

CLIENT NEWS BRIEF

Appellate Court Addresses Evidentiary Issue Impacting Burgeoning Field Of Child Abuse Litigation Against Public Entities

In *D.Z v. Los Angeles Unified School District*, the California Court of Appeal clarified that California laws governing the evidence offered at trial require that courts use a two-step inquiry for all such evidence: First, determine the relevance of the evidence, and second, determine whether the court should exercise its discretion to exclude such evidence. In *D.Z.*, such inquiry was not applied by the trial court when it determined to exclude all evidence that did not involve physical touching regarding a high school teacher alleged to have sexually abused the student plaintiff.

Background

Appellant D.Z. filed a lawsuit alleging negligence by Los Angeles Unified School District, her alleged teacher abuser, and other district employees, as well as a claim against the district under the theory of *respondeat superior* (a doctrine which, generally speaking, permits employer liability for an employee's negligent actions or omissions that occur within the scope of an employee's employment). D.Z.'s negligence claims included the allegation that the district failed properly to train and supervise relevant employees related to a claim that one of her school teachers sexually abused her. D.Z. further alleged that the district knew or should have known of the danger posed by the teacher, and the district's failure to respond appropriately to that knowledge resulted in harm to her.

As trial approached, there were numerous witnesses prepared to testify on behalf of D.Z. regarding past misconduct by the teacher and the district's knowledge of such conduct. However, prior to trial, the trial court determined, relying on Evidence Code section 352, to exclude all evidence of the teacher's alleged misconduct, other than evidence relating to touching of students. The trial court's approach amounted to a bright line exclusion of all evidence of conduct other than physical touching, and excluded evidence that was relevant to appellant's claim, including prior reports made to the school, statements made by the teacher offering female students a ride home, and other statements regarding the female anatomy made to and in front of other female students by the teacher. Also excluded were details regarding a Suspected Child Abuse Report prepared and investigated in response to the teacher's comments.

At the close of trial, the jury found in favor of the district. D.Z. appealed.

The Appellate Court's Decision

The Court of Appeal disagreed with the trial court and concluded that because the trial court drew a bright line in excluding all evidence of the teacher's conduct other than physical touching, it arbitrarily excluded evidence that was relevant to D.Z.'s claims.

The Court of Appeal found that under Evidence Code section 352, evidence relevant to prove *any* element of the underlying cause of action could be admissible. The trial court incorrectly concluded that any evidence other than of physical touching was irrelevant. As a result, the trial court never made it to

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the second step of the analysis to analyze countervailing considerations of undue prejudice, confusion, or undue consumption of time in determining whether to exercise its discretion to exclude evidence.

The Court of Appeal also determined that the erroneous exclusion of relevant evidence prejudiced D.Z. The evidence excluded included a crude comment made by the teacher regarding the size of a student's breasts, and the teacher's inappropriate questions to students about their boyfriends and sexual experiences. Such comments were said to have been reported to the district prior to D.Z.'s first report to the school principal regarding the teacher's conduct, and were seen as crucial to D.Z.'s argument that the district knew or should have known the risk that the teacher would commit sexual abuse of a student.

The Court of Appeal also determined that the exclusion of non-touching evidence impacted D.Z.'s ability to offer otherwise admissible evidence of prior complaints. This also led to confusion amongst witnesses when asked to discuss complaints of touching only, and to omit discussion of inappropriate comments.

Ultimately, the Court of Appeal reversed the judgment and remanded the matter for a new trial.

Takeaway

The Court of Appeal's opinion is likely to be relied upon by plaintiffs' attorneys to seek to introduce at trial a broader spectrum of evidence supporting claims of negligence brought against school districts in the child abuse context. Correspondingly, the action or inaction of a district in relation to an employee alleged to have abused a student may impact the relevant evidence potentially admissible at trial. This underscores the importance of school districts' prompt and thorough handling of complaints received regarding their employees' alleged inappropriate behavior. Upon receipt of such complaints, districts should not only document the complaint, but also the remediation and reasonable steps taken to protect students and ensure that the employee's behavior cannot recur.

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