

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

* * * * *

Shirley Kinsey

v.

Providence School Board

* * * * *

DECISION

Held: Injuries received by Assistant Principal Shirley Kinsey during a melee involving students at Nathan Bishop Middle School were the result of an assault and not an accident. The salary she lost while recovering from surgery for a broken shoulder and other injuries should be restored to her as required under R.I.G.L. 9-1-31 (d).

DATE: August 2, 2006

Travel of the Case

On January 26, 2006, Shirley Kinsey appealed to Commissioner Peter McWalters regarding the denial of her request to the Providence School Board that she receive additional compensation. The compensation was claimed for a period of time in which she was unable to work because of injuries she sustained during an incident at Nathan Bishop Middle School. A de novo hearing before the undersigned, designated by Commissioner McWalters to hear and decide this appeal, was held on March 30, 2006. The record in this case closed on July 10, 2006 upon submission of the Providence School Board's brief. The appellant's request for an expedited decision has been granted.

Issue:

Was Shirley Kinsey's absence from her position as Assistant Principal at Nathan Bishop Middle School a result of injuries she sustained during an assault at the school on March 3, 2005?

Findings of Relevant Facts:

- Shirley Kinsey was employed by the Providence School Board as an Assistant Principal at Nathan Bishop Middle School during school year 2004-2005. Tr. p. 12.
- During the morning of March 3, 2005 Ms. Kinsey was supervising approximately 100 students inside the school's auditorium. The students were inside due to inclement weather. Tr. pp. 12-14; Joint Ex. B.
- Ms. Kinsey was stationed in the rear of the auditorium at the back entry, an area a width of eight to twelve feet Tr. pp. 12-13; 50. The principal of the school, Mr. Earnest Cox, was also supervising this same group of students. He was standing down by the stage at the front of the auditorium. Tr. p.12.
- Students were separated into the East and West sections of the auditorium: eighth grade students on the West and seventh grade students on the East. Tr. p. 14.
- A fight broke out between students on the East side of the auditorium. Tr. pp. 14-15; 50-51; Joint Ex. A; Joint Ex. B.
- As soon as she realized what was happening, Ms. Kinsey proceeded immediately toward the fight¹, separating students in front of her. Tr. p. 19; Joint Ex. A; Joint Ex. B.
- Ms. Kinsey directed students nearby to stay seated. Tr. p. 19; 58.
- Despite receiving these instructions, thirty to forty students who were behind Ms. Kinsey on the West side of the auditorium began jumping over seats making their way toward the fight on the other side of the auditorium. Tr. p. 19; 51; Joint Ex. A; Joint Ex. B.

¹ Ms. Kinsey testified as to conversations she previously had with her supervisor, Principal Earnest Cox, regarding the urgency for school officials to reach fights promptly because of several recent incidents of "stomping" –students deliberately trampling upon other students who were knocked to the floor. Tr. pp. 15-17. One such incident had resulted in a student going to the hospital. Tr. p. 15.

- Ms. Kinsey, along with several students, was knocked to the ground and trampled upon by several of the students who were running and pushing others out of the way so that they could get to the fight. Tr. pp. 19-22; 52; Joint Ex. A and B.
- Ms. Kinsey tried to get up several times, but was knocked back to the floor and further trampled upon. She ultimately placed her hands over her head for protection. Tr. p. 20; 56; Joint Ex. A and B.
- One student attempted to come to Ms. Kinsey's aid by standing behind her and blocking others from continuing to trample her. Tr. pp. 24-26; 57.
- Principal Earnest Cox eventually made his way to Ms. Kinsey and helped her up; no other students were on the ground with Ms. Kinsey at that time. Tr. p. 26; 53.
- Ms. Kinsey was unable to identify any specific individuals who injured her. Tr. p. 58.
- Ms. Kinsey went immediately to the school nurse, and was given Advil and ice for her injuries. As the day progressed, Ms. Kinsey felt increased pain in her arm and shoulder. By the time she had supervised three lunch periods, the pain had become excruciating and she sought medical assistance at Miriam Hospital. Tr. pp. 26-28; Joint Ex. B. Appellant's Ex. 1.
- As a result of this incident, Ms. Kinsey suffered multiple contusions to her hip, knees, elbows, right upper extremity, neck, and head. She also sustained a tear to her rotator cuff and a fractured shoulder. The shoulder injury resulted in surgery on April 15, 2005. Appellant's Ex. 1.
- Throughout the summer of 2005, Ms. Kinsey was in pain and could not perform any activity which required use of her right upper extremity. The opinion of an independent medical specialist, obtained by the Providence School Department on June 1, 2005, was that Ms. Kinsey had suffered extensive damage to her shoulder, which had required extensive surgical repair. His prognosis was that once Ms. Kinsey was able to begin physical therapy², she would be at the point of maximal medical improvement in approximately eight (8) weeks.
- Due to her extensive injuries, the resulting operation on her shoulder and her need for post-operative physical therapy, Ms. Kinsey was absent from work March 4, 2005 for the rest of the school year and was not able to return to work until October 31, 2005.³ Tr. p. 42.
- During her absence from work, Ms. Kinsey received workers' compensation benefits supplemented by a contractual payment⁴ which made up the difference between workers' compensation and her salary for a period of ninety days. She thereafter incurred a loss of salary when the ninety day period expired up to the time of her return to work in October, 2005.

² Her physician had not yet permitted her to begin physical therapy at that time.

³ Any issue of damages to which Ms. Kinsey might be entitled has been deferred. Tr. pp. 86-87.

⁴ Provided for in the collective bargaining agreement the School Board maintains with its administrators. The contract is not in evidence and there is no other information on the terms of this provision.

Positions of the Parties

Providence School Board

The School Board maintains that Ms. Kinsey does not qualify to receive her full salary during the period of her absence since her injuries were not “sustained during an assault” as required under R.I.G.L. 9-1-31 (d). Although the School Department does not dispute the nature or extent of the injuries Ms. Kinsey received during the March 3, 2005 incident, it views the incident as an unfortunate accident, rather than an “assault” as that word appears in the statute. The requisite elements for an assault are absent, the School Board argues, since there is no evidence that the students who pushed and trampled upon Ms. Kinsey did so intentionally and with the purpose of causing her harm.

In their excitement to see the fight at the other end of the auditorium, the onrushing students were not focusing on Ms. Kinsey and at most were indifferent to her. The “mob mentality” demonstrated by a “swarm” of students moving quickly toward a fight is not equivalent to the mindset of a group whose design was to get their Assistant Principal on the ground and trample her. Most of the students involved were probably unaware that Ms. Kinsey was in front of them, the School Board submits. In fact, one student did notice that Ms. Kinsey was in danger and diverted other students from continuing to run over her. Furthermore, Ms. Kinsey was not the only person knocked to the floor. The fact that several students were also knocked to the floor shows that the “mob” of students rushing to see the fight acted indiscriminately, “pushing all that lay in their path”. The group lacked any specific malicious intent with respect to Ms. Kinsey.

The Board stated its legal position when it denied Ms. Kinsey’s grievance. At that time (October 28, 2005)⁵ the Chairman of the School Board indicated that although Ms. Kinsey’s injury was work-related, it was not due to an assault and/or battery. When counsel for Ms. Kinsey later elaborated on the nature of her claim, specifically citing R.I.G.L. 9-1-31(d), counsel for the School Board indicated in her response that “even under the preponderance of evidence standard of proof...it remains the Board’s position that Ms. Kinsey was not assaulted by students”.⁶ At time of hearing, counsel for the Board argued that the definition of assault contained in the criminal offense “Assault of schoolteachers, school officials or other school department employees”⁷ was the applicable definition of assault for purposes of qualifying for salary payments under R.I.G.L. 9-1-31 (d). Ms. Kinsey’s injuries were the result of an accident, not an assault, the Board maintains.

Shirley Kinsey

Counsel for Ms. Kinsey argues that § 9-1-31 was enacted to protect teachers and administrators in our public schools from financial losses incurred as the result of incidents precisely like the one that took place on March 3, 2005 at Nathan Bishop

⁵ PSB Ex. B.

⁶ Reference was made to State v. Pope, 414 A.2d 781 (R.I. 1980)

⁷ R.I.G.L 11-5-7

Middle School. Ms. Kinsey was seriously injured in the performance of her professional duties and in implementing a specific plan previously discussed with her principal to address recent incidents of “stomping” in which students had been injured. Without regard to her own personal safety, she proceeded immediately to break up a fight that had broken out in a group of students that she, and the school principal, were supervising in the school auditorium.

Once her back was turned, thirty to forty students swarmed toward the fight, ignoring Ms. Kinsey’s directive that they remain in their seats. This was not an accident. The students did not run by or around Ms. Kinsey, but ran directly at her knocking her to the ground and trampling her. Counsel argues that many students used the situation to stomp on an assistant principal who was frequently involved in student disciplinary matters. When Ms. Kinsey attempted to get up to avoid further injury, she was knocked back to the ground several times. If these facts don’t constitute an “assault” by these students, then the protection the General Assembly intended to provide to teachers and administrators by enacting Section 9-1-31 has been undermined. If school administrators are not to be protected from financial losses they would otherwise incur in intervening in violent confrontations at school, then how can we expect them to take risks such as that taken by Shirley Kinsey when she rushed to separate students involved in a violent incident in a crowded middle school auditorium?

DECISION

The facts of this case demonstrate that Shirley Kinsey received serious injuries when she was knocked down and trampled on by a group of out-of-control students at Nathan Bishop Middle School on March 3, 2005. These students disregarded her directive that they remain in their seats in the auditorium. There is no evidence that Ms. Kinsey was in a position that made physical contact with her as the students “swarmed” forward an “accident”. According to the evidence, she was in plain view at the time she turned to intervene in the fight on the east side of the auditorium. We infer that the student or students who knocked her down saw her as they indiscriminately pushed ahead to observe the fight. Her back was turned at the time she was knocked to the floor, making it impossible to identify exactly which student or students pushed her down. Her position on the floor while students trampled her and knocked her down as she attempted to get up prevented her from identifying those who were directly responsible for her injuries. As much as we would like to infer that no students saw Ms. Kinsey before they knocked into her or trampled her, we cannot draw such an inference. We find that her injuries were not accidental but were the result of an assault as that word is used in R.I.G.L. 9-1-31(d).

The word “assault” as it appears in the statute is not defined, but even accepting the definition offered by the School Board, i.e. that contained in R.I.G.L. 11-5-7⁸ (which

⁸ Section 11-5-7 defines the perpetrator of an assault as “Any person who shall knowingly and willfully strike a school teacher, student teacher, school security officer, administrator, causing bodily injury, while the teacher, student teacher, security officer, administrator or school department employee is engaged in the

defines the crime of assault on a school teacher, school official, or other school department employee) we find that Ms. Kinsey was the victim of an assault. The School Board argues that there is no evidence that the students intended to injure Ms. Kinsey and we agree. However, Section 11-5-7's definition of an assault does not require such specific intent. The statute requires only that the offender's "striking" of the school administrator be "knowing and willful" and that it cause bodily injury. Although we have no evidence that a student or students held the specific intent to inflict bodily injury on Ms. Kinsey (as evidenced by their indiscriminate pushing of all of those in their way including some students), we do have sufficient facts to conclude that knocking her down was "knowing and willful" and not accidental.

When she was trampled upon and knocked down again as she attempted to get herself up off the floor, the inference that at least one or more students saw her before making contact is more reasonable than the inference that no student in the group was able to see her or that their contact with her was unavoidable. The facts here support the conclusion of "knowing and willful" physical contact, rather than a series of unavoidable accidents. It is undisputed that Ms. Kinsey was engaged in the performance of her duty at the time of this incident and that her serious injuries resulted from being knocked down and trampled upon by the students.

Remedial statutes such as R.I.G.L. 9-1-31 should be liberally, not narrowly construed. Gem Plumbing & Heating Co., v. Rossi, 867 A.2d 796, 811 (R.I. 2005) (quoting Ayers-Schaffner v. Solomon, 461 A.2d 396 (R.I. 1983)). A remedial statute should not be construed in a manner "which would defeat its *evident purpose*." Coletta v. State, 106 R.I. 764, 770 (1970) (citing Condon v. First National Stores, Inc., 65 R.I. 129 (1940) (emphasis added)). The legislative purpose behind the enactment of R.I.G.L. 9-1-31 was to protect designated school officials from financial losses when they receive "certain injuries" during the course of performing their duties. Underlying this express purpose is reinforcement of the notion that school officials have a duty to intervene even in dangerous situations in order to protect students. It is our conclusion that the risk of serious harm to school officials who act as we wish them to in such situations, is exactly the type of risk that R.I.G.L. 9-1-31 (c) and (d) seeks to address.⁹ While the statute makes no provision for compensation for the pain and suffering such injuries may bring, there is provision for payment of medical expenses and compensation for financial losses, including loss of salary. We find that pursuant to this statute, in particular Section 9-1-31(d), Shirley Kinsey was entitled to be paid her full salary, minus workers' compensation benefits, during the period of her absence from her job as Assistant Principal at Nathan Bishop Middle School. Her appeal is sustained.

performance of his or her duty, shall be deemed to have committed a felony, and shall be imprisoned not exceeding three (3) years, or fined not exceeding fifteen hundred dollars (\$1,500), or both.

⁹ We certainly do not mean to imply that school officials are completely insulated from all risk of loss due to on the job injury. Accidental injuries arising out of and in the course of a school official's employment would be treated in the same way as those for other classes of employees under our state's workers' compensation system.

The parties are directed to meet and confer as to the amount owed to Ms. Kinsey. If they are unable to resolve the amount owed to her within thirty (30) days, further hearing in this matter will be scheduled.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

August 2, 2006

Date