

**JOSEPH COSTANZA, ON  
BEHALF OF THE MINOR  
SON, MATTHEW COSTANZA**

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**NO. 2002-CA-0503**

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**COURT OF APPEAL**

**VERSUS**

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**FOURTH CIRCUIT**

**THE VOLUNTEERS OF  
AMERICA OF GREATER NEW  
ORLEANS, INC., ORLEANS  
PARISH SCHOOL BOARD,  
ABC INSURANCE COMPANY,  
AND DEF INSURANCE  
COMPANY**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 95-6161, DIVISION "C-6"  
HONORABLE ROLAND L. BELSOME, JUDGE

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**JAMES F. MCKAY III  
JUDGE**

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(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris,  
Sr., Judge Michael E. Kirby)

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## **AFFIRMED**

The defendant, Orleans Parish School Board (school board), appeals a judgment in favor of the plaintiff, Joseph Costanza, on behalf of his minor son, Matthew Costanza. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In October of 1994, Matthew Costanza, a fifteen (15) year old severely mentally handicapped special needs student, was transferred from Livingston Middle School to Fannie C. Williams Middle School. As a special needs student, Matthew had an “Individualized Educational Program” (IEP), which set out how he was to be educated in school. Matthew’s IEP required that he have a child-specific aide (CSA) at all times. However, Matthew did not have a CSA at Fannie C. Williams. While Matthew attended Fannie C. Williams, he resided in a group home for disabled children operated by the Volunteers of America of Greater New Orleans, Inc. (VOA).

After Matthew returned to the group home from school on December

9, 1994, he went to use the bathroom. A staff member, Ms. Lona Lodge, went in to assist him and she noticed a dried substance, which she believed to be blood, in his underwear. Ms. Lodge notified two other staff members as well as the VOA nurse, Ms. Shirley Williams. Ms. Williams instructed the group home staff to monitor Matthew to see if the problem persisted; it did not. However, in the following days, Matthew displayed behavior that was extremely sexual in nature. He pushed his pelvis up against the backside of a male staff member and bent over while undressed to display his buttocks to a female staff member while making suggestive comments. Thereupon, Ms. Williams asked the VOA staff to take Matthew to the emergency room at Children's Hospital. On December 26, 1994, Matthew was seen by a Dr. Morris and was tested for sexually transmitted diseases by culturing his mouth, penis, and rectum. The lab results came back over the next five days and showed that Matthew had gonorrhea growing in his mouth; the test results for his rectum and penis were inconclusive.

Matthew's parents did not learn of his infection with gonorrhea until January of 1995. On January 5, 1995, the Costanzas removed Matthew from school and took him out of the group home. The Costanzas took Matthew to

his old pediatrician, Dr. Barry Bordenave. Dr. Bordenave believed that the discovery of blood in Matthew's underwear coupled with his behavioral changes were consistent with what one would expect to find from a child who had been sexually molested. Dr. Bordenave referred Matthew to Dr. Kathryn A. Coffman, the director of Child Sexual Abuse program at Children's Hospital. Based on Matthew's history, Dr. Coffman believed that it was more probable than not that Matthew was the victim of sexual abuse. After the Costanzas took Matthew out of school and away from the group home, his behavior continued to worsen. This required Matthew to receive psychiatric care at Jo Ellen Smith Hospital, Metro Behavioral Health Services and St. Jude (Kenner Regional) Hospital. Matthew's treating psychiatrist, Dr. Patrick Dowling, related Matthew's psychosis n.o.s. disorder to his having been sexually molested.

On April 28, 1995, Joseph Costanza brought suit on behalf of his son against the school board, the VOA, and others for negligence in failing to properly supervise Matthew at school and keep him out of harm's way. Mr. Costanza settled with the VOA before trial. On June 4, 2001, the trial court rendered its judgment. The trial court found that Matthew's molestation was

the result of negligence on the part of the school board in failing to adequately supervise Matthew and awarded Mr. Costanza \$450,000 in general damages and \$13,929.12 in special damages. It is from this judgment that the school board appeals.

## **DISCUSSION**

On appeal, the school board raises the following specifications of error: 1) the trial court erred in finding that the plaintiffs proved that Matthew was molested; 2) the trial court erred in finding that the plaintiffs carried their burden of proving negligence on the part of the school board; and 3) the trial court erred in finding that the plaintiffs carried their burden of proving that Matthew sustained damages caused by sexual contact.

A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong". Rosell v. ESCO, 549 So.2d 840 (La. 1989). This "manifest error" standard must allow a "great deference to the trier of fact's findings; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said." Id. at 844. The Supreme Court has announced a two-part test for the reversal of a

fact-finder's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the finding is clearly wrong. *See Mart v. Hill*, 505 So.2d 1120 (La. 1987). As long as the determination is reasonable, based upon the record as a whole, an appellate court should not substitute its own judgment over the fact finder's. *Arceneaux v. Domingue*, 365 So.2d 1330 (La. 1978). If there is a conflict in the testimony, reasonable inferences of credibility and reasonable inferences of fact should not be disturbed. *Rosell v. ESCO*, 549 So.2d 840 (La. 1989).

The trial court found that the plaintiffs proved that Matthew was molested. The trial court may evaluate expert testimony by the same principle as applies to other witnesses; it has great discretion to accept or reject medical or lay opinion. *Delahoussaye v. Madere*, 98-1033 (La.App. 5 Cir. 4/14/99), 733 So.2d 679. In reaching its finding the trial court relied upon the medical reports of the physicians who saw Matthew after the discovery of blood in his underwear as well as the positive gonorrhea culture. Drs. Bordenave, Coffman, and Dowling all opined that Matthew had been the victim of sexual abuse. All three of these physicians testified

as expert witnesses and their opinions were not subject to any objection from the school board. Clearly, it was within the trial court's great discretion to accept these physicians' testimony and find that Matthew was the victim of sexual molestation.

With regard to the trial court's finding that the molestation occurred at the Fannie C. Williams Middle School, we realize that circumstantial evidence must exclude other reasonable hypotheses with a fair amount of certainty; however, this does not mean that it must negate all possible causes. *See* Weber v. Fidelity & Casualty Ins. Co. of New York, 250 So.2d 754 (La. 1971). In the instant case, the blood in the underwear was discovered after Matthew returned from school. Furthermore, the evidence in the record indicates that the school was the only place where Matthew was unsupervised and was the only place where he could have come into contact with someone infected with gonorrhea. Therefore, the trial court's finding was reasonable.

After finding that Matthew's molestation occurred at school, the trial court also found that the molestation occurred due to the negligence of the school board. Based on the evidence in the record, it is apparent that

Matthew was not adequately supervised while he was at school; he was allowed to use the bathroom in the hallway by himself and was often gone for considerable periods of time. Furthermore, the fact that Matthew was not provided with the CSA mandated by his IEP is almost *negligence per se*. Therefore, we find no error in the trial court's finding that the school board was negligent.

The school board contends that the trial court erred in finding that Matthew sustained damages caused by sexual contact. This assignment of error is without merit. Clearly, given that the trial court has found and this Court has affirmed that Matthew was sexually molested due to the negligence of the school board, it stands to reason that he must have sustained damages. Therefore, we find no error in the trial court's finding that Matthew sustained damages caused by sexual contact.

### **DECREE**

For the foregoing reasons, the judgment of the trial court is affirmed.

### **AFFIRMED**



