How NY Appeals Ruling Alters Employers' Sex Abuse Liability

By **Lee Siegel and Evan Gestwick** (July 22, 2025)

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A recent decision by New York state's highest court clarified a key legal standard in sexual abuse cases involving employer liability.

On April 17, the Court of Appeals handed down Nellenback v. Madison County, arguably resetting the evidentiary threshold in sexual abuse cases.[1]

The court ruled that in order to hold an employer responsible for an employee's abusive actions, there must be proof that the employer had actual or constructive knowledge of the employee's dangerous propensity to commit sexual abuse.

This holding counters recent lower court decisions that shifted the constructive notice paradigm in sexual abuse cases, which had allowed evidence of the length of the undiscovered abuse to substitute as notice of a dangerous propensity.

Prior to the enactment of New York's Child Victims Act, or CVA, in 2019 and the Adult Survivors Act in 2022, establishing constructive notice required a showing that an employer knew of facts evidencing an employee's propensity for abuse.

Perhaps given the inaccessibility of evidence that is unique to revived actions or the sheer number of claims, this evidentiary requirement was eroded by various rulings.

Case Background

In Nellenback, the plaintiff was placed in the custody of the county's department of social services, and was assigned a caseworker who was responsible for transporting him and tracking his progress.

The plaintiff alleged that the caseworker sexually abused him on a regular basis over a three-year span. He brought suit against the county under the CVA, alleging that it was negligent in its hiring, supervision and retention of the caseworker.

The county moved for summary judgment, arguing that the plaintiff lacked proof that the county failed to properly hire, train, supervise or direct the caseworker.

In opposition, the plaintiff argued that if the caseworker's supervisor reviewed the case notes more frequently, she would have recognized the paucity of such notes, which would have raised a red flag leading to an inference of untoward behavior.

The plaintiff also introduced the testimony of a caseworker from a different county, asserting that Madison County had a reputation for having a "lax" supervisory structure and "slack recruitment and hiring standards."

In a 6-1 ruling, the court affirmed summary judgment for the county, holding that the plaintiff's claims were

too speculative to sustain a negligent supervision claim.

Significantly, the court made clear that a party cannot avoid summary judgment of a negligent supervision claim "without evidence showing any prior conduct, warnings, or signs of risk to that effect."[2]

Despite the alleged three-year length of abuse, the court found that there was no evidence that the county "was aware of facts from which it should have known of [the caseworker's] dangerous propensity."[3]

In a silent rebuke to the lower courts, the majority wrote, "we have never held that a party can prove negligent supervision by stating the employer 'should have known' an employee was likely to engage in dangerous conduct without evidence showing any prior conduct, warnings, or signs of risk to that effect."[4]

Even before the CVA shined a spotlight on sexual abuse claims, it was understood that an employer could be held liable for injuries that were proximately caused by its negligent supervision, hiring or retention of employees, but only if the employer had notice of the employee's dangerous propensity.[5]

Other Rulings

Moore Charitable Foundation v. PJT Partners Inc.

The Nellenback court relied on the New York Court of Appeals' 2023 decision in Moore Charitable Foundation v. PJT Partners Inc., which concerned an employee's financial fraud, for the proposition that "when an employer has notice of its employee's propensity to engage in tortious conduct, yet retains and fails to reasonably supervise such employee, the employer may become liable for injuries thereafter proximately caused by its negligent supervision and retention."[6]

In Moore, the Court of Appeals wrote, "[w]here the negligence claim relates to an employer's retention and supervision of an employee, the complaint must include allegations that: (1) the employer had actual or constructive knowledge of the employee's propensity for the sort of behavior which caused the injured party's harm."[7]

The Nellenback court referred to the Moore standard — that an employer was deemed to have constructive notice of an employee's dangerous propensity if it had reason to know of the facts or events evidencing such propensity — which was in place before the CVA.[8]

Dia CC. v. Ithaca City School District

As noted by the Supreme Court of the State of New York, Appellate Division, Third Department, which is the state's intermediate appellate court, in Dia CC. v. Ithaca City School District in 2003, plaintiffs "generally must demonstrate the school's prior knowledge or notice of the individual's propensity or likelihood to engage in such conduct, so that the individual's acts could be anticipated or were foreseeable."[9]

This requirement fairly balanced the right of the victim with that of the employer. However, in the spate of litigation brought on by the CVA, some New York appellate courts lowered the evidentiary threshold for victims to establish institutional liability, effectively eliminating the propensity requirement.

MCVAWCD-DOE v. Columbus Avenue Elementary School

Last year, for example, the Appellate Division, Second Department, reinstated dismissed claims against a school district in the absence of propensity evidence in MCVAWCD-DOE v. Columbus Avenue Elementary School.[10]

The court found that the length of the alleged abuse was evidence of negligent supervision of the teacher.

There, the Second Department wrote, "[i]n particular, given the frequency of the alleged abuse, which occurred over a three-year period, and always occurred inside the same classroom during the school day, the defendants did not eliminate triable issues of fact as to whether they should have known of the abuse."[11]

The Appellate Division ignored the Court of Appeals' requirement that the claimant must establish actual or constructive notice of a dangerous propensity.[12]

Following this decision and similar ones, summary judgment motions were denied or reversed, often based only on the length of the claimed abuse.

Sayegh v. City of Yonkers

Last year, another Second Department panel affirmed the denial of summary judgment in Sayegh v. City of Yonkers.[13]

Quoting prior precedent, it found that "'[i]n particular, given the frequency of the alleged abuse, which occurred over' the entirety of a school year, 'and always occurred inside the same classroom during the school day, the defendants did not eliminate triable issues of fact as to whether they should have known of the abuse.'"[14]

The same court reached that result again this year in Sallustio v. Southern Westchester Board of Cooperative Educational Services.[15]

R.A. v. Bay Shore Union Free School District

New York's Supreme Court, its trial level court of general jurisdiction, parroted these appellate decisions last year in R.A. v. Bay Shore Union Free School District.

It concluded that "[g]iven the frequency of the alleged abuse, together with the span of time over which it occurred, the District failed to eliminate triable issues of fact as to whether it knew or should have known of the abuse."[16]

Implications

New York courts had effectively eliminated the requirement that a sexual abuse victim establish prima facie evidence of the employer's reason to know of the abuser's dangerous propensity.

By applying the circular logic that the length of the undiscovered abuse was competent evidence of the employer's knowledge of the abuser's dangerous propensity, the courts removed this long-standing element of the tort.

These rulings distorted the previous balance, unfairly favoring victims over employers that often had no basis to know of, or prevent, the abuse. As a result, summary judgment became largely unobtainable.

Even where the plaintiff could unearth no evidence of an employer's actual or constructive knowledge of the abuser's dangerous propensity, testimony of the length of abuse became a substitute for such evidence.

This caused a sharp decrease in summary judgment rulings, leading to increased defense expenditures and, more significantly, higher costs of settlement, as trials loomed.

But perhaps the balance has now been restored.

Unlike the lower court rulings discussed above, in Nellenback, the three-year period of undiscovered sexual abuse was not competent evidence to defeat summary judgment for the employer in the absence of propensity evidence.

According to the court in Nellenback, there was no evidence "that the County had any knowledge of [the caseworker's] abuse before the report of his abuse of another child in 1996."[17]

Accordingly, the court affirmed and dismissed the plaintiff's claims. In the process, it reminded lower courts of the unfairness in holding school districts, foster care agencies and other employers liable for sexual abuse where they had no reason to know of an employee's dangerous propensity so they could prevent the abuse.

In sexual abuse cases where actual notice of the abuse by the employer is lacking, plaintiffs must pivot to establishing constructive notice.

Sexual abuse plaintiffs often accomplish this by suggesting that red flags were missed, such as instances in which the plaintiff was with their abuser behind a closed door, driven home by their abuser or attended an off-site event with their abuser.

As Nellenback makes clear, absent evidence that the employer had reason to know of facts evidencing the abuser's propensity to commit sexual abuse, the bar for constructive notice cannot be reached.

This is a stark reproach of lower court decisions, which held, in essence, that the abuse itself, without more, was evidence of notice.

Employer Considerations

This development has serious implications for employers and their insurers. Nellenback returns the requirement of establishing notice of an employee's dangerous propensity to its prior order.

This is key, because no matter how much sympathy we have for the victims, an employer that had no reasonable ability to prevent the tort should not be held responsible for an employee's independent act of sexual abuse.

In Nellenback's wake, sexual abuse plaintiffs will place greater emphasis on establishing an employer's ineffective background check, lack of training in identifying and preventing abuse, and, of course, actual notice of the abuse, among other theories.

In order for employers to protect themselves and those in their charge, employers must continue to perform thorough background checks, preferably through qualified third-party vendors. Further, they should personally talk to prior employers and references, provide training and retraining to their employees in identifying and preventing abuse, and, as always, maintain accurate records.

Employers can mitigate their risk of sexual liability by fostering a culture of safety and accountability, establishing clear reporting procedures, and promptly addressing and reporting allegations to the proper authorities and insurers.

Conclusion

Following Nellenback, sexual abuse plaintiffs in New York will be unable to show that an abuser's employer had constructive notice of the potential for abuse just by the mere fact that the abuse occurred.

This ruling will benefit employers, especially school districts, towns, counties, and other public entities, as well as religious institutions and human service organizations that are often the target of abuse claims.

Correction: A previous version of this article misstated the court's holding and the type of claims involved in Moore Charitable Foundation v. PJT Partners Inc. The error has been corrected.

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[1] Nellenback v. Madison County, 2025 N.Y. Slip. Op. 02263 (N.Y. Ct. App. Apr. 17, 2025).

[2] Id. at *7.

[3] Id. at *9.

[4] Id. (citations omitted).

[5] Id. at *6.

[6] Moore Charitable Found. v. PJT Partners Inc., 40 N.Y.3d 150, 157, 195 N.Y.S.3d 436 (2023).

[7] Id. (citations omitted).

[8] Id.; see also Restatement (Second) of Torts § 317 (1965); Ernest L. v. Charlton Sch., 30 A.D.3d 649, 817 N.Y.S.2d 165 (3d Dept. 2006) (dismissing a pre-CVA claim of sexual abuse against a foster care agency on the basis that it had no reason to know of the alleged abuser's propensity to commit statutory rape); Rodriguez v. United Transport. Co., 246 A.D.2d 178, 677 N.Y.S.2d 130 (1st Dept. 1998) (dismissing complaint due to lack of evidence that employer had prior knowledge that abuser had a propensity for abusing patients).

[9] Dia CC. v. Ithaca City School Dist., 304 A.D.2d 955, 956, 758 N.Y.S.2d 197 (3d Dept. 2003), lv denied 100 N.Y.2d 506, 763 N.Y.S.2d 812 (2003).

[10] MCVAWCD-DOE v. Columbus Ave. Elementary Sch., 225 A.D.3d 845, 847-848, 207 N.Y.S.3d 669 (2d Dept. 2024).

[11] Id.

[12] See Moore, supra.

[13] Sayegh v. City of Yonkers, 228 A.D.3d 690, 692, 213 N.Y.S.3d 129 (2d Dept. 2024).

[14] Id.

[15] Sallustio v. Southern Westchester Bd. of Coop. Educ. Servs., 235 A.D.3d 680, 227 N.Y.S.3d 382 (2d Dept. 2025).

[16] R.A. v. Bay Shore Union Free Sch. Dist., 2024 N.Y. Misc. LEXIS 50423.

[17] Nellenback.