



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

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| DATE | COMM | ACTION |
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| 12/17/15 | SM | Fav/1 amendment |
| 01/20/16 | JU | Fav/CS |
| | AED | |
| | AP | |

December 17, 2015

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 58** – Judiciary Committee and Senator Abruzzo
HB 3515 – Representative Heather Fitzenhagen
Relief of Q.B. by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLEMENT CLAIM FOR \$600,000 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE Q.B. FOR THE INJURIES SHE SUFFERED FROM MOLESTATION BY ANOTHER STUDENT ON A PALM BEACH COUNTY SCHOOL BUS.

FINDINGS OF FACT:

Generally

In 2006, QB, a three and a half year old girl, had virtually no speech capability and had been determined to have a delayed development of speech and language for which she could receive assistance from Glade View Elementary. The school near her home, Pahokee Elementary, did not have such a program. In addition, QB's family circumstances required that she ride a school bus to get to and from the new school.

Video of the Bus Ride

On January 16, 2007, QB boarded the special needs bus to ride home from school. She sat alone in the second seat behind the bus driver, Ms. Lavern Sellers, on the bus driver side. At a subsequent stop, another student, JC, boarded the

bus and sat immediately behind the bus driver in the seat he was assigned. He sat alone in his seat. At the time, JC was a 15 year old high school student who had been diagnosed with severe emotional and behavioral disorders. In addition to the bus driver, an attendant, Ms. Grenisha Williams, was also on the bus to assist the driver and the students and maintain order. She sat at the rear of the bus.

The school bus was equipped with a video camera with a minutes elapsed indicator that continuously recorded the comings and goings on the bus, as well as while the bus was in transit. The video camera captured the following incident.

Moments after JC sat down in his seat, he looked around, then moved to the next seat behind him that was occupied by QB. Over the course of the next approximately 13 minutes, JC could be observed leaning over QB, moving and positioning her, and two to three times making what could be described as a “humping” motion. During these 13 minutes, JC would occasionally sit up, look around, and then continue leaning over QB.

After about 13 minutes, the bus assistant got up from her seat at the back of the bus and walked up the aisle. She could be seen talking to JC who, at that point, sits up in the seat. The attendant then walks a few feet back down the aisle, stands there for a while, and finally returns to her seat. JC sits in the same seat with QB for the next approximately 18 minutes. He looks around, talks to QB, and then finally gets off the bus. The attendant is then seen walking from the rear of the bus, stopping to talk to QB for a short time, then walking to the front to talk to the bus driver about what happened.

After the bus driver delivered the last student, she and the attendant reported the incident to their supervisor, which was referred to the Palm Beach County School District Police. An officer visited QB's parents to inform them of what had happened on the bus.

Physical Examination of QB

According to the investigative report of the Palm Beach County School District Police, the next day after the incident, QB's mother took her to her physician to be examined. The examination was done by the Physician's Assistant who told

the investigator, according to his report, that “an examination such as those conducted with regards to a sexual battery and as done at the request of law enforcement in conjunction with the Child Protective Team had not been performed.” The report continues that the PA did advise the investigator that she had examined the vaginal area of QB and found no evidence of trauma. The report states that PA further advised the investigator that the examination did not necessarily indicate that penetration had not been made.

Interview with Bus Attendant, Grenisha Williams

On January 26, 2007, Investigator Mintus of the Palm Beach County School District Police met with and obtained a sworn statement from Ms. Grenisha Williams, the bus attendant. Ms. Williams explained that it is her job to function to assist with students on the school bus and to ensure their safety while riding the school bus. Ms. Williams explained that she had not witnessed [suspect] get up and move from his assigned seat to sit beside [victim].

The investigation report states:

It was for some unknown reason that Ms. Williams states, “something in her head told her to get up and check” the area where [victim] had been seated. It was while checking this area the Ms. Williams’ stated she discovered [suspect] down on his knees and in the kneeling position bent over directly facing [victim]. Ms. Williams stated that she witnessed [suspect] with his mouth in an open position, and kissing the right side portion of [victim’s] neck. According to Ms. Williams, [victim] was sitting in the upright position with her back up against the back portion of the school bus seat, while [suspect] was down on both knees knelt directly in front of [victim] with his two hands wrapped around her waist.

The investigation report continues:

After having witnessed [suspect] kissing the neck of [victim], Ms. Williams’s states she questioned the [suspect] asking him, “what are you doing to that little girl?” However, [suspect] refused to respond to her questions, and eventually grabbed his jacket and repositioned himself in the seat alongside [victim]. At this time Ms. Williams states, she looked down the face of [victim] and could see

tears flowing from her eyes. Ms. Williams states that she was shocked with what she had just discovered.

After [suspect] had refused to get up and move to his assigned seat, Ms. Williams states she then returned to the back portion of the school bus where she maintained a close vigilance on [suspect]. When asked why she had left [victim] in such an exploitable position, Ms. Williams states that she “just panicked” not knowing what to do.

Interview with Assailant, JC

On January 27, 2007, detectives from Palm Beach County School District Police interviewed JC who was identified from the school bus video. During the interview, JC stated that he touched QB, unzipped his pants, and had sex with her.

Conclusion of the Investigation Report

In the investigation report of the Palm Beach County School District Police, Investigator A. Goven concluded:

This investigation finds based upon the witness statement of Ms. Williams, the digital video recording from the school bus cameras, and the confession of the [suspect], evidence exists in support of probable cause that [suspect] did commit the crime of sexual battery of a child under the Age of 12 . . . , in violation of [s. 794.011(2)(a), F.S]. This investigation further finds that Ms. Grenisha Williams, entrusted to provide [victim] with care and supervision, did fail to make a reasonable effort to protect [victim] from being sexually exploited by [suspect] while riding a school bus on 01/16/2007, the criminal violation of Neglect of a Child[, s. 827.03(3)(a)2.c., F.S]. (sic)

QB's disabilities

In the fall of 2006, QB was diagnosed with a significant language and speech disorder. Meeting the eligibility requirements for language and speech impairment programs, QB was placed in Belle Glade Elementary School to participate in their programs. A psychoeducational evaluation in June 2009 reports QB as having a full scale IQ of 77. QB follows an ESE plan in the Palm Beach County school system.

QB was evaluated by various psychological experts who all concluded she had a language and speech impairment. These experts diagnosed her with various other impairments such as ADHD and autism, but over time, those conditions have not continued to manifest.

Dr. Harley V. Stock, Ph.D., ABPP, expert for the defendant, opined that the event that occurred to QB has not had any long lasting or permanent effect on her because of her tender age at the time of the event, her cognitive impairment, and lack of memory processing abilities.

Dr. Michael Hughes, M.D. (Psychiatry), expert for the claimant, concluded that:

QB was the victim of physical and sexual assault. That this affected her adversely, aggravating preexisting conditions, complicating ongoing stressors and creating additional adversities and handicaps for her. The psychological injuries she suffered from the physical and sexual assault currently affect her adversely and will be reasonably expected to continue to affect her for her future life.

In support of his conclusion, Dr. Hughes stated in his deposition that “I believe that [QB] has no conscious memory of the incident that she can put into words. She did not have any speech and her language was very limited at the time, but she clearly has a memory of the events.” He continued, “the younger they are, the more difficult it is for them to cope with a traumatic event because they have less ability to understand it, to talk it over with somebody, to put it in perspective, to put into words.” “[T]hings that happened in the early years are enormously important and they are remembered in very basic ways, even though the person may have no cognitive memory of it.”

Having the benefit of hindsight in this case, the diagnoses and predictions of Dr. Hughes appear most correct.

LEGAL PROCEEDINGS:

The incident occurred on January 16, 2007. A trial was held in the fifteenth judicial circuit court, in and for Palm Beach County, Florida. The jury returned its verdict on February 6, 2013, finding for the plaintiff. The jury awarded \$300,000 in total damages sustained by QB for care and treatment to be incurred in the future. The jury awarded \$150,000 for past damages and \$1,250,000 for future damages for pain and

suffering, disability, physical impairment, mental anguish, inconvenience, aggravation of a disease or physical defect or loss of capacity for the enjoyment of life. The total award was \$1,700,000.

The circuit judge issued an order on February 7, 2013, reducing the verdict to a final judgment. The School Board paid \$100,000, their sovereign immunity limit. A cost judgment was entered in the amount of \$77,950.41. The total unsatisfied judgment balance is \$1,677,950.41.

CONCLUSIONS OF LAW:

Section 1006.22, F.S., relating to safety and health of students being transported, states:

Maximum regard for safety and adequate protection of health are primary requirements that must be observed by district school boards in routing buses, appointing drivers, and providing and operating equipment, in accordance with all requirements of law and rules of the State Board of Education in providing transportation pursuant to s. 1006.21[, F.S].

The School District of Palm Beach County had a duty to provide safe transport of QB to and from her home and with adequate protection. The School District of Palm Beach County breached that duty when it scheduled high school students to ride the bus with preschool students and when the attendant and bus driver failed to supervise the students that were on the bus. The failure to adequately supervise the students it allowed on the bus resulted in the injury of QB.

As provided in s. 768.26, F.S. (2007), sovereign immunity shields the school Board against tort liability in excess of \$100,000 per occurrence. Under the doctrine of *respondeat superior*, the School Board is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See *Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla 2d DCA 2003). School bus attendant Williams, and bus driver Laverne Sellers were acting within the course and scope of their employment when they negligently failed to oversee the movement and activities of the students on the school bus.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Florida Legislature.

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ATTORNEYS FEES:

The bill provides that all fees and related costs are to be capped at 25 percent. The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. Lobbyist's fees are included with the attorney's fees.

SPECIAL ISSUES:

At the hearing by the Special Master on November 10, 2015, the parties announced a full and final settlement against the School Board of Palm Beach County in the amount of \$600,000 had been reached. Parties are awaiting the final approval of the School Board. This amount is reasonable and responsible

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that SB 58 be amended to reflect the settlement amount of \$600,000 payable to the special needs trust established for the benefit of QB. Otherwise, the undersigned recommends that Senate Bill 58 (2016) be reported FAVORABLY.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute reduces the amount awarded in the claim bill to \$600,000 from \$1,677,950 and provides for the payment of the claim in two annual installments of \$300,000. Additionally, these funds must be placed into a special needs trust.