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COURT OF APPEALS
STATE OF NEW YORK

RAWLINS,

Appellant,

-against-

NO. 47
TEACHERS' RETIREMENT SYSTEM,

Respondent.

20 Eagle Street
Albany, New York
April 16, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE WILSON: Our next case is Matter of
2 Rawlins v. Teachers' Retirement System.

3 MR. LUKASZEWSKI: Your Honors, may it please the
4 court? Chet Lukaszewski for petitioner-appellant Rawlins.
5 I would like to request four minutes of rebuttable, Your
6 Honor.

7 CHIEF JUDGE WILSON: Four?

8 MR. LUKASZEWSKI: Yes, please.

9 CHIEF JUDGE WILSON: Yes.

10 MR. LUKASZEWSKI: Thank you. Your Honors, the
11 medical board use the term, "purposeful conduct". The
12 Supreme Court use the term, "intentional harassment or
13 assault". The Appellate Division use the terminology,
14 "purposeful conduct". That is the issue. This court made
15 very clear in Walsh it hadn't decided the issue. The
16 language of law seem to leave the possibility, seem to
17 leave the probability even, that there would be a
18 circumstance or circumstances where probable conduct fit
19 the accident criteria. Why would it not? Why would the
20 probable conduct - - - and I don't want to use hyperbole.
21 And I really did strain at the end of my brief to give
22 examples.

23 JUDGE TROUTMAN: But in this particular case,
24 we're not just talking about one incident, right?

25 MR. LUKASZEWSKI: My client has said that was the



1 moment in time. Her doctor has said that was the moment -
2 - -

3 JUDGE TROUTMAN: But this person repeatedly was
4 seeking her out, correct?

5 MR. LUKASZEWSKI: This person, until the 18th,
6 until the disabling moment in time, was not known to my
7 client to be a danger, to be a threat. The other - - -

8 JUDGE TROUTMAN: But he was - - - he was seeking
9 her out, having interaction with her? But you're saying
10 the triggering event was the last one, not the preceding
11 ones?

12 MR. LUKASZEWSKI: I don't know when this person's
13 obsession or stalking, or whatever term we might want to
14 use, turned to my client. In the initial interactions,
15 which were mundane, which were part of the normal, expected
16 job duties, she had very little dealings. There was very
17 little specificity. He came. He was given a letter by
18 someone else. As the principal, she was - - -

19 JUDGE TROUTMAN: Was it a part of her duties to
20 interact with him?

21 MR. LUKASZEWSKI: No. He was in a different
22 branch. But as the principal, she is the overseer of the
23 building. So - - -

24 JUDGE TROUTMAN: Yet, it's not her responsibility
25 to deal with him - - -

1 MR. LUKASZEWSKI: No.

2 JUDGE TROUTMAN: - - - you're suggesting, in
3 spite of her being responsible for the overall building?

4 MR. LUKASZEWSKI: In general, daily dealings, as
5 she said, she might say hello in passing. It was a school
6 cook. She was the principal - - -

7 JUDGE TROUTMAN: But as to the environment of the
8 school and if things are impacting the school, is it her
9 responsibility to make sure he is removed or if he has an
10 issue, that it is taken care of?

11 MR. LUKASZEWSKI: This is bureaucracy. She's the
12 captain of the ship but she doesn't have the power in that
13 branch, in the utilities branch, to terminate somebody.
14 She's in the educational side.

15 JUDGE TROUTMAN: Could she remove him? Could she
16 have removed him from the building?

17 MR. LUKASZEWSKI: No. That's why she had to send
18 so many emails. That's why she had bring so many other
19 people into the fold to have him removed. That's why it
20 was - - -

21 JUDGE TROUTMAN: But she had to take some action?

22 MR. LUKASZEWSKI: She had to make requests. She
23 had to say I'm getting complaints.

24 JUDGE TROUTMAN: But - - - so she had to do
25 something?

1 MR. LUKASZEWSKI: Yes.

2 JUDGE TROUTMAN: And you're saying, yet, that is
3 not part of work? That doesn't then cause her not - - -
4 this not to be an accident?

5 MR. LUKASZEWSKI: No. That is all part of work.
6 Those are the activities that are the normal and mundane
7 and nonpersonalized and noncriminal and non-putting her - -
8 -

9 JUDGE SINGAS: But that's not what your client
10 said. I think she said her job was to secure - - -
11 securing safety. So wouldn't this scenario fit directly
12 into that?

13 MR. LUKASZEWSKI: I think the hundreds of other
14 examples she admitted to dealing with, where it was a
15 normally distraught employee, it was an upset parent, it
16 was an upset vendor. Hundreds of those in her career, no
17 problem. She is full duty, no psychological issues - - -

18 JUDGE HALLIGAN: What exactly - - - what exactly
19 does the record show that he did that makes this different
20 from, you know, a disgruntled employee or a distraught
21 parent? What exactly would you point us to?

22 MR. LUKASZEWSKI: The personalization after the
23 other events, which I can only use the terminology,
24 "information gathering" perhaps. In - - - at that moment
25 in time, she realized these other events which were mundane

1 at the time, which had no psychological impact, which had
2 no damaging effect - - -

3 JUDGE HALLIGAN: But how is it different than a
4 parent who may perceive her as having authority to do
5 something that the parent wants and goes to her, perhaps
6 repeatedly, in an effort to secure some - - - you know,
7 change in whatever practice is happening at the school? Or
8 - - - or a disgruntled employee for that matter?

9 MR. LUKASZEWSKI: Sure. Well, Your Honor, if the
10 parent starts yelling this person has my belt and wallet,
11 this person has my belt and wallet, and is trying to push
12 his way through security guards to get direct access to
13 this person who has to respond to the scene as part of her
14 job duties, that is what made her think, oh, he's been
15 removed already. We've cleaned out his locker. He turned
16 - - -

17 JUDGE HALLIGAN: I guess that's what I'm
18 grappling with, though. I mean, as - - - as Judge Singas
19 said, she described her own rule as securing the safety of
20 the school. And so why isn't that interaction part of that
21 responsibility?

22 MR. LUKASZEWSKI: Because this took it to another
23 level. This became personalized. This put her in threat
24 for her life.

25 CHIEF JUDGE WILSON: But - - - but a parent could

1 have done the same thing is the point, right? And that
2 would have been part of her responsibility?

3 MR. LUKASZEWSKI: If a parent had personalized
4 the situation, I think yes.

5 CHIEF JUDGE WILSON: And would we call that an
6 accident even though that's sort of within her
7 responsibility with irate parents?

8 MR. LUKASZEWSKI: I think that's the level we're
9 trying to determine here. How far does it go? How much is
10 someone in that position expected to endure? When she all
11 of a sudden comes to the realization, this person might
12 have delusions about me - - -

13 CHIEF JUDGE WILSON: It's not quite how much
14 they're expected to endure; it's whether it ought to be
15 ordinary disability retirement or accidental. And the
16 question then is whether this is characterized as an
17 accident?

18 MR. LUKASZEWSKI: Well, that and can a purposeful
19 act be an accident, which we are hopeful in the overall
20 scheme of this case, it can. And then does this fit the
21 criteria - - -

22 CHIEF JUDGE WILSON: But you might win that
23 proposition and still lose the case.

24 MR. LUKASZEWSKI: I hope that would not be the
25 case. I - - - again, I don't want to lose sight that there

1 is two prongs here and I absolutely am advocating for my
2 client. I just - - -

3 JUDGE HALLIGAN: But doesn't it have to not be a
4 risk of the work performed?

5 MR. LUKASZEWSKI: Yes.

6 JUDGE HALLIGAN: Okay. And - - - and so I - - -
7 what I'm grappling with is, why is - - - just like with a
8 parent, if there is someone who is disgruntled, unhappy,
9 angry, and she's responsible for securing the safety and
10 running the school, why is interacting with that person, as
11 unpleasant as that might be and maybe scary, why is that
12 not a risk of her particular job as she's defined it?

13 MR. LUKASZEWSKI: I think to a point it is. And
14 then I think there are extreme examples and this is the
15 extreme example. I think if a counselor appears before a
16 judge a certain amount of times and may - - - maybe they
17 have to be escorted out - - -

18 JUDGE CANNATARO: That - - - that's - - -

19 MR. LUKASZEWSKI: - - - the time they start
20 charging to the bench and saying you have my wallet, you
21 have my keys, you have my cell phone, I want to see you, I
22 know - - - you - - - we all have now homes that we own, we
23 have families. Everything that she listed that went
24 through her mind, this is now beyond my job; this is about
25 me.

1 JUDGE CANNATARO: Counsel, can we talk about that
2 evidence just a little bit? Because I think in this
3 incident, the - - - the last one anyway, there was no
4 personal interaction between them - - - was - - - she was
5 in a different location and - - - and he was trying to get
6 through school security?

7 MR. LUKASZEWSKI: He was demanding to see her,
8 insisting in a violent and aggressive manner - - -

9 CHIEF JUDGE WILSON: So did she hear any of that?

10 MR. LUKASZEWSKI: Yes. She - - -

11 CHIEF JUDGE WILSON: Does the - - - she heard it?

12 MR. LUKASZEWSKI: - - - she was just feet away.
13 It was almost as if Your Honors were behind that door and
14 the individual was trying to get through that door, knowing
15 where she was. That's the point of the employment aspect
16 of this. As a principal, she has to report to school every
17 day. She has to leave school every day. She has to go to
18 the parking lot where her car is every day. If there's a
19 disturbance, she will have to go there.

20 JUDGE CANNATARO: Do you think - - - do you think
21 this record establishes that he actually intended to do
22 some injury to her?

23 MR. LUKASZEWSKI: I think the New York City
24 Criminal Court has verified how much of a danger that he
25 was found to be to her. The order of protection shows that

1 this isn't us hypothesizing. This is a criminal court
2 judge agreeing that these facts with this individual, it is
3 a personalized danger, hence the order of protection, which
4 was in the record, which was known about.

5 I mean, this person has gone through - - - we've
6 talked about this - - - many stressful occurrences. This
7 Retirement System medical board very rarely will find an
8 event that happens in the workplace to create a permanent
9 psychological disability. Both of those things happened on
10 this day, in this time, and then the New York Criminal
11 Court said we agree this person is such a danger to you.
12 I'm just hoping that the court will see that there are
13 events - - - there are purposeful acts, that can go above
14 and beyond what someone's expected to endure in their job
15 duties. We think this fits that criteria.

16 We also, again, would just like to remind the
17 court that this is not, "if purposeful acts" within the
18 scope of job duties that are so heinous and so extreme.
19 Thankfully, they don't happen all the time but they do
20 happen. The Retirement Systems are not going to go broke.
21 This will be protecting the few, not hurting the many.
22 When this does happen - - - when the scenarios that I put
23 in the hypotheticals in my paper do happen people who enter
24 civil service, whether it be a nurse, a parks worker, a
25 court officer, a police officer, the few who have the

1 misfortune of being permanent disabled for life, should
2 gain the benefit of these pensions. And again, if it's not
3 an accident, if someone has under ten years, there's
4 nothing. They get their contributions back, they go about
5 their life with their contributions, with a permanent
6 disability; they could be thirty years old; they could be
7 twenty-five years old. If these acts are not deemed to be
8 accidents, it is going to leave the very few out there who
9 are very unfortunate in their job duties, that the extreme,
10 if it happens to them, it's going to leave them destitute.

11 Come back on rebuttal?

12 MS. ZALEON: Good afternoon, Your Honors. May it
13 please the court? Janet Zaleon for TRS.

14 Mr. A., the school - - - the former school food
15 service worker, wanted to see the principal. He always, in
16 all these incidents, wanted to see the principal. He
17 thought she could get his job back. He was wrong. She
18 doesn't hire these people. But since she is the principal,
19 she's the point person that people are often going to look
20 to when they have a dispute about something in the school.
21 And in addition, as she herself - - -

22 JUDGE TROUTMAN: So are you arguing that it was,
23 in fact, a part of her job to respond to his complaints and
24 interact with people even though they may, in fact, be
25 disgruntled?

1 MS. ZALEON: That is in fact what the - - - what
2 the position involves. And remember, this is a bargained-
3 for position. She did not remain a rank-and-file teacher.
4 She wanted to be the point person to, as she says, to
5 secure safety in this building and to deal with
6 emergencies. So - - -

7 JUDGE TROUTMAN: What about the argument that
8 there may be behavior that gets to such a level she
9 shouldn't have to deal with that?

10 MS. ZALEON: Well, first of all, as I think you
11 noted in the questioning that was - - - that was brought
12 up, she didn't hear this particular remark. It was
13 reported to her later by a school safety officer. But what
14 she would - - - because she was behind the lunchroom doors,
15 she is not in his presence. And we don't know what he
16 meant. Because there was this incident - - - instance that
17 - - - where he came and also - - - he cleaned out his
18 locker. We don't know if he lost that property and he
19 wants - - - and he - - - and he mistakenly thinks - - -

20 JUDGE CANNATARO: Counsel - - -

21 MS. ZALEON: - - - she has it.

22 JUDGE CANNATARO: - - - I know we've gone down
23 the second part of the path, the scope of employment. But
24 where do you stand on the rule that was applied by the
25 Appellate Division? The purposeful conduct rule.

1 MS. ZALEON: Well, the Appellate Division said
2 two things. As in prior cases from the First Department,
3 it said that purposeful conduct doesn't constitute an
4 accident and it also quoted this court's definition in
5 Kelly, that a precipitating event that is not - - - that is
6 not in the risks of the job would be an accident.

7 So as in - - - in the cases in Walsh, for
8 instance, where the court said we don't need to employ a -
9 - - to decide here whether in some instance a third-party's
10 intentional conduct might be an accident. This court
11 doesn't need to do that here and this court doesn't need to
12 set out a bright line rule in either direction with regard
13 to - - -

14 JUDGE RIVERA: So you're saying we should keep
15 the question open?

16 MS. ZALEON: Well, you certainly should keep the
17 question open here whether intentional conduct could ever,
18 in some circumstances, become - - - because - - - be an
19 accident? Because I think, it may have been Judge Wilson
20 with the - - - and were saying - - - or Judge Garcia, that
21 - - - that in this case, if the petitioner won the
22 proposition that intentional conduct could ever be an
23 accident, it would be lost on the actual facts here, where
24 there is no - - - where it is not.

25 JUDGE CANNATARO: Well, that - - - that gets me

1 to another question about the actual facts. There was - -
 2 - because there was an application of the purposeful
 3 conduct rule, both at - - - at the board or at the agency
 4 level, as well as at the Appellate Division, there's never
 5 really been a finding about those other factors that we
 6 look to to determine whether or not it was an accident. So
 7 are we to now search the record ourselves and draw our own
 8 conclusions about whether this was accidental or not?

9 MS. ZALEON: Well, first of all, there is the - -
 10 - the source in the record is her own admission that both
 11 by her own statements in her application for benefits where
 12 she says that her duties were to secure safety in the
 13 school and deal with emergencies. And also in the course
 14 of conduct of all of the work that she did in response to
 15 the various incidents, like filing occurrence reports, and
 16 - - -

17 CHIEF JUDGE WILSON: That's back to the scope of
 18 work. That's - - -

19 MS. ZALEON: Right. It's - - -

20 CHIEF JUDGE WILSON: - - - not whether - - -

21 MS. ZALEON: - - - it's in the scope of work.

22 CHIEF JUDGE WILSON: - - - that's not on whether
 23 this is an accident or not.

24 MS. ZALEON: Right.

25 CHIEF JUDGE WILSON: And Judge Cannataro, I



1 think, was asking you about whether this is an accident or
2 not?

3 MS. ZALEON: Well, what I'm saying is, it's not
4 necessarily - - - not necessary to search the record in
5 terms of what the - - - what the basis for finding that - -
6 - of this court's full definition of what an accident is.
7 And in fact, in the Walsh case, this court - - -

8 JUDGE CANNATARO: No, no. But Counsel, my
9 concern is, no one below has said this was an accident or
10 this wasn't an accident because of the application of the
11 rule that effectively says it can't be an accident because
12 it was purposeful conduct. Which - - - you know, we - - -
13 as - - - as the Chief said, we may very well disagree with
14 that proposition.

15 MS. ZALEON: But the - - - but the determination
16 under review is whether it - - - it falls within the
17 meaning of an accident. And when you want to apply that
18 definition, you apply the definition that this court has
19 developed through case law.

20 JUDGE GARCIA: So the question - - -

21 JUDGE SINGAS: And is that because we're bound by
22 what the medical board decided below? The parameters of
23 the medical board, are we bound by those?

24 MS. ZALEON: We're not bound - - - you're not
25 bound by it in the sense that they didn't render a case law

1 definition - - - because they're not lawyers - - - of - - -
2 of exactly what the elements of the problem with - - - with
3 it being an accident with purposeful conduct here. What
4 the - - - because even if you wanted to say that purposeful
5 conduct might in some circumstances qualify, it would not
6 under the test here. Because the test was the same record
7 that is before - - - that was before the medical board. If
8 the court - - -

9 JUDGE GARCIA: So I think, if I could cut to it?
10 If we don't agree with the standard that was applied below,
11 we can make our own determination applying the correct - -
12 - what we view as the correct standard?

13 MS. ZALEON: Yes. And in fact, in the Walsh
14 case, the court noted that - - - they didn't - - - you
15 didn't reach the intentional conduct prong because the
16 court said that it was the - - - obviously, this personal
17 assault was not within the scope of employment. That
18 actually was not the ground that was discussed below. That
19 was a ground that was - - - that the medical board in that
20 case and the - - - and the courts below, have said that it
21 wasn't - - - that purposeful conduct doesn't qualify.

22 JUDGE GARCIA: Counsel, just a factual question
23 raised by your adversary. My understanding here was that
24 this person was awarded ordinary disability benefits.

25 MS. ZALEON: Correct.



1 JUDGE GARCIA: This isn't a case where there's
2 less than ten years and they don't have any recovery?

3 MS. ZALEON: Correct. The - - - the ten years is
4 not relevant here. It - - - there may be a fact-pattern in
5 some - - - sometime where the person - - - you know, the
6 petitioner in such a case would be left without a remedy
7 and this court may - - - may then address it. But it is
8 not at issue here. In this case - - -

9 JUDGE TROUTMAN: It is just that one benefit is
10 more generous than the other?

11 MS. ZALEON: One benefit is more generous than
12 the other. But since this - - - there has to be a
13 standard, and this court has developed one over the years
14 that it has to be an act of - - - an event not within the
15 risks of the job. This is definitely within the risks of
16 the job.

17 Does the court have any further questions?

18 Thank you, Your Honors. We'll ask that you
19 affirm.

20 CHIEF JUDGE WILSON: Thank you.

21 MR. LUKASZEWSKI: Your Honors - - -

22 JUDGE HALLIGAN: Can I just ask you a factual
23 question?

24 MR. LUKASZEWSKI: Sure.

25 JUDGE HALLIGAN: It looks to me from the record

1 that I see your client's characterization of the incident
2 on the day in question, the one you referred to, as the
3 last one; at page 41 and 147. Is there any other place - -
4 - which is her letter and also her contemporaneous
5 statement at the time. Is there any other place I should
6 look for to see how she describes it, other than those two
7 documents?

8 MR. LUKASZEWSKI: No, Your Honor. She also
9 discusses it during the medical board exams. But those are
10 synopsis that we would refer to.

11 JUDGE HALLIGAN: Thank you.

12 MR. LUKASZEWSKI: Your Honors, the TRS chooses to
13 allow their medical board to make the accident-incident
14 determinations. We were given the explanation. It's
15 unlike the fire department which has a board of trustees,
16 the New York City Employees Retirement System, the NYPD
17 pension fund. They can't now hide behind that we didn't
18 cite case law because we're not attorneys. They - - - this
19 is their handling process. They allow the medical board to
20 set forth the reason for denial. Their reason for denial
21 was that this was purposeful conduct. The Supreme Court
22 then referenced assault and harassment cases. The
23 Appellate Division then said purposeful conduct.

24 JUDGE CANNATARO: So I'll ask you the same
25 question I asked your adversary. What are we to do if - -

1 - if we take purposeful conduct out of the equation? We
2 hold that sometimes purposeful acts can be accidental.
3 Where do we go from there with the record as it stands?

4 MR. LUKASZEWSKI: Then this court would have the
5 authority to decide if, with the purposeful conduct being
6 included in the accident statute, does this fit the
7 accidental criteria? And I think our arguments which were
8 discussed at length in my initial presentation and which I
9 think in the dissent in Walsh and in my examples, I hope
10 had been brought to light that there are extreme examples.
11 Where people who enter civil service - - - which gives you
12 a glass ceiling on your earnings; which gives you certain
13 restrictions on what you can and can't do; which means
14 you're contributing to a pension fund and not putting that
15 money somewhere else. In these extreme examples they're
16 looking to be protected - - - whether it be an EMT, whether
17 it be a nurse, whether it be a - - - someone who cleans the
18 benches, civil service workers, municipal workers are
19 looking to be protected by these pension laws.

20 If these purposeful events aren't accidents, if
21 these extreme events aren't accidents, then the unfortunate
22 few who are left forever disabled by them are going to have
23 their financial futures destroyed also.

24 We think that they should be protected. We don't
25 think is going to open any type of floodgate, and we hope

1 the court will agree.

2 CHIEF JUDGE WILSON: Thank you.

3 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Rawlins v. Teachers' Retirement System, No. 47 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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