

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVIN HUSK, A MINOR, BY AND  
THROUGH HIS NATURAL PARENT  
AND GUARDIAN, KEVIN HUSK,  
Appellants,

vs.

CLARK COUNTY SCHOOL DISTRICT,  
AND MAUREEN M. KUNTZE F/K/A  
MAUREEN M. GILGAN, AN  
INDIVIDUAL AND AN EMPLOYEE OF  
CLARK COUNTY SCHOOL DISTRICT,  
Respondents.

No. 51660

**FILED**

SEP 28 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a district court order dismissing a tort action. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Devin Husk was injured while in teacher Maureen Kuntze's class. In his amended complaint, Husk alleged simple negligence on the part of respondents Clark County School District (CCSD) and Kuntze. CCSD and Kuntze filed a motion to dismiss Husk's claims, arguing that Kuntze was immune from liability under the Paul D. Coverdell Teacher Protection Act of 2001. 20 U.S.C. §§ 6731–6738 (2006).

The district court granted the motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to NRCP 12(b)(5). The district court concluded that Husk's claims against Kuntze sounded in simple negligence and were therefore preempted by the Coverdell Act. The district court went on to conclude that CCSD could not "be held accountable on a theory premised upon a finding of liability

against its employee” when Kuntze was statutorily immune from civil liability.

Husk now argues that the district court erred in dismissing his complaint because the Coverdell Act does not immunize actions that were unreasonable, i.e., negligent; he argues the Coverdell Act only immunizes reasonable actions. Husk also argues the district court erred in dismissing his claim against CCSD for negligent hiring because the Coverdell Act specifically states that the limits on liability do not apply to claims of negligent hiring.<sup>1</sup> We disagree with Husk as to his first argument but agree as to the second; therefore, we affirm in part and reverse in part. We address each argument in turn.

On appeal from a district court order of dismissal, this court reviews the district court’s legal conclusions *de novo*, assumes all factual allegations in the complaint are true, and draws all inferences in the plaintiff’s favor. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. \_\_\_, \_\_\_, 181 P.3d 670, 672 (2008).

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<sup>1</sup>Following the district court’s ruling, Husk made an oral motion to amend the complaint. This motion was denied. Husk appeals the district court’s decision, arguing the district court abused its discretion in denying his motion to amend his complaint. We have considered this issue and conclude that it is without merit.

Following the oral motion, Husk made motions for reconsideration and to amend the complaint. Having reviewed the parties’ filings and documents, this court concluded that we lack jurisdiction over the two post-judgment orders. Therefore, this court dismissed Husk’s appeal as to the two post-judgment orders.

Scope of the Coverdell Act

Congress enacted the Paul D. Coverdell Teacher Protection Act of 2001 as part of the No Child Left Behind Act. 20 U.S.C. §§ 6731–6738. The Coverdell Act immunizes teachers, principals, and other school professionals from liability when they take “reasonable actions to maintain order, discipline, and an appropriate educational environment.” Id. § 6732. The Coverdell Act applies to both public and private schools in states that receive funds under Chapter 70 of the education title. Id. § 6734.

The liability protection provisions of the Coverdell Act are found in section 6736, which reads, in pertinent part:

[N]o teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if—

(1) the teacher was acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity;

(2) the actions of the teacher were carried out in conformity with Federal, State, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;

....

(4) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher.

Id. § 6736(a).

The Coverdell Act states that it protects teachers from liability for conduct that is “not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to

the rights or safety of the individual harmed by the teacher”—thereby limiting its grant of immunity to simple negligence claims, even though the purpose of the Act indicates that it protects teachers’ “reasonable” actions. See 20 U.S.C. §§ 6732 and 6736(a)(4).

Husk failed to plead anything beyond simple negligence.<sup>2</sup> He did not plead willful or criminal misconduct, gross negligence, or reckless misconduct. Nor did Husk plead a violation of federal or state law. Therefore, Kuntze was entitled to the affirmative defense of immunity under the Coverdell Act.

Because Kuntze was entitled to immunity as to the simple negligence claim per the Coverdell Act, the district court properly dismissed the claims against CCSD for negligent supervision and training. See Schoff v. Combined Ins. Co. of America, 604 N.W.2d 43, 53 (Iowa 1999) (holding an employer can only be held liable for negligent supervision or training when the employee committed an actionable tort).

Negligent hiring claim

Husk also alleged CCSD “negligently hired” Kuntze. The Coverdell Act specifically states that “[t]he limitations on the liability of a teacher under this subpart shall not apply to misconduct during background investigations, or during other actions, involved in the hiring of a teacher.” 20 U.S.C. § 6736(d)(2). While CCSD argues that Husk abandoned his claim for negligent hiring, there is no basis for this

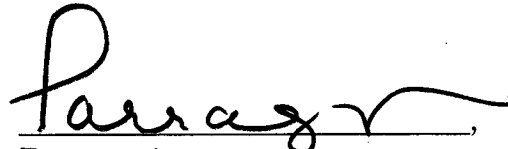
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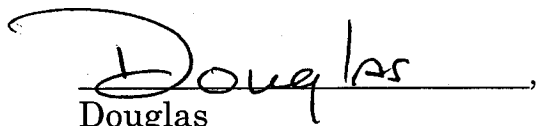
<sup>2</sup>Since the motion at issue was a motion to dismiss, the district court based its decision solely on the parties’ pleadings. We note that the district court properly handled this as a motion to dismiss since neither party attached any documents to the motion to dismiss, opposition, or reply filed in the district court.

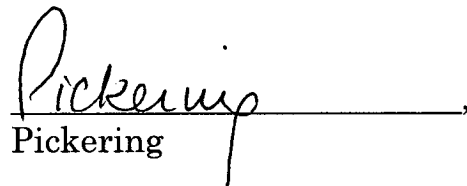
conclusion. In fact, neither party addressed the claim of negligent hiring in the motion to dismiss, opposition, or reply.

In respondents' answering brief, CCSD concedes "that a valid claim of negligent hiring would not [be] preempted by the Coverdell Act." Since the Coverdell Act specifically excludes claims of negligent hiring from the liability protection, the district court erred in dismissing the claim for negligent hiring. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter to the district court for proceedings consistent with this order.

  
Parraguirre, J.

  
Douglas, J.

  
Pickering, J.

cc: Hon. Valorie Vega, District Judge  
Robert F. Saint-Aubin, Settlement Judge  
G. Dallas Horton & Associates  
Clark County School District Legal Department  
Eighth District Court Clerk