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SURVEY OF RECENT CASES

By Kristi Prutow

SCHOOL DISTRICT HAS A COMMON LAW DUTY TO EXERCISE DUE CARE IN SUPERVISION OF ITS STUDENTS

Indiana schools have been fortunate in thus far avoiding the fatalities from gun violence in schools occurring with increasing frequency across the nation. A recent Indiana Court of Appeals decision provides even more incentive for schools to protect against such violence, by increasing the likelihood that a school district could be held liable for monetary damages by the victims or their families.

Recently, in *King v. Northeast Security, Inc.* the Indiana Court of Appeals held that a school district could be held liable for injuries a student sustained when he was beaten in the high school parking lot. The student was beaten by other students in the parking lot of his school at approximately 3 p.m. The school had hired three special deputies to patrol outside of the school between 8 a.m. and 3 p.m. At the time of the assault, the security guard on duty had gone inside to make a personal phone call.

Generally, a school has a common law duty to use ordinary and reasonable care in protecting its students, except for such claims as failure to prevent crime. In King, however, the court found the exception inapplicable under the circumstances. The court considered the forseeability of the victim and type of harm actually inflicted, the fact that security guards had been hired to protect against the possibility of crime in the school parking lot, the school's relationship with the student, and the public policy rationale for holding the school responsible. The court found that under the circumstances there existed a duty on the part of the school to supervise and protect students against injuries whether or not such injuries were related to a crime. Consequently, Indiana schools now have even greater impetus to use all reasonable means necessary to protect their students from acts of aggression by other students.

LANDLORD WHO LOCKS OUT TENANT WITHOUT COURT ORDER IS LIABLE FOR TENANT'S LOSS OF PERSONAL PROPERTY

In *Robinson v. Valladares*, a tenant brought a claim against her landlord, seeking to recover the value of unreturned property that remained in her leased apartment after her landlord locked her out of the apartment by changing locks without first filing an eviction proceeding. The lease provided that either the landlord or tenant could terminate the lease upon 30 days notice. The landlord argued that the lease had expired based upon the tenant's non-payment of rent, and thus he was entitled to treat her as a trespasser and bar her from the premises. However, the Indiana Court of Appeals found that the landlord was liable to the tenant under the common law actions of "repelvin" and "detinue" for the wrongful taking or detention of personal property. Moreover, the court stated that even if back rent or damages are owed to the landlord, the landlord has no right to the personal property of his tenant merely by reason of the landlord-tenant relationship and "resort to self-help instead of legal remedy to satisfy a claim is not favored."

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In addition to common law protections for tenants, Indiana has a "lock-out" statute, which provides that "[e]xcept as authorized by judicial order, a landlord may not deny or interfere with a tenant's access to or possession of the tenant's dwelling unit by commission of any act, including… [c]hanging the locks or adding a device to exclude the tenant from the dwelling unit." (IC 32-7-8-7). This statute applies only to rental agreements entered into or renewed after June 30, 1999. However, the court's holding in Robinson applies to all rental agreement regardless of when the agreement was entered into. Thus Robinson and the "lock out" statute together effectively prohibit landlords from taking possession of property or restricting a tenant's access to property, even if the lease has expired, without first obtaining a court eviction order. Even if the lease provides the landlord the right to take possession, it is wise to obtain an eviction order before changing locks or taking possession of any personal property, in order to avoid liability for the value of the property detained.

EMPLOYER'S TRUTHFUL REPORT OF LURKING EMPLOYEE IS NOT ADVERSE ACTION UNDER TITLE VII

In Aviles v. Cornell Forge Co., the Seventh Circuit held last month that a shipping company's decision to file a truthful, non-discriminatory report with police about a potentially dangerous employee was not an adverse action under Title VII of the Civil Rights Act of 1964. The act prohibits an employer from taking adverse employment action against an employee based upon race or in retaliation for a charge of discrimination against the company. Aviles had filed a charge with the Equal Employment Opportunity Commission alleging he was demoted because of his national origin. He filed a second charge alleging the company suspended him in retaliation for filing the first charge. While Aviles was suspended, the company learned that he was loitering outside the workplace after hours and called the police to escort him from the premises. Aviles claimed he was injured when police officers removed him from his car before determining he was unarmed. Additionally, Aviles alleged that the call to the police occurred only moments after he had filed the discrimination charge, and thus was an adverse action supporting his retaliation claim.

The court declined to establish a rule that any call to the police in such circumstances could constitute an adverse action under Title VII. Judge Rovner stated that "[a]s a matter of common sense, such a holding would be ill-advised. If an employer had to face Title VII liability for truthfully reporting to the police that a disgruntled employee had threatened a supervisor and could be armed, we might discourage employers from taking the most prudent action to protect themselves and others in the workplace".

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