[Cite as *Kraynak v. Youngstown City School Dist. Bd. of Edn.*, 2009-Ohio-4277.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

DONALD T. KRAYNAK PLAINTIFF-APPELLANT CROSS-APPELLEE VS. YOUNGSTOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al. DEFENDANTS-APPELLEES CROSS-APPELLANTS	)	CASE NO. 05 MA 200 OPINION

CHARACTER OF PROCEEDINGS: On remand from the Ohio Supreme Court - Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio
Case No. 01CV1349

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellant/Cross-Appellee:

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JUDGES:
Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary Jane Trapp, of the Eleventh District Court of Appeals, sitting by assignment.

Dated: August 5, 2009

WAITE, J.

{¶1} Appellant, Donald T. Kraynak, individually and as the parent and guardian of D.K., a minor, filed suit against Appellees, Youngstown City School Board of Education and D.K.'s former teacher, Helen Marino, for their alleged failure to report his abuse during the 1999-2000 school year. Ms. Marino was dismissed as a defendant during the course of the trial, and the case proceeded against the school district. Appellant presented two theories of liability: negligence based on the special relationship between teachers and students; and negligence per se based on a teacher's statutory duty to report suspected abuse.

{¶2} The jury returned a verdict in favor of the school district. The jury found that the preponderance of the evidence did not establish that Marino knew or suspected that D.K. had suffered abuse. Thus, that she would have no duty to report. The jury also concluded that Appellees were not negligent and that D.K.'s injuries were not directly and proximately caused by Marino's negligence or her failure to comply with the reporting statute.

{¶3} Appellant filed a motion for judgment notwithstanding the verdict, or in the alternative, a motion for a new trial. The trial court overruled the motion on

October 6, 2005, and Appellant filed an appeal. See *Kraynak v. Youngstown City School Dist. Bd. of Edn.*, 172 Ohio App.3d 545, 2007-Ohio-1236, 876 N.E.2d 587.

{¶4} In our Opinion in the earlier appeal, we held that the trial court incorrectly explained to the jury the meaning of former R.C. 2151.421, which set forth the standards for school and others to use in deciding whether to report child abuse or neglect. The statute requires a school teacher to report abuse when the teacher "knows or suspects" that the child has suffered or faces a threat of suffering certain types of harm. We held that the proper standard in interpreting the phrase "knows or suspects" was an objective standard, whereas the trial court told the jury that the statute contained a subjective standard. *Kraynak v. Youngstown City School Dist. Bd. of Edn.*, 118 Ohio St.3d 400, 2008-Ohio-2618, 889 N.E.2d 528. Subsequently, the Supreme Court held that: "Pursuant to former R.C. 2151.421, in determining whether a person knows of or suspects child abuse for purposes of reporting it to the proper authorities, the standard is subjective." Id. at syllabus. The trial court's jury instructions were based on a subjective standard, and thus, under the Supreme Court's interpretation, the trial court committed no error with respect to the jury instructions.

{¶5} The original appeal to this Court, though, contained a separate issue regarding certain testimony of an expert witness who discussed her interpretation of R.C. 2151.421. We also found error in the admission of the expert's testimony, and it was the combined effect of what we had determined were two separate errors that led us to reverse the trial court's judgment. The Supreme Court has remanded the

case to us to determine if the error regarding the expert witness testimony, in and of itself, constitutes reversible error. We conclude that it does not, and the judgment of the trial court is affirmed.

{¶6} Appellant's fourth assignment of error states:

{¶7} "The Trial Court Committed Reversible Error When It Allowed Defendant-Appellee/Cross-Appellant's Expert, Kathryn Mercer, Ph.D., JD, MSSA, To Testify As To The Subjective Nature of R.C. 2151.421."

{¶8} Former R.C. 2151.421(A)(1)(a) states:

{¶9} "No * * * [school teacher; school employee; school authority] who is acting in an official or professional capacity and knows or suspects that a child under eighteen years of age * * * has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or suspicion."

{¶10} During the trial of this case, Appellees called Kathryn Mercer to testify as an expert witness. Mercer is a professor of law at Case Western Reserve Law School. She taught classes for 17 years on the topic of compliance with Ohio's abuse reporting law. Mercer taught her students that a "knowledge or suspicion" of abuse, as that phrase is used in R.C. 2151.421, "is a personal judgment that each person must reach * * * based upon their training, education, their knowledge of the abuse, neglect, and dependency statute, the knowledge of the information they're receiving, and the accuracy, the determination whether that information is accurate."

She also taught her students to take into account "the child's demeanor, the child's behavior, whether there are visible signs of abuse, whether or not the child is truthful." (Tr., pp. 498, 500.)

{¶11} Mercer testified that the reporting law, "says look at all the circumstances. So if a child -- I teach that if a child would say my parent has hit me with a ruler, the social worker must then assess all the circumstances; what's the age of the child, was it appropriately placed, where was that hit, did it cause a -- a serious disfigurement. The law actually requires, again, child endangering to be not just a bruise, but a serious disfigurement which is either temporary or permanent, and so we, you know, discuss what does that bruise look like, where was it placed, what was the context for which the child was being disciplined, is the child's report accurate, does the person believe the child. So all of that has to be taken into consideration rather than an automatic response upon hearing a particular fact." (Tr., pp. 520-521.)

{¶12} The Supreme Court agreed with our prior Opinion that it was error for the expert witness to testify as to the meaning of the statute and to interpret for the jury what the statute requires, because it is the trial judge's responsibility to explain the law to the jury. *Kraynak*, supra, 118 Ohio St.3d 400, 2008-Ohio-2618, 889 N.E.2d 528, ¶21; Civ.R. 51(A). It is left to us now to determine whether this error in the admission of the expert's testimony, in and of itself, requires a reversal of the jury verdict. Errors in the admission of evidence, and the admission of expert testimony in particular, are reviewed for abuse of discretion. *Terry v. Caputo*, 115 Ohio St.3d 351, 2007-Ohio-5023, 875 N.E.2d 72, ¶16. Furthermore, harmless error in the

admission of evidence will not warrant a reversal of a judgment. For error to constitute reversible error it must affect the substantial rights of the parties. Evid.R. 103(A); Civ.R. 61; *O'Brien v. Angley* (1980), 63 Ohio St.2d 159, 164, 17 O.O.3d 98, 407 N.E.2d 490.

{¶13} The jury is presumed to follow the instructions of law as given by the court. *Bell v. Mt. Sinai Med. Ctr.* (1994), 95 Ohio App.3d 590, 599, 643 N.E.2d 151. In our earlier Opinion, we reviewed the error in Mercer's testimony under the assumption that the trial court erred in explaining to the jury that R.C. 2151.421 sets forth a subjective standard. It was our view that R.C. 2151.421 set forth an objective standard as to whether a teacher such as Marino who "knows or suspects" abuse or neglect of a child should report it. Based on our prior holding, we could only conclude that trial court's jury instruction compounded Mercer's error, since Mercer also propounded a subjective standard in her testimony interpreting R.C. 2151.421. In other words, if the trial court's jury instruction regarding R.C. 2151.421 was erroneous, then it could not have corrected any error in Mercer's inappropriate discussion of the statute. In light of the Supreme Court's holding in this case, though, the trial court did give a correct jury instruction regarding R.C. 2151.421. (8/8/05 Tr., p. 9.) The trial court properly explained that R.C. 2151.421 sets forth a subjective standard, and the court corrected the errors in Mercer's testimony by providing the jury with the correct words of the statute and a correct explanation of the statute. As a result of the Supreme Court's holding, we cannot find the error in admitting the

testimony of Kathryn Mercer to be harmful or prejudicial, and we overrule Appellant's fourth assignment of error.

{¶14} Because there is no reversible error in this case, we affirm the judgment of the trial court in full.

Vukovich, P.J., concurs.

Trapp, J., concurs.