

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ORLEANS

AB 511 DOE,

Plaintiff,

v.

Index No.: 20-46602

LYNDONVILLE CENTRAL SCHOOL DISTRICT;
LYNDONVILLE ELEMENTARY SCHOOL.

Defendants.

REPLY AFFIRMATION OF MEGHAN M. HAYES

Meghan M. Hayes affirms the following under the penalties of perjury:

1. I am an attorney, duly authorized to practice before the Courts of the State of New York and an associate with the law firm Webster Szanyi LLP, attorneys for defendants Lyndonville Central School District and Lyndonville Elementary School (collectively the "District"). I am fully familiar with the facts and circumstances of this case.

2. I submit this affirmation in further support of the District's motion and in opposition to Plaintiff's cross motion for summary judgment pursuant to CPLR 3212 seeking dismissal of the Amended Complaint in its entirety.

3. The District has established its entitlement to summary judgment and the Plaintiff has failed to either rebut the District's showing or establish his own prima facie entitlement to relief.

Background

4. There is no genuine issue of material fact in this case.

5. All of the evidence developed in this matter definitively establishes that prior to the 1990 report of abuse, the District had no notice that Houseman was a danger to children, and as soon as the District received notice of Houseman's

propensities, Houseman was reported to law enforcement and removed from the District.

6. Accordingly, the District cannot be liable for negligently supervising Plaintiff, negligently hiring, training or retaining Houseman, or breaching its statutory duty to report, and Plaintiff's Complaint must be dismissed, in its entirety and with prejudice.

The District Had No Notice of Houseman's Propensities Prior to December 1990

7. For the District to be liable for negligent supervision of Plaintiff, or negligent hiring, training, retention or supervision of Houseman, the District must have had notice of Houseman's specific propensity for sexual abuse, such that the abuse of Plaintiff was foreseeable. (See Reply Memorandum of Law).

8. Prior to Houseman's 1990 arrest, the District had no actual or constructive notice of Houseman's propensities.

9. Six former District employees testified that prior to December 1990, they had no reason to suspect Houseman was acting inappropriately with or sexually abusing children prior to his arrest in December 1990. (SOF, ¶¶ 49, 53, 63, 66, 68, 71, 73, 86, 90, 91, 93, 104, 110, 115, 116; Hayes Aff., Exs. E-J generally). No one testified to the contrary.

10. Until 1990, the District never received any complaints about Houseman acting inappropriately with students. (SOF ¶ 29; Marek Aff., Ex. A, p. 000202-000361).

11. Houseman received only positive evaluations from when he began teaching at the District until his resignation more than two decades later. (SOF ¶¶ 24-26; Marek Aff., Ex. A, p. 000286-000316).

12. There is nothing in Houseman's personnel file that suggests the

District knew or should have known of Houseman's propensities for abuse prior to 1990. (SOF ¶ 29; Marek Aff., Ex. A, p. 000202-000361).

13. Plaintiff did not tell anyone about the abuse. (SOF ¶ 123; Hayes Aff., Ex. D, p. 63, 82-83, 89-91).

14. Plaintiff also testified that at the time, he had no reason to think that anyone at the District knew that he was being abused by Houseman. (SOF ¶ 124; Hayes Aff., Ex. D, pp. 91-92, 99).

15. Plaintiff attempts to manufacture notice by submitting a self-serving affidavit materially altering his deposition testimony. (Costanzo Aff., Ex. M).

16. At his deposition, Plaintiff testified that on one occasion, Houseman had him stay alone after class and "this one certain instance [Houseman] had my hand in his pants, and Mrs. Bane came walking through the door. And I could tell that she was startled and obviously I was startled, he was startled. And she then, after a couple of seconds, you know, started talking to him, and then she left the room." (Hayes Aff., Ex. D, p. 68-69).

17. Plaintiff was asked "[d]o you know approximately when in the school year this happened?" Plaintiff responded "I do not." (Hayes Aff., Ex. D, p. 69).

18. Plaintiff now claims that this incident with Ms. Bane occurred "shortly after [Houseman] began abusing me in the fifth-grade school year." (Costanzo Aff., Ex. M ¶ 3).

19. Regarding the positioning of Plaintiff and Houseman in relation to the door, Plaintiff was asked "was your back to the door or were you facing the door when Ms. Bane walked in?" Plaintiff responded "[m]y backside was kind of --- my left side,

backside, was kind of facing the door.” (Hayes Aff., Ex. D p. 71).

20. Plaintiff further testified as follows:

Q: So when Ms. Bane walked in, did you have to rotate your head to see her?

A: Yes. I rotated my whole body.

Q: And when you did that, where was Mr. Houseman’s hands?

A: I don’t recall.

Q: And where were your hands when you rotated your body?

A: I believe they came off of his lap....

Q: Was your body blocking the area of his genital region?

A: Yes.

(Hayes Aff., Ex. D, p. 72).

21. Plaintiff attempts to alter this testimony by now claiming that he spun to the left and stepped back, and that his hand being removed from Houseman’s genital region would have been visible to Ms. Bane, despite previously testifying that his body was blocking Houseman’s genital region. (Costanzo Aff., Ex. M, ¶ 4).

22. At his deposition Plaintiff testified that he believed Ms. Bane saw Houseman abusing him. When asked what he was basing his belief on, Plaintiff simply responded “[b]ecause she was startled.” (Hayes Aff. Ex. D, p. 73).

23. Plaintiff was also asked “you said at some point [Ms. Bane] started speaking. Do you recall what she was saying when she started speaking?” Plaintiff testified “I don’t. It was just a quick conversation. It lasted fifteen seconds, maybe.” “Q: And did Ms. Bane ever say anything that made you believe that she was startled?” “A:

No.” (Hayes Aff., Ex. D, p. 73).

24. Plaintiff again seeks to change his testimony by claiming that he heard Ms. Bane “let out a loud gasp” and that she was “stumbling over her words as if she did not know what to say.” (Costanzo Aff., Ex. M, ¶ 4).

25. Finally, at his deposition Plaintiff was asked, “[d]o you have any recollection as to whether Mr. Houseman’s pants stayed unzipped while Ms. Bane was in the classroom?” Plaintiff responded, “I have no recollection.” (Hayes Aff., Ex. D, p. 74).

26. Now Plaintiff claims to recall that when Ms. Bane walked into the classroom, Houseman turned his chair away from Ms. Bane, and “clearly was either adjusting his pants or zipping them up.” (Costanzo Aff., Ex. M ¶ 5).

27. Plaintiff’s testimony at his deposition clearly established that it would have been impossible for Ms. Bane to have seen Plaintiff’s hand in Houseman’s pants, and that other than Plaintiff having the impression that Ms. Bane was startled, he had no reason to believe she saw his hand in Houseman’s pants.

28. Plaintiff’s self-serving affidavit which attempts to materially alter his deposition testimony to avoid the obvious consequences of his testimony, creates only a feigned issue of fact and must be disregarded. (See Reply Memorandum of Law).

29. Further, Ms. Bane specifically testified that she never witnessed Houseman abusing Plaintiff, acting inappropriately with a student or sexually abusing a student. (Hayes Aff. Ex. G, pp. 9-10, 13-14).

30. Accordingly, there is no genuine issue of fact as to whether Ms. Bane witnessed Houseman abusing Plaintiff, and the District established that it did not have notice of Houseman’s propensities.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.