COURT OF APPEALS
DECISION
DATED AND FILED

April 11, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2276 **Cir. Ct. No. 2004CV13**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

ROBERT WILSON BLANEY,

PLAINTIFF-APPELLANT,

V.

EMPLOYERS MUTUAL CASUALTY COMPANY, SCHOOL DISTRICT OF CHETEK AND EDWARD HARRIS,

DEFENDANTS-RESPONDENTS,

DAVID JAMES SCOTT, JOHN SCOTT, CHRISTA SCOTT, JOSHUA C. STANFORD, CRAIG STANFORD AND ATRIUM HEALTH PLAN, INC.,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J. Robert Blaney appeals a summary judgment dismissing his negligence claims against principal Edward Harris and School District of Chetek. Blaney argues Harris and the District are not entitled to governmental immunity. We reject Blaney's arguments and affirm the judgment.

BACKGROUND

¶2 Blaney was a tenth grade student attending Chetek High School in September 2000. He had developed a relationship with Amanda Miller, another student attending the school. Their relationship soured, and sometime around September 20, Miller shoved Blaney against a locker and told him she had not finished with him yet. Blaney reported the incident to Harris.

¶3 Around September 25, Blaney reported to Harris that fellow students David Scott and Joshua Stanford began following and verbally harassing him. Blaney attributed this to their friendship with Miller. On September 26, Blaney was excused from a class to have his high school yearbook picture taken. Scott was inside the room where the pictures were being taken and followed Blaney out of the room. Scott attacked Blaney, breaking his jaw and right eye socket. Upon learning of the incident, Harris escorted Blaney and Scott to separate, secure locations and contacted the police.

¶4 Blaney filed suit for negligence, arguing that Harris and the District failed to properly protect his safety. Harris and the District moved for summary

judgment on the grounds of governmental immunity pursuant to WIS. STAT. § 893.80(4)[1], which the trial court granted.

STANDARD OF REVIEW

¶5 We review summary judgment without deference, using the same methodology as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08. Our summary judgment methodology is well documented, and it will not be repeated here. *See, e.g.*, ***Smith v. Dodgeville Mut. Ins. Co.***, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Whether the District and Harris are immune from Blaney's claim is a question of law that we review without deference. *See* ***Kimps v. Hill***, 200 Wis. 2d 1, 8, 546 N.W.2d 151 (1996).

DISCUSSION

¶6 Blaney's sole argument is that summary judgment is inappropriate because Harris was confronted with a known and compelling danger, and therefore he and the District are not entitled to governmental immunity. WISCONSIN STAT. § 893.80(4) provides political subdivisions and public officials with immunity for acts committed in the exercise of legislative, quasi-legislative, judicial, or quasi-judicial functions. "[L]egislative, quasi-legislative, judicial or quasi-judicial" are synonymous with the term "discretionary." ***Envirologix Corp. v. City of Waukesha***, 192 Wis. 2d 277, 288, 531 N.W.2d 357 (Ct. App. 1995). Therefore,

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the statute protects discretionary acts. *See* ***id.*** at 288-89. There is no immunity for ministerial acts, meaning those acts that involve performance of a task imposed by law with such certainty that nothing remains for judgment or discretion. *See* ***id.*** at 289.

¶7 The existence of a known and compelling danger nullifies the grant of governmental immunity for public officers. *See* ***Mellenthin v. Berger***, 2003 WI App 126, ¶20, 265 Wis. 2d 575, 666 N.W.2d 120. In this context, "the ministerial duty arises not by operation of law, regulation or government policy, but by virtue of particularly hazardous circumstances—circumstances that are both known to the municipality or its officers and sufficiently dangerous to require an explicit, non-discretionary municipal response." ***Lodl v. Progressive Northern Ins. Co.***, 2002 WI 71, ¶39, 253 Wis. 2d 323, 646 N.W.2d 314.

¶8 This exception is only effective when the "nature of the danger is compelling and known to the officer and is of such force that the public officer has no discretion not to act." ***Kierstyn v. Racine Unified Sch. Dist.***, 228 Wis. 2d 81, 96, 596 N.W.2d 417 (1999) (citation omitted). More specifically, a dangerous situation will only give rise to a ministerial duty when "there exists a known present danger of such force that the time, mode and occasion for performance is evident with such certainty that nothing remains for the exercise of judgment and discretion." ***Lodl***, 253 Wis. 2d 323, ¶38. Further, "[a] ministerial duty is not an undifferentiated duty to act but a duty to act in a particular way." ***Id.***, ¶44. Not every dangerous circumstance will create a duty that pierces governmental immunity. ***Id.***, ¶40. Further, nothing in the law creates a ministerial duty to protect the public from every danger. *See* ***Caraher v. City of Menomonie,*** 2002 WI App 184, ¶15, 256 Wis. 2d 605, 649 N.W.2d 344.

¶9 Here, the situation did not give rise to a ministerial duty to act because Harris was not faced with a dangerous situation that eliminated any discretion. *See* ***Lodl***, 253 Wis. 2d 323, ¶40. Harris was on notice that Scott and Stanford were verbally harassing Blaney. Although no student should be the subject of verbal harassment at school, the harassment in and of itself did not create a ministerial duty. Even assuming that this was a dangerous situation, numerous courses of action were available to Harris. For a dangerous situation to create a ministerial duty, there can be only a single, self-evident course of action for the public officer to take.

¶10 Blaney fails to explain how a ministerial duty to act was created. Blaney quotes extensively from the text of the District's discipline policy, apparently in an effort to demonstrate that the District's internal procedure[2] required it to act. However, the District's own policies indicate a great deal of discretion on the part of the disciplining official and state that the factual circumstances of each situation guide any course of action. Blaney further contends that the policies proscribing student harassment demonstrate that Harris and the District were on notice that the verbal harassment of Blaney was a known and compelling danger. We reject this argument because the District's policy proscribing harassment and recognizing that it could lead to injury does not turn the verbal harassment of a student into a dangerous situation. Therefore, a ministerial duty did not arise by virtue of a known and compelling danger, and

[2] Blaney points to several portions of the Chetek School District Attitude and Behavior Policy, including the following passage: "Violation of ethics and/or actions which have a high potential for injury or constitute open defiance. [These] behaviors will be immediately referred to the administration. Examples may include but are not limited to: … Sexual, ethnic, and physical harassment; Intimidation; Physical or verbal assaults/disorderly conduct ...."

Harris and the District are entitled to governmental immunity pursuant to WIS. STAT. § 893.80(4).

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.