

HON. JAMES A. MANLEY
20th Judicial District Court
Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860
(406) 883-7250

FILED Ag. 30 2018
Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY T. Luck
DEPUTY

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

Cause No. DV-16-84

ALEX NUNEZ and HOLLY McGOWAN,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YOUR, INC.;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA, INC.;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES and THOMPSON
FALLS CONGREGATION OF JEHOVAH'S
WITNESSES,

Defendants.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.; CHRISTIAN
CONGREGATION OF JEHOVAH'S
WITNESSES and THOMPSON FALLS
CONGREGATION OF JEHOVAH'S
WITNESSES,

Third-Party Plaintiffs,

vs.

MAXIMO NAVA REYES, MARCO NUNEZ,
IVY MCGOWAN-CASTLEBERRY,

Third-Party Defendant.

**ORDER GRANTING PLAINTIFF ALEXIS
NUNEZ'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANTS' FOURTH AFFIRMATIVE
DEFENSE AND CROSS MOTION FOR
SUMMARY JUDGMENT AS TO
FORESEEABILITY OF MAX REYES'S
ABUSE**

ORDER

Plaintiff Alexis Nunez's *Motion for Partial Summary Judgment as to Defendants' Fourth Affirmative Defense and Cross Motion for Summary Judgment as to Foreseeability of Max Reyes's Abuse* is **GRANTED**.

RATIONALE

Plaintiff moved for partial summary judgment on foreseeability as it relates to causation and alleged supervening intervening event.

At least as it relates to the negligence per se claim, this is not a recognized legal defense.

The advancement of tort law in Montana indicates that foreseeability is an issue or element in determining duty and breach, not causation.

With regard to causation, the modern test is in the alternative. If there is a single cause, it is a simple but-for analysis. Where, as here, there are multiple causes, the test is whether the breach of this duty was a significant contributing factor in causing Plaintiffs' injuries. Such multiple causes must be based on tortious conduct.

Where a statute creates a duty, there can still be an issue in determining breach (or sometimes discussed in the context of causation) due to an unforeseen intervening event. This can have the effect of severing the chain of events for causal determination. This is discussed thoroughly in *Prindel v. Ravalli County*, 2006 MT 62, ¶¶ 38-45, 331 Mont. 338, 133 P.3d 165.

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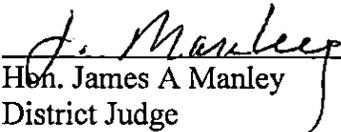
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ORDER GRANTING PLAINTIFF ALEXIS NUNEZ'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE AND CROSS MOTION FOR SUMMARY JUDGMENT AS TO FORESEEABILITY OF MAX REYES'S ABUSE

In this case the statute created a duty and negligence per se is established by the five factors set out in paragraph 27, *Prindel*, supra. The plaintiffs were members of the class sought to be protected by the statute, and the perpetrators and harm were exactly what was sought to be protected against. Foreseeability is thereby established by the statute.

IT IS SO ORDERED.

DATED this 30th day of August, 2018.



Hon. James A Manley
District Judge

cc: **James P. Molloy**, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen
D. Neil Smith, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen
Kathleen L. DeSotto / Tessa A. Keller, Co-Counsel for Defendant and Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, and Thompson Falls Congregation of Jehovah's Witnesses
Joel M. Taylor, Co-Counsel for Defendant and Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, and Thompson Falls Congregation of Jehovah's Witnesses
Mathew M. Stevenson / David M. Maldonado, Attorneys for Third-Party Defendant Maximo Nava Reyes
Matthew McKeon, Attorney for Third-Party Defendant Ivy McGowan-Castleberry
08/29/18 SCB

ORDER GRANTING PLAINTIFF ALEXIS NUNEZ'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE AND CROSS MOTION FOR SUMMARY JUDGMENT AS TO FORESEEABILITY OF MAX REYES'S ABUSE