MISSOURI COURT OF APPEALS
WESTERN DISTRICT

M.N., A MINOR, BY AND THROUGH HIS BIOLOGICAL MOTHER AND NEXT FRIEND, S.N.,
APPELLANT

vs.

NORTH KANSAS CITY SCHOOL DISTRICT, AND KELLY SERVICES, INC.,
RESPONDENTS

DOCKET NUMBER WD82959

DATE: MARCH 10, 2020

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable David P. Chamberlain, Judge

Appellate Judges:

Division Four: Karen King Mitchell, Chief Judge, Edward R. Ardini, Jr. Judge and Cynthia L. Martin, Judge

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Attorneys:

Kirk D. Holman, for Appellant

Kimberly H. Seten, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

M.N., A MINOR, BY AND THROUGH HIS BIOLOGICAL MOTHER AND NEXT FRIEND, S.N., APPELLANT,

v.

NORTH KANSAS CITY SCHOOL DISTRICT, AND KELLY SERVICES, INC., RESPONDENTS.

WD82959 Clay County

Before Division Four Judges: Karen King Mitchell, Chief Judge, Cynthia L. Martin, Judge, and Edward R. Ardini, Jr., Judge

In the fall of 2015, M.N. was in the fifth grade and attended school in the North Kansas City School District. On October 9, 2015, Debi Davis, an employee of Kelly Services, Inc., was assigned to be a substitute teacher for M.N.'s classroom. That afternoon, while passing out crossword puzzles to the students, Davis called M.N. a "nigger." Later in the day, when M.N. was getting a pencil or ruler, Davis told him to "put it down because nigers [sic] are dumb." At the end of the school day, Davis told M.N. that she did not "give a shit" about him.

M.N. filed this action against the District and Kelly Services asserting a claim of racial discrimination in his use of a public accommodation in violation of section 213.065 of the Missouri Human Rights Act. The District and Kelly Services filed a joint motion for summary judgment, in which they asserted, *inter alia*, that they could not be held liable for the conduct of Davis. The trial court granted the motion, finding there was no evidence that either defendant "knew or should have known that the substitute teacher would call [M.N.] the derogatory name." M.N. appealed.

REVERSED AND REMANDED.

Division Four holds:

(1) The trial court erred in applying a direct negligence standard to determine the defendants' liability for Davis's conduct. Relying on *Subia ex rel. Doe v. Kansas City, Missouri School District*, 372 S.W.3d 43 (Mo. App. W.D. 2012), the trial court ruled that M.N. was required to prove the defendants either knew or should have known that Davis would make the offensive comments she made. The trial court's reliance on *Subia* was misplaced, however, because that case involved a claim of student-on-student harassment, and the student was attempting to hold the school district directly liable for its decision to remain idle in the face of known student-on-student harassment in its school. Here, on the other hand, M.N. is attempting to hold the defendants vicariously liable for Davis's actions by virtue of their relationship as employee/employer or agent/principle. Thus, the trial court should have

applied *respondeat superior* principles in determining whether the defendants were liable for Davis's conduct.

(2) Applying the principles of *respondeat superior*, the defendants are not entitled to summary judgment because there are genuine issues of material fact relating to whether the District was Davis's employer or principal and whether Davis was acting in the course and scope of her agency or employment when she made the offensive comments.

Opinion by: Edward R. Ardini, Jr., Judge Date: March 10, 2020

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