

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

STEFAN SNYDER et al.,

Plaintiffs and Appellants,

v.

MARYWOOD-PALM VALLEY
SCHOOL, INC.,

Defendant and Respondent.

E053339

(Super.Ct.No. INC089496)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Randall Donald White,
Judge. Affirmed.

Law Offices of Joseph Amato and Joseph Amato for Plaintiffs and Appellants.

Thompson & Colegate, Susan Knock Brennecke and John W. Marshall for
Defendant and Respondent.

Plaintiffs Stefan Snyder and Liliana Plati (plaintiffs) sued defendant Marywood-
Palm Valley School, Inc. (Marywood), among others, for the wrongful death of their 17-
year-old son, Stefan Bartek Snyder-Plati (Stefan). Plaintiffs alleged that Marywood

negligently failed to supervise Marywood students Stefan and Tabitha Loftis (Loftis), such that Loftis, who had an Oregon, but not a California, driver's license, was allowed to drive a car onto Marywood's campus and leave with Stefan. Shortly thereafter, the car was involved in an accident that resulted in the death of Loftis, Stefan, and a third student.

Marywood moved for summary judgment on the ground (among others) that it owed no duty that would subject it to liability for Stefan's death. The trial court granted the motion. Following the entry of judgment, plaintiffs appealed. We affirm.

I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Plaintiffs filed a complaint against the estate of Loftis, certain individuals, and Marywood. They alleged that Loftis negligently operated a motor vehicle such that a collision occurred resulting in the death of Stefan. As to Marywood, plaintiffs alleged that it "negligently failed to supervise the actions of [Loftis], who was not properly licensed to drive a vehicle within the State of California, and/or [Stefan] (a minor) who was a student at the [Marywood] and entrusted to the school's care. As a result of [Marywood's] negligence, [Loftis] was allowed to operate a motor vehicle onto the campus of [Marywood] and take on two minor passengers (including [Stefan]) in violation of California State law." The allegation was clarified in answers to interrogatories, wherein plaintiffs stated that Marywood "should have taken reasonable steps that each student that was allowed to drive onto campus was validly licensed by the State of California" and that "reasonable surveillance and control over its premises

[should have been present] to ensure that all safety related laws were being followed, including those limiting the ability of minor drivers to transport other minors from campus.”

Approximately one year after the complaint was filed, Marywood moved for summary judgment. Marywood supported the motion with plaintiffs’ discovery responses and the declaration of Vincent Downey, Marywood’s “Head of School.” According to Downey, Marywood is a private school that includes an “upper school” for students in 9th through 12th grades.¹ An automobile accident occurred on September 24, 2007, in which three students, including Loftis and Stefan, were fatally injured while in a vehicle driven by Loftis. The accident occurred off Marywood’s campus and after 3:20 p.m., when school was dismissed for the day.² The students were not engaged in a school-authorized trip or in school activities.

In discovery responses, plaintiffs stated that Loftis was licensed to drive by the State of Oregon, but not by the State of California. In particular, she had not obtained a nonresident minor’s certificate required by the California Vehicle Code. However, plaintiffs stated they were not contending that Loftis negligently operated the vehicle at the time of the accident because she was not licensed by the State of California. They

¹ Other evidence submitted by Marywood indicates that the school includes grades kindergarten through 12th grade.

² Downey states that he went to the scene of the accident “which was approximately eight (8) minutes away.” There is no other evidence of the distance between the campus and the location of the accident.

also conceded that they were not contending that Marywood had an obligation to inspect each vehicle leaving its premises to ensure that the operator of the vehicle possessed a current and valid California driver's license or to ensure that the operator was not a minor transporting other minors without adult supervision. They also admitted that they did not know what Marywood's policies were regarding inspecting vehicles for these purposes.

Plaintiffs opposed the motion with their declarations. Plati (Stefan's mother) states: "I had no knowledge that [Loftis] or any other student would be allowed to take my child off campus. In fact, it was Marywood's policy to require a signature for anyone other than me or his father to take Stefan off campus. The year before, I was required to sign a release for Stefan to leave campus with another student." She adds that she "would never have let [her] son be taken to or from school by a student who did not have a valid driver's license." Stefan's father made similar statements in his declaration.

Plaintiffs also submitted unauthenticated copies of the following documents: (1) assorted pages from the 2006/2007 parent handbook for Marywood; (2) one page of the traffic collision report regarding the accident; and (3) eight pages from the California Department of Motor Vehicle's Web site pertaining to the licensing of drivers. Marywood filed written objections to these documents on hearsay, foundation, and relevance grounds. The court did not expressly rule on these objections. Because we find the objections are well-taken, we will not consider these documents.³

³ Despite the court's failure to expressly rule on Marywood's objections to the documentary evidence, the objections have been preserved for appeal and we may rule on
[footnote continued on next page]

II. ANALYSIS

A. *Summary Judgment Standards*

“‘The purpose of a summary judgment proceeding is to permit a party to show that material factual claims arising from the pleadings need not be tried because they are not in dispute.’ [Citation.]” (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 172.) A moving party defendant is entitled to summary judgment if it establishes a complete defense to the plaintiff’s cause of action, or shows that one or more elements of the cause of action cannot be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) The moving party bears the initial burden of production to make a prima facie showing that there is no triable issue of material fact. Once the initial burden of production is met, the burden shifts to the responding party to demonstrate the existence of a triable issue of material fact. (*Id.* at pp. 850-851.) From commencement to conclusion, the moving party defendant bears the burden of persuasion that there is no triable issue of material fact and that the defendant is entitled to judgment as a matter of law. (*Id.* at p. 850.) “In determining the propriety of a summary judgment, the trial court is limited to facts shown by the evidentiary materials submitted” (*Committee to Save the Beverly Highlands Homes Assn. v. Beverly Highlands Homes Assn.* (2001) 92 Cal.App.4th 1247, 1261.)

[footnote continued from previous page]

them in accordance with our de novo standard of review. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 533-535.)

Summary judgment is a “drastic remedy.” (*Mateel Environmental Justice Foundation v. Edmund A. Gray Co.* (2003) 115 Cal.App.4th 8, 17.) As stated in *Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289 and 290: “The defendant must demonstrate that under *no hypothesis* is there a material factual issue requiring trial. [Citation.] If the defendant does not meet this burden, the motion must be denied.” (Italics added.)

On appeal, “our review is de novo, and we independently review the record before the trial court.” (*Riverside County Community Facilities Dist. v. Bainbridge 17* (1999) 77 Cal.App.4th 644, 652.) “We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.” (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) “The trial court’s stated reasons for granting summary judgment are not binding on us because we review its ruling, not its rationale.” (*Kids’ Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878.)

B. *Analysis*

“The threshold element of a cause of action for negligence is the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion. [Citations.]” (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397.) 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” (*Rowland v. Christian* (1968) 69 Cal.2d 108, 112; Civ. Code, § 1714.)

“Courts, however, have invoked the concept of duty to limit generally “the otherwise potentially infinite liability which would follow from every negligent act” [Citations.]” (*Bily v. Arthur Young & Co.*, *supra*, 3 Cal.4th at p. 397.) “A judicial conclusion that a duty is present or absent is merely “a shorthand statement . . . rather than an aid to analysis ‘[D]uty,’ is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.” [Citations.]” (*Ibid.*) “Whether a given case falls within an exception to [the] general rule, or whether a duty of care exists in a given circumstance, ‘is a question of law to be determined [by the court] on a case-by-case basis.’ [Citation.]” (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 472.) Although the issue of duty is a matter for the trial court, it is nonetheless a factually oriented inquiry that depends “upon the particular circumstances in which the purported wrongful conduct occurred.” (*Laabs v. Southern California Edison Co.* (2009) 175 Cal.App.4th 1260, 1269 [Fourth Dist., Div. Two], quoting *Burger v. Pond* (1990) 224 Cal.App.3d 597, 603 [Fourth Dist., Div. Two].)

Plaintiffs assert that Marywood’s duty in this matter was “to take reasonable steps to ensure that student drivers on its campus were properly licensed before permission was granted to these students to drive on campus.” This implies a duty to control the conduct of Loftis (by preventing her, as a minor without a valid California driver’s license, from leaving the campus with other students) and/or Stefan (by preventing him from leaving the campus with Loftis).

Plaintiffs concede that as a general rule a defendant will not be held liable for the failure to control the conduct of third parties. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203.) However, a duty may arise if (a) a special relationship exists between the school and Loftis which imposes a duty upon the school to control Loftis's conduct, or (b) a special relationship exists between the school and Stefan which gives Stefan a right of protection. (See *ibid.*) Plaintiffs argue that such a special relationship exists "where a school has undertaken the care of students, as in this case"

In resolving whether there exists a special relationship for purposes of imposing a duty, the court looks to the same factors underlying any duty of care analysis. "Such factors include 'the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.' [Citations.] [¶] . . . In cases where the alleged duty requires taking action to protect someone from the conduct of others, courts have also considered factors involving the relationship between the parties and the connection between the defendant and the injury-producing event. These include whether the defendant induced the victim's reliance on a promise that defendant would protect . . . the victim [citation], the extent to which a defendant created the peril or increased the risk of harm . . . [citation], and the existence of a dependency

relationship between the plaintiff and defendant.” (*Titus v. Canyon Lake Property Owners Assn.* (2004) 118 Cal.App.4th 906, 911-912 [Fourth Dist., Div. Two].)

Here, the only fact which supports the imposition of a duty is the relationship of the parties: Both Loftis and Stefan were students at Marywood. Other facts weigh against imposing a duty. The accident occurred off school premises after the students had been dismissed for the day. Both Loftis and Stefan were in the upper grades; they were not individuals of tender years needing adult supervision at all times. Because of this, little, if any, moral blame attaches to Marywood’s conduct. The foreseeability of harm to Stefan and the degree of certainty that he would suffer injury or death as a result of leaving the campus with Loftis was extremely minimal.⁴ Nor is there a closeness in connection or causal relationship between Marywood’s conduct and the automobile accident. Marywood did not create the peril that caused the death of Stefan, and there is no evidence that Stefan relied on any promise by Marywood that increased the risk of his injury or death by way of an automobile accident. Lastly, there is nothing within the bounds of reason that Marywood could have done to prevent the accident.⁵

⁴ Clearly, there is a risk of a motor vehicular accident each time an individual takes to the road. The risk in the present case is no greater than any other instance wherein individuals drive on the roadways. In this regard, it must be noted that plaintiffs do not contend that Loftis was incompetent to drive per se; only that she did not have a valid California license.

⁵ By way of requests for admission and answers to interrogatories, plaintiffs concede they are not contending that defendant had a duty to check each automobile as it left campus to determine who was in the car and whether the driver had a California driver’s license.

The only relevant, admissible evidence submitted by plaintiffs is their statements that the year prior to this incident they had to sign a release to allow their son to leave campus with someone other than them, and that they would not have allowed their son to leave campus with an unlicensed driver. This evidence is insufficient to impose on Marywood the duty they seek. First, there is nothing in the evidence to suggest that the requirement that they sign a release for their son to leave campus with another was in place at the time of the accident; the release they refer to was signed “[t]he year before.” Nor is there evidence that plaintiffs did not sign such a release for the relevant school year.

Furthermore, the statement that they would not have allowed their son to leave campus with an unlicensed driver is of no moment. First, Loftis was licensed to drive—by the State of Oregon. Second, plaintiffs acknowledged they do not contend that Loftis was incompetent to drive per se or that she was negligent because she was not licensed by the State of California. There simply are no material facts supporting a duty that Marywood should have controlled the conduct of Loftis relative to her driving off the campus with Stefan after school hours.⁶ Nor is there anything in the relationship between Stefan and Marywood suggesting that Marywood should have, in some fashion, protected Stefan by preventing him from leaving the school premises with Loftis.

⁶ In plaintiffs’ opening brief and their reply brief, they reference their declarations wherein they state that students smoked marijuana on campus and that Loftis was a “party girl.” These “facts” were properly objected to by defendant as lacking foundation and hearsay.

Plaintiff asserts that it was against Marywood's policy to allow students to leave campus with individuals other than the students' parents without written permission of the parents. The parents' declarations on this point appear to be based on the unauthenticated (and outdated) parent handbook. As noted above, Marywood properly objected to the handbook, and we will not consider it. Moreover, even if we did consider the excerpts of the one-year-old parent handbook, there is nothing in the unauthenticated bits and pieces of the document that indicates that upperclass students cannot leave the campus after school with fellow students.

The cases relied upon by plaintiff for purposes of arguing that a duty exists as it relates to off campus injuries are not helpful. In *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508 (*Hoyem*), a 10-year-old boy left the school premises before the end of scheduled classes. At a public intersection a motorcycle struck him, causing injuries. He sued the school district for negligent supervision. The trial court sustained the school district's demurrer without leave to amend. On appeal, the school district argued that it could not be held liable where the injury occurred outside of the school grounds. The California Supreme Court disagreed. (*Id.* at pp. 511-512.) In so holding, the court indicated that the school district had a duty to supervise the 10-year-old student while he was on school grounds during school hours. This duty included preventing him from leaving school during school hours. The court explained that "school districts must exercise reasonable care in supervising their pupils while the pupils are on school

premises. A district may be held liable if its breach of that duty proximately causes a student's injury." (*Id.* at p. 516.)

The *Hoyem* court relied on title 5, California Administrative Code, section 303: "Defendant district first contends that the duty to supervise pupils . . . does not include any responsibility for assuring that pupils remain on the school premises during the school day. . . . [H]owever, the duty to supervise includes the duty 'to enforce those rules and regulations necessary [for pupils'] protection.' [Citation.] Title 5, California Administrative Code, section 303 provides: 'A pupil may not leave the school premises at recess, or at any other time before the regular hour for closing school, except in case of emergency, or with the approval of the principal of the school.' We have no doubt that this rule is at least in part for the pupils' protection, and that the school authorities therefore bore the duty to exercise ordinary care to enforce the rule." (*Hoyem, supra*, 22 Cal.3d at p. 514, quoting *Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747.)

Hoyem is not controlling. *Hoyem* and the regulation it relied on concern the control of students during school hours. Plaintiffs in the present case contend that Marywood has a duty to control the on-campus conduct of Loftis or Stefan even after school hours. They fail to point to any similar regulation or policy governing the control of students leaving school premises after school hours.

Satariano v. Sleight (1942) 54 Cal.App.2d 278, also relied upon by plaintiffs, is simply inapplicable. There, a student was injured on a public street immediately adjacent

to the school. The court held that the school maintained a duty to supervise its students while they crossed the street. Of importance, however, was that the public street ran through the school. (*Id.* at pp. 279-280.) The accident occurred during school hours as the student was going from the gymnasium to a school field. As stated by the court: “In a sense the public street under these circumstances became an extension of the school grounds. At least it was incumbent upon the children to cross it daily during regular school hours in going from one class to another.” (*Id.* at p. 284.) Clearly, the case has no applicability to the present facts.

The case most on point would appear to be *Guerrero v. South Bay Union School Dist.* (2003) 114 Cal.App.4th 264. There, Norma, age six and in first grade, was struck by a car while crossing the street in front of her school. The accident occurred approximately 30 minutes after she was released from school and while she was waiting to be picked up from school. As in the present case, one of the plaintiff’s arguments was “that the accident was caused by South Bay’s failure to properly supervise her while on school grounds.” (*Id.* at p. 269.) In addressing various cases wherein a duty had been found relative to an off-campus injury, the court stated: “Each of the cases in which schools have been held to have a duty of care for the safety of students off campus and after school arises from circumstances where school personnel did something on campus or failed in their supervisory duties on campus. . . . [¶] Norma’s case does not present any basis for constructing a duty to exercise reasonable care for her safety after she was released from school. Although she argues the District failed in its duty to supervise her

while on school grounds, she does not articulate what the school’s duty should have been or what action the school should have taken.” (*Id.* at p. 270.)

And while *Guerrero* dealt extensively with Education Code section 44808,⁷ its rationale is equally applicable to the present facts. As that court stated: “We are convinced . . . that the statutory scheme in this case neither requires nor permits the extension of a duty of care to the schools of California to supervise children properly dismissed from school until their parents arrive. In order to provide that level of supervision in this case the District would have to have sufficient staff to control each of the students it dismissed to ensure that the student is either safely home or safely picked up by parents or guardians.” (*Guerrero v. South Bay Union School Dist.*, *supra*, 114 Cal.App.4th at p. 274.)

In conclusion, we hold that on the present evidence, summary judgment was appropriate. The accident occurred off the school premises after the school had been dismissed. Although Loftis and Stefan were both upper class students at Marywood,

⁷ Education Code section 44808 provides: “Notwithstanding any other provision of this code, no school district . . . shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district . . . has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances. [¶] In the event of such a specific undertaking, the district . . . shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district”

there is no admissible evidence to support the notion that Marywood had a duty to, in some manner, prevent Stefan from leaving campus in Loftis's car.

III. DISPOSITION

The judgment is affirmed. Marywood shall recover its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

HOLLENHORST
Acting P.J.

RICHLI
J.