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[EXEMPT GOV. CODE §6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KENYA TAYLOR, Individually and as a Successor in Interest to Decedent, DAYVON TAYLOR, Plaintiff, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, a government agency, LOS ANGELES COUNTY, a government entity; CITY OF LOS ANGELES, a government entity; TYLER D'SHAUN MARTIN-BRAND, an individual; and DOES 1 through 50 inclusive, Defendants,	Case No. **20STCV33128** **DEFENDANT, LOS ANGELES UNIFIED SCHOOL DISTRICT'S TRIAL BRIEF** TRIAL DATE: JULY 31, 2023 TIME: 8:30 A.M. DEPT. 76

PARTIES

Attorneys for Plaintiff	**Steve Vartazarian** **Mathew Whibley** **Sarkis Yenikomshuyan** **THE VARTAZARIAN LAW FIRM, APC**
Attorney for Defendant	**Gary A. Bacio** **BACIO & ASSOCIATES** **Gil Burkwitz** **PETERSON, BRADFORD, BURKWITZ, GREGORIO, BURKWITZ, & SU**

INTRODUCTION

Kenya Taylor, plaintiff, seeks damages from the Los Angeles Unified School District (LAUSD) for the death of her son, Dayvon Taylor, at the hands of off-duty LAUSD employee Taylor Martin-Brand. Martin Brand cleared a background check when he was hired in 2010. No LAUSD employee had any reason to believe that Martin Brand was a danger to students until the day he was arrested for murder of Dayvon Taylor. There were no reports of abusive or violent behavior regarding Taylor Brand as an employee. In fact, he was considered an excellent employee. Plaintiff claims to have depended on LAUSD hiring qualified and capable people, which it did. She never asked any of Taylor Brands supervisors about his qualifications and chose, of her own volition, to allow Taylor Brand to babysit her son Dayvon without inquiring or asking permission from any LAUSD personnel. The death occurred during Christmas break when LAUSD was not in session and all LAUSD employees were on holiday. On December 26, 2019, after Kenya Taylor left her son with Martin Brand beginning December 20, 2019, Tyler Brand beat Dayvon to death on December 26, 2019. The days Kenya Taylor allowed Martin Brand to babysit Dayvon were not working days for any employees of LAUSD as they were the Christmas break. The death occurred outside of school hours, outside of school facilities, and outside of school and District supervision.

SUMMARY OF FACTS

The LAUSD hired Tyler Martin Brand as an Out of Classroom Worker in September, 2016. During the hiring process, he passed the LAUSD's training for his position as an Out of Classroom Worker. He also passed a criminal background and fingerprint check. He was assigned to Playa Vista Elementary during the regular school year. He was assigned to Normandie Elementary during June and July of 2019 for the summer program only, and returned to Playa Vista in August 2019 where he was still working when the 2019 Christmas break came. As an Out of Classroom Worker, his daily duties consisted of activities on the playground where he was assigned to keep students active in sports like basketball. None of the LAUSD's employees at Playa Vista Elementary or Normandie Elementary ever observed any behavior by Martin Brand that raised any concern that he posed a danger to students or anyone else. By all accounts he was a respectful person and an

excellent employee. No student or parent ever informed any LAUSD employee about any concern that Martin Brand was behaving inappropriately or displayed violent tendencies.

On December 20, 2019, Kenya Taylor asked Martin Brand to babysit her son, Dayvon, at Martin Brand's apartment in Downey California during the Christmas break. She alleges she asked him to keep her son so she could move to a new apartment. On December 26, 2019, Martin Brand brought a nearly lifeless Dayvon Taylor back to his mother at her new apartment. They then took Dayvon to the hospital in Long Beach where he was pronounced dead. The autopsy report demonstrates that Dayvon was severely beaten, probably over several days, and died as a result of those beatings. At the hospital, Martin Brand told Downey Police Detective that he had obtained permission from Kenya Taylor to discipline her son with corporal punishment. Martin Brand demonstrated how he had hit Dayvon numerous times with a closed fist to the chest area.

LIABILITY ARGUMENT

A. The first, second, third and fourth causes of action for violation of mandatory duty, negligent hiring , retention and supervision, negligence and negligence per se lack merit.

The events that give rise to this lawsuit happened outside of District and school operating hours, outside of school facilities, and outside of the supervision of any school or District administrators. Plaintiff claims that LAUSD violated a mandatory duty under Penal Code 11165.7 and 11165.9. This claim is patently false. These penal code section set out the mandatory duty to report child abuse. Prior to the death of Dayvon Taylor, there were no reports, claims, or concerns of child abuse expressed by anyone relating to Tyler Martin Brand. It was only after the death that any concerns were raised by anyone including Kenya Taylor who stated in her deposition that Dayvon "loved" coach Martin Brand. A public entity like the LAUSD may not be held vicariously liable for murderous acts of misconduct by its employees, particularly when they occur off campus during District vacation time and outside of the supervision of District Personnel as is the case here. Such acts are outside the scope of employment as a matter of law. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th291; *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992; *John R. v.Oakland Unified School Dist.* (1989) 48 Cal.3d 438.)

Further, the LAUSD may not be sued for its own negligence under a common law theory. (*Doe v. L.A. County Dep't of Children & Family Servs.* (2019) 37 Cal.App.5th 675, 686.) Instead, the plaintiffs must attempt to hold the LAUSD liable under Government code section 815.2 for the negligent acts of individual employees acting within the scope of their employment. As the Supreme Court has explained, "If a supervisory or administrative employee of the school district is proven to have breached that duty by negligently exposing plaintiff to a foreseeable danger of molestation by [a school district employee], resulting in [the plaintiff's] injuries, and assuming no immunity provision applies, liability falls on the school district under section 815.2." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 865-866.) Hence, "a school district is liable 'for the negligence of supervisory or administrative personnel who allegedly knew, or should have known, of the foreseeable risk to students of murderous abuse by an employee and nevertheless hired, retained, and/or inadequately supervised that employee." (*D.Z. v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 223, quoting *Williams s. Hart, supra*, 53 Cal.4th at p. 865.) The plaintiffs cannot prove a breach of that duty of care because there is no evidence that any LAUSD personnel knew or should have known that Martin Brand posed a foreseeable risk to students of murderous abuse. He cleared a criminal background check when he was hired in 2010. He performed his duties as a teacher's aide for the next eight and a half years without any indication that he posed a risk to students. He was never left alone with a student. It was not until the death of Dayvon on December 26, 2019, that any LAUSD employee had notice that Martin Brand was a danger. The personnel at Beyond the Bell at Playa Vista Elementary reacted immediately by removing Martin Brand from any contact with students through termination of employment. They fulfilled their duty of care to their students by doing so. LAUSD cannot be held liable for negligence or negligence per se based on those facts.

B. The fifth and sixth causes of action for survival action and wrongful death lacks merit as well.

The claim by plaintiff that the LAUSD is liable for the death of Dayvon Taylor based on survival action and wrongful death lacks merit.

First, there is no statutory basis for holding a public entity liable on a negligence theory which is necessary for the wrongful death claim. The Government Claims Act "precludes a finding of liability against public entities without express statutory authorization." (*Tuthill v. City of San Buenaventura* (2014) 223 Cal.App.4th 1081, 1089. See also Gov. Code, § 815.) Although Government Code section 815.2 authorizes vicarious liability for "injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment," there is ample proof here that Tyler Martin Brand was not acting within the scope of his employment. He was, in fact, off campus, off hours, and outside of any LAUSD supervision.

Second, there is no evidence that would support a finding of survival damages which are those damages occurring between the injury and the death of the decedent. Here, Dayvon was brought to the hospital and was pronounced deceased. There are no damages between the time he was injured by Martin Brand and his death at the hands of Martin Brand. There is no evidence of that LAUSD had any participation in the babysitting scheme cooked up by Kenya Taylor and Tyler Martin Brand.. None of its employees knew anything about Martin Brand's misconduct until the reporting of Dayvon's death. Far from adopting Martin Brand's misconduct as their own, the employees at LAUSD immediately removed Martin Brand from employment upon learning of his conduct that led to Dayvon's death. On those facts, the plaintiffs cannot prove that the LAUSD ratified Martin Brand's abuse. Authorization would require proof that the LAUSD intentionally or by want of ordinary care allowed Martin Brand to believe that he had its approval to babysit and murder the plaintiff's son Dayvon. (*Inglewood Teachers Ass'n v. Public Employment Relations Bd.* (1991) 227 Cal.App.3d 767, 781; Civ. Code, §§ 2316.) There is no evidence of any conduct by LAUSD employees that would lead anyone to believe the LAUSD approved Martin Brand's babysitting or murderous abuse of Dayvon Taylor. In fact, all LAUSD employees are mandated reporters, who have a duty to report suspected child abuse including murder. As shown by LAUSD's reaction to the reports from the murder of Dayvon LAUSD's employees acted swiftly to terminate Martin Brand's employment.

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DAMAGES

Plaintiff's argument that LAUSD is responsible for her son's death is not supported by the evidence. The beating that led to Dayvon's death was perpetrated by Tyler Martin Brand who was an employee of LAUSD at the time. No LAUSD administrator was informed of the agreement of Kenya Taylor to have her son babysat by Martin Brand. She made the choice of her own volition. The death occurred during Christmas break when all LAUSD employees were on holiday and not working. The death occurred outside of working hours, off campus and outside of the supervion and authority of any LAUSD personnel.

The plaintiff has been deposed. Her testimony regarding the death of her son is as follows:

1. She met Tyler Martin Brand at the Beyond the Bell Program at Normandie Elementary School.
2. She got his cell phone number when he asked her if he could babysit Dayvon at the program during the Fall semester at Normandie.
3. Tyler Brand was not working at Normandie at that time. He was assigned to Playa Vista Elementary during the regular school year and was only at Normandie Elementary fro the summer program in June and July of 2019. He returned to Playa Vista, 10 miles away from Normandie, in August of 2019 where he worked until the Christmas break of 2019.
4. Kenya Taylor called Tyler Brand to ask him to babysit during the Christmas break with full knowledge that the school had nothing to do with the babysitting choice she made herself.
5. The school had no notice that Tyler Brand was babysitting Dayvon Taylor with his mother's permission and at her request.
6. Kenya Taylor did not check with school or District personnel and did not know of any issues with Martin Brand before Dayvon's death.
7. Kenya Taylor made the choice to have Martin Brand babysit Dayvon without any counsel of LAUSD authority and without making a single inquiry to anyone at LAUSD regarding to the appropriateness of her actions in trusting her son to Martin Brand without supervision for days at his apartment in Downey

Defendant will call witnesses who participated in the hiring process of Martin Brand and they will testify that Martin Brand was hired appropriately, had no criminal background issues

and that Beyond the Bell staff appropriately trained and supervised him. That staff followed all protocols in the supervision of Martin Brand. Further, that school staff had no reason to believe he was committing criminal acts while off school grounds during Holiday time, and that school staff had no reason to believe he was committing criminal act on school grounds as there were no complaints from anyone about Marin Brand's behavior or work. Not one negative report was made by any of the staff or students at Playa Vista and Normandie Elementary schools, until December 26, 2019. At that time, he was immediately removed from his employment.

CONCLUSION

The fact that an LAUSD employee abused and harmed Plaintiff's son off campus and outside of LAUSD supervision during vacation when the District was closed down, does not make LAUSD liable for the injuries Martin Brand inflicted. Plaintiffs cannot provide evidence that LAUSD personnel knew or should have known that Martin Brand posed a foreseeable risk to students.

DATED: July 31, 2023

GARY A. BACIO
Attorney for Defendants,
LOS ANGELES UNIFIED SCHOOL DISTRICT

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 200 East Del Mar Blvd., Suite 116, Pasadena, California 91105.

On July 31, 2023, I served on the parties of record in this action the foregoing document described as: **DEFENDANT, LOS ANGELES UNIFIED SCHOOL DISTRICT'S TRIAL BRIEF**, by electronic mail addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **(BY MAIL)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, I deposited such envelope in the mail at Pasadena, California.

☒ **(VIA ELECTRONIC MAIL)** I caused the documents to be transmitted by electronic mail to the party(s) identified on the service list using the e-mail address(es) shown. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission(s) were unsuccessful.

☐ **(BY FEDERAL EXPRESS/OVERNIGHT MAIL)** I caused the above-described document to be served on the interested parties noted as follows by Federal Express/Overnight Mail.

☐ **(BY PERSONAL SERVICE**) I caused such envelope to be delivered by hand to the office(s) of the addressee via messenger.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 31, 2023, at Pasadena, California.

Angélica Alcalá, Declarant

SERVICE LIST

KENYA TAYLOR v. LAUSD, et al.
Case No.: 20STCV33128

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