COURT OF APPEALS
DECISION
DATED AND FILED

September 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 2009AP2637
2009AP2976

Cir. Ct. Nos. 2008CV442
2008CV442

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JACOB BREKKEN, A MINOR, BY AND THROUGH HIS PARENT AND GUARDIAN, CHRISTOPHER BREKKEN,

PLAINTIFF,

CHRISTOPHER BREKKEN, INDIVIDUALLY,

PLAINTIFF-RESPONDENT,

V.

WAYNE (JOHN) KNOPF,

DEFENDANT,

ANN KNOPF,

DEFENDANT-THIRD-PARTY
PLAINTIFF-APPELLANT,

V.

CHERYL LYNN BREKKEN,

THIRD-PARTY DEFENDANT-RESPONDENT,

SECURA INSURANCE, A MUTUAL COMPANY,

INTERVENING DEFENDANT.

APPEALS from a judgment of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Ann Knopf appeals a summary judgment dismissing her counterclaim against Christopher Brekken and her third-party complaint against Cheryl Brekken in which she sought contribution from Jacob Brekken's parents for failure to supervise Jacob, resulting in Knopf's sexual assault of him. We affirm the summary judgment because Knopf's counterclaim and third-party complaint failed to state a claim for which relief can be granted and her claims are barred by public policy.[1]

BACKGROUND

¶2 Knopf worked as a substitute teacher at thirteen-year-old Jacob's school. In Christopher's and Jacob's complaint, they allege Knopf negligently and intentionally harmed Jacob by engaging in sexual relations with him. In her counterclaim and third-party complaint, Knopf seeks contribution from Jacob's divorced parents, Christopher and Cheryl, asserting their focus on determining

[1] Knopf's brief raises additional issues (lack of a guardian ad litem for Jacob and use of issue preclusion) that were not presented to the circuit court. This court will not consider issues raised for the first time on appeal. *See* ***Wirth v. Ehly***, 92 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).

who Jacob was involved with rather than stopping the contact constituted negligent supervision.

¶3 Christopher and Cheryl share joint custody of Jacob. Between January and May 2007, Knopf and Jacob corresponded extensively via e-mail, instant messenger, telephone and face-to-face interaction. Based on comments from other students and friends, changes in Jacob's habits and discovery of an empty condom wrapper in Jacob's belongings, his parents began to suspect their son was involved in an inappropriate relationship. They began to monitor him more closely. Christopher installed spyware on the computer Jacob used to intercept his communications. This effort yielded a set of e-mail communications between Jacob and an individual calling herself "Mara S," and extensive transcripts of exchanges between Jacob and an individual calling herself "Island girl." While these communications were not sexually explicit, they suggested Jacob was surreptitiously meeting with someone for amorous purposes.

¶4 During this time, Jacob's parents spoke on a daily basis about their investigations, but lacked complete certainty about who "Mara S" and "Island girl" were. Cheryl started to get up every night to check on Jacob and once found him chatting on the computer at 3:00 a.m.

¶5 Late on the night of May 17, 2007, Cheryl got up to check on Jacob and discovered he was missing. She called Christopher at 11:55 p.m. and notified him Jacob was gone. Christopher came over to Cheryl's residence and noticed her car was also missing. Christopher then drove to Knopf's house and found Cheryl's car nearby. Christopher confronted Knopf and she denied seeing Jacob. Christopher then called the sheriff. Shortly after 1:00 a.m., Jacob appeared at the

scene with the zipper of his jeans open. Under questioning, Jacob stated that he had repeated sexual intercourse with Knopf.

ANALYSIS

¶6 On summary judgment, the court's first duty is to examine the pleadings to determine whether they state a claim. ***Grams v. Voss***, 97 Wis. 2d 332, 338, 294 N.W.2d 473 (1980). In her pleadings, Knopf alleges Christopher and Cheryl negligently supervised Jacob. However, the facts recited in her pleadings do not constitute negligent supervision. Negligent supervision is generally a term relating to an employer's supervision of employees. When referring to parents' supervision of children, the appropriate terminology is "negligent failure to control." *See* ***Gritzner v. Michael R.***, 2000 WI 68 ¶45 n.13, 235 Wis. 2d 781, 611 N.W.2d 906. Knopf's counterclaim and third-party complaint do not allege facts that would support a claim of negligent failure to control Jacob. The parent's duty to control a minor child refers to preventing the child from intentionally harming others. ***Seibert v. Morris***, 252 Wis. 460, 463, 32 N.W.2d 239 (1948).

¶7 Construing Knopf's pleadings as raising a claim that the Brekkens negligently failed to protect Jacob, she fails to state a claim because she identifies no negligent act by Jacob's parents and because public policy bars her attempt to deflect blame for her sexual assault of Jacob. Knopf seeks contribution from Jacob's parents alleging they "should have been more concerned about preventing the alleged 'sexual assault'-by stopping it-than about finding out 'for sure who it was.'" She contends the length of her relationship with Jacob and the frequency of their communications should have alerted his parents to her misconduct and therefore they are blameworthy for failing to protect him.

¶8 When a child comes to harm, it is often possible to imagine ways parents could have been better protectors. However, we agree with the observation that the mere existence of a claim for failure to protect a child is not intended "to transform parents from caregivers and disciplinarians into jailers and insurers of their minor children." ***Williamson v. Daniels***, 748 So. 2d 754, 761-62 (Miss. 1999). Knopf's assignment of blame to Jacob's parents represents convoluted reasoning reminiscent of Lewis Carroll. We will not follow down the rabbit hole and open the door for a child molester to sue the victim's parents for their failure to lock their child away or for their ineffectiveness in trying to stop the child from being sexually abused.

¶9 Although we rarely preclude liability on public policy grounds at the summary judgment stage, the facts have been sufficiently developed and the public policy is sufficiently clear for this court to make the determination at this stage. *See* ***Sawyer v. Midelfort***, 227 Wis. 2d 124, 141, 595 N.W.2d 423 (1999). When a case is so extreme that it would shock the conscience of society to impose liability, the courts may step in and hold as a matter of law that there is no liability. ***Pfeifer v. Standard Gateway Theater***, 262 Wis. 229, 239, 55 N.W.2d 29 (1952). As a matter of public policy, we cannot allow Knopf to defeat the deterrent effect of liability for the sexual assaults by shifting blame to others. *See* ***Jessica M. F. v. Liberty Mut. Fire Ins. Co.***, 192 Wis. 2d 42, 48, 561 N.W.2d 787 (Ct. App. 1997); ***Hagen v. Gulrud***, 151 Wis. 2d 1, 7, 442 N.W.2d 570 (Ct. App. 1989).

¶10 Knopf concedes she would not be permitted to seek contribution from Jacob's parents for her intentional tort. She argues, however, that she may do so because Christopher's and Jacob's complaint also alleged negligence. Negligent sexual molestation is an oxymoron. ***C. L. v. School Dist. of***

Menomonee Falls, 221 Wis. 2d 692, 702-03, 585 N.W.2d 826 (Ct. App. 1998). When the victim is thirteen years old, intent to injure is inferred from the sexual assault. ***Id.*** at 701. That the complaint describes Knopf's conduct as "negligent" does not present an opportunity for Knopf to reduce her personal liability by blaming others for the harm done by her sexual assault of a child.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.