MISSOURI COURT OF APPEALS
WESTERN DISTRICT

S.M.H.,

Respondent,

v.

ERIC SCHMITT, ATTORNEY GENERAL OF THE STATE OF MISSOURI, and SARAH STEELMAN, COMMISSIONER OF ADMINISTRATION, STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD83050

Date: June 16, 2020

Appeal from:
Cole County Circuit Court
The Honorable Patricia Joyce, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, P.J., and Alok Ahuja and Gary D. Witt, JJ.

Attorneys:
Katherine S. Walsh, St. Louis for appellant
Stephen M. Gorny, Christopher D. Dandurand, Kansas City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

S.M.H.

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While Respondent S.M.H. was a high-school student in the St. Louis Public School District, she was sexually molested by one of her teachers over a multi-year period. During the period when the abuse was occurring, the school district lost its state accreditation. As a result, the Special Administrative Board of the Transitional School District of the City of St. Louis, established by § 162.1100, RSMo, became the district's governing body, and the employer of S.M.H.'s abuser.

S.M.H. obtained a default judgment for $4 million against the teacher who had abused her. She then filed a declaratory judgment action in the Circuit Court of Cole County against the State. In her declaratory judgment action, S.M.H. contended that she was entitled to payment on the judgment from the State Legal Expense Fund established by § 105.711, RSMo.

The circuit court granted summary judgment to S.M.H. The State appeals.

AFFIRMED.

Opinion Holds:

The State first argues that the Legal Expense Fund does not provide coverage for S.M.H.'s judgment, because the Transitional School District which employed S.M.H.'s abuser did not constitute an "agency of the state" within the meaning of § 105.711.2(2), RSMo. To the contrary, we conclude that the State's

pervasive control of the Transitional School District under § 162.1100, RSMo, renders it an "agency of the state" for purposes of Legal Expense Fund coverage. The fact that *other* similar special administrative boards are expressly *excluded* from Legal Expense Fund coverage by § 162.081.5, RSMo, bolsters this conclusion. Further, the fact that the Transitional School District was established as part of the settlement of desegregation litigation in which the State was a named defendant, and in which the State admitted responsibility for the long history of segregated schools in St. Louis, also supports the conclusion that this unique school district is a state agency.

The State also argues that summary judgment was inappropriate because genuine issues of material fact exist concerning whether the teacher who abused S.M.H. tendered defense of the lawsuit to the State. We disagree. S.M.H.'s summary judgment evidence established that her abuser had requested a defense of S.M.H.'s claims from the State in 2015, but that his request was refused based on the Attorney General's determination that the teacher was not covered by the Legal Expense Fund. Correspondence from 2018 confirmed that the Attorney General's Office had made a "no-coverage" determination prior to 2017, and that, immediately before the default-judgment hearing, the Office persisted in the view that S.M.H.'s claims were not covered. This was sufficient to establish as an undisputed fact that the abusive teacher adequately tendered defense of the claim to the State.

Before: Division Two: Mark D. Pfeiffer, P.J., and Alok Ahuja and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge **June 16, 2020**

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