COURT OF APPEALS
DECISION
DATED AND FILED

September 27, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP3093

Cir. Ct. Nos. 1999CV106
1999CV107
1999CV108
2001CV266

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

RUSSELL MANNING, MICHELLE MANNING AND B. M. M., A MINOR, BY HER GUARDIAN AD LITEM, GREGORY R. WRIGHT,

PLAINTIFFS-APPELLANTS,

V.

NECEDAH AREA SCHOOL DISTRICT AND EMPLOYERS MUTUAL CASUALTY COMPANY,

DEFENDANTS-RESPONDENTS.

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MITCHELL WENGRZYNOWICZ, JOYCE WENGRZYNOWICZ AND A. W., A MINOR, BY HER GUARDIAN AD LITEM, GREGORY R. WRIGHT,

PLAINTIFFS-APPELLANTS,

V.

NECEDAH AREA SCHOOL DISTRICT AND EMPLOYERS MUTUAL CASUALTY COMPANY,

DEFENDANTS-RESPONDENTS.

NICHOLAS BECERRA, TINA BECERRA AND K. N. B., A MINOR, BY HER GUARDIAN AD LITEM, GREGORY R. WRIGHT,

PLAINTIFFS-APPELLANTS,

V.

NECEDAH AREA SCHOOL DISTRICT AND EMPLOYERS MUTUAL CASUALTY COMPANY,

DEFENDANTS-RESPONDENTS.

CHRISTEEN SUCHOMEL AND T. R. G., A MINOR, M.J.S., A MINOR, B.E.S., A MINOR, BY THEIR GUARDIAN AD LITEM, GREGORY R. WRIGHT,

PLAINTIFFS-APPELLANTS,

V.

NECEDAH AREA SCHOOL DISTRICT AND EMPLOYERS MUTUAL CASUALTY COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Juneau County: CHARLES A. POLLEX, Judge. *Affirmed*.

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 HIGGINBOTHAM, P.J. This case stems from a Necedah School District bus driver's alleged sexual abuse of the minor plaintiffs, who were then elementary school students in the District. The plaintiffs appeal an order granting the motion of the District and Employers Mutual Casualty Company[1] for summary judgment on municipal and public officer immunity grounds pursuant to WIS. STAT. § 893.80(4) (2005-06).[2] The plaintiffs contend that the District is not immune from suit for the following reasons: (1) the mandatory reporting statute, WIS. STAT. § 48.981, creates a ministerial duty to report suspected abuse to law enforcement and provides a private cause of action, and the District employees' breach of this duty precludes the District's immunity defense; and (2) the known and present danger exception to immunity applies.[3]

¶2 We conclude that the plaintiffs' argument that the District breached a ministerial duty under WIS. STAT. § 48.981 to report suspected abuse fails. The plaintiffs' complaints do not allege the failure to report abuse as a basis of the District's negligence, and therefore the issue of whether § 48.981 establishes a ministerial duty to report for purposes of governmental immunity is not properly before us. We further conclude on the summary judgment materials that a known and present danger did not exist under the standard established in ***Lodl v. Progressive Northern Insurance Co.***, 2002 WI 71, ¶¶20-21, 253 Wis. 2d 323, 646 N.W.2d 314. We therefore affirm.

[1] We refer to the defendants collectively as "the District" throughout.

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[3] The plaintiffs also argue that the District is liable for the actions of its employees under the doctrine of respondeat superior. We do not address this argument because our conclusion that the District is entitled to immunity is dispositive.

Background

¶3 For purposes of the District's motion for summary judgment on governmental immunity grounds, the parties agree that no material facts are in dispute. John Lynch was employed as a bus driver with the Necedah Area School District from 1992 to 1998. On February 25, 1998, a Juneau County Sheriff's deputy told a Tammy Stowers-Tonn, a school psychologist for the District,[4] that his stepdaughter had told him that Lynch had touched the private parts of A.W. and B.M.M, two elementary school girls who rode Lynch's bus. On February 27, 1998, Stowers-Tonn and the sheriff's deputy reported these allegations to Charlotte Preiss, the District elementary school principal, who directed Stowers-Tonn to investigate the allegations. On March 2, 1998, Stowers-Tonn provided a written report about her investigation to Preiss and Peter Klas, the district administrator. Stowers-Tonn also reported that day the allegations of abuse to the Juneau County Department of Human Services. The Juneau County Sheriff's Department placed a surveillance camera on Lynch's bus the following day and arrested him on March 6, 1998. Lynch was charged in Juneau County Circuit Court with eighteen counts of illicit sexual conduct. Lynch ceased driving for the District, and died before his criminal trial took place.

¶4 Lynch's victims described to police investigators and in deposition testimony repeated incidents of sexual touching. A.W. told investigators that Lynch would place her on his lap and touch her private parts when she was in kindergarten during the 1996-97 school year. B.M.M. told investigators that

[4] Stowers-Tonn was not employed by the District, however. She was an employee of the Wisconsin Cooperative Educational Service Agency.

Lynch touched her in the crotch area and on her buttocks the year before when she was in kindergarten and through her first grade year. Tina Becerra, mother of K.N.B., told investigators that K.N.B. said that Lynch would place her on his lap and touch her private parts.

¶5 T.R.G. testified in deposition that Lynch touched her over her underwear in the vaginal area and under her underwear on her buttocks starting her first grade year, 1993-94. T.R.G. testified that after all of the other students had been dropped off, Lynch would pull the bus to the side of the road and have her pick up the trash on the bus and touch her as she did so. T.R.G. testified that when her younger sisters, M.J.S. and B.E.S., started riding the bus in the fall of 1994 and 1996, respectively, she observed Lynch touch them in a similar manner. M.J.S. testified that Lynch would pull the bus to the side of the road and would touch her and her sisters' private parts as they cleaned up the bus.

¶6 In the years prior to Lynch's arrest, several district employees either saw or received reports of questionable contact by Lynch with prepubescent girls on his bus. Teacher Michael Schroeder reported to a police detective after Lynch's arrest that some time during the 1993-94 school year he had observed Lynch place his hand on a girl's buttocks and pull her toward him as she was stepping off the school bus. Schroeder testified in deposition that he did not think much about the incident until Lynch volunteered, "This is the only affection that most of these kids get all day," and that "the boys at the barn," the other bus drivers and Pat Pesik, the District transportation supervisor, "ha[d] warned him (Lynch) about that kind of stuff."

¶7 Bus drivers Neil Kandziora, Donald Burdick, Marcia Kimbrue and Don Julius provided deposition testimony. Kandziora testified that, as he was

driving home from his route, he often saw Lynch's bus parked to the side of the road, and that Lynch always returned to the bus barn later than the other drivers. Burdick stated that, some time in 1992, he overheard a heated exchange between transportation supervisor Pesik and Lynch, in which Pesik told Lynch to "keep your hands off of those children." All four drivers recounted incidents in which they overheard Pesik warn Lynch not to touch the girls. As the transportation supervisor, Pesik was responsible for managing and training the bus drivers, but not hiring or firing them.

¶8 Kimbrue testified that two girls told her some time in 1992 or 1993 that they did not want to ride Lynch's bus anymore because he grabbed their buttocks and under their arms. Kimbrue reported this information to Pesik, Lynch's supervisor, who said he would talk to Lynch.

¶9 Julius first observed Lynch hugging and patting elementary-school girls some time in 1994. In 1995, Julius discovered a first-grade girl crying in the back of his bus. The girl, A.C., told him that Lynch had touched her where he should not. Julius told Lynch what A.C. had said, Lynch said he would take care of it. Thereafter, A.C. stopped riding Lynch's bus and started riding Julius's. In early 1997, T.R.G. reported to Julius that Lynch had touched her on her private parts. That year, Carol Brown, a custodian, told Julius that two girls had told her that Lynch had touched their buttocks on his bus, and said that they wanted to ride Julius's bus instead. Julius told Brown that he would inform Pesik about the matter.

¶10 Pesik testified that he received a call from a parent approximately three to five years before Lynch's 1998 arrest complaining that Lynch was

hugging her daughter, which made the child feel uncomfortable. Pesik said he told Lynch to keep his hands off of the child.

¶11 Donna Jorandby, secretary to Rockview Elementary Principal Charlotte Preiss, handled issues that required immediate attention when Preiss was out of the building and would report all matters back to Preiss. Jorandby testified that sometime in the 1996-1997 school year custodian Carol Brown told her that Julius said Lynch had touched a young girl in her private parts when she was picking up a candy wrapper on Lynch's bus. After this incident, Jorandby frequently watched Lynch from her spot inside the school as the children boarded his bus in the afternoon. Jorandby told investigators that she saw Lynch give long hugs to the girls boarding his bus.

¶12 Kathy Jorgenson, a teacher's aide at the District who occasionally rode on Lynch's bus from the elementary school in town to Rockview Elementary School, observed Lynch hug a young girl, S.G., and move his hand up her skirt. Jorgenson told Jorandby about the incident. Jorandby subsequently moved S.G. and another child, A.J., onto another bus.

¶13 In Spring 1997, Christeen Suchomel, mother of T.R.G., M.J.S. and B.E.S., was told by her daughters about Lynch's fondling. Suchomel called John Lynch's wife, Catherine Lynch, who was then Principal Ronald Schelfhout's secretary at the in-town elementary school,[5] to tell her that her children said that

[5] Schelfhout was the elementary school principal for the entire Necedah School District during the 1996-97 school year. In this capacity, Schelfhout split his time between two district elementary school buildings, the in-town elementary school and Rockview. A second principal, Charlotte Preiss, worked exclusively at Rockview in the 1996-97 school year, and took over the position of District-wide elementary school principal from Schelfhout upon his retirement in June 1997.

Lynch had touched their private parts. Suchomel testified that Mrs. Lynch responded that her husband "thought of [Suchomel's daughters] as his grandkids and that he was probably hugging them and that … they were misinterpreting it."

¶14 T.R.G. testified that some time in the 1996-97 school year, she discussed with her sisters the idea of telling someone at the school about Lynch's abusive touching. M.J.S. and B.E.S. told T.R.G. that doing so would be a waste of time. Nonetheless, T.R.G. decided to tell Principal Schelfhout because she believed he was someone who had the power to do something about it. T.R.G. said that she approached Schelfhout in the hallway between classes and told him that Lynch had been touching her and her sisters where they did not want to be touched. T.R.G. testified Schelfhout told her to come back to his office to talk about it. T.R.G. said that when she got to his office, "he told me to sit down, and the phone rang. He answered the phone instead of talking to me and told me to go back to class." She testified that as she was walking back to class she ran into her sister, M.J.S., in the hallway, who stopped her because she saw her crying. T.R.G. said that she was crying "[b]ecause I knew that nobody was going to help us." She testified that Schelfhout never spoke with her about Lynch again.[6]

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[6] Schelfhout denied that the conversation with T.R.G. ever took place. He testified in a December 2000 deposition as follows:

> A: You know, this whole thing just blew me out of the water when I read it in the paper because I had absolutely no knowledge of anybody accusing anybody. This whole thing is just a blow to me. No, she never talked with me. Nobody ever talked with me. The whole thing is just beyond me. I don't understand it.
>
> Q: Don't understand what?
>
> A: This whole accusation because I just would never have believed it.

(continued)

¶15 The minor plaintiffs B.M.M., A.W. and K.N.B. sued the District and Employers Mutual Casualty Company in federal district court.[7] In June 1999, B.M.M., A.W. and K.N.B. each filed state suits against the District and Employers Mutual in Juneau County Circuit Court. In January 2000, the parties stipulated to dismissal of their federal suits. In November 2001, T.R.G., M.J.S. and B.E.S. jointly sued the District and Employers Mutual in Juneau County Circuit Court. The District and Employers Mutual moved for summary judgment on governmental immunity grounds in each of the four cases.

¶16 The respective pleadings of B.M.M., A.W. and K.N.B. state identical claims of negligence. They allege the District was negligent in its failure to: (1) investigate allegations against Lynch; (2) properly supervise Lynch; and (3) "take other appropriate actions to determine if Lynch was a threat to the safety of the minor students." The complaint of T.R.G., M.J.S. and B.E.S., while alleging failure to investigate and properly supervise Lynch, alleges additional

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> Q: So you deny that you ever had a discussion with [T.R.G.]?
>
> A: Right.
>
> Q: … who told you that she—that Mr. Lynch was touching her inappropriately?
>
> A: Exactly.

We recognize that this testimony creates a possible factual dispute with T.R.G.'s testimony that she told Schelfhout that Lynch was touching her and her sisters inappropriately. For purposes of deciding the District's motion for summary judgment, we set aside Schelfhout's denial and accept as true T.R.G.'s testimony about her conversation with Schelfhout. *See* ***Brown v. MR Group, LLC***, 2005 WI App 24, ¶15, 278 Wis. 2d 760, 693 N.W.2d 138 (all reasonable inferences are drawn in favor of the nonmoving party on summary judgment) (citation omitted). However, as we discuss *infra* ¶23, any factual dispute that may exist is not material here.

[7] The three minor plaintiffs initially brought separate federal suits. These suits were consolidated by an August 1999 order.

bases for negligence, including the failure to: (1) supervise and instruct school personnel (in addition to Lynch) responsible for protecting students; and (2) follow and enforce school policies adopted to prevent sexual assaults against students.

¶17 The Juneau County Circuit Court, Presiding Judge Charles A. Pollex, ordered the four cases consolidated.[8] The circuit court granted the District's motion for summary judgment. In its written decision, the court concluded that the District was not vicariously liable for Lynch's negligent conduct under the doctrine of respondeat superior because Lynch was not acting within the scope of his employment at the time of the assaults. The court also concluded that the District was immune from liability under WIS. STAT. § 893.80(4) because none of the plaintiffs' claims based on negligent supervision, training and investigation triggered either the ministerial duty or known and present danger exceptions to governmental immunity. The circuit court also concluded that the statute requiring certain persons to report suspected child abuse, WIS. STAT. § 48.981, did not create a private cause of action. The circuit court further concluded that, even if § 48.981 created a cause of action, it was not available to the plaintiffs here because the response of the individuals who the court determined to be mandatory reporters, teacher Michael Schroeder and Principal Schelfhout, was subject to discretion and therefore the District would be immune from liability for their actions. The plaintiffs now appeal.

[8] In March 2005, the plaintiffs moved to consolidate their cases. The circuit court's August 2005 summary judgment order treated the cases as if they were consolidated, listing the plaintiffs together under one caption. However, in an apparent oversight, the circuit court did not formally address the motion to consolidate until October 2005, when it granted the consolidation motion *nunc pro tunc*.

Standards of Review

¶18 We review a circuit court's grant of summary judgment de novo, applying the same methodology as the circuit court. ***State v. Bobby G.***, 2007 WI 77, ¶36, __ Wis. 2d __, 734 N.W.2d 81 (citation omitted). Summary judgment is appropriate when the affidavits and other submissions show that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). In evaluating the affidavits and other submissions, we draw all reasonable inferences from the evidence in the light most favorable to the non-moving party. ***Burbank Grease Servs., LLC v. Sokolowski***, 2006 WI 103, ¶40, 294 Wis.2d 274, 717 N.W.2d 781 (citation omitted).

¶19 The District's motion for summary judgment is based on its assertion of governmental immunity under WIS. STAT. § 893.80(4). The question of whether the immunity statute applies in a given case involves the application of legal standards to a set of facts, a question of law which we review de novo. ***Voss v. Elkhorn Area Sch. Dist.***, 2006 WI App 234, ¶12, 297 Wis. 2d 389, 724 N.W.2d 420

Discussion

¶20 When considering an assertion of the defense of governmental immunity, we "assume[] negligence, focusing instead on whether the municipal action (or inaction) upon which liability is premised is entitled to immunity under the statute, and if so, whether one of the judicially-created exceptions to immunity applies." ***Lodl***, 253 Wis. 2d 323, ¶17 (citations omitted). Under the governmental immunity statute, WIS. STAT. § 893.80(4), municipalities and their officers and

employees are immune from suit for "acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions."[9] Collectively, these acts have been "interpreted to include any act that involves the exercise of discretion and judgment." ***Lodl***, 253 Wis. 2d 323, ¶21. As a general rule, "public officers are immune from liability for damages resulting from their negligence or unintentional fault in the performance of discretionary functions." ***Lister v. Board of Regents of Univ. of Wis. Sys.***, 72 Wis. 2d 282, 301, 240 N.W.2d 610 (1976).

¶21 A well-established exception to the rule of immunity holds that an officer is liable for damages resulting from the officer's performance of a ministerial duty. *See, e.g.* ***Lister***, 72 Wis. 2d at 300-01; ***Cords v. Ehly***, 62 Wis. 2d 31, 40-41, 214 N.W.2d 432 (1974); ***Meyer v. Carman***, 271 Wis. 329, 331-33, 73 N.W.2d 514 (1955). "A public officer's duty is ministerial only when it is absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion." ***Lister***, 72 Wis. 2d at 301 (citation omitted).

¶22 The plaintiffs contend that the mandatory child abuse reporting statute, WIS. STAT. § 48.981,[10] imposes a ministerial duty for certain professionals

[9] WISCONSIN STAT. § 893.80(4) provides as follows:

> No suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employees nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.

[10] WISCONSIN STAT. § 48.981 provides, in relevant part:

(continued)

who have reasonable cause to suspect that a child has been abused or neglected, or have reason to believe that the child has been threatened with abuse and abuse will occur, to report the abuse or threatened abuse to the county social services department or local law enforcement. They further contend that § 48.981 establishes a private cause of action for persons harmed by a mandatory reporter's failure to report abuse under which the plaintiffs may proceed against the District. For our purposes, school teachers and school administrators are among the mandatory reporters listed under the statute. *See* § 48.981(2)(a)14. and 15. The plaintiffs assert that school secretary Donna Jorandby, teacher Michael Schroeder, transportation supervisor Pat Pesik and principal Ronald Schelfhout were all mandatory reporters under the statutes, and each failed to report when they had

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> (2) PERSONS REQUIRED TO REPORT. (a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):
>
> ….
>
> 14. A school teacher.
>
> 15. A school administrator.
>
> ....
>
> (3) REPORTS; INVESTIGATION. (a) *Referral of report*. 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county [social services] department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

reasonable cause to suspect Lynch was abusing school children. The plaintiffs argue that the failure of these employees to execute their ministerial duty to report defeats the District's assertion of governmental immunity.

¶23 The plaintiffs raise some important questions that neither we nor the supreme court have addressed, including whether WIS. STAT. § 48.981 imposes a ministerial duty to report suspected child abuse for governmental immunity purposes, and whether § 48.981 establishes a private cause of action for failure to report abuse. However, these questions are not properly before us because they are unrelated to the plaintiffs' allegations of negligence in this case. The plaintiffs' complaints do not allege that § 48.981 is the basis for a private cause for action. The complaints do not allege the failure to report—either under a general duty of care standard or under a statutory mandate in § 48.981—is a basis for the District's negligence. Rather, the complaints allege negligence based on inadequate supervision, failure to investigate, poor instruction of school staff, and failure to follow school anti-sexual harassment policies, but not failure to report suspected abuse. We therefore address neither whether the requirement of § 48.981(2) for certain government employees to report suspected or threatened abuse constitutes a ministerial duty for governmental immunity purposes, nor whether § 48.981 may be the basis of a private cause of action .[11]

¶24 The plaintiffs have not argued that a ministerial duty imposed by law exists on any other grounds. And, upon reviewing the plaintiffs' complaints, we conclude that none allege grounds for liability that involve the breach of a

[11] For the same reasons provided in ¶23, we also do not address whether Jorandby or Pesik were mandatory reporters under WIS. STAT. § 48.491.

ministerial duty imposed by law. We therefore conclude that the ministerial duty exception does not apply here.

¶25 Turning to the plaintiffs contention that the known and present danger exception to governmental immunity applies in this case, they argue that Lynch's on-going abuse of young girls constituted a present danger known to several District employees to which the employees failed to respond. We conclude on the summary judgment materials that no District employee was faced with a circumstance giving rise to a known and present danger as defined by ***Lodl.***

¶26 The known and present danger exception to governmental immunity was first established in ***Cords v. Anderson***, 80 Wis. 2d 525, 259 N.W.2d 672 (1977). There, the plaintiffs were seriously injured when they fell into a deep gorge while hiking at night on a trail at Parfrey's Glen, a state-owned nature preserve in Sauk County. The manager of the preserve knew that the drop off from which the plaintiffs fell was dangerous, particularly at night, but did nothing to advise the public or his supervisors of the hazard. The ***Cords*** court concluded that "the duty to either place warning signs or advise superiors of the conditions is, on the facts here, a duty so clear and so absolute that it falls within the definition of a ministerial duty." ***Id.*** at 542.

¶27 The supreme court revisited the known and present danger exception in ***Lodl***. In that case, the plaintiff was injured in a car accident at an intersection at which the traffic lights were blacked out during a storm. ***Lodl***, 253 Wis. 2d 323, ¶¶6-10. The plaintiff argued that the municipality was liable for her injuries under the known and present danger exception to governmental immunity when a police officer who was dispatched to the intersection to investigate the black out failed to manually direct traffic at the intersection. ***Id.***, ¶4. The ***Lodl*** court concluded that

while the situation at the intersection was dangerous, it was not a known and present danger giving rise to a ministerial duty such that the municipality would be liable for the officer's negligence. ***Id.***, ¶5.

¶28 The ***Lodl*** court explained that the known and present danger exception, like the exception for a ministerial duty, applies only to the failure to perform a non-discretionary duty; the government is immune when the dangerous circumstance allows for more than one response by an employee or official. ***Id.***, ¶5. ***Lodl*** stated the known and present danger standard as follows: "[A] dangerous situation will be held to give rise to a ministerial duty only when 'there exists a known and present danger of such force that the time, mode and occasion for performance is evident with such certainty that nothing remains for the exercise of judgment and discretion.'" ***Id.***, ¶38 (citation omitted). A dangerous circumstance that would appear to give rise to a generic duty to "do something," but does not impose a duty to act in a particular way, is not a known and present danger under ***Lodl***. ***Id.***, ¶¶43-44.

¶29 In determining whether the known and present danger exception applies in this case, we must examine the summary judgment materials to see if any circumstance presented a danger known to one or more of the District employees that imposed a duty that required a particular, nondiscretionary response by the District employee(s). Based on our review of the affidavits and other submissions, we conclude that no District employee was faced with a

circumstance in which he or she had a duty to act in a particular manner based on a known and present danger under the standard established in ***Lodl***.[12]

¶30 Assuming for purposes of argument that each District employee who had information about Lynch's conduct had sufficient information to know (objectively) that Lynch posed a present danger to the children, all of the employees, for purposes of the known and present danger exception, possessed discretion in either the mode, timing or occasion for their response to Lynch's threat to the children's safety. The employees could have confronted Lynch as transportation supervisor Pesik did; informed his or her supervisor as bus driver Kimbrue did; monitored Lynch's behavior with the children as Jorandby did; or investigated the allegations against Lynch further, to name but a few general

[12] We question the logic of the "particular response" requirement of the ***Lodl*** decision. Under ***Lodl*** and prior cases in this area, *see, e.g.* ***Cords v. Anderson***, 80 Wis. 2d 525, 542, 259 N.W.2d 672 (1977), the applicability of an exception for governmental immunity for a known and present danger is appropriately tied to the seriousness and immediacy of the danger. ***Lodl***, 253 Wis. 2d 323, ¶40. ***Lodl*** expresses this in terms of how "compelling" the danger is. ***Id.*** However, ***Lodl*** then substitutes the "particular response" requirement as a proxy for the seriousness and immediacy of the known danger: "For the known danger exception to apply, the danger must be compelling enough that a self-evident, particularized, and non-discretionary municipal action is required." ***Id.***; *see also* ¶39 (The known and present danger exception applies "by virtue of particularly hazardous circumstances—circumstances that are both known to the municipality or its officers and sufficiently dangerous to require an explicit, non-discretionary municipal response."). If a relationship exists between the seriousness and immediacy of a danger and the range of reasonable responses available to a government official, we believe it is tenuous at best. A situation that is less dangerous than another may compel one certain response by a government officer, while a more dangerous situation may compel *a* response, but more than one reasonable response exists. We fail to comprehend the logic of a test that confers immunity on the government when an official fails to act in the latter circumstance (very serious and immediate danger allowing multiple reasonable responses), but not when he or she fails to act in the former (less serious danger allowing only one reasonable response).

responses. No one particular response was mandated by any of the many circumstances that the District employees faced.[13]

Conclusion

¶31 Because the plaintiffs' complaints do not allege the failure to report abuse as a basis of the District's negligence, we do not address the plaintiffs' contentions that certain District employees had a ministerial duty under WIS. STAT. § 48.981 to report Lynch's abuse, and that they breached this duty, thereby exposing the District to liability for the employees' actions. We further conclude on the summary judgment materials that a known and present danger did not exist under the standard established in ***Lodl***. We therefore affirm the circuit court's order granting the District's motion for summary judgment on governmental immunity grounds.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[13] Plaintiffs note that the District had a sexual harassment policy in place at the time of Lynch's actions, and they argue that this policy was not followed. However, they do not say who failed to follow the policy (Lynch? Lynch's supervisors? Lynch's co-workers?), or what provisions of the policy were breached. They raise the existence of the sexual harassment policy in the context of the known and present danger exception but fail to develop an argument that relates the policy to the issue of governmental immunity. We therefore do not address this matter further. *See* ***Kristi L.M. v. Dennis E.M.***, 2007 WI 85, ¶20 n.7, __ Wis. 2d __, 734 N.W.2d 375 (undeveloped arguments need not be addressed).