

Topic: Torts & Statutory Governmental Immunity

Mosley v. Portland Public School District No. 1J
Supreme Court of Oregon, 1992

FACTS

On November 13, 1987, 15 year old Chrisetta Mosley was attending classes at Jefferson High School. During her lunch hour, she became involved in a fight with another student, Wanda Griffin. Griffin produced a box-cutting knife and stabbed Mosley several times. Although there were security personnel on campus, none were in the hallway when the altercation occurred. Mosley was stabbed in the face and chest, and suffered permanent scarring as a result.

Mosley sued the Portland School District under several theories of negligence. The issue before the court is whether the School District can be found liable, or whether they are immune from liability under Oregon's discretionary immunity statute.

ORS 30.265 reads in pertinent part as follows:

- (3) Every public body and its officers, employees and agents acting within the scope of their employment or duties. . . , are immune from liability for:
 - . . . (c) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

HANDOUT QUESTIONS

1. Why did Mosley sue the school district instead of the student who injured her?
2. Do you think the school was negligent in not breaking-up the fight? Why or why not?
3. Do you think the school was negligent in allowing a student to carry a weapon onto school premises? If so, what action should the school have taken to prevent this fight?
4. Do you think government organizations *should* be immune from liability in certain cases? If so, think of examples of situations where government's should be immune from civil liability. If you think government should not be immune, explain your thinking.
5. What can schools do to prevent fighting between students? What can students do to prevent fighting?

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ISSUE

The question before the court is whether the School District is immune, as a matter of law, under Oregon's discretionary immunity statute, from liability for injuries to Chrisetta Mosley that were caused by another student on campus during regular school hours. ORS 30.265.

WHAT HAPPENED AT TRIAL?

The trial court (circuit court) found for the School District. On appeal, the Oregon Court of Appeals reversed and remanded on grounds that the school could be liable for (1) failing to provide proper supervision of students and (2) failing to "stop the attack before the knife was used." 315 Or. 85, at 88 (1992). Upon review prior to remand, the Oregon Supreme Court affirmed the Circuit Court's decision for the School District, holding that the number and positioning of security personnel on the campus was a "policy choice," and was thereby protected by a statutory discretionary immunity scheme that exempted the School District from liability. ORS 30.265(3)(c). Further, the court held that there was insufficient evidence to support the injured student's claim that the School District was negligent in not breaking-up the fight, which would not have fallen under the discretionary immunity scheme.

HOW DID THIS CASE REACH THE OREGON SUPREME COURT?

The case was decided in favor of defendant School District by a jury in the Circuit Court of Multnomah County. The Court of Appeals affirmed in part and remanded in part. In consideration of the remanded issues, the Supreme Court undertook review.

ARGUMENTS

Plaintiff Mosley argued that the School District was negligent (1) in failing to exercise proper supervision of students by poor placement of security personnel, and (2) in failing to stop the fight before a knife was used. The Portland School District, defendant, argued the affirmative defense of immunity as a matter of law.

WHO WON?

The Portland School District prevailed first on the issue of discretionary immunity and second on plaintiff's failure to adequately support her claim of negligence under the theory that security personnel failed to break-up the fight in time to avoid serious injury to plaintiff.

APPLICATION

1. This case provides an opportunity for student's to consider their school's responsibility to them. Conversely, it demonstrates the precedent that as long as school's are taking "reasonable measures" to ensure safety in the school, school's are not liable for injuries that result from fights between students.
2. This would be an excellent opportunity for the school security or police to visit the classroom and talk about safety at school, search and seizure policies, and rules concerning weapons brought to school.
3. Ask students to consider whether school's should have metal detectors like courthouses and airports do. What impact would this have on the students' experience at school? Would they feel safer? Would they feel imprisoned? Would they feel that their privacy was being violated?
4. Ask students to break-up into small groups, discuss and record answers for developing a school safety policy.

Ask students to answer the following questions:

- a) Where do fights most often occur on campus?
- b) At what time of the day do fights most often occur?
- c) What are most fights about? List as many reasons as you can think of.

Students should list at least one possible solution for dealing with each of the factors listed below. Factors that influence violence in schools:

- a) Weapons are easily obtained and brought onto campus.
- b) Some students would rather fight about a conflict than talk it out.
- c) Peer pressure from some students for other students to carry weapons and/or fight.