

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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ROBERT H. EBEL
CLERK *hu*

PAUL A. BONACCI,)	4:CV91-3037
)	
Plaintiff,)	MEMORANDUM AND ORDER ON
)	MOTION OF DEFENDANT OMAHA
vs.)	PUBLIC SCHOOL DISTRICT FOR
)	SANCTIONS PURSUANT TO
LAWRENCE KING, et al.,)	RULE 11
)	
Defendants.)	

Ruling on this motion has been delayed in deference to the appeal to the United States Court of Appeals. The mandate of that court now has come down, affirming my decision to dismiss the claims against the Omaha Public School District and resolving the pending motion is therefore appropriate.

Rule 11 of the Federal Rules of Civil Procedure declares:

"The signature of an attorney . . . constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

On February 1, 1991, John DeCamp, counsel for the plaintiff, signed a complaint in this case, asserting in paragraph 28 that:

"During 1986 Plaintiff Paul A. Bonacii reported to his counselors at Northwest High School, a high school operated by the Omaha Public School District, that he had been and was continuing to be victimized by prominent members of the Omaha community as a child sex slave. Plaintiff related to his counselors many incidents of child sexual abuse and other violent criminal activity. The Defendant School District carelessly, negligently, recklessly and intentionally failed to take proper

corrective actions to protect Plaintiff from suffering further abuse, violence, and threats to his safety."

Judgment was requested from the school district in the amount of \$10 million. On August 26, 1990, about six months before the filing of the complaint, Paul Bonacci executed a document before John DeCamp, as notary public, titled, "INFORMATION IN RESPONSE TO PRESS QUESTIONS TO JOHN DECAMP & PAUL BONACCI," in which it was stated:

"ON OR ABOUT APRIL 21, 1986, MR. BONACCI WAS A STUDENT AT NORTHWEST HIGH SCHOOL; THAT EVENTS OCCURRED THEN WHICH CAUSED MR. BONACCI AT THAT TIME, APRIL 1986, TO TELL ESSENTIALLY THE SAME STORY AS IS BEING TOLD TODAY WITH RESPECT TO THE SO CALLED FRANKLIN PERSONALITIES AND CHILD ABUSE, ETC., THAT SAID STORY WAS TOLD TO THE STUDENT'S BONACCI'S SCHOOL COUNSELORS AND ULTIMATELY, AT THE COUNSELORS' INSTIGATION, TO THE OMAHA POLICE, AND ULTIMATELY TO DOCTORS AT THE NEBRASKA PSYCHIATRIC INSTITUTE. . ."

(Exhibit 2 attached to Motion for Summary Judgment, filing 57).

I granted the motion for summary judgment on behalf of the Omaha Public School District on the ground that the evidence before me failed to show any factual or legal ground for liability of that defendant. That ruling now has been upheld by the United States Court of Appeals for the Eighth Circuit and the defendant Omaha Public School District has moved for sanctions under Rule 11, claiming that when DeCamp signed the complaint he could not help but know, because of the Bonacci affidavit, that the charges against the school district were not well ground in fact or warranted by existing law or a good faith argument for the application of law.

The days of filing a lawsuit against a defendant, including a deep-pocket defendant, in the hope of discovering thereafter some evidence and law that will support a claim have come and gone. Rule 11 abolishes that notion and affirmatively places upon counsel the obligation to make reasonable inquiry before the signing of the paper and the development of a belief thereafter that the claim is well grounded and warranted. Failure to meet that duty invites a mandatory sanction.

Because John DeCamp has not responded to the motion for sanctions, I cannot tell exactly what investigation he made before he signed the complaint. It is apparent that six months before he signed the complaint he had an affidavit, probably prepared by him, which said that Bonacci had told his story to the school counselors "and ultimately, at the counselors' instigation, to the Omaha Police and ultimately to doctors at the Nebraska psychiatric Institute." What "ultimately" means or meant, I am not sure. It

was the affidavit of Diane Zipay of July 29, 1991, a Community Counselor for the Omaha Public Schools, that established that the transmission of information to the Omaha Police Division and to the Nebraska Psychiatric Institute occurred immediately after she was informed that Paul Bonacci was a victim of sex abuse and that she personally drove Paul Bonacci to the Nebraska Psychiatric Institute for treatment. The affidavit of Paul Bonacci contains none of the details of the immediacy of the action taken by Diane Zipay or of any action that was taken by her or anyone else on behalf of the school, other than the telling of the story "at the counselor's instigation" to the police and the doctors. Room remains, as far as the Bonacci affidavit is concerned, for considerable detail with respect to possible slowness of reporting. While it is a close call, I conclude that I cannot say that John DeCamp did not form a belief after reasonable inquiry that the claim was well grounded in fact.

With respect to the law DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989), established, before the signing of the complaint, that the due process clause of the Constitution of the United States imposes no duty on a state to provide members of the general public with adequate protective services. A reasonable assumption would be that that rule applied to public school districts. The court in the DeShaney opinion, however, acknowledged that "in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals." Id. 198. The Court said that:

"[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs--e.g. food, clothing, shelter, medical care, and reasonable safety--it transgresses the substantive limits on state action set by the Eighth Amendment and Due Process Clause. . . ."

Although the idea that a public school fits that principle was not accepted by me or the court of appeals, I cannot say that there was no good faith argument for the extension, modification, or reversal of existing law to that effect. Similarly, although it is true that Neb. Rev. Stat. §§ 28-710 and 711 require school employees to inform law enforcement officers of suspected or known cases of child sexual abuse and that there is no other statutory law, apparently, that imposes any further duty on school officials to protect, I cannot say that the possibility of Nebraska common law placing a further duty on public school officials would be an unwarranted position to take.

IT THEREFORE IS ORDERED that the motion of Omaha Public School District for sanctions pursuant to Rule 11, filing 68, is denied.

Dated July 1, 1992.

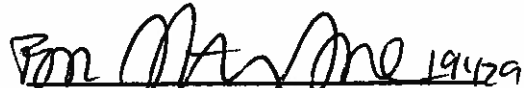
BY THE COURT


Warren R. Arbon
United States Senior District Judge

GREETINGS!

PLEASE TAKE NOTICE that on the 10th of December, 1991, Plaintiff served a copy of his sworn answers to Defendant ALAN BAER's First Set of Interrogatories.

DECAMP LEGAL SERVICES, P.C.,


JOHN W. DECAMP #10951
521 S. 14TH #300
LINCOLN, NEB. 68508
(402) 477-3974

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this notice was mailed first class postage prepaid to the attorneys above on this date, the 10 day of Dec, 1991.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COURT
68

PAUL A. BONACCI,)
)
Plaintiff,)

CIVIL NO: 91-3037 PM 4:10

WHEEL
CLERK

-vs-

THE CATHOLIC ARCHBISHOP OF OMAHA)
a non-profit corporation,)
LAWRENCE KING, PETER CITRON,)
ALAN BAER, HAROLD ANDERSON,)
ROBERT WADMAN, MICHAEL HOCH,)
KENNETH BOVASSO, NEBRASKA)
PSYCHOLOGICAL ASSOCIATES, f/k/a)
Nebraska Psychiatric Institute,)
a non-profit corporation; THE)
CITY OF OMAHA, a municipal cor-)
poration; THE OMAHA PUBLIC)
SCHOOL DISTRICT, OMAHA WORLD)
HERALD COMPANY, a corporation;)
J. L. BRANDEIS, INC. AND SONS,)
INC., a corporation; THE)
DOUGLAS COUNTY GRAND JURY,)
MICHAEL FLANNAGAN, an individual)
and SAMUEL VAN PELT, an)
individual,)
)
Defendants.)

MOTION OF DEFENDANT
OMAHA PUBLIC SCHOOL DISTRICT
FOR SANCTIONS PURSUANT TO
RULE 11

COMES NOW the defendant, Omaha Public School District, and pursuant to Rule 11 of the Rules of Civil Procedure moves the Court for an Order directing plaintiff's attorney to pay to the Omaha Public School District and its insurance carrier, Aetna Casualty & Surety Company, the amount of their reasonable expenses and attorney fees incurred because of the filing of the Complaint against the Omaha Public School District.

Defendant Omaha Public School District attaches hereto and incorporates herein the Affidavit of Neal R. Krause, Secretary of the Board of Education of the Douglas County School District 001 sued as "The Omaha Public School District" reflecting it has paid fees and expenses through October 31, 1991 of \$9,984.42 and the Affidavit of Lisa Purcell, claims representative of Aetna Casualty & Surety Company, the liability insurance carrier for the Omaha Public School District, reflecting that it has incurred expenses

and attorney fees through October 8, 1991 in the amount of \$1,137.95 in defense of this case.

In support of this Motion, defendant Omaha Public School District shows the Court that the factual basis alleged against it appears in Count III, paragraph 28, on page 15 of the Complaint which states:

"That during 1986 plaintiff Paul A. Bonacci reported to his counselors at Northwest High School, a high school operated by the Omaha Public School District, that he had been and was continuing to be victimized by prominent members of the Omaha community as a child sex slave. Plaintiff related to his counselors many incidents of child sexual abuse and other violent criminal activity. The defendant School District carelessly, negligently, recklessly and intentionally failed to take proper corrective actions to protect plaintiff from suffering further abuse, violence and threats to his safety."

This Complaint was filed on February 4, 1991.

The Affidavit of plaintiff Paul A. Bonacci, attached to the Motion for Summary Judgment of Omaha Public School District (filing 57, Exhibit 1) states at the bottom of the first page:

"...THAT ON OR ABOUT APRIL 21, 1986, MR. BONACCI WAS A STUDENT AT NORTHWEST HIGH SCHOOL; THAT EVENTS OCCURRED THEN WHICH CAUSED MR. BONACCI AT THAT TIME, APRIL, 1986, TO TELL ESSENTIALLY THE SAME STORY AS BEING TOLD TODAY WITH RESPECT TO THE SO-CALLED FRANKLIN PERSONALITIES OF CHILD ABUSE, ETC., THAT SAID STORY WAS TOLD TO THE STUDENT'S (BONACCI'S) SCHOOL COUNSELORS, AND ULTIMATELY, AT THE COUNSELOR'S INSTIGATION, TO THE OMAHA POLICE, AND ULTIMATELY TO THE DOCTORS AT THE NEBRASKA PSYCHIATRIC INSTITUTE...."

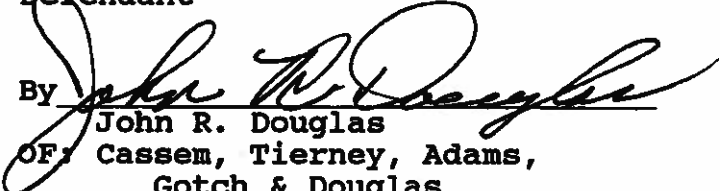
This Affidavit was executed by Mr. Bonacci and notarized by Mr. DeCamp on August 26, 1990.

On July 18, 1991 this Court entered a Memorandum and Order dismissing all plaintiff's civil rights claims against the Omaha Public School District (filing 53). On November 5, 1991 this Court entered a Memorandum and Order granting defendant Omaha Public School District's Motion for Summary Judgment on any negligent claims for alleged violation of defendant's statutory duty to report suspected child sexual abuse.

Rule 11 of the Federal Rules of Civil Procedure requires that a complaint be well grounded in fact. The Affidavit of Paul A. Bonacci prepared and notarized by John DeCamp on August 26, 1990 contains factual statements which establish that this defendant fulfilled its legal duty to the plaintiff and that the factual allegations of the Complaint prepared, signed and filed by John DeCamp on February 4, 1991 are false.

WHEREFORE, the Omaha Public School District prays for an Order awarding it and its insurance carrier the fees and expenses incurred in defending this matter pursuant to Rule 11 of the Federal Rules of Civil Procedure.

THE OMAHA PUBLIC SCHOOL DISTRICT,
Defendant

By 
John R. Douglas
OF: Cassem, Tierney, Adams,
Gotch & Douglas
Suite 300
8805 Indian Hills Drive
Omaha, Nebraska 68114
(402) 390-0300

and

David M. Pedersen
OF: Baird, Holm, McEachen,
Pedersen, Hamman & Strasheim
1500 Woodmen Tower
Omaha, Nebraska 68102
(402) 344-0500

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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DISTRICT OF NEBRASKA

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PAUL A. BONACCI,) 4:CV91-3037
)
Plaintiff,)
) MEMORANDUM AND ORDER ON CLERK
vs.) DEFENDANT OMAHA PUBLIC
) SCHOOL DISTRICT'S
THE CATHOLIC ARCHBISHOP OF) MOTION FOR SUMMARY
OMAHA, et al.,) JUDGMENT
)
Defendants.)

NORBERT H. EBEL *jm*

This case is before the court on a motion for summary judgment by defendant Omaha Public School District. The facts and allegations involved in this action have been fully set out in an earlier memorandum and order, filing 53, and shall not be repeated here. Although section 1983 claims against this defendant were previously dismissed, state tort claims remain based upon the defendant's statutory duty to report suspected child sexual abuse. The defendant now contends that affidavits of the plaintiff and a school counselor show there is no genuine issue of material fact in dispute and that summary judgment is appropriate.

Rule 56(c) permits the entry of summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is properly granted when, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party, it is clear that no genuine issue of material fact remains and the case may be decided as a matter of law. Buller v. Buechler, 706 F.2d 844, 846 (8th Cir. 1983). If the moving party meets the initial burden of establishing the nonexistence of a genuine issue, the burden shifts to the nonmoving party to produce evidence of the existence of a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

The complaint alleges that Bonacci informed school officials of his coerced participation in a "sex ring" in April, 1986, and that the school district is liable for its employees' failure to protect the plaintiff from further abuse. Pursuant to Neb. Rev. Stat. §§ 28-710 to 711, school employees are required to inform law enforcement officers of suspected or known cases of child sexual abuse. However, I do not find statutory law that imposes any further duty to protect on school officials.

According to Bonacci's sworn statement, his involvement in the sex ring was "told to the student's (Bonacci's) school counselors and ultimately, at the counselors' instigation, to the Omaha Police, and ultimately to doctors at the Nebraska Psychiatric

Institute." (Filing 57, Exhibit 2). The testimony of the school counselor, to whom the story was related by Bonacci, is entirely consistent with Bonacci's statement. The affidavit testimony of Diane Zipay states:

"In April, 1986, while a Community Counselor for the Omaha Public Schools, I contacted Paul Bonacci at the request of Northwest High School to discuss his excessive absenteeism and failing academic status. A conference was scheduled at Northwest High School with Paul Bonacci, Mrs. McCoy (Paul Bonacci's mother), Frank Bell (Assistant Principal of Northwest High School) and myself. Prior to the conference, I received a phone call from a person who said she was the mother of Paul Bonacci's girlfriend. The woman informed me that Paul Bonacci was a victim of sex abuse. When Paul Bonacci and his mother arrived at the conference, I spoke with Paul Bonacci privately and shared with him the information the caller had given. Paul Bonacci informed me that he had been sexually abused. I immediately called the Omaha Police Division and reported the suspected abuse. Officer Robert Wolf, a police investigator, was sent to Northwest High School to investigate the alleged abuse. Mrs. McCoy then agreed to help Paul Bonacci seek treatment. Paul Bonacci refused to go to the hospital with the mother. However, I personally drove Paul Bonacci to the Nebraska Psychiatric Institute. Mrs. McCoy followed in order to complete the necessary paperwork. Paul Bonacci was admitted to the Nebraska Psychiatric Institute for approximately 27 days during which time he completed course work on an individualized study basis."

(Filing 57, Exhibit 2).

Because the sworn statements show that the school officials acted in accordance with their statutory duty, there are no remaining issues as to this defendant. Therefore, I shall grant judgment in favor of the defendant.

IT IS HEREBY ORDERED that the motion of Omaha Public School District's motion for summary judgment, filing 57, is granted.

Dated November 5, 1991.

BY THE COURT


United States Senior District Judge