

[J-3-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

R.W. AND C.W., INDIVIDUALLY AND AS	:	No. 32 WAP 2004
THE PARENTS AND NATURAL	:	
GUARDIANS OF L.W.,	:	Appeal from the Order of the Superior
	:	Court entered December 9, 2003 at No.
Appellants	:	255WDA2003, affirming the Order of the
	:	Court of Common Pleas of Indiana County
	:	entered July 31, 2002 at No.
v.	:	10485CD2001.
	:	
	:	
SCOTT MANZEK, PERSONALLY AND IN	:	838 A.2d 801 (Pa.Super.Ct. 2003)
HIS CAPACITY AS THE OWNER OF 84	:	
SERVICES, 84 SERVICES, COOKBOOK	:	
PUBLISHERS, INC. AND GIFTCO., INC.,	:	
	:	
Appellees	:	ARGUED: March 7, 2005

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: DECEMBER 28, 2005

Because I cannot agree with the reasoning or the conclusions drawn by the majority, I must respectfully dissent.

In my opinion, I do not believe that Appellees needed to provide a warning that there exist in the world evil people who could possibly cause intentional harm to minor students. Of course, it is an unfortunate fact that heinous acts are committed against small children by people such as Timothy Fleming (“Fleming”). And yet, this does not make it incumbent upon defendants such as Appellees to provide a warning of this generalized risk.

Appellees had no specific knowledge that Fleming posed such a risk to L.W.¹ In the absence of such particularized knowledge, I am chary of imposing on individuals and business enterprises a duty to warn that unknown third parties could potentially cause harm by engaging in criminal acts.

Furthermore, even if I were to agree that Appellees had such a duty, I do not see how Appellants will ultimately prevail in this matter. Although this issue has not been raised before this court, in my opinion, it is apparent that Appellants' complaint has tacitly conceded that there is no causation in this matter. In a failure to warn case, a defendant will not be held liable, even in the absence of making a warning, when the plaintiff already knew of the danger which the missing warning allegedly should have cautioned and engaged in the dangerous activity anyway. See Phillips v. A-BEST, 665 A.2d 1167, 1171 (Pa. 1995). In the instant matter, the complaint admits that Appellants had specifically warned L.W. against approaching strangers in her fundraising. See Complaint at ¶¶ 15 and 18. In essence, Appellants had already given the warning that they claim Appellees negligently failed to convey. Thus, it cannot be said that Appellees' failure to provide a warning in any fashion caused L.W.'s tragic injuries.

For these reasons, I disagree with the majority's order reversing the order of the Superior Court and must respectfully dissent.

¹ This is in contrast to Emerich v. Philadelphia Center for Human Development, Inc., 720 A.2d 1032 (Pa. 1998). In Emerich, a psychiatric patient informed his psychiatrist that he intended to kill his girlfriend. In light of there being such a specific threat posed by a particular individual, this court held that the psychiatrist had a duty to warn the girlfriend of the boyfriend-patient's threat to murder her. In the matter sub judice, however, there is no allegation that Appellees had knowledge that Fleming posed such a threat.