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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

Case No. 33889-4-III

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

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

v.

SOAP LAKE SCHOOL DISTRICT, et al.,  
Respondent.

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

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**BRIEF OF APPELLANT**

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## I. INTRODUCTION

This is an appeal from an Order granting Defendant Soap Lake School District's Motion for Summary Judgment on all claims advanced by Michele Anderson, as personal representative of the Estate of her seventeen (17) year old daughter, Sheila Anderson, who was a student at Soap Lake School District (hereinafter referred to as "Soap Lake" for brevity) at the time she was killed in an automobile accident being driven by another student athlete, Pavel Turchik. Pavel was also killed in the high speed accident. Both student athletes were intoxicated and Pavel was driving Sheila home. Pavel and Sheila were returning home that evening after drinking alcohol at the house of her basketball coach, Igor Lukashevich. On the night Pavel and Sheila were killed, Coach Lukashevich was employed by Soap Lake as the high school girls' basketball team coach, of which Sheila was a student athlete. Pavel was also a basketball player on the boy's team.

Sheila's Estate believes the law supports a finding that Soap Lake is liable for the negligence of its employees, as well as for negligence in hiring, training and supervising of Coach Lukashevich. Further, Soap Lake and Coach Lukashevich entered into a contract of adhesion with Sheila and her mother, Michele Anderson, and Pavel Turchik while Sheila and Pavel were student athletes at Soap Lake, and Soap Lake and Coach

Lukashevich owed a duty to Sheila to protect her from foreseeable dangers: Here, the dangerous effects of drinking alcohol with an adult coach, employed by the school district, while at an event sanctioned by the adult coach as a reward for Sheila's athleticism on the basketball court.

The trial court granted Soap Lake's Motion for Summary Judgment on October 9, 2015. However, Sheila's Estate believes that there are genuine issues of material fact in dispute, and in addition, as a matter of law Soap Lake should not be entitled to summary judgment even if there were no factual disputes.

## **II. ASSIGNMENTS OF ERROR**

- A. The Superior Court Erred When It Granted Soap Lake's Motion For Summary Judgment As There Were Factual Issues In Dispute
- B. The School District's Contract Of Adhesion Created A Duty On The Part Of The School District To Protect Student Athletes And Their Parents
- C. Public Policy And The School District's Contract Of Adhesion With Student Athletes Created A Heightened Duty Between Student Athletes, Parents And The School District
- D. The School District Was Negligent In Its Supervision, Hiring And Training Of Basketball Coach Igor Lukashevich
- E. Coach Lukashevich's Sanctioned Activity on February 18, 2011 Imputes Liability To His Employer, The Soap Lake School District

### III. STATEMENT OF THE CASE

At 12:50 a.m. on February 19, 2011, in the middle of the basketball season for Soap Lake High School, 17 year old Soap Lake basketball players Sheila Rosenberg and Pavel Turchik were tragically killed when their vehicle hit a driveway culvert at speeds estimated by law enforcement to be 99 miles per hour. CP 00003.

Investigators determined that the vehicle Sheila was riding in struck a driveway culvert and became airborne for at least 120 feet, spiraling through the air. CP 00108. Sheila and Pavel were unrestrained. Id. The vehicle then “slammed down on the passenger side violently before going airborne again.” Id. During this, the investigator’s own words recreate the scene:

While the Pontiac was rolling violently out of control, Sheila was ejected out the front passenger window and out in front of the Pontiac’s path. The Pontiac slammed down again on the passenger side and on top of Sheila.

Id. Sheila was found 20 feet from the roadway, dead from blunt force trauma, with a BAC of .20. CP 00109. 17 year old Pavel’s BAC was .17 and after being transported via helicopter to a Spokane hospital, he too succumbed to his injuries. CP 00109.

Sheila’s iPhone was located at the scene near her body, along with a digital camera. CP 00104. The responding investigator used the



photographs from the phone and camera to identify Sheila, as her clothes were the same clothes that she was wearing in the photographs on the camera, which were taken the night before. CP 00105. In this case, investigators for the Plaintiff, working in conjunction with Michele Anderson, used the iPhone to establish a timeline of events.

Found on the iPhone were several text messages between Sheila, Pavel and Coach Lukashevich. Facebook and iPhone messages were used in an attempt to establish a timeline of events from the night of February 18, 2011. CP 00060. Text messages between Pavel and Sheila indicate that plans were made while at the Soap Lake High School basketball court to drink alcohol at Coach Igor's house later in the evening on February 18<sup>th</sup>. CP 00060 to CP 00062. Apparently, Sheila was being rewarded by Coach Lukashevich for something she had done as a member of the basketball team. Unbeknownst to Sheila, the trust she placed in Coach Lukashevich would lead to her untimely death later that evening.

On February 18, 2011, at 9:58 PM, Coach Lukashevich sent a text message to Sheila's phone which read "Got your ice cream." Sheila responded "did you?!" and Coach Lukashevich responds, "Yea bring Victoria and come over". CP 00078.

During the course of the investigation, Sheila's mother learned from friends of Sheila about the involvement of Coach Lukashevich

providing alcohol to minors. She informed the investigating officer, Deputy Sainsbury, who then interviewed various individuals, including Coach Lukashevich, Ruby Langley and Catrina Langley. CP 00115. Ruby Langley was friends with Sheila and was on the track team with her. CP 00090.

Deputy Sainsbury was provided conflicting information at various points but what became clear from his investigative reports was that Coach Lukashevich invited Sheila and Pavel to his house and supplied them with liquor. CP 00115. Ruby Langley told Deputy Sainsbury that she initially did not tell him anything about Coach Lukashevich's involvement in supplying Sheila with alcohol because "she didn't want to get Igor in trouble." CP 00115. Ruby testified in this case that she was "close" friends with Sheila and that she had previously been around Sheila when they were drinking alcohol, and that on the night of February 18, 2011 when they were at Coach Lukashevich's house together, Sheila appeared to be intoxicated. CP 00094. Ruby observed Coach Lukashevich drink a combination of vodka and what she believed to be cranberry juice. CP 00097. She then observed Coach Igor, Sheila and Pavel drink a shot of alcohol, poured by Coach Lukashevich. CP 00097 to CP 00098, CP 00122. Ruby's sister, Catrina Langley, noticed that Sheila was "very intoxicated" while at Coach Lukashevich's house. CP 00130.

Nothing in the record indicates that Coach Lukashevich ever tried to stop Sheila or Pavel from leaving his house despite obvious signs of intoxication. He invited her over, allowed her to become intoxicated further, and then allowed her to get in a car with another intoxicated student athlete, Pavel. Sheila and Pavel left Coach Lukashevich's house shortly after midnight on the early morning of February 19, 2011 and they were killed within minutes thereafter.

Soap Lake was a member of the Washington Interscholastic Activities Association (WIAA), which set forth standards for student athletes. One of those standards was that student athletes were to abstain from alcohol and to abstain from activities and events where alcohol was present. Sheila and Pavel were prohibited from drinking alcohol pursuant to the Soap Lake School District's "Activities Code" which all basketball players, including Sheila, signed prior to being allowed to play basketball. This Activities Code required student athletes to abstain from alcohol and not attend events where alcohol was present. CP 00087 at ¶ 3(B). Enforcement of the "Activities Code" was the responsibility of the basketball head coach, Igor Lukashevich. CP 00087 ("The head coach or advisor will determine the disciplinary action necessary for violation of team or organizational rules"). The Code prohibited student athletes from

consuming alcohol, *inter alia*, throughout the on- and off-season. CP 00086.

#### IV. ARGUMENT

##### 1. Standard of Review

###### a. Summary Judgment

This Court reviews orders granting summary judgement de novo, and performs the same inquiry as the trial court. Durland v. San Juan County, 182 Wn.2d 55, 69, 340 P.3d 191 (2014). Summary judgment is only appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). All facts and inferences are to be viewed in the light most favorable to the nonmoving party. Kok v. Tacoma School District No. 10, 179 Wn. App. 10, 17, 317 P.3d 481 (2013).

###### b. Duty

The existence of a duty is a question of law which this Court reviews de novo. N.K. v. Corp. of President Bishop, 175 Wn. App. 517, 525, 307 P.3d 370 (2013), review denied, 179 Wn. 2d 1005 (2013). Whether a defendant breached its duty is generally a question of fact. Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). It is well settled in Washington State that a school district has a duty to “anticipate dangers which may reasonably be anticipated, and then to take

precautions to protect [students] in its custody from such dangers.” McLeod v. Grant County School District, 42 Wn.3d 319, 319 (Wash. 1953); Peck v. Siau, 65 Wn. App. 285 (Wash. Ct. App. 1992). Foreseeability of injury is a question for the jury unless the circumstances of the injury are “so highly extraordinary or improbable as to be wholly beyond the range of expectability.” McLeod, 42 Wn.2d at 322.

### **c. Negligence**

In order to prove a claim for negligence, Michele must show (1) that Soap Lake owed a duty to her and her daughter, Sheila, (2) that Soap Lake breached that duty, (3) that Sheila suffered an injury as a result (4) and that Soap Lake’s breach was the proximate cause of Sheila’s injury. Lowman v. Wilbur, 178 Wn. 2d 165, 169, 309 P.3d 387 (2013).

## **2. Argument on Assignments of Error**

### **A. The Superior Court Erred When It Granted Soap Lake’s Motion For Summary Judgment As There Were Factual Issues In Dispute**

“What constitutes reasonable care and whether a defendant breached its duty are generally questions of fact.” Richland School District v. Mabton School District, 111 Wn. App. 377, 389, 45 P.3d 580 (2002), Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). Plaintiff alleges Soap Lake owed a duty to its students. What were the duties of Soap Lake pursuant to the Activities Code? Soap

Lake's own principal/athletic director Kevin Kemp did not know. In fact, he did not know or could not remember a majority of the questions asked of him in his deposition. Mr. Kemp did not concern himself with whether or not Coach Lukashevich provided alcohol to minors on the night of Sheila's death, even though he recommended not hiring Coach Lukashevich for the subsequent basketball seasons because of his involvement in the deaths of Pavel and Sheila. CP 00476 to CP 00478.

Did the coach provide alcohol to his student athletes, including Sheila and Pavel, in furtherance of his employment with Soap Lake? Plaintiff believes he did. This is based on several reasons, including Mr. Kemp's deposition, where he testified that Coach Lukashevich did not need authorization to conduct an off-campus basketball activity. CP 00405, Lines 16-20; CP 00406, Lines 1-16. 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. In fact, 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. 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.

**B. The School District's Contract Of Adhesion Created A Duty On The Part Of The School District To Protect Student Athletes And Their Parents**

Soap Lake, through the Washington Interscholastic Activities Association, created an "Activities Code" and required the student athletes to sign it. If the student athletes and their parents did not sign the activities code, they were not allowed to participate in athletic events. Soap Lake created this contract of adhesion and they titled it as an "Activities Code".

In Zuver v. Airtouch Communications, Inc., 103 P.3d 753, 153 Wn.2d 293 (Wash. 2004), the Washington Supreme Court outlined three factors which help us determine whether or not the Activities Code in this case is a contract of adhesion. First, the contract must be prepared by one party and submitted to the other on a "take it or leave it" basis. Such is the case here, where students were told to either sign the Activities Code as a condition for participating in sporting events. Second, the contract is printed on a standard form. Such is also the case here, where the schools submitted the form contract to all student athletes and their parents for signature. Third, whether there was 'no true equality of bargaining power' between the parties. Such is the case here, where there is absolutely no bargaining power on the students or their parents' part when they are entering into an agreement with an authoritative school district employee.

"Tort law has traditionally redressed injuries properly classified as physical harm." Stuart v. Coldwell Banker Commercial Group, Inc., 109 Wash.2d 406, 420, 745 P.2d 1284 (1987). It "is concerned with the obligations imposed by law, rather than by bargain," and carries out a "safety-insurance policy" that requires that products and property that are sold do not "unreasonably endanger the safety and health of the public." Id. at 421, 420, 745 P.2d 1284. Contract law, in contrast, carries out an "expectation-bargain protection policy" that "protects expectation interests, and provides an appropriate set of rules when an individual bargains for a product of particular quality or for a particular use." Id. at 420-21, 745 P.2d 1284.

While the school district required students to submit to the terms of the contract, it did not extinguish its own duty to fulfill the contract. In Wagenblast v. Odessa School District, the Washington Supreme Court held that conditioning participation in public school interscholastic athletics on the student athletes and their parents releasing the school district from all potential future negligence claims violated public policy. Id. at 856, 758 P.2d at 973. Soap Lake must stand by its contract with Sheila, her mother and Pavel, and cannot extinguish their own liability because they do not like the outcome. They required student athletes to abstain from alcohol and promised punishment if student athletes did not



abstain; however, instead of punishment, student athletes were supplied alcohol by Coach Lukashevich while at events sanctioned by Coach Lukashevich, the person who was to hold these student athletes responsible for violations of the Activities Code.

Here, where an actual contract exists, “Courts...are usually reluctant to allow those charged with a public duty, which includes the obligation to use reasonable care, to rid themselves of that obligation by contract.” Wagenblast v. Odessa School Dist. No. 105-157-166J, 758 P.2d 968, 110 Wn.2d 845 (Wash. 1988). School districts such as Soap Lake are included as those charged with a public duty and that duty includes the obligation to use reasonable care.

Soap Lake has a duty imposed by law to take certain precautions to protect their students from danger. This means that they must “anticipate” reasonably foreseeable dangers. McLeod v. Grant Cy. Sch. Dist. No. 128, 42 Wn.2d 316, 319, 320, 255, P.2d 360 (1953). When a basketball coach is inviting young school basketball players to his house to drink alcohol on a regular basis, there is certainly a danger reasonably to be anticipated. A reasonable person in the same situation would stop that conduct and/or mitigate its results by ensuring alcohol is not being given to the students and that students are not driving home while intoxicated. These young minors relied upon their mentors, coaches, teachers and supervisors to take

care of them, show them how to act as a good person outside of the walls of the high school, and make good decisions. When Soap Lake hired Coach Lukashevich and took no action to stop him from providing alcohol to members of the basketball team during team sanctioned events and/or bring minors into his home when alcohol was being served to others, Soap Lake was negligent and breached their duty of care.

**C. Public Policy And The School District's Contract Of Adhesion With Student Athletes Created A Heightened Duty Between Student Athletes, Parents And The School District**

In addition to Soap Lake's duty of reasonable care, they created a heightened duty pursuant to the Activities Code. From a public policy standpoint, the citizens of Washington have a reasonable expectation that when a school acts *in loco parentis*, the school will do everything in its power to protect the children under their charge. Michele Anderson, Sheila's mother, expected the school district to uphold their end of the Activities Code and not supply Sheila or Pavel with alcohol, as it totally contradicts the purpose of the Activities Code.

Soap Lake's own contract with the basketball players, parents and coach expanded their control and supervision of players beyond school grounds. They required players to never engage in activities where alcohol is present and never consume alcohol or be punished. Then they allowed their players to go from a basketball workout session at the school

gym to the basketball coach's house to get drunk. Washington case law is clear that the school district owed a duty to protect these students from danger and they failed to do that by hiring and/or improperly training or supervising an individual who caused Sheila Rosenberg and Pavel Turchik's horrific and untimely deaths.

**D. The School District Was Negligent In Its Supervision, Hiring And Training Of Basketball Coach Igor Lukashevich**

Soap Lake may be liable to a third person for negligence in hiring or retaining an employee who is incompetent or unfit. Peck v. Siau, 65 Wn.App. 285, 288, 827 P.2d 1108 (1992). In order to prove negligent hiring or retention, the Plaintiff needs to show that Soap Lake knew or should have known (in the exercise of ordinary care) of Coach Lukashevich's unfitness at the time of hiring or retention and that Coach Lukashevich proximately caused Sheila's injuries. Carlsen v. Wackenhut Corp., 73 Wn.App. 247, 252-53, 868 P.2d 882 (1994); Peck, 65 Wn.App. at 288-89.

The supervisor of Coach Lukashevich, and the person responsible for his hiring, supervision, training and retention, was Kevin Kemp. Mr. Kemp was Soap Lake's Athletic Director and Principal. At the time of hiring, Coach Lukashevich was recommended for the job by Mr. Kemp, and Coach Lukashevich's sole qualifications for the position of Head

Coach of the girls' basketball team was that he had participated in basketball while a student at Soap Lake previously. CP 00360; CP 00368 at Lines 20-21; CP 00393 at Lines 12-23.

Mr. Kemp did not recall ever contacting Coach Lukashevich's references or reviewing Coach Lukashevich's employment application. CP 00361; CP 00369 to CP 00372; CP 00393 at Lines 12-23 Mr. Kemp could not provide any written policies on the hiring process, nor could he recall what any of the procedures and policies were. CP 00361; CP 00366 to CP00367; CP 00371 to CP 00372 Mr. Kemp could not recall the written duty guidelines for Mr. Lukashevich and could not provide them. CP 00361; CP 00376. Mr. Kemp did not know if Coach Lukashevich ever performed any training activities other than meetings with Mr. Kemp to meet his coaching requirements for the WIAA. CP 00361; CP 00374 to CP 00376; CP 00411 to CP 00413. Mr. Kemp was unfamiliar with the Employee Handbook for school year 2010/2011, did not know if coaches were required to be provided with a copy of it, did not provide Mr. Lukashevich with an Employee Handbook and does not know if any other party did so. CP 00361; CP 00377 to CP 00380.

Mr. Kemp's sole methods for ensuring compliance with employee policies were to provide a copy of the handbook and to make impromptu drop-ins at practices, yet Mr. Kemp could not recall the practice schedule

or how often he would drop in. CP 00361; CP 00379 to CP 00382; CP 00385; CP 00380. Mr. Kemp did not go through the information contained in the employee handbook with Mr. Lukashevich and could not find a signed copy of the Coach's employee handbook. CP 00361; CP 00382 to CP 00383. 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", which he described as a "supporting culture". CP 00362; CP 00386 to CP 00388. He does not recall ever having specifically addressed the drug and alcohol free workplace policy at those meetings and only remembers addressing at coach meetings the portion of the activities code dealing with academic performance and attendance. CP 00362; CP 00388; CP 00390 to CP 00391. He did give coaches instructions to have on file a signed copy of the activities code for each player and the school district did require that each student receive and sign a copy of it. CP 00362; CP 00931; CP 00420. Mr. Kemp stated that he and Mr. Lukashevich also had a one on one meeting. No documentation exists of that. There was a sign in sheet for the group coach meeting but that was never provided in this litigation.

There were no policies regarding investigation of alleged violations of the activities code. CP 00362; CP 00397. The only

discipline provided for in the activities code for violations is suspension of varying lengths and severity. CP 00362; CP 00400. Mr. Kemp stated that he would only document discipline if it was a suspension. CP 00362; CP 00399 to CP 00400; CP 00402. He could not identify what other discipline would be meted out. No reports were provided for any instances of disciplining students for violations of the activities code. CP 00362; CP 00402.

The firing of Mr. Lukashevich after the deaths of Pavel and Sheila was directed to be put on the school board agenda for the meeting on July 26, 2011. Minutes are taken of board meetings; however, no minutes have been provided. CP 00362; CP 00407; CP 00408 to CP 00410. Mr. Kemp recommended that Mr. Lukashevich's employment not be renewed due to "poor culture" but expressed that he was not concerned about any misbehavior on Mr. Lukashevich's part. CP 00362; CP 00410, CP 00418 to CP 00419. Mr. Kemp only described training activities with coaches for first aid and CPR. He did not recall any training for Mr. Lukashevich. Id. Kemp had only three scheduled meetings with Mr. Lukashevich over the course of the season, two at the beginning and one at the end. CP 00363; CP 00411 to CP 00413.

The deposition of Kevin Kemp continues, and concludes, in a similar fashion—he knows nothing, remembers nothing and did nothing.

Mr. Kemp's inaction alone supports a theory of negligence as it relates to the employment of Coach Lukashevich. As in all tort law, inaction, failure to act or an omission when there is a duty to do something may impose liability. Banks v. Nordstrom, Inc., 57 Wn.App. 251, 258, 787 P.2d 953 (Wash.App. Div. 1 1990). Kevin Kemp's inactions as it relates to the hiring, retention, supervision and training of Coach Lukashevich was negligent.

**E. Coach Lukashevich's Sanctioned Activity on February 18, 2011 Imputes Liability To His Employer, The Soap Lake School District**

Sporting events play a pivotal role in the development and growth of the lives of many students. In turn, the coaches of student athletes also play a pivotal role in the high school years of student athletes. As the Washington Supreme Court has noted, "[a]s a natural incident to the relationship of a student athlete and his or her coach, the student athlete is usually placed under the coach's considerable degree of control." Wagenblast v. Odessa School District, 110 Wn.2d 845 (Wash. 1988). "A school district must protect students in its custody from reasonably anticipated dangers." Jachetta v. Warden Joint Consolidated School Dist., 142 Wn.App. 819, 824, 176 P.3d 545 (2008). This 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.” See, Travis v. Bohannon, 128 Wn.App. 231, 239, 115, P.3d 342 (2005). Here, 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 team at Soap Lake and within the scope of his employment, as testified to by the Athletic Director and Principal, Kevin Kemp. Ruby Langley testified at Page 47 and 48 of her deposition that while at Coach Lukashevich’s house on the night of February 18, 2011, she and Sheila ate ice cream in addition to the alcohol that was present and that the ice cream was in Coach Lukashevich’s freezer, and that she witness Pavel, Sheila and Coach Lukashevich all take shots of liquor together. 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, then got her drunk and let her drive home. He owed a duty to protect Sheila. Soap Lake owed a duty to Sheila to also protect her; in this instance, to protect her from her own basketball coach. Both Coach Lukashevich and Soap Lake failed in their respective duties.

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 Wash.2d 351, 363 P.2d 138 (1961). 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. Rhea v. Grandview School Dist. No. JT 116-200, 39 Wash.App. 557, 560, 694 P.2d 666 (1985). “Even when students are not in ‘custody’ or compulsory attendance, Carabba, 72 Wash.2d at 956-57, 435 P.2d 936, liability may nevertheless attach when schools supervise and exercise control over extracurricular activities.” Rhea v. Grandview School Dist. No. JT 116-200, 694 P.2d 666, 39 Wn.App. 557 (Wash.App. Div. 3 1985)(citing Sherwood v. Moxee Sch. Dist. 90, 58 Wash.2d 351, 363 P.2d 138 (1961)).

Soap Lake doesn’t much care for this authority and will make an attempt to persuade this Court that the Plaintiff is trying to stretch the rule discussed in Rhea. However, the reality is that this Court has consistently held that when a school function is occurring, whether or not that school function occurs on school property, so long as a responsible adult from the district is present, liability will attach. Here, Sheila and her boyfriend Pavel went to a basketball coach’s house for ice cream because of her role as a student athlete and his role as her basketball coach. Coach Lukashevich then served her and Pavel alcohol and she took shots of alcohol with him.

In determining whether a tort was committed within the scope of the school’s authority Chappel v. Franklin Pierce School District 402, 71 Wn.2d 17, 20-24, 426 P.2d 471 (1967) lists ten factors to aid in the

Court's determination and this Court has previously held that pursuant to Chappel "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." Rhea, 39 Wn. App. 557 at 561 (citing Chappel, supra).

Following the ten factors outlined in Chappel at 426 P.2d 474, here Coach Lukashevich was the appropriate agent of the school district. The following facts in this case are applied to the ten factors outlined in Chappel:

- (a) It was Coach Lukashevich who authorized the extra-curricular activity Sheila attended on the night of February 18, 2011;
- (b) It was Coach Lukashevich who was the faculty advisor who regularly attended and supervised the basketball activities, and in fact was the sole planner of the activity on February 18, 2011;
- (c) There is no doubt that the girls' basketball team possessed educational and cultural value;
- (d) Soap Lake forbid alcohol consumption by its student athletes, as set forth in their Activities Code and assumed and asserted authority over activities involving the consumption or presence of alcoholic beverages, to the detriment of the student athlete;
- (e) The faculty advisor assigned to the team, Coach Lukashevich, clearly indifferently enforced the rules of Soap Lake relating to student alcohol consumption;
- (f) The faculty advisor, Coach Lukashevich, planned, executed, attended and supervised the activity on

February 18, 2011, and indeed the activity occurred at his house ;

- (g) 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;
- (h) Physical injuries are foreseeable when underage students consume alcohol and then get into a car to drive;
- (i) The designated faculty advisor, Coach Lukashevich, did attend the activity but failed to provide a properly advised and informed substitute who would comply with the Activities Code; and,
- (j) The lack of appropriate supervision at the activity at Coach Lukashevich's house proximately caused the death of Sheila Rosenberg and Pavel Turchik.

The general danger here is that when underage students socialize with adult school district employees at the employee's residence, there is a reasonable expectation that the students could engage in activities with the adult that could produce harm. Certainly, most reasonable people could conclude that it is inappropriate for an underage student to socialize with an adult school district employee late at night when alcohol is present and that harm could result therefrom. As in McLeod, safeguarding Sheila from general danger, by disallowing socialization between students and adult employees, especially when alcohol is being served, would likely have protected her from the particular harm that she suffered.

Allowing underage students to socialize with an adult school district employee breaches the school district's duty to exercise reasonable

care as an ordinarily reasonable and prudent person would exercise under the same or similar circumstances. Because Sheila and Pavel were intoxicated at Coach Lukashevich's residence, Coach Lukashevich exercised the same responsibility to take care of her and Pavel as he would have if they were on the basketball court and should have ensured that at the very least they did not get into a car intoxicated and drive home. Coach Lukashevich's negligence is also Soap Lake's negligence.

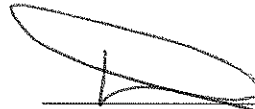
## V. CONCLUSION

No amount of clever legal writing will ever bring Sheila Rosenberg back to life. However, this Court has the opportunity to hold responsible those adults in Sheila's life who helped cause her horrific death, and these adults include Coach Lukashevich and his employer, Soap Lake School District. Most importantly, this Court should clearly establish that contracts purporting to require behavior by students and school districts will be enforced as to all parties entering into such agreements, as such agreements advance the public need to protect student athletes from alcohol use.

The case law provides for a duty of care to Sheila, Pavel and their parents, a contract entered into between the parties further expanded that duty, and the defendants were negligent when they breached their duties to

Sheila. The Estate of Sheila Rosenberg respectfully requests this Court reverse the decision of the trial court and remand this case for trial.

Respectfully submitted this 20<sup>th</sup> day of April, 2016.



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**PROOF OF SERVICE**

I, Branden R. Gradin, declare as follows:

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

COURT OF APPEALS – DIVISION III      Hand Delivered  
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MICHAEL E. McFARLAND, JR.              U.S. Mail  
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SIGNED AND DATED at Spokane, Washington this 20<sup>th</sup> day of  
April, 2016.

  
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BRANDEN R. GRADIN