

EDMUND SULLIVAN, et al.,

Plaintiffs,

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS, et al.,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE
* CITY
* Case No. 24C10004503

* * * * *

PLAINTIFFS' MOTION FOR A NEW TRIAL

Plaintiffs Edmund Sullivan, Shawna Sullivan, Sean Sullivan, a minor, through his father and next friend, Edmund Sullivan, and Colleen Sullivan, a minor, through her mother and next friend, Shawna Sullivan, by and through their undersigned counsel, pursuant to Maryland Rule 2-533, move for a new trial, and states as follows:

INTRODUCTION

On December 22, 2011, the jury in this action rendered a verdict in favor of Defendants Sidney Twigg and Charlotte Williams on negligence and gross negligence. Immediately thereafter, Jurors No. 3 and 6 spoke to the press. These jurors' comments demonstrated that the jury's verdict was not based on the facts presented, but rather, was based on their fears that the Baltimore City public school system would have to divert money away from classrooms in order to pay a judgment, and that their verdict would set a precedent nationwide. The comments also demonstrate that the jury failed to follow this Court's instructions, in particular, in considering the Defendants separately. The comments also suggest that some jurors may have been watching news reports although specifically instructed by the Court not to do so.

Additionally, the jury's verdict was against the evidence presented in the case, including the Defendants' concessions that they breached their duties in not taking action as required under Maryland law.

Based upon this failure of impartiality, and the fact that the jury failed to follow the Court's instructions and failed to consider the evidence, Plaintiffs request a new trial.

ARGUMENT

Maryland Rule 2-533 states that the "court may set aside all or part of any judgment entered and grant a new trial to all or any of the parties and on all of the issues, or some of the issues if the issues are fairly severable." The Court of Appeals has stated that a trial court has "wide latitude" and can consider many factors in considering a motion for a new trial:

[T]he breadth of the trial court's discretion to grant or deny a new trial is not fixed or immutable, it will expand and contract depending upon the nature of the factors being considered, and the extent to which its exercise depends upon the opportunity the trial judge had to feel the pulse of the trial, and to rely on his or her own impression in determining the questions of fairness and justice.

Argyrou v. State, 349 Md. 587, 599 (1988). As the Court of Special Appeals has stated, "[t]rial courts in Maryland are empowered with the discretion to grant a new trial as a safety valve to prevent a miscarriage of justice due to an improper verdict. Consequently, the trial court may grant a new trial for any reason that will support its determination that a party was denied a fair trial." *Cam's Broadloom Rugs, Inc. v. Buck*, 590 A.2d 1060, 87 Md. App. 561, 575-76 (Md. App., 1990).

Here, at least two jurors' comments have demonstrated a lack of impartiality in the jury deliberations. Juror No. 6 stated to the press that the jurors were "heavily"

motivated in their decision by the fact that a verdict in favor of Plaintiffs would have, in their view, negative effects for the Baltimore City school system and other school systems throughout the country:

This weighed heavy on us because we realized what we did would affect systems nationwide . . . [w]e took that heavily into consideration, because we knew we could open the possibility of lawsuits – from past, present and future parents of students – against schools across the country, and Baltimore City would have been at the forefront.

Exhibit A, December 22, 2011 Baltimore Sun article, at 1.

Juror No. 3 likewise stated that the jury was motivated by a fear that money would be diverted from the students: “[w]e don’t need a blow to the system . . . [t]hey would have had to pay a lot of money that would take away from other kids. Instead of taking from them, we need to build the schools up with that money.” *Id.* at 2.

The right to a fair trial before a panel of impartial jurors is a well-established principle of American jurisprudence. *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L. Ed.2d 751 (1961). The jurors comments demonstrate that they were protecting Defendants and the school system from a verdict. The jurors did not reveal this bias during jury selection, and this Court should grant a new trial on that basis. *See Williams v. Netherland*, 181 F.Supp.2d 604 (E.D.Va. 2002) (new trial ordered when juror withheld information on voir dire), *aff’d*, *Williams v. True*, 2002 WL 1357162 (4th Cir. 2002). These extraneous considerations of the jury here tainted the verdict and amount to a miscarriage of justice.

The jurors’ comments also demonstrate that one or more of the jurors were watching media reports, because there was absolutely no mention at trial that the case was setting precedent, whereas such statements were made by reporters during newscasts.

Additionally, there was no mention by Plaintiffs as to how much money was pled in this action, however, Juror No. 3's comments indicate that he was aware that the media was reporting a large sum of money sought. *Id.* ("they would have had to pay a lot of money").

Maryland and other courts have granted new trials when jurors have used social media during the pendency of the trial, particularly when the court instructed jurors to refrain from participating in social media. *See, e.g., Zarzine Wardlaw v. State of Maryland*, 971 A.2d 331, 338-39 (Md. App. 2009) (denial of mistrial reversed on appeal when juror did own research of psychological disorder of a key witness, which indicated a trait of lying, and shared information with the jury); *Dimas-Martinez v. State*, 2011 Ark. 515 (2011) (new trial ordered when juror was tweeting during the trial).

Additionally, the jurors failed to follow this Court's instructions in that they did not consider the Defendants separately. Juror No. 6 told the media that if they were considering their verdict against Defendant Twiggs only, and not together with Defendant Williams, the verdict "may have been different." Ex. A at 2. This juror also stated that the jury thought Twiggs "could have done more." *Id.* In stating so, the juror admitted that they would have found Williams not liable, and likely would have found Twiggs liable for Plaintiffs' injuries.

Lastly, the jury's verdict contradicted the evidence presented in this action. Defendants never argued that they did not have a duty, did not argue that the bullying did not occur in some form, but argued that there was not enough evidence that Plaintiffs put the Defendants on notice to trigger their duty. There was sufficient notice that Defendants were put on notice, or should have known of the incidents, by: (1) the

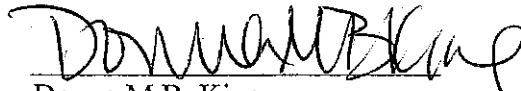
testimony of oral communications, including Plaintiffs' testimony of face to face communications with Defendants and communications with teachers who were aware of the bullying, which were not contested by Defendants at trial; (2) the phone records, demonstrating calls to the schools to complain about the bullying, harassment and assault; and (3) Defendants' own testimony that Defendant Twiggs received at least one "concern" about verbal harassment, "may" have heard of other incidents, and Defendant Williams received at least two complaints of assault.

Defendants both admitted breaching their duty. Defendant Twiggs testified to only a cursory investigation by asking some teachers whether they had heard the verbal harassment. Defendant Williams testified that in response to oral complaints, she spoke to ten boys involved in the complaints, was aware of which children assaulted Sean Sullivan, but took no action other than to tell them that it was "inappropriate" and to tell their parents. Neither Defendant inputted in the schools' tracking system any information on their investigation and discipline, and neither had any paper file relating to any investigation. Defendant Williams admitted that she herself could have filled in the bullying complaint form to start the investigation, and did not. The Defendants' actions were in breach of the duties of Maryland law and the Baltimore City schools' administrative regulations, as testified to by Jonathan Brice and Veronica Altvater.

Thus, the jury's verdict should not stand considering the evidence, the jury's failure to follow this Court's instructions, and the jury's admitted lack of impartiality.

WHEREFORE, Plaintiffs Edmund Sullivan, Shawna Sullivan, Sean Sullivan, a minor, through his father and next friend, Edmund Sullivan, and Colleen Sullivan, a minor, through her mother and next friend, Shawna Sullivan, respectfully request that this

Court grant this motion for a new trial.

A handwritten signature in black ink, appearing to read "Donna M.B. King". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Donna M.B. King
Law Office of Donna M.B. King, LLC
309 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 494-1005

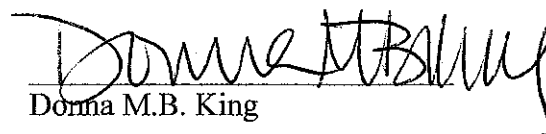
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January 2012, I served the foregoing
Plaintiffs' Motion for a New Trial upon the following counsel by First Class mail:

Quinton Herbert, Esquire
Associate Counsel
200 East North Avenue, Suite 208
Baltimore, Maryland 21202

Attorney for Defendants Baltimore
City Board of School Commissioners,
Charlotte Williams and Sidney Twiggs


Donna M.B. King

www.baltimoresun.com/news/breaking/bs-md-ci-bullying-lawsuit-verdict-20111222,0,4301275.story

baltimoresun.com

Jury finds in favor of principals, school system in bullying lawsuit

Parents had sued for \$1.3 million

By Erica L. Green, The Baltimore Sun

6:01 PM EST, December 22, 2011

A lack of evidence led a Baltimore jury to rule that two principals were not negligent in a \$1.3 million bullying lawsuit against the city school system, but jurors said they were also conscious of a snowball effect that could subject systems around the country to a barrage of lawsuits.

advertisement

"This weighed heavy on us because we realized what we did would affect systems nationwide," said Carl Armstrong, who served as Juror No. 6 in the four-day trial.

"We took that heavily into consideration, because we knew we could open the possibility of lawsuits — from past, present and future parents of students — against schools across the country, and Baltimore City would have been at the forefront."

The jury returned their decision Thursday morning in the lawsuit brought by parents Edmund and Shawna Sullivan, who alleged that their special-needs son and their older daughter were bullied while attending Hazelwood and Glenmount elementary schools and that their complaints were ignored by the principals.

According to Jimmy Gittings, president of the city's principals union, the Baltimore school system is already feeling the effects of the lawsuit.

"It has been open season ever since this case became public," said Gittings, who said that he "believed in his heart" that both principals would win on all counts.

"You wouldn't believe the number of phone calls that I have been receiving from principals who have been literally harassed and threatened by parents telling them that they would take them to court over things that are very trivial."

Gittings said he was pleased with the verdict, and that the blame for bullies should be placed on the parents who raise them.

The jury said that a lack of documentation, witnesses and testimony was the primary reason the Sullivans lost the case.

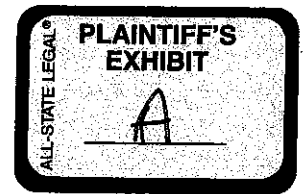
The parents said that several violent incidents against their children went ignored by the schools' leaders and that their special-needs son, who is now 10, suffered physical and emotional damage as a result. The parents also alleged bullying of their now-14-year-old daughter at Hazelwood.

Armstrong said that jurors believed the boy was bullied at Hazelwood and carried the baggage to Glenmount. But the parents' lack of witnesses to the incidents, and the fact that they couldn't consistently recount names, dates, times and other details were damaging to their case, he said.

On Wednesday, Circuit Judge W. Michael Pierson granted the district's motion to throw out nine of the 13 counts, leaving the principals to each face a negligence and gross negligence count.

Charlotte Williams, who was principal of Glenmount during the year the special-needs boy attended second grade, and Sidney Twiggs, principal of Hazelwood, both testified that they addressed any incidents brought to their attention.

In the end, jurors were not convinced that the repercussions — the boy had to be institutionalized for more than two weeks after the alleged bullying — were spurred by inaction of the school leaders.



"Evidence was lacking, and there were way too many holes," Armstrong said. "Emotional-wise, they had us. But evidence-wise, they just didn't have it."

Other jurors said they were also thinking about how the lawsuit would affect the school system's ability to educate and protect other students.

"We don't need a blow to the system," said Major Wilkes, Juror No. 3. "They would have had to pay a lot of money that would take away from other kids. Instead of taking from them, we need to build the schools up with that money."

The Sullivans said it was never about money, but taking on a system they believed failed their children.

"This is the system telling us: We're not responsible for your children," Edmund Sullivan said of the verdict. "We're not the only people who have gone through this. It really puts us all on notice. I feel betrayed that the school system can do this and get away with it."

Donna King, attorney for the Sullivans, said that in the end it was important to share the Sullivans' story, even though jurors said they didn't have enough evidence to believe all of it.

"This is a message to all parents to put everything in writing, take pictures, and not rely on the school system to do the right thing," King said.

In a statement, the school system said, "Today's verdict shows the jury's careful consideration and recognition of how complex the interactions between students can be, and how seriously our school leaders and teachers take their responsibilities to our children."

It was Williams' testimony that the jury found the most credible and consistent, Armstrong said, adding that she had a "huge role" in the jury's decision.

"If it weren't for Ms. Williams, it may have been different," Armstrong said. "We thought Mr. Twiggs could have done more."

Williams declined to comment Thursday.

Williams, who served 34 years in the city school system before retiring, described to jurors how her school, staff and parents were inundated with information about bullying, including the state-mandated reporting forms, and that she had done extensive training and independent research on the subject.

She also said that she was made aware of two incidents involving the special-needs student and that she consulted with teachers and parents, as well as met with the roughly 10 students alleged to have been involved in either tripping, hitting or jumping the boy, to inform them that the children's behavior was not appropriate.

After the verdict was read, Twiggs broke down in tears.

"It's all God," Twiggs said through sobs. "God knew I was doing the right thing."

Twiggs added that although the jury decided in favor of the system, he still has to answer to his school community. "It's not over," he said.

erica.green@baltsun.com

Copyright © 2011, [The Baltimore Sun](#)