SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0142-15T1

JOHN DOE and JANE DOE,

Plaintiffs-Appellants/
Cross-Respondents,

v.

HOPEWELL VALLEY REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION, a corporate body in the County of Mercer, and MATTHEW HOFFMAN, individually and in his representative capacity as an employee of the Hopewell Valley Board of Education,

Defendants-Respondents/
Cross-Appellants.

Argued April 25, 2017 – Decided May 8, 2017

Before Judges Fisher, Vernoia and Moynihan.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2329-09.

Robert F. Varady argued the cause for appellants/cross-respondents (LaCorte, Bundy, Varady & Kinsella, attorneys; Mr. Varady, on the briefs).

Edward L. Thornton argued the cause for respondents/cross-appellants (Methfessel & Werbel, attorneys; Mr. Thornton, of counsel and on the briefs; Amanda J. Sawyer, on the briefs).

PER CURIAM

Plaintiffs John Doe and his former spouse Jane Doe[1] appeal a July 20, 2015 Law Division order denying their motion for a new trial following a jury verdict finding defendant Hopewell Valley Regional School District was not liable for damages arising out of sexual abuse committed against John Doe by one of the District's former teachers, defendant Matthew Hoffman. The District cross-appeals a May 16, 2014 pretrial order denying its motion to dismiss the complaint on statute of limitations grounds, and a portion of the jury charge concerning the District's liability as a "passive abuser" under the Child Sexual Abuse Act (CSAA), N.J.S.A. 2A:61B-1. Based on our review of the record, we affirm the court's order denying plaintiffs' motion for a new trial and find it unnecessary to address issues raised in the District's cross-appeal.

I.

On September 14, 2009, plaintiffs filed a complaint against the District, Hoffman, and various fictitious parties claiming that from approximately 1982 until 1986, John Doe was sexually

[1] Plaintiffs utilized fictitious names to protect their privacy.

assaulted on multiple occasions by Hoffman, a teacher then employed at one of the District's schools. Plaintiffs asserted claims against Hoffman for intentional sexual assault, and the District for vicarious liability, negligence, and negligent retention and supervision of Hoffman. Plaintiffs also claimed violations of the CSAA against both Hoffman as an "active abuser," and the District as a "passive abuser." A per quod claim was asserted on Jane Doe's behalf.

Defendants moved to dismiss the complaint as barred by the statute of limitations. Following a four-day hearing, the court made findings concerning the date of accrual of plaintiffs' claims and the tolling of the statute of limitations, and denied defendants' motion.

The matter proceeded to trial before a jury. The evidence showed that John Doe (Doe)[2] grew up in a home environment where his parents had marital problems and his father abused alcohol. In 1982, Doe was in the sixth grade in one of the District's schools, and Hoffman was his math teacher. During an overnight class trip, Hoffman took pictures of Doe lying on some leaves and later gave one of the photos to Doe as a birthday present.

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[2] For ease of reference, and because the claims in the complaint are founded on the sexual abuse of John Doe, where appropriate we refer to him singularly as Doe.

During the summer of 1982, following Doe's sixth grade school year, Hoffman frequently appeared in Doe's neighborhood, at Doe's baseball games, and became a frequent guest at the house where Doe resided with his parents. During that summer, Doe was permitted to go to Hoffman's house at times to do yard work, where the first act of sexual abuse occurred in Hoffman's bedroom. Doe explained the abuse continued and escalated during the summer, and took place at Hoffman's house, and in Hoffman's car while parked in either secluded areas or the school parking lot.

Doe attended seventh grade at a different school within the District. However, Hoffman continued his presence at Doe's house and with Doe's family. Hoffman occasionally picked up Doe after school and sexually abused Doe in his car.

During Doe's seventh grade school year, his parents' marital problems and father's alcohol abuse worsened. Doe believed that, during this difficult time, his mom "was just happy to have [Hoffman]," "who she thought was a role model, a mentor, to help take care of [Doe] . . . [s]o [Hoffman] had much . . . more access." Doe testified that from seventh to eighth grade, the sexual abuse continued and escalated.

Doe went on overnight trips with Hoffman "other than the school trip[s]." He traveled with Hoffman "to Baltimore and stayed at [Hoffman's] grandmother's house," where he was further sexually

abused. Hoffman took Doe on two skiing trips in West Virginia with Hoffman's family, where Hoffman isolated Doe and sexually abused him.

The sexual abuse continued while Doe was in ninth, tenth, and eleventh grade at the District's high school. It ended during Doe's eleventh grade school year because he began to drive and could spend his time more freely.

Doe graduated high school, went to college, and attended law school. He married Jane Doe in 1999. At the time of trial, Doe was forty-four years old, divorced, and worked as an attorney. He explained that after he and Jane Doe had two children, their marriage began to deteriorate and they sought marriage counseling. According to Doe, during the counseling he learned he had issues stemming from sexual abuse, and in 2009, he and Jane Doe decided to file suit.

Plaintiffs presented the testimony of Dr. Emili Rambus, who was qualified as an expert in psychology and sexual abuse. Rambus conducted a psychological evaluation of Doe, and opined that he "experienc[ed] numerous emotional and psychological symptoms . . . consistent with chronic post-traumatic stress disorder" that were "directly related to the sexual abuse [he] endured."

There was evidence presented concerning the District's policies in the 1980s, during the period of the alleged abuse. Doe

testified the District did not offer classes or guidance about addressing discomfort or embarrassment in the presence of an adult, and he was not aware of any District procedure for reporting abuse.

Plaintiffs also presented the testimony of Dr. Charol Shakeshaft, an expert in educational administration and educator sexual abuse. Shakeshaft testified the District's policies in the 1980s did not address the "prevention of child sexual abuse," or include "mandated reporter policies." Shakeshaft explained the District did not train its staff on child sexual abuse reporting policies even though other districts in the 1980s conducted such training.

Shakeshaft testified that there were "red flags" signaling Hoffman's abusive conduct, including a warning in one of Hoffman's evaluations that he "not [] be so involved with children and students," and that the District failed to supervise and monitor Hoffman's activities. Shakeshaft found it "highly unusual" that Hoffman hired Doe to do yard work, invited Doe to stay overnight at his grandmother's house, took an "inappropriate" photo of Doe, and asked Doe to call him by his first name.

According to Shakeshaft, the District's teacher evaluations, which measured community involvement, encouraged "activities that could lead teachers to step over their boundaries," without policies to prevent inappropriate activities. Shakeshaft opined

that the District's "lack of direction and guidance, combined with an absence of policies or expectations about appropriate behavior, created an environment in which child sexual abuse could easily occur."

Edward Gola testified on behalf of the District. From 1978 until 1984, he was the principal at the school where Hoffman taught math. From 1984 to 1986, Gola was the principal of the District's junior school. And, from 1986 to 1992, he served as the District's Superintendent of Schools.

Gola explained the District had a policy book for each school which constituted the "operating policies and the regulations . . . for the school district." He could not recall if the handbook contained information about the sexual abuse of children. Nor could Gola recall if, prior to 1992, he either received or provided training about recognizing signs that a student might be the victim of sexual abuse.

Gola acknowledged that he encouraged teacher involvement in the community and that he never "addressed . . . what would be proper conduct or improper conduct with the kids outside the classroom." Gola explained that community involvement was considered in teacher evaluations. He stated that in a 1981 evaluation he advised Hoffman to "be cautious," with overextending himself "into areas of childhood development," but explained he

was merely "mentoring" Hoffman because he was a very "enthusiastic" teacher.

Gola testified he was aware that teachers tutored students at their homes, which he stated was approved by the Director of Pupil Personnel Services and the Board of Education. He also testified that teachers were instructed not to be in a child's presence without another adult.

The District called Dr. Edward Dragan as an expert in the fields of education, education administration, and compliance with federal, state and county laws and policies governing education. Dragan explained the development of the law mandating school policies directed toward preventing child sexual abuse. Dragan explained there were no policies regarding sexual abuse training in schools until the 1990s, however, in the 1970s, New Jersey law required a general standard of care requiring that any person who "ha[d] any reasonable cause to believe that a child ha[d] been subjected to abuse that the person is to contact the appropriate [State] agency." Dragan testified that in 1982, "it was not the professional standard of care" that a school district have a policy on the prevention of child sexual abuse.

Dragan explained "it wasn't the standard of care during that time at all, that the district provide any training . . . it was not something that was being discussed at all in the [1980s]."

Dragan opined that the District "acted in a manner consistent with [the] professional standard of care . . . with regard to student supervision and student safety during the time that [] Hoffman was a teacher at the [D]istrict and [Doe] was a student during the time period of [1982] through [1989]."

On cross-examination, Dragan acknowledged that Hoffman failed to observe boundaries with Doe, but "[t]here was no requirement at the time . . . for teachers to be taught or educated in boundaries at all." He testified that some of Hoffman's conduct that Shakeshaft labeled "red flags" was consistent with the norms at the time. Dragan testified that in other New Jersey school districts, including those where he worked, it was the "theme . . . during the [1970s] and [1980s] . . . to become involved with the students" "but there was no regulation."

The jury returned a verdict finding Hoffman sexually abused Doe from approximately 1983 until 1988, and awarded $200,000 in compensatory damages and $100,000 in punitive damages against Hoffman. The jury found the District was not negligent in its supervision and retention of Hoffman, and did not violate the CSAA as a passive abuser.

Plaintiffs filed a motion for a new trial arguing the jury's no-cause verdict in favor of the District was against the weight

of the evidence. The court heard oral argument and denied the motion, finding:

> [T]he battle line that's drawn [in] this case were the two experts, between these two parties, Dr. Dragan versus Dr. Shakeshaft and, you know, the jury ultimately agreed with Dr. Dragan and did not agree with Dr. Shakeshaft . . . A jury is free to accept or reject an expert's testimony. So, you know, the jury could have not accepted some of those points you raised that Dr. Dragan may have agreed with, because at the end of the day Dr. Dragan said the school district didn't do anything wrong here.

The court entered an order of judgment against Hoffman that included "a judgment of no cause for action" as to the District. Plaintiffs appealed and the District's cross-appeal followed.

II.

Jury verdicts are "entitled to considerable deference" and "'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 597-98 (1977)); accord Boryszewski v. Burke, 380 N.J. Super. 361, 391 (App. Div. 2005), certif. denied, 186 N.J. 242 (2006). "A trial judge may only grant a motion for a new trial

'if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law.'" Hill v. N.J. Dep't of Corr. Comm'r Fauver, 342 N.J. Super. 273, 302 (App. Div. 2001) (quoting R. 4:49-1(a)), certif. denied, 171 N.J. 338 (2002). A "miscarriage of justice" "has been described as a 'pervading sense of "wrongness" . . . [which] can arise . . . from manifest lack of inherently credible evidence to support the finding, obvious overlooking or undervaluation of crucial evidence, [or] a clearly unjust result.'" Risko, supra, 206 N.J. at 521 (alterations in original) (quoting Lindenmuth v. Holden, 296 N.J. Super. 42, 48 (App. Div. 1996), certif. denied, 149 N.J. 34 (1997)).

The "standard applies whether the motion is based upon a contention that the verdict was against the weight of the evidence, or is based upon a contention that the judge's initial trial rulings resulted in prejudice to a party." Hill, supra, 342 N.J. Super. at 302. In applying the standard, the judge must evaluate the evidence with an eye toward correcting "clear error or mistake by the jury." Dolson v. Anastasia, 55 N.J. 2, 6 (1969). The judge is to "take into account, not only tangible factors relative to the proofs as shown by the record, but also appropriate matters of credibility, generally peculiarly within the jury's domain, and

the intangible 'feel of the case' which it has gained by presiding over the trial." Kita v. Borough of Lindenwold, 305 N.J. Super. 43, 49 (App. Div. 1997).

"The standard for appellate review of a trial court's decision on a motion for a new trial is substantially the same as that controlling the trial court except that due deference should be made to its 'feel of the case,' including credibility," Caldwell v. Haynes, 136 N.J. 422, 432 (1994), and we will not not reverse the judge's ruling unless "it clearly and convincingly appears that there was a miscarriage of justice under the law," Hill, supra, 342 N.J. Super. at 302 (quoting R. 4:49-1(a)).

Plaintiffs argue the jury's no-cause verdict was against the weight of the evidence. They contend that although the jury was properly instructed to consider their negligence claims against the District under the "heightened duty that teachers and school personnel owe to their students" as described by the Court in Frugis v. Braciqliano, 177 N.J. 250 (2003),[3] the jury's verdict showed that it "failed to understand this heightened duty." Plaintiffs claim the District's expert, Dragan, acknowledged that during the 1980s schools were obligated to protect students from

[3] The jury was given the same model jury charge provided in Frugis, supra, 177 N.J. at 270. The model jury charge has been in effect since 1980. Model Jury Charge (Civil), 5.74, "Duty of Teachers and School Personnel to Student," (Sept. 1980).

sexual abuse, and plaintiffs' expert, Shakeshaft, testified the District failed to regulate teachers traveling with students, teachers tutoring students off school grounds, and students working for teachers, and failed to implement "common sense safety rules" that were standard in the 1980s.

Plaintiffs also assert the evidence showed the District encouraged its teachers to participate in community activities that brought them into contact with students outside of school, and rewarded teachers for doing so. Plaintiffs argue the District's policies enabled Hoffman to engage in his predatory behavior, and the District lacked "reasonable measures" to ensure teachers were not endangering or exploiting vulnerable children.

Based on our careful review of the record, we are not persuaded the court erred by denying plaintiffs' motion for a new trial on the negligence claims. Contrary to plaintiffs' assertions, the record shows that Dragan disputed Shakeshaft's testimony that the District's policies and conduct violated the standards at the time. Moreover, there was no evidence the District knew, or had any reason to know, about Hoffman's conduct during Doe's enrollment as a District student.

As the trial judge correctly determined, it was for the jury to determine the worth of the expert witnesses' opinions, Sanzari v. Rosenfeld, 34 N.J. 128, 138 (1961), and whether the District

took "reasonable measures" and acted in a manner consistent with the standards extant during the 1980s. It is not enough that "some of the evidence was in conflict and witnesses' testimony was not always entirely consistent." Iacano v. St. Peter's Med. Ctr., 334 N.J. Super. 547, 553 (App. Div. 2000). Rather, "[a] jury verdict should be set aside 'only in cases of clear injustice.'" Little v. KIA Motors Am., Inc., 425 N.J. Super. 82, 92 (App. Div. 2012) (quoting Boryszewski, supra, 380 N.J. Super. at 391). We are satisfied there was evidence supporting the jury's no-cause verdict on plaintiffs' negligence claims and that the verdict did not constitute a manifest injustice. Hill, supra, 342 N.J. Super. at 302.

Plaintiffs also claim the jury's no-cause verdict on their CSAA claim was against the weight of the evidence. They argue the evidence showed the District was a passive abuser and the jury's finding the District was not a passive abuser constitutes a manifest injustice. We disagree.

The CSAA definition of sexual abuse encompasses the perpetrator of the abuse and others.

> [A]n act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual

> abuse by any other person also commits sexual abuse . . . .
>
> [N.J.S.A. 2A:61B-1(a)(1).]

Thus, the statute imposes liability on both "active" and "passive" sexual abusers. Hardwicke v. Am. Boychoir School, 188 N.J. 69, 86 (2006).

In Hardwicke, the Supreme Court held that a private boarding school could be liable as a passive abuser under the CSAA. Id. at 94. The plaintiff alleged the school's musical director sexually abused him over the course of two years, and the school itself knew or should have known of the abuse. Id. at 74. The Court noted that in order to hold a passive sexual abuser liable under the statute, a plaintiff must demonstrate the defendant is: "(1) a person (2) standing in loco parentis (3) within the household." Id. at 86. The Court first found the boarding school was a "person" under the statute. Id. at 91. It next determined the school satisfied the role of "in loco parentis" because it

> regulated the students' personal hygiene, monitored the cleanliness of their rooms, dictated the amount of money each student could have on campus, required students to write two weekly letters to friends or family, expected students to attend religious services when on campus during the weekend, provided transportation for recreational activities off school grounds, and disciplined students who violated those policies.
>
> [Id. at 91-92.]

Finally, the Court considered whether the boarding school was a "household" under the statute. Id. at 93. The Court stated:

> [T]he School provides food, shelter, educational instruction, recreational activities and emotional support to its full-time boarders—in other words, housing with the amenities characteristic of both a school and a home.
>
> [Id. at 94.]

More recently, in J.P. v. Smith, 444 N.J. Super. 507, 523 (App. Div.), certif. denied, 226 N.J. 212 (2016), we rejected the plaintiff's argument that a public day school was a passive abuser when the alleged sexual abuse took place on school-sponsored overnight trips. The plaintiff argued the school provided her with "food, shelter, educational instruction, recreational activities and emotional support, the same five elements that were deemed sufficient in Hardwicke to establish the [s]chool as a household under the CSAA." Ibid.

We found Hardwicke distinguishable, reasoning that the Hardwicke court was concerned "not only with the role of the school as a parental substitute, but also with its role as the provider of amenities normally associated with a home environment for students who resided there full-time." Ibid. We described the "full-time" nature of the relationship as the "crucial element." Ibid. We further reasoned that the legislature could have easily

used the terminology "school or household" if it intended a broader construction of the types of entities that would constitute a "passive abuser." Id. at 524; see also Bryson v. Diocese of Camden, N.J., 909 F. Supp. 2d 364, 369-70 (D.N.J. 2012) (finding private school was not a household under CSAA where the plaintiff resided with his parents, did not reside at the school, and the school provided only amenities associated with a school and not a home).

Measured against this standard, we are satisfied the jury's determination that the District was not a passive abuser is supported by the evidence and did not result in a manifest injustice. There was no evidence supporting a reasoned conclusion that the District constituted a household within the meaning of the CSAA.

Because the court correctly denied plaintiffs' motion for a new trial, it is unnecessary to consider the District's argument that the court erred by denying its motion to dismiss the complaint on statute of limitations grounds.

Affirmed.