721, 985 P.2d 262 (1999) ("A special relationship between the defendant and the intentional tortfeasor may give rise to a duty to control the tortfeasor's conduct for the benefit of third persons.").

The Court of Appeals confused these two types of "special relationship" duties. Rather than focusing on "day-to-day" control, the Court of Appeals should have looked to the reasons parents entrust vulnerable children to a youth

sports organization, and the organization's ability to minimize the foreseeable risk that an adult given a position of authority would engage in sexual abuse. Parents entrusted their children to YABA's officers and coaches, and YABA was the best position to prevent foreseeable misconduct. These considerations, rather than "day-to-day" control establish the "special relationship" that, as a matter of policy, principle and common sense, imposes on YABA a common law duty to protect its youth bowling participants.

R.K.'s abuse occurred during bowling tournaments sponsored by YABA and its local affiliate, WSYABA, like the October 1997 statewide bowling jamboree in Ellensburg, attended by a national YABA representative. The Court of Appeals' emphasis on the fact that WSYABA "ran the jamboree" (Op. ¶20), ignores that this was a YABA event, as R.K.'s identity badge reflects. (CP 542) Youth bowlers participated in the WSYABA statewide jamboree

because YABA certified the results and ranked the competitors.

WSYABA had no meaningful independence, operating under mandatory constitutional provisions and bylaws that YABA imposed on all its local subsidiary affiliates. Events like the statewide jamboree had to comply with YABA policies, and WSYABA—like any local YABA subsidiary affiliate—had to submit an application for the statewide event for YABA's approval. The very purpose of YABA's control over YABA's state affiliates and the certification process was to legitimize those events with YABA's imprimatur and thereby assure participants and their parents that each event was reliably operated by YABA. (CP 500)

YABA could have, and should have, taken a proactive approach to prevent sexual abuse, such as by prohibiting Treddenbarger and other coaches and adult volunteers from sharing a hotel room with youth bowlers, a practice

that was common knowledge among WSYABA's leadership. (CP 536) Treddenbarger was in a position to groom and sexually abuse youth bowlers entrusted to his care solely by virtue of his role as both a YABA-certified bowling coach and President of YABA's local subsidiary affiliates, WSYABA and GSYABA. YABA's bowling events—organized and operated under YABA's policies, overseen by national YABA officers, and certified by YABA—provided Treddenbarger the opportunity to commit his crimes.

The Court of Appeals erred in failing to recognize that these factors, and not the day-to-day operation of WSYABA and other local affiliates, establish YABA's special relationship with the youth participants entrusted to its officers' care at the events it organized.

The California Court of Appeals rejected the *N.K.'s* emphasis on organizational control for this very reason in *Doe v. U.S. Youth Soccer Ass'n, Inc.,* 8 Cal App. 5th 1118, 214 Cal.Rptr.3d 552 (2017). The *Doe* court held that a

national youth soccer organization owed a special relationship duty to a minor plaintiff who was sexually abused by their soccer coach. The court stressed that "defendants, through the coaches, acted as 'quasi-parents' by assuming responsibility for the safety of the players whose parents [are] not present" during "overnight soccer activities." 8 Cal. App. 5th at 1130-31. This is analogous to the basis for a special relationship with R.K. in the instant case.

The *Doe* court further distinguished *N.K.* because—like R.K.—the "plaintiff was a member of US Youth [Soccer Association] and played on a . . . team, which was the local affiliate of US Youth [and] was required to comply with the policies and rules of US Youth." Because "US Youth established the standards under which coaches were hired, US Youth determined which individuals . . . had custody and supervision of children involved in its programs." *Doe*, 8 Cal. App. 5th at 1131; *see also Brown v. USA Taekwondo*,

40 Cal. App. 5th 1077, 1094-1101, 253 Cal.Rptr.3d 708 (2019) (national youth taekwondo organization owed a special relationship duty to plaintiffs who were sexually abused by their taekwondo coach "in his hotel and dormitory rooms during overnight trips to taekwondo competitions."), *aff'd*, 11 Cal.5th 204, 276 Cal.Rptr.3d 434 (2021).

The Court of Appeals attempted to distinguish this persuasive authority because "YABA did not hire coaches and did not determine which coaches had custody or supervised children involved in WSYABA events, even when they were YABA-certified." (Op. ¶23; *see also* ¶3: "YABA was not involved in youth bowlers' decisions of whether to work with a coach and who to work with.") But this is a meaningless distinction for purposes of analyzing the ability of a national organization to prevent the foreseeable risk of sexual abuse of its youth participants.

For one, YABA did "determine" which coaches its youth members would work with. When youth participants applied for membership to YABA, YABA required new members to join a local subsidiary affiliate organization and *automatically* assigned them based on geography. Thus, when R.K. applied to be a YABA member, he was automatically assigned by YABA to WSYABA and GSYABA, where Treddenbarger served as President and a YABA-certified coach. This is no different than the plaintiff in *Doe*, who joined her local youth soccer program where the tortfeasor served as one of several coaches. *Doe*, 8 Cal. App. 5th at 1124-25.

More importantly, by certifying its coaches, YABA determined which individuals would supervise the youth bowlers participating in its events. Indeed, the purpose of YABA's coach certification program was to train individuals to provide YABA-certified bowling instruction to youth members. (CP 502)

Encouraging these coach-athlete relationships was central to YABA's goal; the "YABA Mission" statement emphasizes that "[c]oaching is a very important part of YABA" because it is "committed to providing education, coaching, and organized development of youth participation in the sport of bowling." (CP 589) YABA even bestowed special awards to youth members who manage to best their own bowling coach, emblazoned with YABA's logo and the words "I BEAT MY COACH." (CP 558) That YABA "did not determine" (Op. ¶23) which *specific* coaches had custody for *specific* youth members is irrelevant to the special relationship YABA fostered with them.

The Court of Appeals' holding substantially narrows the range of reasonably foreseeable harms from which defendants owe those in their care a duty of protection. A specific harm—for example, from a specific YABA coach—need not be foreseeable; only the general field of danger giving rise to a *potential* harm need be foreseeable to

support a duty of protection. *See McLeod v. Grant Cnty. Sch. Dist. No. 128*, 42 Wn.2d 316, 320, 255 P.2d 360 (1953) ("[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."). Thus, a sexual assault is "not legally unforeseeable as long as the possibility of sexual assaults . . . was within the general field of danger." *Niece*, 131 Wn.2d at 50. And there can be little debate over the risk of sexual abuse by adult leaders of youth organizations in 1996.

YABA's central mission was to provide education, coaching, and "adult leadership and guidance" to young bowlers. (CP 461-62, 589) It chose to carry out this mission through the certified coaches and officers administering YABA programs and running YABA events. *See H.B.H.*, 192 Wn.2d at 154, ¶44 (A special relationship duty of protection applies to "schools, camps, and day care centers" that "delegate responsibilities to teachers, counselors, and

caregivers" for children entrusted to their care). While YABA may not have required specific youth bowlers to work with specific coaches, it was obviously foreseeable—and, in fact, intended—that YABA-certified coaches and YABA officers would supervise youth participants attending YABA programs and events, and thus coach misconduct was a reasonably foreseeable harm within the general field of potential risks. Indeed, YABA anticipated that risk, promulgating disciplinary rules that prohibited adult leaders from engaging in "inappropriate behavior or unbecoming conduct such as . . . physical, sexual, or mental abuse." (CP 458-59)

The Court of Appeals' decision holding that YABA lacked a special relationship with the youth bowlers entrusted to its care restricts the zone of foreseeability this Court's precedents require, defies this Court's unambiguous rejection of a physical custody and control test, and misapplies *N.K.* by ignoring the substantial

relationship YABA fostered with youth participants through its coaches, officers, and the local affiliates it controlled. This Court should accept review and reinstate R.K.'s claim against USBC. RAP 13.4(b)(1).

2. The Court of Appeals' published decision is contrary to this state's policy to give survivors of sexual abuse suffered as minors an expansive remedy.

Providing justice and remedies for sexual assault survivors—particularly those who were abused as minors—is an issue of public importance in our state. This Court should grant review because the Court of Appeals' published decision deprives these survivors of a remedy that the Legislature has expanded, not narrowed, allowing victims suffering juvenile sexual abuse to sue even if the abuse occurred decades ago.

In 1991, the Legislature proclaimed that "[c]hildhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens," and that victims

may experience severe emotional harm "many years after the abuse occurs." Laws of 1991, ch. 212 § 2. The Legislature clarified that the "discovery rule" allowed victims of child sexual abuse to timely sue within three years of discovery of the "last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation." RCW 4.16.340(2); *see C.J.C.*, 138 Wn.2d 699, 712, 985 P.2d 262 (1999) (legislature intended "to provide a broad avenue of redress for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitation").

The Washington Legislature, like those in other states, has expanded the remedy for victims to sue organizations for failure to prevent abuse of children long

after the deaths of individual perpetrators.[2] Yet the Court of Appeals in this case adhered to an archaic standard of "custody and control," that allowed YABA to turn a blind eye to abuse occurring in plain sight. This Court should grant review and reverse to preserve the remedy the Legislature envisioned. *See* RAP 13.4(b)(4).

F. Conclusion.

This Court should accept review to address whether USBC/YABA had a special relationship with R.K. and other youth bowlers entrusted to its care. In holding that no special relationship existed, the Court of Appeals erroneously required physical custody and control, in conflict with this Court's decision in *H.B.H.*, and misapplying *N.K.* The Court must correct this error and

---

[2] *See* Chen, David W., "Coaching Legends Were Accused of Abuse. Will Someone Finally Pay?", *New York Times* (Dec. 17, 2019), available at https://tinyurl.com/4rkfayt7 (last visited on August 1, 2023).

provide guidance on a prominent issue of public importance.

I certify that this brief is in 14-point Georgia font and contains 4,337 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 1st day of August, 2023.

LAW OFFICES OF JAMES S. ROGERS

By: */s/ James S. Rogers*
James S. Rogers
WSBA No. 5335
Heather M. Cover
WSBA No. 52146

SMITH GOODFRIEND, P.S.

By: */s/ Howard Goodfriend*
Howard M. Goodfriend
WSBA No. 14355
Jonathan V. Collins
WSBA No. 48807

Attorneys for Petitioner

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 1, 2023, I arranged for service of the foregoing Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-File
James S. Rogers Heather M. Cover Michelle Hyer Law Offices of James S. Rogers 1500 Fourth Avenue, Suite 500 Seattle, WA 98101-1632 JSR@JSRogersLaw.com heather@jsrogerslaw.com michelle@jsrogerslaw.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Mirén C. First Keller Rohrback LLP 1201 Third Ave., Suite 3200 Seattle, WA 98101 mfirst@kellerrohrback.com pkilner@kellerrohrback.com tuy@kellerrohrback.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail

Jeffrey A. O. Freimund Freimund Tardif, PLLC 711 Capitol Way S Ste 602 Olympia, WA 98501-1236 jeff@ftlawoffice.com natasha@ftlawoffice.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail
Northwest Challenge League 2141 S 285th Street Federal Way, WA 98003 3319	____ Facsimile ____ Messenger _X_ U.S. Mail ____ E-Mail

DATED at Everett, Washington this 1st day of August, 2023.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

531 P.3d 901
Court of Appeals of Washington, Division 1.

R.K., Appellant,
v.
UNITED STATES BOWLING CONGRESS, a Texas organization, Respondent, Washington State United States Bowling Congress, a Washington corporation; Greater Seattle United States Bowling Congress, a Washington corporation; Greater Seattle United States Bowling Congress Youth, a Washington Non-Profit Corporation; Northwest Challenge League f/k/a, Puget Sound Travel League, a Washington Corporation; Young American Bowling Alliance, a nonstock Wisconsin Corporation; Washington State Young American Bowling Alliance, a Washington Non-Profit Corporation, Defendants.

No. 84130-1-I
|
Filed July 3, 2023

Synopsis

Background: Youth bowling tournament participant brought action against competitive youth bowling associations alleging negligence for failing to protect him from his coach's sexual abuse when he was 17 years old. The Superior Court, King County, Brian M. McDonald, J., granted summary judgment to associations. Participant appealed.

Holdings: The Court of Appeals, Coburn, J., held that:

[1] association did not have duty to protect participant under protective relationship theory;

[2] associations did not have special relationship with coach that created duty to protect participant; and

[3] associations were not vicariously liable for coach's alleged sexual abuse.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (20)

[1] Appeal and Error De novo review

Court of Appeals reviews summary judgments de novo.

[2] Summary Judgment In conjunction with right to judgment as matter of law

Summary judgment is appropriate 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. Wash. Super. Ct. Civ. R. 56(c).

[3] Summary Judgment Favoring nonmovant; disfavoring movant

A court must construe all facts and inferences in favor of the nonmoving party on motion for summary judgment. Wash. Super. Ct. Civ. R. 56(c).

[4] Summary Judgment Genuine Issue or Dispute as to Material Fact

A genuine issue of material fact exists for summary judgment purposes when reasonable minds could differ on the facts controlling the outcome of the litigation. Wash. Super. Ct. Civ. R. 56(c).

[5] Appeal and Error Negligence in general

Existence of a legal duty is a question of law reviewed de novo.

[6] Negligence Protection against acts of third persons

Generally, there is no duty to prevent a third party from intentionally harming another unless a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party's conduct.

[7] **Negligence** ⬐ Protection against acts of third persons

A special relationship, and the accompanying duty to protect from harm by a third party arises where (1) the defendant has a special relationship with the tortfeasor that imposes a duty to control that person's conduct or (2) the defendant has a special relationship with the victim that gives the victim a right to protection.

[8] **Negligence** ⬐ Protection against acts of third persons

Under Washington case law, entrustment for the protection of a vulnerable victim is the foundation of a special protective relationship giving rise to duty to protect from harm by a third party.

[9] **Negligence** ⬐ Voluntarily Assumed Duty

Special tort duties are based on the liable party's assumption of responsibility for the safety of another.

[10] **Negligence** ⬐ Protection against acts of third persons

Duty to protect arising from a protective relationship is limited by the concept of foreseeability.

[11] **Negligence** ⬐ Protection against acts of third persons

To satisfy foreseeability concept for duty to protect from harm by a third party, it is not necessary to show that the defendant knew of the particularized risk of criminal conduct, but that a reasonable person in the defendant's position would be aware of the general field of danger posing the risk to someone in the position of the plaintiff.

[12] **Public Amusement and Entertainment** ⬐ Bowling

Competitive youth bowling association did not assume responsibility for safety of 17-year-old tournament participant and thus did not have custodial relationship that gave rise to duty to protect him from his coach's alleged sexual abuse under protective relationship theory of liability for actions of a third party, where association did not hire coaches and did not determine which coaches had custody or supervised children involved in association's events, even when coaches were certified by association.

[13] **Negligence** ⬐ Protection against acts of third persons

To create a duty to protect from conduct of a third party based on special relationship with the third party, there must be the ability for the defendant to control the conduct of the third party and proof that the defendant was aware of the perpetrator's dangerous propensities.

[14] **Public Amusement and Entertainment** ⬐ Bowling

Competitive youth bowling associations did not have necessary knowledge of bowling coach's dangerous propensities to have special relationship with coach in order to create duty to protect 17-year-old tournament participant from his coach's alleged sexual abuse, where coach was not required to register with associations nor was participant required to have a coach associated with the associations in order to compete in tournaments, and there were no known complaints made about coach to associations, neither participant nor his parents reported the abuse to associations, and participant's parents did not take legal action or report the abuse to authorities.

[15] **Torts** ⬐ Vicarious liability

Vicarious liability is a different theory from duty arising from a special relationship.

[16] **Trial** Withdrawal of particular counts or issues

A party is permitted to withdraw an issue from the trial court's consideration through its attorney.

[17] **Appeal and Error** Necessity of presentation in general

Purpose of rule that appellate courts only consider issues that were raised before the trial court is to allow the trial court to correct any error called to its attention, avoiding unnecessary appeals and retrials, encouraging the efficient use of judicial resources. Wash. R. App. P. 2.5(a).

[18] **Labor and Employment** Other particular intentional acts

Competitive youth bowling associations were not vicariously liable for bowling coach's alleged sexual abuse of 17-year-old tournament participant, because employers were not strictly liable for an employee's intentional sexual misconduct.

[19] **Labor and Employment** Nature of liability in general

Vicarious liability, otherwise known as the doctrine of respondeat superior, imposes liability on an employer for the torts of an employee who is acting on the employer's behalf.

[20] **Labor and Employment** Departures in general

Where an employee steps aside from the employer's purposes in order to pursue a personal objective of the employee, the employer is not vicariously liable.

***903** Honorable Brian Mcdonald, Judge

Attorneys and Law Firms

Howard Mark Goodfriend, Catherine Wright Smith, Jonathan Collins, Smith Goodfriend PS 1619 8th Ave. N. Seattle, WA, 98109-3007, James Steven Rogers, Heather Cover, The Law Offices of James S. Rogers, 1500 4th Ave. Ste. 500, Seattle, WA, 98101-1632, for Appellant.

Miren Cybele First, Keller Rohrback. LLP, 1201 3rd Ave. Ste. 3200 Seattle, WA, 98101-3052, Jeffrey A.O. Freimund, Simmons Sweeney Freimund Smith Tardif PL, 711 Capitol Way S. Ste. 602, Olympia, WA, 98501-1236, for Respondent.

PUBLISHED OPINION

Coburn, J.

***904** ¶1 R.K. alleges he was sexually abused by his bowling coach, Ty Treddenbarger between 1997, when R.K. was 17, and 1999. At that time, Treddenbarger was president of the Washington State Young American Bowling Alliance (WS-YABA), the state subsidiary of the national association Young American Bowling Alliance (YABA). In 2005, YABA merged with other bowling organizations to form the United States Bowling Congress (USBC), which also absorbed YABA's liabilities. WS-YABA dissolved in 2010. R.K. did not report the abuse to authorities until 2017. In 2019 Treddenbarger pleaded guilty to child molestation charges related to abusing other youth bowlers between 2011 and 2013. In 2020 R.K. filed suit against WS-YABA, YABA and USBC, among other entities, alleging negligence for failure to protect him from harm. The trial court granted USBC's summary judgment motion because USBC did not have a special relationship with R.K. or Treddenbarger that established a duty to R.K. We affirm.

FACTS

¶2 For many years Ty Treddenbarger was a leader in the youth bowling community in the State of Washington. He had been an officer of WS-YABA since its inception in 1983 and became president of the organization in 1998. He was one of the founders of the Puget Sound Travel League, a league where young bowlers traveled to different bowling sites in the state to compete.

¶3 WS-YABA was a subsidiary of YABA, an organization that sought to promote youth bowling and recreational competition. YABA mainly supported independent state and local bowling organizations by providing standardized rules, equipment certification requirements, and awards for youth bowlers who competed in state and local competitions. YABA did not run state or local tournaments. Besides offering introductory coaching courses geared toward volunteers, YABA was not involved in hiring, directing, tracking or monitoring coaches. YABA was not involved in youth bowlers' decisions of whether to work with a coach and who to work with.

¶4 WS-YABA created its own programs and tournaments and chose its own committees to organize those tournaments. WS-YABA could request leagues and tournaments be YABA sanctioned. WS-YABA had its own board of directors, separate and apart from YABA. Local and state organizations also chose their own volunteers according to their own procedures with no involvement from YABA. As a subsidiary of YABA, WS-YABA was required to conduct an annual state YABA championship tournament.

¶5 In 2005, YABA merged with two other national bowling associations to create the USBC. USBC assumed all liabilities of the merging corporations, including YABA. WSYABA, although a subsidiary of YABA, was not part of the merger. WS-YABA was administratively dissolved by the Washington Secretary of State in 2010 for failing to file an annual list of officers.

¶6 In March 2017 Treddenbarger was arrested for sexually abusing and exploiting children who participated in youth bowling. Upon notification of the arrest, USBC sent a letter the same day to Treddenbarger notifying him that he was suspended from all roles that might place him in contact with a child. Up until that day, USBC was unaware of any complaints made to it, YABA, or WS-YABA about Treddenbarger. Treddenbarger ultimately pleaded guilty to four federal charges related to the production and possession of child pornography, and two state charges of child molestation.

¶7 After learning of Treddenbarger's arrest, R.K. contacted the King County Sheriff's Office and reported that he, too, had been abused as a teen by Treddenbarger in the late '90s. Until this point, R.K. had previously tried to suppress or forget his experience, going so far as to move across the country to attend college in 1999, destroying any pictures he had with Treddenbarger and all of his bowling memorabilia. He had only disclosed the abuse to his parents after Treddenbarger contacted him asking to meet when R.K. returned home for the summer in 2000. R.K. responded with an email summarizing the abuse he had been subjected to by ***905** Treddenbarger and threatened to notify authorities if Treddenbarger contacted him again. The two had no further communications. R.K. later disclosed the abuse to his sister and a few friends between 2006 and 2017.

¶8 R.K. first met Treddenbarger in the fall of 1996, when R.K. was 16 years old. R.K. became more involved in bowling, and Treddenbarger, then president of WSYABA, grew to become R.K.'s mentor and coach. R.K. started a bowling club at his high school and joined the Puget Sound Travel League. R.K. eventually became president of WS-YABA's youth leaders. R.K. and Treddenbarger worked closely to plan, organize, and travel to bowling tournaments and other WS-YABA events. Treddenbarger first started sexually abusing R.K. several months after the two met. [1] R.K. turned 18 in December 1997, during his senior year of high school.

¶9 According to R.K., the two would travel for bowling events and Treddenbarger would molest R.K. while R.K. slept in their shared hotel room. He woke up on multiple occasions to Treddenbarger fondling his genitals above and under R.K.'s clothing. R.K. also remembered Treddenbarger spying on him while R.K. showered, looking through cracks in bathroom and shower doors. The abuse continued throughout the school year. While R.K. remembered being abused many times both before and after turning 18, he had a hard time remembering specific dates. He did recall two specific trips in 1997 before he turned 18. In the summer of 1997, he and Treddenbarger went to Las Vegas to scout a potential venue, the Orleans Casino, for the Junior World Team Challenge. R.K found a photograph from that trip taken of the marquee outside the Orleans Casino. [2] The other 1997 event where he remembered being sexually abused in a shared hotel room was at the WS-YABA bowling jamboree in Ellensburg.

¶10 When R.K. graduated high school in 1998, the two took a six-week bowling trip. They visited bowling alleys Treddenbarger considered purchasing, planned competitions, and attended a national bowling convention in Atlanta. After R.K. moved across the country to attend college in 1999, the two had minimal contact.

¶11 In 2020, R.K. filed this lawsuit against USBC, YABA, WS-YABA, and other organizational defendants [3] alleging

negligence for failing to protect him from Treddenbarger's abuse.

¶12 USBC moved for summary judgment arguing that it was not liable for its predecessor's subsidiary's conduct, that it did not owe a duty of care to R.K., and that the suit was barred under the statute of limitations and that the tolling provision expanding the statute of limitations for claims arising from childhood sexual abuse did not apply. The trial court ruled that there was a genuine issue of material fact as to whether the statute of limitations properly tolled under RCW 4.16.340(1)(c). Nonetheless, the trial court granted the summary judgment motion to dismiss[4] because USBC did not owe a duty to R.K.

¶13 R.K. appeals.

DISCUSSION

Standard of Review

[1] **[2]** **[3]** **[4]** ¶14 We review summary judgments de novo. Strauss v. Premera Blue Cross, 194 Wash.2d 296, 300, 449 P.3d 640 (2019). Summary judgment is appropriate 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.' " Id. (alteration in original) (internal quotation marks omitted) ***906** (quoting Ranger Ins. Co. v. Pierce County, 164 Wash.2d 545, 552, 192 P.3d 886 (2008)); CR 56(c). We must construe all facts and inferences in favor of the nonmoving party. Scrivener v. Clark College, 181 Wash.2d 439, 444, 334 P.3d 541 (2014). "A genuine issue of material fact exists when reasonable minds could differ on the facts controlling the outcome of the litigation." Dowler v. Clover Park Sch. Dist. No. 400, 172 Wash.2d 471, 484, 258 P.3d 676 (2011).

Duty

[5] ¶15 The existence of a legal duty is a question of law reviewed de novo. N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints, 175 Wash. App. 517, 525, 307 P.3d 730 (2013) (citing Sheikh v. Choe, 156 Wash.2d 441, 448, 128 P.3d 574 (2006)).

[6] **[7]** ¶16 Generally, there is no duty to prevent a third party from intentionally harming another unless " 'a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party's conduct.' " Niece v. Elmview Grp. Home, 131 Wash.2d 39, 43, 929 P.2d 420 (1997) (internal quotation marks omitted) (quoting Hutchins v. 1001 Fourth Ave. Assocs., 116 Wash.2d 217, 227, 802 P.2d 1360 (1991)). A special relationship, and the accompanying duty to protect arises where (1) the defendant has a special relationship with the tortfeasor that imposes a duty to control that person's conduct or (2) the defendant has a special relationship with the victim that gives the victim a right to protection. H.B.H. v. State, 192 Wash.2d 154, 168-69, 429 P.3d 484 (2018); Niece, 131 Wash.2d at 43, 929 P.2d 420 (citing Petersen v. State, 100 Wash.2d 421, 426, 671 P.2d 230 (1983)); N.K., 175 Wash. App. at 526, 307 P.3d 730. When a special relationship exists under § 315, the party owing a duty must use reasonable care to protect the victim from the tortious acts of third parties. RESTATEMENT (SECOND) OF TORTS § 315A cmt. e ("The duty in each case is only one to exercise reasonable care under the circumstances."). H.B.H., 192 Wash.2d at 169, 429 P.3d 484.

A. Special Relationship with R.K.

[8] **[9]** ¶17 Under Washington case law, entrustment for the protection of a vulnerable victim is the foundation of a special protective relationship. H.B.H., 192 Wash.2d at 173, 429 P.3d 484 (collecting cases). Special tort duties are based on the liable party's assumption of responsibility for the safety of another. R.N. v. Kiwanis Int'l, 19 Wash. App. 2d 389, 406, 496 P.3d 748 (2021). One example of this special relationship is between a school and its students because a student "is placed under the control and protection of the other party, the school, with resulting loss of control to protect himself or herself." N.K., 175 Wash. App. at 532, 307 P.3d 730 (quoting Hutchins, 116 Wash.2d at 228, 802 P.2d 1360). Another is that between a group home and "highly vulnerable residents" because "a nursing home's function is 'to provide care for those who are unable because of physical or mental impairment to provide care for themselves.' " Niece, 131 Wash.2d at 45, 929 P.2d 420 (quoting Shepard v. Mielke, 75 Wash. App. 201, 205, 877 P.2d 220 (1994)). The H.B.H. court rejected the notion that it is only "physical custody" that

creates the special relationship and explained that the basis of the special relationship is the "liable party's assumption of responsibility for the safety of another." H.B.H., 192 Wash.2d at 173, 429 P.3d 484 (holding that the State, through DSHS, has a special relationship with foster children even while they are in the care of a foster family because DSHS remains the child's legal custodian throughout the duration of the dependency.).

[10] **[11]** ¶18 The duty is, however, limited by foreseeability. N.K., 175 Wash. App. at 530, 307 P.3d 730. It is not necessary to show that the defendant knew of the particularized risk of criminal conduct, but that a reasonable person in the defendant's position would be aware of the general field of danger posing the risk to someone in the position of the plaintiff. Id.; N.L. v. Bethel Sch. Dist., 186 Wash.2d 422, 431, 378 P.3d 162 (2016).

¶19 R.K. compares his case to N.K., stating that "[s]imilarly, here, YABA had a special relationship with the youth participants entrusted to its officers' care during YABA events." In N.K. the victim brought a claim ***907** of negligence against the Boy Scouts of America, a national organization, the local boy scouting council, and his church, which hosted his Boy Scout troop, based on each defendant's failure to protect him from sexual abuse by a troop volunteer in 1977. 175 Wash. App. at 522, 307 P.3d 730. The court found that the church did have a special relationship with N.K. akin to that between a school and students because it selected the scout masters and volunteers, actively participated in encouraging children to participate in scouting, paid for the boys' participation in the troop, and owned and controlled the facilities where the troop met. Id. at 533, 307 P.3d 730. The court, however, declined to find that there was a special relationship between the victim and the national Boy Scouts of America or the local scouting council despite the fact that both organizations provided training and education on operations and were involved in selecting volunteers. Id. at 534, 307 P.3d 730. The national organization and the local scouting council did not have a custodial responsibility for the troop members. Id. This court noted that without a relationship "typically involving on-the-ground control of day-to-day operations, an institutional defendant is not in a position to provide protection from physical danger as a school or church group does for children, or to monitor personal care as a hospital or nursing home does for disabled patients." Id. at 535, 307 P.3d 730.

¶20 YABA's relationship in the instant case is closer to that of the Boy Scouts of America and the local council in N.K. than that of the church. YABA was not involved in the day-to-day operations of WS-YABA, which ran the jamboree. YABA took no role in selecting or screening volunteers and played no part in placing youth with any bowling coaches. Nothing in the record shows that YABA directed or even knew that Treddenbarger took R.K. to Las Vegas in 1997, let alone that they shared a hotel room there.

¶21 R.K. argues that when N.K. was decided, that court observed that "NK does not cite authority, and we have found none, that has allowed a case to proceed on the theory of a protective relationship in the absence of a custodial relationship between the organization and the victim." Id. at 535, 307 P.3d 730. R.K. cites a non-binding case out of California that expressly disagrees with N.K. Jane Doe v. U.S. Youth Soccer Ass'n, Inc., 8 Cal. App. 5th 1118, 1122, 214 Cal. Rptr. 3d 552 (2017). The Doe court read N.K. to require physical custody in order to establish a special relationship with the plaintiff. Id. at 1130, 214 Cal.Rptr.3d 552 . Aside from the fact that H.B.H. clarified that physical custody is not always required, Doe is factually distinguishable.

¶22 In Doe, a local soccer league coach sexually abused a 12-year-old soccer player in 2011 for about a year. Doe, 8 Cal. App. 5th at 1123, 214 Cal.Rptr.3d 552. The coach later pleaded no contest to continuous sexual abuse of a child and lewd lascivious acts on a child under age 14. Id. The child later sued the league as well as the state soccer association and the national soccer association. Id. The court reversed the dismissal of all the soccer organization defendants and held that each had a special relationship with the victim that created a duty to protect her from the criminal conduct by a third party. Id. at 1122, 214 Cal.Rptr.3d 552. The court observed that United States Youth Soccer Association, Inc. (US Youth), the national soccer association, acknowledged in 1994 that pedophiles were drawn to its youth soccer program to gain access to children. Id. at 1123, 214 Cal.Rptr.3d

552. It had developed a KidSafe Program designed to educate adult volunteers, coaches, employees, parents, and players participating in its soccer programs regarding the prevention and detection of sexual abuse. In the mid-1990's, US Youth distributed the KidSafe Program pamphlets to each state association, including California Youth Soccer Association, Inc., but neither the national or state association required the local West Valley Youth Soccer League coaches, volunteers, trainers and administrators receive information on or be trained in the KidSafe Program. Id. at 1124, 214 Cal.Rptr.3d 552. No meetings were conducted for parents and online links to the program were not emailed to parents of children participating in US Youth programs. US Youth bylaws also required its state associations and affiliate leagues collect and screen criminal conviction information on its coaches, trainers, ***908** volunteers and administrators who will be in contact with child members. But US Youth permitted its state associations and leagues to collect this information through a "voluntary disclosure" form. The tortfeasor coach had been previously convicted in 2007 of battery against his spouse, but lied on the criminal history form. Neither the league or the state association conducted a criminal background check on that coach. Id. at 1129, 214 Cal.Rptr.3d 552. Notably, the court reasoned that US Youth established the standards under which coaches were hired, and determined which coaches had custody and supervision of children involved in its program. Id. at 1131, 214 Cal.Rptr.3d 552.

[12] ¶23 Unlike US Youth, YABA did not hire coaches and did not determine which coaches had custody or supervised children involved in WS-YABA events, even when they were YABA-certified. We conclude that nothing in the record supports a reasonable inference that YABA assumed responsibility for the safety of R.K.

B. Special Relationship with Treddenbarger

¶24 R.K. next argues that YABA had a special relationship with Treddenbarger that created a duty to protect R.K. from his conduct.

[13] ¶25 To create a duty under this theory, there must be the ability for the defendant to control the conduct of the third party and proof that the defendant was aware of the perpetrator's dangerous propensities. N.K., 175 Wash. App. at 535, 307 P.3d 730. R.K, as an example of ability to control conduct, points to the fact that YABA required WS-YABA to adopt a mandatory constitution that required any disciplinary recommendation of its officers to be made to YABA for the final decision. However, the ability to discipline after the fact does not eliminate the requirement that the defendant needs to be aware of the perpetrator's dangerous propensities before having a duty to act.

¶26 The record shows that neither USBC, YABA or WS-YABA was aware of Treddenbarger's dangerous propensity. USBC received no complaints about Treddenbarger until it was informed of his arrest in March 2017. USBC also has no knowledge of any complaints about Treddenbarger made to either YABA or WS-YABA. Neither R.K. nor his parents reported the abuse to either YABA or WS-YABA. R.K.'s parents did not take legal action or report the abuse to authorities because R.K. did not want to at the time he disclosed the abuse to them in 2000.

¶27 R.K. argues that it was common knowledge that Treddenbarger shared a hotel room with R.K. at the national conference in Atlanta in 1998. However, R.K. was 18 at that time. Though Treddenbarger abused other youth bowlers, those instances occurred chronologically after the abuse of R.K. Thus, any information related to Treddenbarger sharing rooms with these other bowlers is information that would not have yet existed during the time Treddenbarger abused R.K. R.K. also points to the fact that he recalled picking up a YABA representative with Treddenbarger and driving her to the Ellensburg jamboree, which R.K. remembered attending when he was under 18. However, there is no evidence that the representative knew that R.K. and Treddenbarger shared a hotel room at the tournament. Suggesting that knowledge of carpooling is enough to raise a reasonable inference of a shared hotel room is too attenuated.

¶28 R.K. relies on Brown v. USA Taekwondo, 40 Cal. App. 5th 1077, 1083, 253 Cal. Rptr. 3d 708 (2019), aff'd, 11 Cal. 5th 204, 483 P.3d 159, 276 Cal. Rptr. 3d 434 (2021). In Brown, three plaintiffs sued, among others, the national taekwondo association, US Taekwondo (USAT), and the United States Olympic Committee. Their claims arose out of their coach's sexual abuse when they were 15 and 16 years old that eventually resulted in felony convictions. Id. at 1082, 253 Cal.Rptr.3d 708. USAT had a code of ethics prohibiting sexual relationships between coaches and athletes regardless of the athlete's age. Id. at 1085, 253 Cal.Rptr.3d 708. Plaintiffs alleged that the coach openly carried on

relationships with each one of them and USAT knew or should have known the coach was violating the ethics code. Id. at 1086, 253 Cal.Rptr.3d 708. When the Olympic Committee had actual knowledge of plaintiffs' ***909** allegations against the coach, they recommended, following an ethics hearing, terminating the coach's USAT membership. Id. at 1087, 253 Cal.Rptr.3d 708. But USAT allegedly refused to present the recommendation to the full board of directors and allowed the coach to continue coaching at USAT competitions before putting him on its banned coaches list about two years later. Id.

¶29 The court reversed dismissal of USAT as a defendant, holding that it had a special relationship with the tortfeasor coach. The coach was required to register with USAT in order to coach at USAT-sponsored competitions, and athletes could only compete in competitions with registered coaches. Id. at 1083, 253 Cal.Rptr.3d 708. Notably, the court held that the other defendant, the United States Olympic Committee, did not have a special relationship with the coach. Id. at 1101, 253 Cal.Rptr.3d 708. It reasoned that although the Olympic Committee "had the ability to control USAT, including requiring it to adopt policies to protect youth athletes, it did not have direct control over the conduct of coaches." Id. at 1083, 253 Cal.Rptr.3d 708.

¶30 In addition to the fact Brown only provides persuasive authority, it is factually distinguishable. Unlike USAT, YABA did not have knowledge of a perpetrator's dangerous propensities. Treddenbarger was not required to register as a coach and R.K. was not required to have a coach, let alone one associated with YABA.

[14] ¶31 We conclude that because neither USBC nor YABA was aware of Treddenbarger's dangerous propensity, R.K. cannot show the existence of a special relationship between USBC and Treddenbarger.

Vicarious Liability

[15] ¶32 R.K. contends that YABA as the parent company of subsidiary WS-YABA was vicariously liable for the harm R.K. suffered at the hands of Treddenbarger, therefore USBC assumed that liability when it was created and assumed YABA's liabilities. Vicarious liability is a different theory from duty arising from a special relationship. N.K., 175 Wash. App. at 537, 307 P.3d 730 (citing Niece, 131 Wash.2d at 48, 929 P.2d 420).

¶33 USBC contends R.K. abandoned this theory of liability at the summary judgment hearing below. USBC further argues, for the first time on appeal, that the corporate survival statute time bars R.K.'s claims against USBC.

¶34 R.K. initially named WS-YABA as a defendant, but WS-YABA was administratively dissolved by the Washington Secretary of State on February 1, 2010 because it failed to file an annual list of officers. The Washington corporate survival statute, RCW 23B.14.340, allows lawsuits against dissolved corporations to be filed for three years after the date of dissolution. USBC now argues that this time bar extends to parent companies even if the parent company assumed the liabilities of the subsidiary at the relevant time period and continues to exist. USBC waived this argument by not raising it below. RAP 2.5(a); Roberson v. Perez, 156 Wash.2d 33, 39, 123 P.3d 844 (2005).

[16] **[17]** ¶35 We next turn to whether R.K. abandoned its vicarious liability theory below. A party is permitted to withdraw an issue from the trial court's consideration through its attorney. Stratton v. U.S. Bulk Carriers, 3 Wash. App. 790, 794, 478 P.2d 253 (1970). This court generally does not consider issues not raised before the trial court. RAP 2.5(a). The purpose of this rule is to allow the trial court to correct any error called to its attention, avoiding unnecessary appeals and retrials, encouraging the efficient use of judicial resources. Postema v. Postema Enterprises, Inc., 118 Wash. App. 185, 193, 72 P.3d 1122 (2003); State v. O'Hara, 167 Wash.2d 91, 98, 217 P.3d 756 (2009).

¶36 R.K. filed an opposition to the summary judgment motion that included argument that Treddenbarger was an agent of YABA and that a principal is subject to vicarious liability to a third party. During oral argument at the motion hearing, the court interrupted USBC at the point when it started to address R.K.'s vicarious liability theory.

> ***910** [USBC:] And then with respect to the idea that Treddenbarger was YABA's agent, again, the Court doesn't need to determine whether or not Treddenbarger was YABA's agent. I would submit that there is not sufficient evidence in the record to even establish that. But even if there was, it's blackletter law in Washington that an agent

> does not act within the scope of an agency in relationship when he commits torts for his own sexual gratification.
>
> And there's a host of cases that support that, including Thompson v. Everett Clinic, C.J.C. v. Corporation of Bishops of Yakima, Niece v. Elmview.
>
> It's pretty well established, Your Honor, that even if Treddenbarger had been YABA's agent, that YABA wouldn't be vicariously liable for Treddenbarger's tort. And then (inaudible) –
>
> THE COURT: Why don't I – why don't I stop you there, because I think I'll leave a little bit of time for rebuttal.

The court then asked to hear from R.K.'s counsel and specifically asked counsel to address the different duties that may flow from the relationship with either the victim or with the tortfeasor as discussed in N.K., 175 Wash. App. at 517, 307 P.3d 730.

¶37 Counsel for R.K. began to address the special relationship question and then took a moment to make a clarification.

> I do want to, just for the record, mention that this whole discussion of, you know, intentional (inaudible) committed for sexual personal gratification really have no place in this analysis. That's a vicarious liability argument. That's not the theory that we're proceeding under. I just want to be clear on the record before getting into more detail with the N.K. case.

Counsel went on to address the question of duty and special relationships, but did not return to the issue of vicarious liability. USBC also never returned to its vicarious liability argument in rebuttal and the court never addressed the issue of vicarious liability in its oral or written ruling.

¶38 It appears that both USBC and the court understandably may have interpreted R.K.'s counsel's statement to suggest that R.K. was no long proceeding under any vicarious liability theory. In its opening brief, R.K. argues that "[a]ny reasonable observer would assume that Treddenbarger and WSYABA operated as agents of YABA." In reply to USBC's argument of abandonment, R.K. denied abandoning its vicarious liability theory and argued that it is USBC who fails to recognize R.K.'s distinguishing its argument that YABA had an agency relationship with WS-YABA, as opposed to Treddenbarger.

¶39 Regardless, we need not determine if R.K. abandoned this theory, because it still does not support reversal of summary judgment.

[18] [19] [20] ¶40 R.K. focuses his argument on whether WS-YABA is an agent of YABA and could bind YABA through actual or apparent authority. However, such an agency relationship, even if it did exist, is not relevant unless R.K. shows that WS-YABA was vicariously liable for Treddenbarger's conduct. "Vicarious liability, otherwise known as the doctrine of respondeat superior, imposes liability on an employer for the torts of an employee who is acting on the employer's behalf." Niece, 131 Wash.2d at 48, 929 P.2d 420. However, "[w]here the employee steps aside from the employer's purposes in order to pursue a personal objective of the employee, the employer is not vicariously liable." Id. (citing Kuehn v. White, 24 Wash. App. 274, 277, 600 P.2d 679 (1979)). Under Washington law, neither YABA nor WS-YABA would be held vicariously liable because an employer is not strictly liable for an employee's intentional sexual misconduct. See S.H.C. v. Lu, 113 Wash. App. 511, 529, 54 P.3d 174 (2002) (citing C.J.C v. Corporation of Catholic Bishop of Yakima, 138 Wash.2d 699, 727-28, 985 P.2d 262 (1999)); Thompson v. Everett Clinic, 71 Wash. App. 548, 860 P.2d 1054 (1993).

¶41 R.K. does not address the case law rejecting the finding of vicarious liability for an employee's intentional sexual misconduct and also does not present any argument as to how WS-YABA is vicariously liable for Treddenbarger's conduct. R.K. has not shown how vicarious liability applies in this case.

***911** CONCLUSION

¶42 Because we hold, under these facts, that USBC did not have a duty to protect R.K., we need not address whether the statute of limitations properly tolled under RCW 4.16.340(1)(c). The order granting USBC summary judgment is affirmed.

WE CONCUR:

Chung, J.

Mann, J.

All Citations

531 P.3d 901

Footnotes

1 When reviewing a summary judgment motion, we assume plaintiff's allegations are true. Afoa v. Port of Seattle, 176 Wash.2d 460, 478, 296 P.3d 800 (2013).

2 The marquee in the photograph announces Crystal Gayle and The Commodores and specific August dates for each performer.

3 The complaint lists additional defendants Washington State United States Bowling Congress, Greater Seattle United States Bowling Congress, Greater Seattle United States Bowling Congress Youth, and Northwest Challenge League f/k/a Puget Sound Travel League.

4 After the trial court granted USBC's motion, R.K. successfully sought a motion for voluntary nonsuit as to all defendants except USBC.

SMITH GOODFRIEND, PS

August 01, 2023 - 2:39 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	84130-1
Appellate Court Case Title:	R.K., Appellant v. United States Bowling Congress, et al., Respondents

The following documents have been uploaded:

- 841301_Petition_for_Review_20230801143621D1890679_8460.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 2023 08 01 - Petition for Review.pdf

A copy of the uploaded files will be sent to:

- cate@washingtonappeals.com
- h-langeland@hotmail.com
- jeffrey@ssslawgroup.com
- jon@washingtonappeals.com
- jonathan.bruce.collins@gmail.com
- jsr@jsrogerslaw.com
- katia@jsrogerslaw.com
- mfirst@kellerrohrback.com
- michelle@jsrogerslaw.com
- natasha@ftlawoffice.com
- pkilner@kellerrohrback.com
- tuv@kellerrohrback.com

Comments:

Sender Name: Victoria Vigoren - Email: victoria@washingtonappeals.com
Filing on Behalf of: Howard Mark Goodfriend - Email: howard@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

Address:
1619 8th Avenue N
Seattle, WA, 98109
Phone: (206) 624-0974

Note: The Filing Id is 20230801143621D1890679