



STORAGE NAME: h6523a.CJS

DATE: 3/26/2019

March 26, 2019

SPECIAL MASTER'S FINAL REPORT

The Honorable Jose R. Oliva
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6523 - Representative Rodriguez, A. M.
Relief/Jane Doe/School Board of Miami-Dade County

THIS IS A SETTLED \$1.3 MILLION CLAIM RELATING TO THE RAPE AND ATTEMPTED MURDER OF JANE DOE, A MIAMI-DADE COUNTY HIGH SCHOOL TEACHER, BY A STUDENT. THE COUNTY HAS PAID \$200,000 PURSUANT TO S. 768.28, F.S.

FINDINGS OF FACT:

On September 19, 2014, Jane Doe (Claimant),¹ a Miami-Dade County high school teacher, was brutally slammed to the floor, raped, and choked to the point of unconsciousness by a student, Victor Nash. The incident occurred within Claimant's own classroom at Miami-Dade Senior High School at 4:30 p.m., after normal school hours. Claimant had earlier requested permission to go home but was instructed by her superior to remain on campus to complete other teacher duties.

On the day of the incident, Mr. Nash entered Claimant's classroom while Claimant was alone. He proceeded to close the blinds. Claimant began to panic, grabbed her belongings, and tried to escape, but to no avail. Mr. Nash grabbed Claimant with both hands and forced her closer. Claimant began to cry and tried to push him away. Mr. Nash then slammed her to the

¹ Throughout the proceedings, the parties have agreed to not use Ms. Doe's real name on the record.

floor, causing her to hit her head. Claimant begged him to stop, but Mr. Nash began choking her, causing her to lose consciousness.

After raping Claimant, Mr. Nash grabbed Claimant's keys and went to the parking lot, where he stole her vehicle. Five hours later, he was arrested by Homestead Police.

Meanwhile, Claimant awoke on the floor of her classroom, alone. She screamed, but no one responded. Eventually she found a janitor, who called 911 on her behalf.

Mr. Nash was arrested and confessed to slamming, choking, and raping Claimant. He was charged with attempted first-degree murder, sexual battery causing great bodily harm, robbery, and grand theft auto. However, Claimant was unable to testify during the criminal case and Mr. Nash received only 25 years' imprisonment as a result of a plea deal.

Claimant suffered traumatic, permanent injuries as a result of the beating, rape, and choking she suffered at the hands of Mr. Nash, including:²

- Post-traumatic stress disorder;
- Depression;
- Gastrointestinal issues;
- Weight gain;
- Guilt;
- Panic attacks;
- Suicidal thoughts;
- Headaches;
- Nightmares; and
- Not being able to leave home for a period of time.

Events Leading up to the Incident

There were warning signs before this incident occurred to indicate Mr. Nash was a dangerous person. When he was 8 years old, Mr. Nash underwent a psychological evaluation for hostility and inappropriate behavior. At age 12, he brought a knife to school and was Baker Acted. Six years later, he was expelled from Homestead Senior High School after setting a bathroom on fire.

About a year before the incident occurred, Mr. Nash was arrested for making written threats to kill or do bodily harm, a second-degree felony.³ In May 2014, a juvenile court determined Mr. Nash was incompetent to stand trial and would never attain competence.

Claimant was primarily trained as an instructor for deaf, hearing

² At the Special Master hearing, Claimant indicated that the case was worth far more than \$3 million, but that the lower settlement amount reflected Claimant's inability to testify as a result of her psychological injuries.

³ See s. 836.10, F.S.

impaired, and special education students. During the 2012-2013 school year, Respondent hired her as an itinerant teacher to teach at ten different elementary and middle schools. In the 2013-2014 year, Respondent transferred Claimant to Miami Centennial Middle school, where she taught a class of nine middle school students with hearing impairments.

In August 2014, Respondent reassigned Claimant to South Dade Senior High School to teach history, economics, and government to high school students with emotional and behavioral disorders, even though she was unlicensed to teach such students. That same month, Victor Nash enrolled at the same high school. Respondent assigned him to Claimant's class without notifying Claimant of Mr. Nash's dangerous propensities or violent past.

At the time of the incident, Claimant was 24 years old. She was 4 feet, 11 inches tall and weighed 105 pounds. Her assailant, Mr. Nash, was 6 feet, 1 inch tall and weighed 200 pounds.

LITIGATION HISTORY:

Claimant filed a complaint in circuit court in May 2016. Before the case was tried, in early 2018, the parties settled for \$3 million. Respondent's insurance paid Claimant a total of \$1.7 million, leaving \$1.3 million to be pursued in this claim bill.

CLAIMANT'S POSITION:

Claimant argues that Respondent had a duty to operate its school safely and should have warned Claimant of what it knew about Victor Nash—namely, his:

- Violent history;
- Arrest for a second-degree felony; and
- Being deemed mentally incompetent to stand trial.

Claimant argues that her injuries at the hands of Mr. Nash occurred as a direct result of Respondent's failures to warn her about Mr. Nash and provide her a safe working environment.

RESPONDENT'S POSITION:

This is a settled claim, and Respondent does not oppose it formally. At the hearing, however, Respondent did not concede that all of the elements of negligence are present, arguing that the incident was unforeseeable. The Special Masters questioned Respondent as to whether Respondent should have done anything differently to warn Claimant of the dangers presented by Victor Nash, or whether such students are prevalent in the particular high school at issue. Respondent refused to answer either question.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty & Breach

A school board has a common law duty to properly maintain and operate its property, and generally to warn of dangers

known to the school board.⁴

In this case, the evidence submitted in the record and at the Special Master hearing supports the fact that Respondent knew that Victor Nash posed a danger to those at the school, including the teachers. Respondent reassigned Claimant, who had expertise with hearing-impaired students, to a high school class of students with emotional and behavioral disorders, even though she was not equipped to teach those students.

Moreover, Victor Nash, one of the students in that class, had an escalating history of aggression, defiance, violent encounters, and other problems, including a second-degree felony charge for which Mr. Nash was deemed incompetent to stand trial. Respondent knew of this troubling history, but it did not warn Claimant nor equip her with any defensive training, security education, or crisis management training.

Causation & Damages

I find that Respondent's failure to warn Claimant and failure to protect her from a known harm caused her injuries. Claimant's damages from the attack suffered at the hands of Victor Nash are severe and well-documented. Claimant's injuries are lifelong and severe, and Claimant will never fully recover from the incident. I find that the \$3 million settlement is reasonable under the circumstances.

Workers' Compensation Law Issue

The main legal issue in this case is not whether Respondent was negligent, but whether the claim would have been barred by chapter 440, F.S., relating to Workers' Compensation, had the claim proceeded to trial.

Chapter 440 provides the sole compensation for tort claims arising under Workers' Compensation. However, an employee can recover outside chapter 440 if he or she can prove, by clear and convincing evidence, that the employer "engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work."⁵

In this case, Respondent breached a duty to Claimant, and that breach contributed to Claimant's injuries. What is less clear is whether, if the case had not settled, Claimant would have been able to show at trial, by clear and convincing evidence, the

⁴ *Green v. Sch. Bd. of Pasco Cnty.*, 752 So. 2d 700, 701 (Fla. 2d DCA 2000).

⁵ S. 440.11(1)(b)2., F.S.

standard required by chapter 440.

I find that there is sufficient evidence in the record, had the case proceeded to trial, for a jury to find Respondent's conduct in failing to warn Claimant of Mr. Nash's tendencies to rise to the level of conduct required to recover outside the Workers' Compensation statute, as provided in s. 440.11(1)(b)2., F.S. On the other hand, it is possible a jury could have decided Claimant did not meet the standard required to recover outside the Workers' Compensation statute. The settlement amount presumably took these risks and possibilities into account.

Regardless of whether Claimant would have prevailed under s. 440.11(1)(b)2., the Legislature is not bound by a jury verdict, a settlement, or the Workers' Compensation statute in determining whether to award a claim bill. This case is an outlier. The facts are particularly egregious, and Claimant has suffered tremendously. Therefore, the Legislature may decide to pass the claim bill as a matter of grace because of the peculiar nature of this case.

Alternatively, if the Legislature decides that Respondent's conduct did not rise to the standard required to recover outside the Workers' Compensation statute, the Legislature may decide not to pass this claim bill.

ATTORNEY'S/
LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$260,000, and the lobbying fee will not exceed \$65,000. Outstanding costs are \$3,084.56.

COLLATERAL SOURCES:

Claimant has received a total of \$1.7 million from Respondent's insurance.

RESPONDENT'S ABILITY
TO PAY:

The Special Masters questioned Respondent at the final hearing about the Respondent's ability to pay, and Respondent stated that it was not prepared to answer the question. After the hearing, Respondent supplemented the record and clarified the funds would be paid by the School District from the general fund, which funds all aspects of the School District.

LEGISLATIVE HISTORY:

This is the first session this claim has been presented to the Legislature.

RECOMMENDATION:

I recommend that Committee Substitute for House Bill 6523 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Rodriguez, A.M., House Sponsor
Senator Thurston, Senate Sponsor
Christie Letarte, Senate Special Master