

Plaintiff Held To Be Original Cause Of Alleged Harmful Condition Or Situation

Plaintiff Held To Be "Original Cause" Of Alleged Harmful Condition Or Situation: Jones v. Maloney , 74 Mass.App.Ct. 745 (2009)

In January 2003, the plaintiff, an eighteen-year old senior at Groton Dunstable Regional High School, sexually assaulted a female student by grabbing and squeezing her breasts during "A" period manufacturing technology class. The young woman reported the incident to her guidance counselor who, in turn, informed the assistant principal, Cathy Jo Maloney. Maloney immediately investigated the incident by interviewing the victim, two witnesses and, finally, the alleged assailant, Cyle Jones. Due to the serious nature of the allegations, Maloney also reported the incident to the school resource officer, a member of the Groton Police Department. Maloney initially suspended the plaintiff for five days for two violations of the school's anti-harassment policy. The principal later suspended Cyle indefinitely.

Following its investigation, the Groton Police Department charged Cyle with three counts of indecent assault and battery. In May 2003, a jury convicted Cyle on one count of indecent assault and battery for touching the female student's breasts.

In June 2005, Cyle Jones and his mother filed suit against the School District and Maloney alleging negligence and intentional infliction of emotional distress. In substance, the plaintiffs complained that the School District, through the omissions of Maloney, mishandled the initial investigation and violated school policies by failing to advise Cyle's mother that her son was being interrogated by police, and by failing to remain in the room with Cyle to act *in loco parentis* during the police interview. On August 17, 2007, the Middlesex Superior Court (McEvoy, J.) granted summary judgment in favor of both the School District and Maloney. Cyle and his mother appealed.

On August 3, 2009, the Massachusetts Appeals Court (Kafker, J.) affirmed the decision below. At the outset, the Appeals Court rejected plaintiffs' argument that Cyle was convicted for an accidental or "unintentional" touching. An indecent assault and battery is an "intentional, unprivileged and indecent touching of the victim." Commonwealth v. Mosby, 30 Mass.App.Ct. 181, 184 (1991). Therefore, Cyle could not contest the validity of the criminal conviction in the context of his civil suit. In light of that conviction, the School District was entitled to immunity under M.G.L. c. 258, sec. 10(j). Maloney's alleged omissions were not affirmative acts sufficient to qualify as the "original cause" of the harmful condition or situation - *i.e.*, Cyle's exposure to criminal prosecution and eventual conviction. "[R]ather Cyle's groping of his classmate is the original cause." Nor could plaintiffs successfully invoke the exception to immunity that eliminates "any claim based upon the intervention of a public employee which causes injury to the victim or places the victim in a worse position than he was in before the intervention . . ." M.G.L. c. 258, sec. 10(j)(2). "The cause of Cyle's injury is Cyle's own proven criminal conduct, not any 'intervention' by the assistant principal."



Summary judgment, ruled the Appeals Court, was also properly entered on plaintiffs' claim for intentional infliction of emotional distress against Maloney. Focusing, in particular, on the second element of proof - that defendant's conduct was extreme and outrageous - the Court found nothing extreme and outrageous about Maloney's investigation, which involved interviews of both the victim and perpetrator, as well as witnesses. "If [the investigation] was in any way incomplete or precipitous, it was at most negligent."

The Jones decision is significant for two reasons. First, the Appeals Court ruled that the plaintiff himself, rather than only the defendant or a third party, can be the "original cause" of a harmful condition or situation. This ruling broadens the potential application of Section 10(j) immunity in future cases. Second, the Court narrowly interpreted the immunity exception in Section 10(j)(2) by limiting "interventions" to affirmative acts (similar to the "original cause" restriction), and by recognizing that the "victim" protected by Section 10(j)(2) can be someone other than the plaintiff. As the Jones Court explained, "Cyle is not a 'victim' here." The female student was his "victim." Clearly, expansive use of Section 10(j)(2) to avoid immunity will not be tolerated by Massachusetts courts. The School District and Maloney were successfully defended in this action by PD&P.

- [John J. Davis](#)