

Affirmed and Opinion filed March 23, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00880-CV

CHRISTOPHER E. LOCKE, Appellant

V.

SANTA FE INDEPENDENT SCHOOL DISTRICT, Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 97-CV-0605-A**

O P I N I O N

Christopher E. Locke, appellant, filed suit against appellee Santa Fe Independent School District for its failure to report and stop the sexual abuse of appellant by one of its teachers, and for purposefully concealing the events from appellant's parents and authorities. The trial court granted summary judgment in favor of the school district, based on the governmental immunity afforded independent school districts. Appellant appeals from the summary judgment on legal and factual grounds. We affirm.

Appellant Christopher Locke was an eighth-grade student at Santa Fe Junior High during the 1991-92 school year when Carrie Becker was assigned to him as a content mastery instructor. During the school year, Ms Becker began having a sexual relationship with appellant on the campus premises. Other teachers

and school personnel became aware of the situation, but did not report it to proper authorities or inform appellant's parents, even when appellant began having behavioral and psychological problems and his parents turned to the school for help. Although Ms Becker resigned from the school district, appellant's parents and authorities were still not informed of what had happened. Only several years later did the events come to light.

The movant in summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. The movant must either disprove at least one element of each of the plaintiff's causes of action, or establish all elements of an affirmative defense to the non-movant's claims. *American Tobacco Company v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997). If defendant establishes an affirmative defense that would bar plaintiff's suit as a matter of law, plaintiff must present summary judgment proof that raises a fact issue as to at least one element of the affirmative defense. *See City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 (Tex. 1979). In deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true, and every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *Nixon v. Mr. Property Management, Inc.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

What was allowed to happen to appellant as a student was unquestionably reprehensible, and concealment of the incident from proper authorities and his parents cannot be condoned under any circumstances. Nonetheless, it is well-established in Texas that independent school districts are immune from state tort law claims such as those raised by appellant, by virtue of the doctrine of sovereign immunity. While appellant concedes this is the law, he cites three cases that he alleges have "carved out" exceptions to this rule; these cases, however, either rely on claims under federal law or are otherwise factually inapplicable. For instance, *Doe v. Rains County Independent School District*, 66 F.3d 1402 (5th Cir. 1995), does not support appellant's argument that the teachers' violations of the child-abuse reporting requirements waived the school district's immunity. To the contrary, both *Doe* and *Gebser v. Lago Vista Independent School District*, ___ U.S. ___, 118 S. Ct. 1989 (1998), construe claims for sexual harassment or sexual abuse brought by students against teachers and school districts under federal law. Appellant did not allege any claims under federal law.

Appellee school district merited summary judgment as a matter of law on the affirmative defense of immunity under the claims pleaded by appellant below, and there were no genuine issues of fact precluding summary judgment. *See City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 (Tex. 1979). Appellant's first issue is overruled.

Appellant's second and third issues raise complaints about the factual admissibility and content of appellee's summary judgment affidavits below. These issues on appeal are immaterial, as appellee was entitled to summary judgment based on governmental immunity as a matter of law, accepting the pleadings and summary judgment evidence of appellant as true. *Clear Creek*, 589 S.W.2d at 677. Appellant's second and third issues are overruled.

As we have overruled appellant's issues, we do not reach appellee's cross-point regarding the school district's objections to appellant's summary judgment evidence.

The judgment below is affirmed.

PER CURIAM

Judgment rendered and Opinion filed March 23, 2000.

Panel consists of Sears, Cannon, and Hutson- Dunn* .

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.