

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

FILED

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Washington Superior Court  
Docket No. 39-1-99 W  
SUPERIOR COURT  
WASHINGTON COUNTY

NATHANIEL SESSIONS,  
Plaintiff,

v.

STATE OF VERMONT, et al.,  
Defendants.

Decision on State's Motion for Judgment as a Matter of Law

Negligent Supervision

Looking at the evidence in the light most favorable to the Plaintiff in relation to the elements of a claim for negligent supervision, there is insufficient evidence upon which the jury could find that the cause of any of the harm suffered by Nathaniel Sessions can reasonably be attributed to the failure of Mr. Bernadini to act in some way on the complaint Mr. Feld made to him about Mr. Lyons. Plaintiff has presented evidence on whether Mr. Bernadini should have done something. Plaintiff has not presented evidence on whether that something should have included an investigation, the scope or details of any such investigation if it had been conducted, or the likely details of any "appropriate discipline" that should have resulted from the investigation. Even assuming that the jury could reasonably infer

(1) that there should have been an investigation;

(2) that the investigation would have brought to light

(a) that several state employees in the Travel and Tourism office had heard that Mr. Lyons liked young boys in a sexual manner,

(b) that adolescent boys regularly visited Mr. Lyons in his office and that they were permitted entrance without being announced contrary to policy applicable to other visitors, and

(c) that Mr. Lyons repeatedly made unwanted sexual advances to Mr. Feld, a younger subordinate employee, even after repeatedly having been asked to stop,

the jury still would have to infer

(3) that Mr. Lyons would have received "appropriate discipline" as a result.

The jury then would need to infer

(4) what the discipline would be (any inference on this point would build on inferences previously made, including the scope of an investigation and what it would have revealed), and

(5) that it would have prevented sexual abuse of Nathaniel Sessions by Mr. Lyons.


There are five significant links in the chain of causation for which the jury would have to make inferences without sufficient evidentiary basis. The jury could not conclude that the conduct of Mr. Bernadini was a proximate cause of the harm to Nathaniel Sessions without engaging in this series of inferences, and since there is insufficient evidence to support the inferences individually and collectively, the jury would have to engage in speculation. Because there is insufficient grounds for the jury to find causation without speculating, the State's Motion is granted as to the claim of negligent supervision. The State's other arguments are moot, and need not be considered.

#### Failure to Warn

Plaintiff is not claiming that there should have been a posted warning, as in the case of unsafe physical premises, or that when he entered the State travel office or warehouse, he did so as a business invitee. Plaintiff is claiming a duty to act to protect Nathaniel Sessions rather than a failure to warn of an unsafe condition on a business property. If the claim is that office workers with knowledge from which risk could be inferred had a duty to act directly on his behalf (by directly intervening to prevent the abuse), that would be a duty to protect third persons from harm, and a necessary element is the existence of a special relationship between the person with knowledge and the person to be protected. There is no evidence of such a special relationship between office employees and Nathaniel Sessions. If the claim is that there was a duty on the part of state employees to protect male, adolescent visitors to Mr. Lyons generally, then this is a duty necessarily involving office policy and office supervisors. It is another version of a negligent supervision claim. Record evidence does not establish an appropriate standard of care for such employees or that, even if they had acted properly, harm to Plaintiff would have been prevented (causation). Thus, the court is unable to conclude that there is a valid claim for negligence for "failure to warn" upon which the jury could render a verdict.

For the foregoing reasons, the State's Motion for Judgment as a Matter of Law is granted on the negligent supervision and failure to warn claims.

Dated at Montpelier, Vermont this 25<sup>th</sup> day of August, 2003.

  
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Mary Miles Teachout  
Superior Court Judge