

Ansley Stone

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Professor Anderson

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Case Law Review: A.M.D. v. YMCA of Greater Indianapolis

When an Indiana minor, A.M.D., was eight years old, he participated in a day camp over the summer at the YMCA at a park in Zionsville, Indiana. The camp consisted of children in the ages ranging from kindergarten through sixth grade. On June 27, 2006, the YMCA camp counselors accompanied A.M.D. and the other camp participants to Creekside Park (which was immediately adjacent to the routine park the camp was held) to go rafting and enjoy the park's facilities for the day. The case states that:

Until the time of the incident giving rise to this appeal, there was nothing out of the ordinary at the park and there were no activities or individuals that gave anyone at the YMCA cause for concern. In particular, there was no one at the park who was lingering around, looked out of place, or generally looked suspicious. (Court of Appeals of Indiana)

There were three counselors present at the camp, one positioned where the rafting began (Megan Donaldson), and the other two positioned where the rafting ended (Melissa Raab and Jay Binkert). Shortly after the rafting began, A.M.D. informed Raab that he needed to go to the bathroom. The public restroom was a ten-to-fifteen-minute walk away, so Raab instructed A.M.D. to urinate in the bushes. Raab knew that the YMCA's bathroom policy required at least one counselor and buddy to go with a camper to the restroom. A.M.D. obeyed these instructions, going into the bushes within Raab's line of sight. Raab turned her attention away from A.M.D.

momentarily to check on the other children. When she turned back to check on A.M.D., after less than a minute, he was gone.

Unbeknownst to A.M.D. and the YMCA counselors, there was a sexual predator hidden in the woods near where A.M.D. was using the bathroom. Too well-hidden to be noticed by A.M.D., the predator, Stephen Taylor, approached A.M.D., telling him that he was a doctor and offering to give him a piggy-back ride, which A.M.D. accepted. The case states that “while hidden in the woods, Taylor sexually assaulted A.M.D. Once Raab noticed that A.M.D. was not by the bushes, she immediately began looking for A.M.D. and screaming his name. Ultimately, A.M.D. was found, but the perpetrator had run away” (Ind. App. 2013). About six months later, Taylor was arrested on an unrelated charge and later identified as the assailant who sexually assaulted A.M.D. Taylor was convicted of a class A felony and was sentenced to fifty years in the Department of Correction.

On May 7, 2008, the parents of A.M.D. (hereby referred to as John Doe and Jane Doe), filed a negligence action against the YMCA. The YMCA responded by filing a motion claiming that 1) The YMCA was not the proximate cause of A.M.D.'s injuries because Taylor's criminal actions were not reasonably foreseeable, and 2) the exculpatory clause contained in the camper application signed by Jane Doe released the YMCA from all claims. The Doe's responded to these assertions by arguing that the YMCA was negligent in their supervision of A.M.D., failed to prevent foreseeable conduct by a third-party, and were not exempt from their responsibility to A.M.D. by the exculpatory clause. After a hearing by a court in 2012, the holding for the case was ruled in favor of the plaintiff.

There are four elements of negligence (duty, breach of duty, causation, injury), which are required to be proven according to the state of Indiana: 1) A duty owed to the plaintiff by the

defendant, 2) a breach of that duty, and 3) an injury proximately caused by the breach of duty. The duty owed to A.M.D. was clearly expressed and understood by the camp counselors. Outside of their duties as counselors, there is a duty of ordinary care on behalf of the child in custody which exists outside of the compensation they receive for their job. But the counselors had a clear, expressed duty on top of this ordinary duty, which they agreed to when they applied for and accepted positions as counselors. This duty included following bathroom procedure specifically created to prevent injuries like the one that occurred, which is linked to the idea of reasonable foreseeability. The duty was breached when Raab left A.M.D. unsupervised and did not follow bathroom protocol.

Foreseeability is trickier to prove in this situation. As stated in the court case, “Prior to June 27, 2006, the YMCA was not aware of any criminal incidents or crimes that were committed at the Lions or Creekside Parks. Prior to June of 2006, there were no other incidents of violent or sexual assaults reported at Creekside Park. There have been no incidents of violent or sexual assaults reported at Lions Park for at least the past twenty-five years” (Ind. App. 2013). This may allude that the foreseeability of the assault that occurred was not reasonable. The YMCA claimed that it was not foreseeable that a sexual predator would be waiting in the woods motivated to sexually molest one of the campers.

However, one must also consider that foreseeability of this particular risk is not necessarily pertinent to the prevention of the injury. There was a specific clause in the camp bathroom procedures that specifically stated: “No camper is ever alone and no camper is ever alone with a staff member. All campers will take trips to the bathroom with entire camp and/or camp groups and camp staff. Campers will only use bathrooms inspected for safety by camp

staff.” More specifically, and relevant to this case, there is a clause in the Code of Conduct for Day Camp Counselors provided that expressly declares that:

Staff will make sure the restroom is not occupied by suspicious or unknown individuals before allowing children to use the facilities. Staff will stand in the doorway while children are using the restroom. This policy allows privacy for the children and protection for the staff (not being alone with a child). If staff are assisting younger children, doors to the facility must remain open. No child, regardless of age, should ever enter a restroom alone on a field trip. Always send children in pairs, and whenever possible, with staff.

(Ind. App. 2013)

This case has an important impact on the safety and risk management field. It raises concerns with the management of minors and how seriously their caretakers take the policies which are in place to protect them. If the counselors had followed the protocol which was expressly established in the YMCA’s clauses, it is reasonable to assume that the assault would not have occurred. If there was not a restroom policy established, or if it had not been as detailed, perhaps the negligence ruling could have been reversed. However, the duty that was established was breached because of negligence by the counselor no matter the foreseeability of the injury. More training could have been done to ensure that the restroom rules were followed by both the counselors and campers.

If there was no way for one of the counselors to take a child to the restroom for fear of leaving the other children not-adequately supervised, there should have been more counselors hired by the YMCA. There were measures that could have easily (and reasonably) been taken to prevent the assault that occurred. It is heartbreaking for the parents of the victim, as the negligence occurred in less than a minute, but forever changed their family.

Works Cited

Court of Appeals of Indiana. *A.M.D. Ex Rel. Doe v. Young Men's Christian Ass'n of Greater Indianapolis*. 990 N.E.2d 527. 19 July 2013. Thomson Reuters.