CALIFORNIA SCHOOL & CITY NOT LIABLE FOR FATAL ROADTRIP
MYRICKS v. LYNWOOD UNIFIED SCHOOL DISTRICT
No. B117397 (Cal.App. Dist.2 1999)
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE
July 16, 1999

KEYWORDS: California, school, city, tort claims act, transportation, employee, control test.

[Note: Attached opinion of the court has been edited and citations omitted.]

Plaintiffs appeal from the summary judgments entered for defendants City of Lynwood and Lynwood Unified School District. Plaintiffs are members of a girls' summer basketball team, the Running Rebels, which is affiliated with the Lynwood Girls Basketball Development League.

In the summer of 1994, the Running Rebels went on a road trip to play in Arizona, Colorado, and Nevada basketball tournaments. En route from Colorado to Nevada, plaintiffs were injured when the driver of their van fell asleep and lost control of the vehicle, which rolled over several times.

The sole issue on appeal is **whether sufficient evidence exists to create a triable issue of fact regarding the school district's and city's potential liability for the accident.** We conclude that although defendants were **tangentially involved with the Running Rebels' summer basketball program,** no legal basis exists to expose them to potential liability for the accident. We affirm the summary judgments.

BACKGROUND

As a practical matter, before the accident, the **Running Rebels served as a de facto summer developmental team for the Lynwood High School (LHS) girls' basketball team**, the Lady Knights. In 1992, a California Interscholastic Federation (CIF) rule prohibited high school basketball coaches from coaching basketball at any level following the end of the CIF basketball season in February or March until some time in June. In September 1992, former LHS girls' basketball coach Roberson, who was instrumental in forming the Running Rebels, was found to have violated this CIF rule by having coached the Running Rebels during spring tournaments in 1992. As a result of this violation, Roberson resigned from his coaching position at LHS, thus avoiding any CIF penalty against LHS. Roberson was replaced by LHS' junior varsity girls' basketball coach, Ellis Barfield. Although Barfield had also violated the same CIF rule by serving as the Running Rebels' assistant coach during the spring, Barfield received only a five-day suspension from practicing with the Lady Knights in the 1993-1994 CIF season.

At the end of the 1993-1994 CIF basketball season, Barfield followed Roberson's practice of coaching the Running Rebels, but waited to do so until summer to avoid violating the CIF rule against coaching during the off-season. Barfield also adopted Roberson's procedure of using the LHS gym, basketballs, and practice uniforms for the Running Rebels' summer practices and road trips. **Barfield did these things without asking anyone's permission at LHS.**

The practice uniforms did not have any team name written on them. Barfield had purchased the practice uniforms in bulk for the Lady Knights players to keep as their own during and after the CIF basketball season. Those Lady Knights players who could afford to do so paid Barfield for their practice uniforms; and Barfield absorbed the cost for those who could not afford to pay. Barfield bought some additional practice uniforms that he kept and later gave to Running Rebels' players who did not already have a Lady Knights' practice uniform.

Playing on the Running Rebels was not an official school activity or part of the official LHS summer "intersession" program. No school credits were given for playing on the summer team. No evidence was presented to indicate that playing on the Running Rebels was a prerequisite for playing on the Lady Knights.

In early June 1994, Barfield began planning the Running Rebels' 1994 summer schedule. Barfield held some planning meetings at the LHS gym for parents of Running Rebels' players. The record is not exactly clear, however, as to how Barfield selected the girls for the summer team. According to Barfield, he did not hold tryouts or ask girls during the regular school year to join the summer team. Due to CIF restrictions, Barfield could not ask middle school girls to show him their basketball skills before they attended LHS. Apparently, Barfield only discussed joining the Running Rebels with those girls or their parents who asked him about the summer team. From Barfield's testimony that he had given his extra Lady Knights practice uniforms to those Running Rebels players who did not already have their own, we reasonably infer the summer team was comprised of either returning or potential Lady Knights players.

At least some of the parents of Running Rebels players may have been confused about whether they were signing consent forms (that Barfield had copied from those used for the Lady Knights) for their daughters to play summer ball for the Lady Knights or the Running Rebels. Two of the Running Rebels consent forms were signed by parents who wrote "Lady Knights" as the name of the team. In addition, the booster club for the Running Rebels was comprised of the same parents who were on the Lady Knights booster club.

Even though Barfield was coaching a summer league team comprised mainly of Lady Knights members and using LHS facilities and equipment to do so, he was not a paid district employee during the summer of 1994. Barfield is a paid district employee only during the CIF basketball season, and even then, he works only part-time hours.

To finance the Arizona, Colorado, and Nevada road trip, Barfield solicited the city council in early June 1994 for a $10,000 donation to the Running Rebels. The city council addressed the team's request at a July 5, 1994, council meeting attended by Barfield, Connie Franklin (Running Rebels team chaperone), and Linda George (mother of one of the players). **When a council member inquired whether the donation was for the Lady Knights and whether the district had been solicited for funds, someone from the audience (presumably Barfield, Franklin, or George) said, "No, City team. . . . summer ball."** Barfield also explained to the council, ". . . we approached the School District two years ago with the same type of [request], and they . . . say they can't fund us, as far as the summertime . . . because . . . the money is there first for . . . education . . . ."

The council agreed to pay $10,000 directly to the Running Rebels' vendors, and asked the team to submit an itemized list of expenses. The city ultimately issued checks to vendors for: (1) hotel payments of $2,371.77, $875, and $1,000; (2) car rental expenses of $2,453.23; and (3) tournament expenses of $2,500 and $800. The balance of the trip expenses was paid by Barfield and other private donors.

Barfield, who did not have a valid California driver's license, had his mother use her credit card to rent the two vehicles for the trip. Barfield nevertheless drove for much of the trip, which began on July 7, 1994. The accident occurred on July 23, 1994, just outside Las Vegas, at about 6:40 a.m., after the team had driven all night from Colorado. It is undisputed that the van rolled over when the driver, Running Rebels' assistant coach Michelle Allen, *fn6 fell asleep and lost control of the vehicle. Injuries were sustained by all of the van's occupants, one of whom died at the hospital.

Allen, like Barfield, was also a part-time district employee. During the CIF basketball season, Allen had worked as the Lady Knights' assistant coach. In addition, Allen was working during the summer as a part-time, hourly employee for the city's recreation and parks department at Hamilton Park. Allen, whose daughter was on the road trip as a Running Rebels player, received no salary from the city or the district while on the trip. Although Allen was scheduled to work at Hamilton Park during the weeks of the trip, she did not inform her supervisor in advance of her absence and simply failed to show up for work. There is no evidence in the record that any city official was aware that Allen was going to be accompanying the team on the road trip. Allen's name was not included on the list given to the city of those persons who were going on the trip.

The police accident report attributed the following statement to Allen: "D-1 [Allen] states that she and Mr. BARFIELD were sharing the driving duties. She stated that after taking over driving duties, after about one and one-half or two hours she became tired. She states they stopped at a rest area for about two or three hours. She further states that she again began driving and again fatigue set in. Mr. BARFIELD then took over the driving duty for about two hours. Ms. ALLEN then again began driving. Ms. ALLEN states that she had pulled over twice prior to the accident due to feeling tired. Ms. ALLEN states finally she `dozed off' one last time and woke up with the vehicle off the road surface."

After the accident, LHS administrators sent several employees, including the principal, to Las Vegas to comfort the surviving injured players at the hospital, at least one of whom was critically injured. The principal was aware of the Running Rebels' trip, having given permission to two team members to miss excessive days of summer school without being terminated. Apparently, those two team members had brought assignments or had additional assignments faxed to them on the trip.

Based on the above evidence, the trial court entered summary judgment for the district and city, finding no basis for imposing liability against them for plaintiffs' injuries. This appeal followed.

THE DISTRICT'S LIABILITY

"Except as otherwise provided by statute[, . . . a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, § 815, subd. (a).) "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." (Gov. Code, § 815.2, subd. (a).)

In the context of public schools, the Legislature has established different liability rules for injuries occurring during required school- sponsored, off-premises activities, on the one hand (Educ. Code, § 44808), and field trips or excursions, on the other hand (Educ. Code, § 35330).

If a student is injured while off campus for a school-sponsored activity, which is defined as an activity "that requires attendance and for which attendance credit may be given", the student's injury is treated, for liability purposes, in the same manner as an on-campus injury. "Students who are off of the school's property for required school purposes are entitled to the same safeguards as those who are on school property, within supervisorial limits."

However, if a student is injured while on a "field trip or excursion in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities" (Educ. Code, § 35330, subd. (a)), he "shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of pupils taking out-of-state field trips or excursions shall sign a statement waiving such claims. . . ." (Educ. Code, § 3530, subd. (d).)

In this case, the evidence is undisputed that the basketball trip was not a school-sponsored activity for which attendance was required and attendance credit given. The out of state tournaments were not part of LHS' formal CIF or summer intersession programs. The fact that LHS authorized two of the plaintiffs to attend the tournaments without being dropped from the summer intersession program and bring school assignments with them does not suggest the road trip was a mandatory or required school activity.

Similarly, Barfield's use of LHS facilities and equipment for Running Rebels practices and the district's funding of its employees' emergency post-accident trip to Las Vegas bear no relation to whether the road trip was a school sponsored activity for which attendance was required. Plaintiffs' contention that the payment of the district employees' post-accident travel expenses constituted a subsequent ratification of the trip for purposes of establishing the district's liability is an unwarranted inference. Accordingly, we conclude, as a matter of law, that plaintiffs' injuries are not governed by Education Code section 44808.

To the extent, if any, the road trip was a voluntary field trip or excursion related to LHS' girls' basketball program, the waiver provisions of Education Code section 3530, subdivision (d) must control. Under that statute, assuming it applies, plaintiffs are "deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion." (Educ. Code, § 3530, subd. (d).)

Moreover, if the road trip was not a field trip or excursion related to LHS' girls' basketball program, the district would still be immune from liability under Government Code section 815, subdivision (a). Assuming the trip was an entirely private enterprise, neither Barfield nor Allen would have been acting within the scope of employment or as defendants' agents. The road trip would have constituted a private, independent venture for which the district, as a matter of law, is immune from liability under the Government Tort Claims Act.

We conclude the record demonstrated, as a matter of law, the complete absence of any basis for holding the district liable for plaintiffs' off-campus injuries. Accordingly, summary judgment was properly entered for the district.

THE CITY'S LIABILITY

Allen was a city employee at the time of the accident. Under Government Code section 815.2, subdivision (a) the city is liable for an "injury proximately caused by an act or omission of [its] employee . . . within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative."

Plaintiffs contend the city is potentially liable for Allen's negligence in the scope of her part-time employment with the city's recreation and parks department. The record fails to establish, however, a triable issue of fact as to whether Allen was acting in the scope of her city employment while driving the van. Allen's part-time, hourly position with the city required her to report for her shifts at Hamilton Park, not drive the van for the Running Rebels. Without informing the city in advance, Allen went on the road trip, missed her daily shift assignments without her supervisor's approval or knowledge, forfeited her pay, and required her supervisor to rearrange the shift schedule at the last minute when it became apparent that Allen's absence would extend for several weeks. Accordingly, the record does not support plaintiffs' contention that the city is potentially liable for their injuries by virtue of Allen's municipal employment status.

Plaintiffs also contend the city's payment of the bulk of the team's trip expenses rendered the city potentially liable for Barfield's and Allen's negligence in planning and executing the trip. The record shows, however, that the city undertook no responsibility for and exercised no control over the team or the planning, scheduling, or execution of the trip. When the city council agreed at the July 5 meeting to pay the team's vendors, the schedule had already been determined by Barfield with no input from the city. Although the city required the team to submit an itemized expense list to permit individual city checks to be made out to each vendor, that was done solely to ensure fiscal responsibility and accountability.

Having exerted no control over the team or the planning, scheduling, or execution of the trip, the city may not, as a matter of law, be held potentially liable for plaintiffs' injuries... [T]he city exerted no control and made no decisions regarding the Running Rebels' road trip, coaching staff, uniforms, or schedule. The city simply donated $10,000 to help cover the bulk of the team's expenses, demonstrating a "commendable interest . . . in the youth activities of the community" for which no liability may attach. (Mann v. Nutrilite, Inc., supra, 136 Cal.App.2d at p. 736.) Accordingly, summary judgment was properly entered for the city.

DISPOSITION

We affirm the summary judgments for defendants city and district.