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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

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RENE SHEAFFER,

Plaintiff and Appellant,

v.

SCOTT VALLEY UNION SCHOOL DISTRICT et al.,

Defendants and Respondents.

C069156

(Super. Ct.  
No. SCSCCVPO07332)

Rene Sheaffer sued the Scott Valley School District (District) and one of its teachers, Jim Morris, for negligent supervision after she was raped on campus by a high school student, Austin Eastlick.<sup>1</sup> In a prior unpublished decision, we reversed an earlier grant of summary judgment because the trial court erroneously denied a continuance of the hearing on the motion for summary judgment. (*Sheaffer v. Scott Valley School District* (Jan. 13, 2010, C059862) [nonpub. opn.] (*Sheaffer I.*)) After remand, the trial

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<sup>1</sup> We refer to the District and Morris collectively as defendants. Although Austin Eastlick, Duane Eastlick, and Patricia Holly Whitman were also sued by Sheaffer, they are not parties to this appeal.

court again granted summary judgment in favor of defendants. The trial court reasoned that defendants were liable only if Sheaffer could show a triable issue of fact that the sexual assault was foreseeable. Based on the undisputed facts, the trial court granted summary judgment in favor of defendants because Eastlick's possession of a multitool did not render it foreseeable that he would use a different knife to commit a sexual assault on campus. And, Morris lent the shop keys based on a life-long and unproblematic history with Eastlick that rendered the sexual assault unforeseeable.

On appeal, Sheaffer argues the trial court erred by (1) overruling her evidentiary objections to defendants' evidence, (2) denying her motion for a continuance to conduct further discovery prior to the hearing on the motion for summary judgment, (3) granting summary judgment even though defendants breached their duty to supervise Eastlick by failing to enforce a no-knives rule on campus, and (4) entering summary judgment in favor of Morris even though he lent Eastlick the keys to the campus metal shop where Eastlick raped Sheaffer.

We conclude that the trial court properly granted summary judgment in favor of defendants. Although the District was aware that Eastlick sometimes carried a multitool<sup>2</sup> that he used to complete his farm chores, Eastlick perpetrated the rape using a single blade foldout knife<sup>3</sup> that he hid from defendants. Morris lent the keys to the metal shop based on his life-long relationship with Eastlick, which indicated that Eastlick was a trustworthy person. Here, the record shows that Eastlick's crime was unforeseeable to

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<sup>2</sup> Eastlick's multitool contained a bottle opener, two screwdrivers, pliers, and a damaged blade that was less than 2.5 inches long. The blade had a broken tip and was not capable being locked in an open position. Eastlick had found it on the side of the road after it had been run over. Thus, nothing on it worked very well.

<sup>3</sup> Eastlick's foldout knife had a single three-inch blade that brought the knife's total length to about six or seven inches.

defendants. Sheaffer's remaining contentions are forfeited for failure to preserve them for appeal. Accordingly, we affirm the judgment.

## FACTUAL AND PROCEDURAL HISTORY

### *Operative Complaint*

After this court reversed the summary judgment granted in *Sheaffer I, supra*, C059862, after defendants filed a motion for summary judgment on the first amended complaint, and after the trial court issued an order allowing Sheaffer to amend her fourth cause of action for negligence against the District, Sheaffer filed a second amended complaint.

The second amended complaint alleged that Sheaffer was 17 years old on January 27, 2006, when she rode to school on a bus with Eastlick. Eastlick asked for and received the keys to the campus metal shop from Morris. Eastlick then enticed Sheaffer to accompany him to the deserted metal shop, where he held a foldout knife to her throat while raping and then forcing her to orally copulate him. Eastlick later pled guilty to unspecified criminal charges in connection with the sexual assault.

The District had a rule requiring students to be suspended or expelled for bringing knives or other dangerous objects onto campus. On two occasions prior to January 27, 2006, Eastlick was caught with a knife but received no discipline for the violations.

Based on these allegations, the operative complaint set forth three causes of action against the District and Morris: (1) negligence as to the District for "failing to warn, suspend or reprimand" Eastlick for his prior knife possessions on campus; (2) negligence as to Morris for providing Eastlick with the keys to the deserted metal shop; and (3) intentional infliction of emotional distress as to Morris. The intentional infliction of emotional distress cause of action was later dismissed.

### *Motion for Summary Judgment*

In December 2010, defendants moved for summary judgment on the first amended complaint on the grounds that the unforeseeability of Eastlick's crime defeated Sheaffer's causes of action for negligence.<sup>4</sup> Defendants introduced evidence that there had been no sexual assault on campus for more than 25 years and there was no evidence suggesting that Eastlick would rape another student while armed with a foldout knife.

Defendants also introduced evidence showing Sheaffer and Eastlick dated in ninth grade when she allowed him "to fondle her bare breast." They rode the bus together every morning on their way to their respective high schools. On January 27, 2006, Sheaffer and Eastlick got off the bus together at Etna High School, where Eastlick but not Sheaffer was a student. Sheaffer had transferred out of Etna High School to another school prior to the start of the school year. Eastlick stopped by Morris's classroom and received the keys to the school's metal shop.

Morris had known Eastlick "since Eastlick was a baby and ha[d] developed a longstanding relationship of trust with him." Eastlick had been in Morris's classes for each of the three years that Morris had taught at Etna High School. Eastlick also went on overnight trips with Morris as part of the Future Farmers of America program. On the trips, Morris did not encounter any behavioral problems with Eastlick. Given the large area encompassed by the campus, "it is not uncommon to give students keys to allow them access to parts of the campus to obtain or retrieve items." Morris lent keys to students based on his experience with them and his judgment as to who was trustworthy. Eastlick had borrowed keys to the metal shop in the past and had not abused the

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<sup>4</sup> The hearing on the motion for summary judgment was continued many times. After the second amended complaint was filed, Sheaffer and defendants were provided the opportunity to file supplemental pleadings before the hearing.

privilege. Morris never saw Eastlick carry a foldout knife. However, Morris could not recall whether Eastlick carried a multitool because they were commonly carried by students in that rural community. When he saw multitools on campus, he told students to put them away.

Declarations by school psychologist Carol Baker and school counselor Carolyn Hewes showed that “Eastlick was repeatedly evaluated for a learning disability, but there was never any manifestation of, or reason to suspect, any mental instability or behavioral issues.” Review of the school files showed that Eastlick had no prior incidents of sexual assault, had not been assessed to require any anger management training, and had no behavior issues or mental disabilities.

At his deposition, Eastlick explained that he received a Gerber foldout knife for Christmas in December 2005. Eastlick knew that the knife was prohibited at school and would be confiscated if seen. Thus, if he took it to school, he carried it inside his pants pocket to conceal it. Neither Morris nor the school principal was aware that Eastlick owned this foldout knife.

Eastlick did acknowledge that he regularly carried a Gerber multitool in a leather pouch. He used the multitool for completing his farm chores. Although the multitool contained a small 2.5 inch knife, the blade had a broken tip and it was not capable of being locked into an open position. There was no evidence that the multitool was used in a threatening manner. Further, the multitool was not used against Sheaffer.

Eastlick answered that he had never gotten in trouble for a physical fight, graffiti, or breaking school property. He acknowledged that he once participated in a snowball fight on campus in which one of his snowballs accidentally hit a teacher. Eastlick appears not to have received any discipline or punishment for the snowball incident.

There was a dispute about what happened at the metal shop. Eastlick claimed that he picked up a utility knife and held it to his own neck while joking about killing himself.

Eastlick asked Sheaffer to perform oral sex on him, and she voluntarily complied. Sheaffer contends Eastlick drew a knife, which he held to her neck while raping her and forcing her to orally copulate him.

In addition to arguing a lack of foreseeability, defendants asserted that they enjoyed discretionary immunity because they were entitled to determine the correct disciplinary response to Eastlick bringing a multitool onto campus.

### *Opposition to Summary Judgment*

Sheaffer opposed summary judgment on two grounds. First, she argued that defendants had not yet fully responded to her discovery requests. Specifically, Sheaffer asserted that defendants unreasonably failed to respond to her request for admissions.

Second, she contended that the District and Morris failed to fulfill their duty to supervise Eastlick by failing to enforce its no-knives policy and entrusting him with the keys to the metal shop. Asserting that the evidence established Eastlick's "use of his pocket knife in order to accomplish the sexual assault," Sheaffer urged the court to conclude that the injury was foreseeable. Sheaffer argued that "if students were allowed to carry weapons to school it was foreseeable that someone, or more than one person, could be injured or killed." As to Morris and the District, Sheaffer contended: "Had [defendants] not allowed Austin Eastlick unsupervised access to a locked building, he would not have been able to commit this horrendous act."<sup>5</sup>

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<sup>5</sup> In her opposition to defendants' separate statement of facts, Sheaffer does not dispute many of defendants' facts. The majority of her responses are "undisputed" or "cannot respond without further discovery." As a result, defendants' material facts are largely undisputed. The disputed facts involve the incident itself (Disputed Facts Nos. 6, 8, 29, 31, 32, 33, 43, 44, 45), the school's knowledge that Eastlick carried a "knife" on campus (Disputed Facts Nos. 16, 24, 25, 38, 40, 56, 58, 72, 74, 75), Eastlick's anger issues resulting in suspensions and attendance at anger management classes (Disputed Fact No. 27), whether Eastlick assisted Morris in agricultural classes or other students with their projects (Disputed Fact No. 51), whether Eastlick was competing in a small engine

### ***Reply to Opposition to Summary Judgment***

Defendants filed a reply in which they argued Sheaffer had been unjustifiably dilatory in conducting discovery in the two and a half years prior to the present motion for summary judgment. As to the negligent supervision claim, defendants argued that Sheaffer failed to introduce evidence sufficient to demonstrate any triable issues of fact. The reply pointed out it was undisputed that Morris did not know about the foldout knife used by Eastlick during the sexual assault. Defendants also reiterated that Eastlick's multitool did not meet the definition of a knife or weapon under Education Code section 48915, subdivision (g). Finally, nothing in Eastlick's past known to defendants indicated he would commit a sexual assault.

### ***Trial Court Ruling***

The trial court granted summary judgment on the operative complaint. At the outset, the court noted that both the District and Morris were being sued for negligence. The trial court reasoned that defendants were liable only if Sheaffer could show a triable issue of fact that the sexual assault was foreseeable. The court concluded that Eastlick's crime was not foreseeable by defendants. As the trial court explained: "This alleged sexual assault in the High School metal shop occurred in a small rural school where students and teachers generally know each other. In at least the last 25 years there has never been an accusation of rape anywhere on the Etna High School campus, including the metal shop. In at least the last 25 years there has [sic] been no fights on the Etna High School campus that involved knives nor have there been any accusations or reports of a student brandishing a knife in a threatening manner on the campus. Given the rural setting, it is not unusual for students to carry multitool style pocketknives with small

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competition or would go to metal shop to clean up, organize or work on a project unsupervised (Disputed Fact No. 53), and Sheaffer allowing Eastlick to touch her breast one time prior to the incident (Disputed Fact No. 100).

knife blades on them to school as students often have to perform farm chores before and after school. The carrying or possession of such a multitool is not a prediction of behavior or an indication a student might use the instrument for violence. While there is evidence High School Principal Jim Isbell and teacher Jim Morris were aware Austin Eastlick on occasion carried a Gerber multitool with a 2 1/2 inch blade on campus, this multitool does not meet [the] Education Code section 48915(g) definition of a prohibited knife on school campuses. Prior to January 27, 2006, Austin Eastlick had never been reprimanded by any school employee for misuse of the Gerber multitool or used it in an inappropriate manner. Austin Eastlick never used his Gerber multitool as an instrument to hurt someone or threaten someone. At no time during high school did Austin Eastlick ever physically threaten anyone prior to January 27, 2006.

“Shortly before the alleged incident Austin Eastlick acquired a Gerber single blade foldout knife. Defendant Morris was not aware Austin Eastlick owned a single blade foldout knife. There is a disputed issue of fact regarding whether Principal Isbell was aware Austin Eastlick owned a single blade foldout knife due to the ambiguity in D.A. Investigator Cathy Golden’s notes. Therefore the issue becomes whether it was foreseeable [Eastlick] would use the knife to harm a student simply because he owned and sometimes carried this knife. In addressing discipline, school district employees have discretion in choosing a course of action. (Education Code section 48915(a).) Government Code section 815.2(b) provides a public entity is not liable for an act or omission where the employee is immune from liability. Further, even if having the Gerber single blade foldout knife on campus is prohibited by the Education Code, simply knowing [Eastlick] carried or owned the knife does not create a foreseeability he would improperly use the knife. Pursuant to *Leger v. Stockton Unified School Dist.* [(1988) 202 Cal.App.3d 1448], school districts have to use reasonable care based on an ordinary prudent person standard in supervising students. Defendants have put forth the expert

declarations of Carol Baker and school counselor Carolyn Hewes. Both of these experts worked with Austin Eastlick for a number of years, reviewed his school files and concluded he had no mental health issues. Based on this contact, these experts opine there was no reason for the School District to foresee Austin Eastlick would commit an assault of [Sheaffer], even if the allegations are true. These uncontradicted expert opinions state the assault, if it occurred, was completely unpredictable and unforeseen by anyone at Etna High School.

“Teacher Jim Morris has known Austin Eastlick since he was an infant, has had a good relationship with him, has a history of leaving [Eastlick] alone to work in the metal shop without incident and had no reason to suspect [Eastlick] was capable or likely to commit the alleged assault. . . . [¶] . . . The undisputed facts show Austin Eastlick had extensive experience using the metal shop, he had never been in trouble for inappropriate use of the metal shop or the privilege of using the metal shop and that he had borrowed keys from Jim Morris for access to the metal shop several times previously without abusing the privilege. Prior to this alleged incident, Austin Eastlick had never gotten in trouble at Etna High School for a school fight, or vandalism of school property and had never used the metal shop or any of its utility knives in an inappropriate manner and had never been discipline[d] or criticized for using a utility knife in the metal shop in a threatening manner toward another student. . . . With no reason for [Morris] to foresee Austin Eastlick would misuse his privilege of using the metal shop or information Austin Eastlick was capable of criminal activity, there was no reason for [Morris] to foresee this alleged assault on [Sheaffer] in the metal shop when he lent keys to Austin Eastlick to access the building.” (Record citations omitted.)

Accordingly, the trial court entered summary judgment in favor of defendants and awarded them \$5,068.64 in costs. Thereafter, Sheaffer timely filed a notice of appeal.

## DISCUSSION

### I

#### *Standard of Review*

As the California Supreme Court has noted, “The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) To this end, the Code of Civil Procedure allows a defendant to move for summary judgment “if it is contended that the action has no merit . . . .” (Code Civ. Proc., § 437c, subd. (a).) To secure summary judgment, a defendant must show that “one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action.” (*Id.*, subd. (p)(2).) “When the defendant moves for summary judgment, in those circumstances in which the plaintiff would have the burden of proof by a preponderance of the evidence, the defendant must present evidence that would preclude a reasonable trier of fact from finding that it was more likely than not that the material fact was true [citation], or the defendant must establish that an element of the claim cannot be established, by presenting evidence that the plaintiff “does not possess and cannot reasonably obtain, needed evidence.” (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003.)” (*Fait v. New Faze Development, Inc.* (2012) 207 Cal.App.4th 284, 293.)

If a defendant has met his or her burden of demonstrating the action has no merit, then “the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.” (Code Civ. Proc., § 437c, subd. (p)(2).) “The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (*Id.*, subd. (c).)

“‘Because the trial court’s determination [on a motion for summary judgment] is one of law based upon the papers submitted, the appellate court must make its own independent determination regarding the construction and effect of the supporting and opposing papers. We apply the same three-step analysis required of the trial court. We begin by identifying the issues framed by the pleadings since it is these allegations to which the motion must respond. We then determine whether the moving party’s showing has established facts which justify a judgment in movant’s favor. When a summary judgment motion prima facie justifies a judgment, the final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue.’

*(Hernandez v. Modesto Portuguese Pentecost Assn. (1995) 40 Cal.App.4th 1274, 1279.)*

[¶] ‘The affidavits of the moving party are strictly construed, while those of the party opposing the motion are liberally construed, and doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion.’ *(Miller v. Bechtel Corp. (1983) 33 Cal.3d 868, 874.)*’ *(Fait v. New Faze Development, Inc., supra, 207 Cal.App.4th at p. 293)*

## II

### *Evidentiary Objections*

Sheaffer contends the trial court erred in overruling her objections to defendants’ evidence in support of the motion for summary judgment. However, the argument in Sheaffer’s opening brief cites no legal authority. We deem the contention forfeited.

This court has previously explained that “[t]o demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. *(City of Lincoln v. Barringer (2002) 102 Cal.App.4th 1211, 1239, fn. 16; In re Marriage of Nichols (1994) 27 Cal.App.4th 661, 672-673, fn. 3.)*’ *(In re S.C. (2006) 138 Cal.App.4th 396, 408.)* Sheaffer’s failure to provide any legal authority that supports her argument forfeits the issue on appeal. *(Id. at*

p. 408; see also *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.) This court does not have a duty to search for authority to support an appellant's contentions on appeal. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Accordingly, Sheaffer's argument regarding the trial court's overruling of her objections to defendants' evidence is forfeited.

### III

#### *Motion for Continuance to Complete Discovery*

Sheaffer argues that the trial court erred by denying her motion to continue the hearing on the motion for summary judgment so that she could complete discovery. We conclude that the issue has not been preserved for appeal.

#### A.

##### *Sheaffer's Abandonment of Objection to Lack of Time to Complete Discovery*

After remand following our opinion in *Sheaffer I, supra*, C059862, defendants filed the present motion for summary judgment in December 2010, with a hearing date scheduled for March 2011. In February 2011, Sheaffer opposed the motion and requested a continuance of the hearing under Code of Civil Procedure section 437c, subdivision (h). The trial court continued the hearing five times. In May 2011, for the fifth time, the trial court continued the hearing on defendants' motion for summary judgment and motion to compel and revised the briefing schedule to allow the parties to file supplemental pleadings.

Although Sheaffer filed an opposition and supplemental opposition to the motion for summary judgment, she did not request a further continuance of the hearing on the motion for summary judgment under Code of Civil Procedure section 437c, subdivision (h). At the hearing on the motion for summary judgment, Sheaffer's counsel did not request a continuance to complete discovery.

## B.

### *Failure to Preserve the Issue for Appeal*

Sheaffer argues that “the trial court erred in not addressing [her] motion to compel prior to ruling on the motion for summary judgment.” However, Sheaffer’s argument fails to mention that she did not have a motion to compel pending at the time that the trial court granted summary judgment. Rather, defendants had two discovery motions pending: one motion to compel and one motion for sanctions on the basis of a withdrawn motion to compel. Defendants’ counsel informed the trial court that their motion to compel was moot in light of the ruling on the motion for summary judgment.

After the court continued the matter several times and expressly granted Sheaffer the opportunity to brief the issue of discovery, she did not argue the need for further discovery in opposing summary judgment. Indeed, her points and authorities in opposition to summary judgment are silent on the matter.

““No procedural principle is more familiar to this Court than that a constitutional right,’ or a right of any other sort, ‘may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.’ [Citation.]” [Citation.]’ [Citation.]” (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1558.) Sheaffer failed to preserve the issue because she did not request additional time to complete discovery prior to the hearing on the summary judgment motion.

## IV

### *Defendants’ Duties to Supervise Eastlick*

Sheaffer contends (1) the District breached its duty to supervise Eastlick by failing to suspend or discipline him when he carried the multitool onto the high school campus, and (2) Morris acted negligently in lending Eastlick the keys to the metal shop. We disagree.

A.

*Duty to Supervise Students*

As the California Supreme Court has explained, “in order to prevail in a negligence action, plaintiffs must show that defendants owed them a legal duty, that defendants breached that duty, and that the breach proximately caused their injuries.” (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1145-1146.) School districts and their teachers have a clear duty to supervise their students. (*M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 517.) Indeed, “[t]he law regarding the duty of supervision on school premises is very, very well established. ‘It is the duty of the school authorities to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection. [Citations.] The school district is liable for injuries which result from a failure of its officers and employees to use ordinary care in this respect. [Citations.]’ (*Taylor v. Oakland Scavenger Co.* (1941) 17 Cal.2d 594, 600 (*Taylor*)). ‘What is ordinary care depends upon the circumstances of each particular case and is to be determined as a fact with reference to the situation and knowledge of the parties.’ (*Bellman v. San Francisco H.S. Dist.* (1938) 11 Cal.2d 576, 582.)” (*J.H. v. Los Angeles Unified School Dist.* (2010) 183 Cal.App.4th 123, 139-140.)

However, school districts are not responsible for guarding students against every imaginable risk. Instead, “the existence of a duty of care depends in part on whether the harm to plaintiff was reasonably foreseeable. (See *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112.)” (*Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1459 (*Leger*)). *Leger* involved the issue of whether a school district was negligent in failing to monitor a school bathroom that the district knew or should have known to have been unsafe based on facts showing “that attacks were likely to occur there.” (*Id.* at p. 1460.) This court noted that “school authorities who know of

threats of violence that they believe are well-founded may not refrain from taking reasonable preventive measures simply because violence has yet to occur.” (*Ibid.*) Thus, in *Leger*, the plaintiff’s allegations that the bathroom was likely to be the site of violence due to its use prior to high school wrestling practice sufficed to overcome the school district’s demurrer. (*Ibid.*)

In so concluding, this court was careful to note that “[n]either schools nor their restrooms are dangerous places per se. (Cf. *Peterson v. San Francisco Community College Dist.* [(1984)] 36 Cal.3d 799, 812.) Students are not at risk merely because they are at school. (See *Chavez v. Tolleson Elementary School Dist.* (1979) 122 Ariz. 472.) A contrary conclusion would unreasonably ‘require virtual round-the-clock supervision or prison-tight security for school premises, . . .’ (*Bartell v. Palos Verdes Peninsula Sch. Dist.* (1978) 83 Cal.App.3d 492, 500.)” (*Leger, supra*, 202 Cal.App.3d at p. 1459.)

The question of whether a school district’s duty to supervise its students encompasses a particular risk constitutes a question of law that “depends on the foreseeability of the risk and a weighing of policy considerations for and against imposition of liability. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072.) ‘As a general rule, each person has a duty to use ordinary care and “is liable for injuries caused by his failure to exercise reasonable care in the circumstances . . . .”’ (*Parsons [v. Crown Disposal Company]* (1997)] 15 Cal.4th [456,] 472, quoting *Rowland [v. Christian]* (1968)] 69 Cal.2d [108,] 112, and citing Civ. Code, § 1714.) ‘Whether a given case falls within an exception to this general rule, or whether a duty of care exists in a given circumstance, “is a question of law to be determined on a *case-by-case basis.*” [Citation.]’ (*Parsons, supra*, 15 Cal.4th at p. 472, italics added.)” (*Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1080 (*Romero*) fn. omitted.)

The California Supreme Court has explained that for a negligent supervision claim “[k]nowledge of dangerous habits and ability to control the child are prerequisites to

imposition of liability. [Citations.]’ [Citation.] ‘[O]nly the manifestation of specific dangerous tendencies . . . triggers a parental duty to exercise reasonable care to control the minor child in order to prevent . . . harm to third persons. [Citation.]’ (*Robertson v. Wentz* [(1986)] 187 Cal.App.3d [1281,] 1290; see also *Weisbart v. Flohr* (1968) 260 Cal.App.2d 281 [parents liable only if they ‘became aware of habits or tendencies of the infant which made it likely that the child would misbehave so that they should have restrained him’].)” (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 935 (*Hoff*)). The same standard of supervision required of parents also applies to schools under their in loco parentis duties. (*Id.* at pp. 934-935.)

*Hoff* involved the question of whether a school district had been negligent when one of its students drove out of the school parking lot in an unsafe manner and caused injury to the plaintiff just outside the campus. (*Hoff, supra*, 19 Cal.4th at p. 930.) The Supreme Court concluded that the school incurred no liability, holding that “any duty that school employees owe off-campus nonstudents should *at least* be no greater in scope than the duty that parents owe third persons. [Citations.] Accordingly, school personnel who neither know nor reasonably should know that a particular student has a tendency to drive recklessly owe no duty to off-campus nonstudents.” (*Id.* at p. 936.)

This standard for a negligent supervision claim was applied in a case involving parental supervision. In *Romero, supra*, 89 Cal.App.4th 1068, Ryan N. was visiting at the home of her friend when she was sexually assaulted by another visiting teenager, Joseph W. (*Id.* at p. 1072.) Ryan and her mother brought an action for negligent supervision against Nicanor and Gail Romero, the parents of the friend that Ryan had visited. (*Ibid.*) The Romeros filed a motion for summary adjudication, which was granted by the trial court. (*Id.* at p. 1073.) The plaintiffs sought writ relief, which was denied by the *Romero* court. (*Ibid.*)

In denying the writ petition, the *Romero* court acknowledged that the Romeros assumed a “‘special relationship’ with Ryan and Joseph when they invited the minors into their home.” (*Romero, supra*, 89 Cal.App.4th at p. 1080.) Even so, the Court of Appeal held that “to the extent plaintiffs alleged the Romeros were liable for negligent supervision under a theory of nonfeasance for negligently failing to properly supervise Ryan and control the conduct of her assailant Joseph, . . . the Romeros did not owe a duty of care to supervise Ryan or take other measures to protect her against Joseph’s sexual assault because there is no evidence from which the trier of fact could find that the Romeros had prior actual knowledge that Joseph had a propensity to sexually assault female minors.” (*Ibid.*, italics omitted.) The court held that liability for negligent supervision arising out of a third-party’s sexual assault arises only “when the evidence and surrounding circumstances establish that the defendant had *actual knowledge* of, and thus *must have known*, the offending minor’s assaultive propensities.” (*Id.* at p. 1083.)

## B.

### *Whether Eastlick’s Possession of a Multitool Rendered Commission of a Sexual Assault Foreseeable*

In this case, the trial court correctly concluded the undisputed evidence established the unforeseeability of Eastlick’s sexual assault against Sheaffer. Eastlick’s school records did not include any history of involvements in fights, damage to property, or other behavioral issues that indicated a propensity toward sexual violence. Eastlick had a learning disability. However, his learning disability was assessed for academic issues and did not indicate any type of behavior issues, mental disabilities, or risk of danger to himself or others.

Both the school principal, Jim Isbell, and Morris believed Eastlick was popular. Neither Isbell nor Morris observed Eastlick being pushed around, displaying a temper, or

showing violent tendencies. Eastlick's history at school gave no indication that he was violent or dangerous.

Eastlick did have a habit of carrying his multitool on campus. However, Eastlick carried it in order to complete his farm chores. Regardless of whether school officials should have disciplined Eastlick for openly displaying his multitool on his belt, the multitool did not play any part in the sexual assault.<sup>6</sup> As to the knife that Sheaffer alleged Eastlick to have used against her, Eastlick actively concealed it from school officials. In contrast to his open carrying of the multitool on his belt, Eastlick hid the foldout knife inside his pants pocket. Eastlick secreted the foldout knife because he believed he would get into trouble if found with it on campus. The District and Morris are liable for negligent supervision only if they knew or should have known facts establishing Eastlick's dangerousness or propensity to violence. (*Hoff, supra*, 19 Cal.4th at p. 936.) Based on the information defendants had about Eastlick, his commission of a sexual assault with a concealed weapon appears to be out of character and unforeseeable.

We note the record shows that at some point Isbell became aware that Eastlick was involved in a "pushing incident that was reported by another teacher." However, Isbell "believe[d] it could have happened after the incident in question." The occurrence of the pushing before the sexual assault would conflict with Isbell's unequivocal denial of any knowledge that Eastlick had gotten into any physical altercation prior to January 27, 2006. Sheaffer does not mention the pushing incident in her opening brief, and we conclude it does not provide a nonspeculative basis for rendering Eastlick's sexual assault foreseeable.

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<sup>6</sup> Based on our determination that the sexual assault was not foreseeable, we do not address defendants' discretionary immunity argument.

We also reject, as unfounded, Sheaffer’s argument that Eastlick had been suspended and enrolled in anger management courses at school. Defendants introduced evidence from the school counselor, Carolyn Hewes, who reviewed Eastlick’s school history — including that from his education prior to Etna High School. Hewes found that there were no reported behavior problems during Eastlick’s schooling. Hewes taught anger management courses but noted that Eastlick had not been enrolled in them. The school psychologist, Carol Baker, stated that “there was no reason to believe [Eastlick] had a psychological or mental disabilities [sic].”

To each of these assertions by Hewes and Baker, Sheaffer merely responded: “Plaintiff cannot respond without further discovery. This information is the subject of further discovery, which is pending.” Sheaffer’s statement she might discover something to be able to dispute Hewes and Baker constitutes mere speculation. “Speculation, however, is not evidence.” (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 864.) Moreover, speculation cannot defeat a motion for summary judgment. (See *id.* at p. 862.)

In sum, there is no evidence that defendants had any knowledge or information that Eastlick would commit a sex offense against another student or anyone else. For this reason, it makes no difference that Sheaffer was not a student on the Etna High School campus but at another high school. Where Sheaffer was enrolled does not have any bearing as to whether Eastlick demonstrated dangerous propensities observable to any District employee. (*Hoff*, *supra*, 19 Cal.4th at p. 937.) Accordingly, the trial court properly granted summary judgment in favor of the District.

### C.

#### ***Morris’s Lending Eastlick the Keys to the Metal Shop***

In her opening brief, Sheaffer does not identify Morris’s lending of the metal shop keys to Eastlick among the “issues to be decided.” Her opening brief focuses almost

exclusively on Eastlick's carrying a multitool at school. Sheaffer's argument regarding the lending of the keys does not consist of much beyond asserting that if Morris had "taken the knife away from . . . Eastlick, or not given him the keys to an unoccupied building, or accompanied . . . Eastlick to the building -- [Sheaffer] would have been safe." In short, Sheaffer does not develop an argument regarding why she believes the trial court's granting of summary judgment as to Morris errs as to the lending of the keys. We would be justified in deeming the argument forfeited. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.) Nonetheless, we conclude on the merits that the trial court also correctly granted summary judgment in favor of Morris.

Sheaffer's operative complaint alleged Morris acted negligently in giving Eastlick the keys to the metal shop where she was raped. However, Morris did not have any knowledge or experience that would warn him that Eastlick would betray his trust with the keys to the metal shop. Eastlick had not misbehaved in the metal shop or anywhere else on campus in a way that suggested he would commit a sexual assault. Morris had no warning signs that Eastlick would commit a rape.

Morris had known Eastlick since Eastlick was an infant and had never observed him to get into trouble. Morris's experience with Eastlick on overnight field trips further supported Morris's judgment that Eastlick could be entrusted with the keys to the metal shop. Morris exercised his judgment and refused to lend the keys to students whom he believed were not trustworthy. In the case of Eastlick, Morris did trust Eastlick with the keys based on a long-time, positive relationship. Prior to the sexual assault on Sheaffer, Eastlick had several times borrowed the metal shop keys without incident. Nothing in the record undermines Morris's judgment as reasonable in light of his past experience with Eastlick.

As the California Supreme Court has noted, "[k]nowledge of dangerous habits and ability to control the child are prerequisites to imposition of liability. [Citations.]'

[Citation.] ‘[O]nly the manifestation of specific dangerous tendencies . . . triggers a parental duty to exercise reasonable care to control the minor child in order to prevent . . . harm to third persons. [Citation.]’ (*Hoff, supra*, 19 Cal.4th at pp. 934-935.) Here, Morris was not negligent in lending Eastlick the keys to the metal shop because there was no indication that Eastlick would commit a crime or misbehave in the metal shop. The trial court properly granted summary judgment as to Morris.

DISPOSITION

The judgment is affirmed. Respondents Scott Valley Union School District and Jim Morris shall their recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

\_\_\_\_\_ HOCH \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ ROBIE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ MURRAY \_\_\_\_\_, J.