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Lynch v. Board of Education - Teacher's Apparent Authority Renders School District Liable for Negligence

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LYNCH V. BOARD OF EDUCATION— TEACHER'S APPARENT AUTHORITY RENDERS SCHOOL DISTRICT LIABLE FOR NEGLIGENCE

Prior to 1959, Illinois school districts were considered quasi-municipal corporations and, therefore, absolved from tort liability under the doctrine of sovereign immunity.[1] In *Molitor v. Kaneland Community Unit District No. 302*,[2] however, the Illinois Supreme Court recognized that public policy militated against allowing school districts or their agents to engage in tortious conduct with impunity when private persons would be responsible for the same conduct. Accordingly, the court abolished the sovereign immunity of school districts.[3]

The General Assembly, reacting to *Molitor*,[4] amended the Illinois School Code to restore limited immunity for school districts and teachers in the exercise of disciplinary or supervisory activities.[5] In *Kobylanski v. Chicago Board of Education*,[6] the Illinois Supreme Court interpreted that statute to apply to "all matters relating to the . . . *conduct of the schools*."[7] The effect of this interpretation was to confer blanket immunity from negligence and to impose liability on districts and teachers only for willful and wanton misconduct.

Two years later the court qualified the expansive *Kobylanski* decision when faced with a school district's alleged negligence in providing defective athletic equipment to students. In *Gerrity v. Beatty*,[8] the court held that the *Kobylanski* court's interpretation of sections 24-24 and 34-84a of the School Code was not intended to apply to furnishing equipment. Rather, a plaintiff need only prove ordinary negligence to recover for negligent issuance of defective athletic equipment.[9] The court reasoned that public policy considerations required school districts to bear the obligation to issue safe athletic equipment and that *Kobylanski* immunity was limited to "matters relating to

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1. *See* Kinnare v. City of Chicago, 171 Ill. 332, 49 N.E. 536 (1898) (seminal decision granting sovereign immunity to school districts). *See generally* Kerwin, *Tort Liability for Illinois Schools under Section 9-103 of the Illinois Tort Immunity Act*, 25 DEPAUL L. REV. 441 (1976).

2. 18 Ill. 2d 11, 163 N.E.2d 89 (1959), *cert. denied*, 362 U.S. 968 (1960), *modified on other grounds*, 24 Ill. 2d 467, 182 N.E.2d 145 (1962).

3. 18 Ill. 2d at 21, 163 N.E.2d at 96.

4. *Compare* Comment, *Governmental Immunity in Illinois: The Molitor Decision and the Legislative Reaction*, 54 NW. U. L. REV. 588 (1959) (favorable review of *Molitor*) *with* Hickman, *Municipal Tort Liability in Illinois*, 1961 U. ILL. L.F. 475 (criticizing *Molitor* as judicial legislation) *and* Huff, *Tom Molitor and the Divine Right of Kings*, 37 CHI.-KENT L. REV. 44 (1960) (criticizing *Molitor* as judicial legislation).

5. ILL. REV. STAT. ch. 122, §§ 24-24, 34-84a (1979) (approved July 13, 1965).

6. 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

7. *Id.* at 173, 347 N.E.2d at 708 (emphasis in original).

8. 71 Ill. 2d 47, 373 N.E.2d 1323 (1978).

9. *Id.* at 52-53, 373 N.E.2d at 1326.

the teacher's personal supervision and control of the conduct or physical movement of the student."[10]

After *Kobylanski*, Illinois courts were fairly in agreement as to the extent of school district liability for injuries that occur during authorized school activities. The more difficult question arises in determining what is actually an authorized school activity, such that a duty of care is imposed upon the district. Unless schools are informed of when an activity occurring on school grounds will be deemed authorized, and thus trigger a school's liability for negligence, prudence might dictate that a school chain its playgrounds or provide constant supervision over its premises.

Recently, the Illinois Supreme Court addressed this issue in *Lynch v. Board of Education*.[11] The *Lynch* court, applying the agency concept of apparent authority,[12] found that an activity which a school refused to authorize, and from which it tried to disassociate itself, reasonably appeared to third persons to be authorized because of the conduct of the teachers who participated in the activity. Therefore, the district was held to have breached its affirmative duty to provide adequate protective equipment.[13] As the court noted, the facts were close; therefore, an understanding of the facts is essential.

Beginning in 1970, a girl's "powderpuff" football game was held at halftime of Collinsville high school's annual varsity homecoming game. In 1974, however, the school cancelled the "powderpuff" game and attempted to disassociate itself from an ad hoc game that was being organized by a group of students and teachers. The school refused to let announcements be made or bulletins be posted concerning the game. Nevertheless, the girls practiced on school grounds, used school locker rooms to change clothes, and eventually played the game on school property. Further, all these events were directed by three teachers acting at the behest of the participating students.[14]

During the game, Cynthia Lynch was struck in the face and knocked to the ground by an opponent.[15] She brought suit for these game-related injuries against the school district and the trial court entered judgment on a general verdict, finding the district negligent in failing to provide adequate

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10. *Id.* at 51, 373 N.E.2d at 1325. *See* Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 395 N.E.2d 538 (1979) (teacher liable for willful and wanton negligence in failing to inspect athletic equipment).

11. 82 Ill. 2d 415, 412 N.E.2d 447 (1980).

12. *See* RESTATEMENT (SECOND) OF AGENCY §§ 8, 27 (1958); W. SEAVEY, HANDBOOK ON THE LAW OF AGENCY § 8 (1964).

13. 82 Ill. 2d at 434-35, 412 N.E.2d at 459-60.

14. A more detailed discussion of the facts appears in the supreme court opinion. *Id.* at 417-23, 412 N.E.2d at 451-54.

15. To add insult to injury, the plaintiff's team lost the game 52-0. *Id.* at 417, 412 N.E.2d at 451.

protective equipment.[16] The Illinois Appellate Court for the Fifth District affirmed, holding that the game was an authorized school activity and that sufficient evidence existed to justify the verdict.[17]

In affirming the appellate court, however, the Illinois Supreme Court substituted a different rationale. The appellate court had imposed a duty to provide adequate protective equipment by finding that the "powderpuff" game was an authorized school activity.[18] In contrast, the supreme court refused to find that the game was expressly authorized and concluded that such a determination was immaterial because the actions of the teachers vested the game with the appearance of an authorized activity.[19]

The supreme court's reliance on apparent authority to establish the school district's duty to provide adequate equipment was erroneous in several respects. Initially, even if Justice Ryan was correct in criticizing the plurality opinion for extending apparent authority to hold a principal liable in a negligence action,[20] the facts did not indicate the existence of apparent authority. Inherent in the concept of apparent authority is a requirement that the authority of the agent emanate from the actions of the principal; that is, authority may not be presumed from the acts or statements of the putative agent.[21] Rather, apparent authority must be based on words or acts of the principal that would lead a reasonably prudent person, exercising diligence and discretion, to naturally believe that the agent possessed authority to affect the legal relations of the principal.[22]

Illinois courts have construed this requirement very narrowly. For example, mere possession of a principal's property with actual authority to execute a lease is insufficient to confer the appearance of authority to sell upon

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16. *Id.* at 416-17, 412 N.E.2d at 450-51. The plaintiff also alleged willful and wanton misconduct on the part of the defendant for failing to provide adequate supervision. The supreme court, however, ruled that although the jury returned a general verdict, the presumption that the jury found willful and wanton misconduct was sufficiently rebutted by the evidence. *Id.* at 430-32, 412 N.E.2d at 457-59.

17. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 390 N.E.2d 526 (5th Dist. 1979).

18. *Id.* at 325, 390 N.E.2d at 532.

19. 82 Ill. 2d at 434, 412 N.E.2d at 459.

20. *Id.* at 439, 412 N.E.2d at 462 (Ryan, J., dissenting). *See* Smith v. Polukey, 22 Ill. App. 2d 238, 252, 160 N.E.2d 508, 515 (2d Dist. 1959) (injured person does not rely on apparent authority in getting hurt; actual authority must be proved to recover).

21. *See* Schoenberger v. Chicago Transit Auth., 84 Ill. App. 3d 1132, 1136, 405 N.E.2d 1076, 1081 (1st Dist. 1980) (interviewer held to have no apparent authority to hire and set pay scales); Chalet Ford, Inc. v. Red Top Parking, Inc., 62 Ill. App. 3d 270, 274, 379 N.E.2d 88, 90-91 (1st Dist. 1978) (principal's actions over a four year period created apparent authority in agent to accept car keys contrary to posted notice).

22. *See* Weisbrook v. Clyde C. Netzley, Inc., 58 Ill. App. 3d 862, 865-66, 374 N.E.2d 1102, 1105-06 (2d Dist. 1978) (third party may not assume that agency relationship existed between father and son merely because father loaned son money to purchase a car); Barraia v. Donoghue, 49 Ill. App. 3d 280, 282-83, 364 N.E.2d 952, 954 (1st Dist. 1977) (entrustment of yacht and signed title are sufficient indicia to create agent's apparent authority to sell).

an agent.[23] Unlike placing property in an agent's possession to lease to third parties, the *Lynch* school district did not engage in any affirmative conduct to confer upon its teachers apparent authority to coach the game. Quite the contrary, the evidence indicated that the school district explicitly refused to make announcements or post notices concerning the game.[24] In fact, the school even countermanded an unauthorized announcement to clarify that the game was not an authorized school activity.[25]

Further, to rely upon an agent's apparent authority a third party must exercise due diligence and discretion to ascertain the agency's existence and scope.[26] In *Lynch*, the supreme court assumed without discussion that the plaintiff had exercised diligence and discretion in ascertaining the extent of the teachers' authority; however, the standard to be applied is objective. Therefore, the fact that the school made a countermanding announcement, that it refused to allow the "powderpuff" game to be played at halftime of the homecoming game, and that other students realized the game was not authorized clearly indicates that a close factual question existed as to plaintiff's duty to use due diligence and discretion. In such cases, it is imperative that the jury be accurately instructed.[27]

Despite the obvious, difficult factual questions presented in *Lynch*, the supreme court allowed the jury finding of an agency relationship based on apparent authority to stand, even though the jury was not instructed on the law regarding apparent authority.[28] The *Lynch* court reasoned that because the trial court sustained the defendant's objection to an instruction on apparent authority, the defendant could not argue on appeal that the failure to give the instruction was erroneous.[29] Granting that this reasoning is in accord with Illinois precedent, the more reasonable disposition would have been to remand the cause so that a jury could decide the close factual questions after proper instructions.

Further indication that the court's reasoning was erroneous appears in the discussion of the duty imposed by the apparent agency. The court reasoned that the duty to furnish equipment was imposed because the school knew or should have known through its apparent agents that injury was foreseeable.[30]

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23. *See, e.g.*, Lawcock v. United States Trotting Ass'n, 55 Ill. App. 2d 211, 216-17, 204 N.E.2d 802, 804 (1st Dist. 1965) (possession of principal's horse with authority to execute a lease was insufficient to create apparent authority to sell).

24. 82 Ill. 2d at 425-26, 412 N.E.2d at 455.

25. *Id.*

26. *See* Schoenberger v. Chicago Transit Auth., 84 Ill. App. 3d 1132, 1135-36, 405 N.E.2d 1076, 1080-81 (1st Dist. 1980); Wing v. Lederer, 77 Ill. App. 2d 413, 417, 222 N.E.2d 535, 537-38 (2d Dist. 1966).

27. *See* Both v. Nelson, 31 Ill. 2d 511, 514-15, 202 N.E.2d 801, 804 (1964); Edwards v. Hill-Thomas Lime & Cement Co., 378 Ill. 180, 187, 37 N.E.2d 801, 804 (1941); Grover v. Commonwealth Plaza Condominium Ass'n, 76 Ill. App. 3d 500, 508-11, 394 N.E.2d 1273, 1279-81 (1st Dist. 1979).

28. 82 Ill. 2d at 428, 412 N.E.2d at 456.

29. *Id.*

30. *Id.* at 434-35, 412 N.E.2d at 459.

This reasoning demonstrates an obvious misunderstanding of apparent authority. Apparent authority is an estoppel principle that binds a principal when his actions appear to vest authority in an agent.[31] The essence of the concept is that liability is imposed based on the principal's manifestations *to the third party* who dealt with the putative agent.[32] Therefore, there need not be any actual relationship between the principal and the apparent agent through which the foreseeability of injury could be brought to the principal's attention.

This was the situation in *Lynch*. The teachers who were found to be apparent agents were operating independently of their function as school employees. They were coaching after school hours, were receiving no remuneration, and were aware that the activity was unauthorized.[33] Based on this attenuated relationship between the school and the teachers, it is difficult to understand how the school could have foreseen injury resulting from an activity with which it had no connection.

Finally, and most importantly, the agency discussion as it relates to this case was wholly irrelevant. Because of an agency relationship, liability is imposed on a principal for the wrongful actions of an agent acting within the scope of his or her authority.[34] As Justice Ryan explained in his dissenting opinion, the cause of action in *Lynch* was not predicated upon any alleged negligence by the teachers.[35] The basis for the alleged negligence was the school's failure to provide adequate protective equipment to the students. Therefore, agency principles were entirely inapplicable to impose liability as a principal on the school district in this case.

Nevertheless, this application of apparent authority was used to impose an affirmative duty on the school district to provide equipment. The court's reasoning seems to have been that because it appeared the teachers were authorized to coach the game, the school district was estopped from denying liability. As dissenting Justices Ryan and Goldenhersh asserted, such reasoning was circuitous and unnecessary. The evidence adduced was sufficient to support the findings of the trial and appellate courts that the "powderpuff" football game was an authorized activity.[36]

The plurality opinion evinces a strained attempt to reach a desired result. Utilizing the estoppel principle of apparent authority renders it virtually im-

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31. *See* Bank of North Carolina v. Rock Island Bank, 630 F.2d 1243 (7th Cir. 1980) (corporation's president is vested with apparent authority to conduct usual and ordinary functions of his position); Crawford Sav. & Loan Ass'n v. Dvorak, 40 Ill. App. 3d 288, 293, 352 N.E.2d 261, 264-65 (1st Dist. 1976) (unlimited access to telephone creates apparent authority to conduct ordinary and usual business for the principal).

32. *See, e.g.*, Simpson v. Compagnie Nationale Air France, 42 Ill. 2d 496, 499-500, 248 N.E.2d 117, 120 (1969) (travel agent who planned trip, including a flight on the defendant airline, was not apparent agent of airline since the airline took no action conferring apparent authority on the travel agent).

33. 82 Ill. 2d at 426, 412 N.E.2d at 455.

34. *See* W. SEAVEY, HANDBOOK ON THE LAW OF AGENCY §§ 55, 83 (1964).

35. *Id.* at 438, 412 N.E.2d at 461 (Ryan, J., dissenting).

36. 82 Ill. 2d at 437, 412 N.E.2d at 461 (Goldenhersh, C.J., concurring).

possible for school districts to limit liability by disassociating themselves from unauthorized activities that are tangentially related to their schools. As was the case in *Lynch*, the supreme court found that it reasonably appeared to third parties that the "powderpuff" game was authorized, despite the school's affirmative conduct to disassociate itself from the activity. Further, because the court stated that the duty of the school district was "to furnish equipment to prevent serious injuries . . . when an injury was foreseeable,"[37] school districts must now take drastic action to protect themselves from liability. For example, school districts might be well advised to limit access to recreational areas to times when constant supervision is available. School districts might consider prohibiting teachers from participating in any unauthorized extracurricular activities.[38] Although the public policy against such restrictive measures is obvious,[39] such actions might be the only available alternatives to limit the potential liability created by the *Lynch* decision.

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37. *Id.* at 434-35, 412 N.E.2d at 459.

38. In his concurring opinion, Justice Moran argued that the school district should have taken more positive action to absolve itself from liability. *Id.* at 437-38, 412 N.E.2d at 461 (Moran, J., concurring).

39. In his dissent, Justice Ryan discussed the problems that a school district would face if it were to impose burdensome restrictions on the use of its premises as a result of *Lynch*. *Id.* at 422-43, 412 N.E.2d at 463 (Ryan, J., dissenting).