

In defense of negligence



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In Defense of Negligence Crystal J. Bolden Professor Nekia S. Hackworth

Elmo Puppeteer Sued over Sexual Allegations November 28, 2012 Relevant Facts in the case of Kevin Clash 1 According to New York Daily News, November 2012 the voice behind the little red furry friend Elmo from " Sesame Street" is being sued by three different accusers for inappropriate sexual conduct towards under aged kids. The first accuser came fourth stating that he had sexual relations with Kevin Clash seven years ago when he was only 16 years of age, shortly after that another male by the name of Cecil Singleton has stepped forward stating he had phone sex with Kevin Clash in 1993 when he was only 15 years of age. The Baltimore Sun, November 2012, reports that a third victim has come forward stating that he too has had sexual rela- tions with Kevin Clash the voice of Elmo while under aged. The most recent accuser wishes to remain anonymous is being identified as " D. O. " states he spoke with Clash on a gay telephone chat line and several days later met up with the defendant in a New York apartment, where he was served alcoholic beverages and then seduce by Clash in a room full of stuffed puppets. The Baltimore Sun states that this is the third allegation in a two week time period. The third accuser stated he only came forward in hopes of supporting the first two accusers statements who were being challenged. Based on a recent statement made by Michael Berger who is the attorney of Kevin Clash the latest allegation is being denied and Clash's reputation will strongly be defended. According to the Baltimore Sun the third accuser who they call D. O lived in Florida and had made several visits to Clash's apartment as an adult during the years of 2003 and 2004. Clash's attorney states that " the suit, which charges that Clash " trolled gay telephone chat line rooms to meet and have sex with under aged boys,

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seeks unspecified damages. " According to ABC news, the first accuser has come forth after causing two charges against Clash, now states he wants to withdraw his statement that he had sexual relations with Kevin Clash as a minor but instead as a consenting adult. The second accuser Cecil Singletary is suing Clash for \$5 million. 2. During all of this Kevin Clash has since resigned from his job as the voice of Elmo, stating the controversy surrounding his personal and private life has played a huge impact on his career making it difficult for him to perform his job duties and states he needs to focus on this matter in private. (www. abcnews. go. com). Four Elements of Negligence There are four main elements of negligence when it comes to pertaining to law. The first element that is normally recognized is the Duty of Care. In the cases surrounding the puppeteer Kevin Clash, I would say it is somewhat difficult to determine whether the defendant in these cases are liable for any negligence without reviewing the facts that the defendant had a big influence on a huge scale of fans which in this case are the children that admired and learned much from the furry little friend Mr. Clash portrayed so well. I suppose one would have to examine the civil liability act and the relevance of the case in this particular matter considering the facts, in my eyes it is a public wrong if these accusations are true. Kevin Clash has specific duties to entertain and teach, as well as, heighten supervision of any high risk activities. The cases against Clash indicates negligence on his behalf because he may have allowed the character of his job to influence the children to become victim of circumstances, additionally, Clash actions may have placed PBS, Sesame Street under risk of negligence because Clash should not be with 500 feet of any children and some judges even order sex offenders not to work around

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any children. (<https://records.txdps.state.tx.us>). The Civil Liability Act would be very difficult to prove if facts aren't examined carefully. The defendant actions has placed the company under great scrutiny causing many to have a concern of a sex offender working around children. The Second element of negligence is Breach of Duty which comes with the failure to Cont' 3. exercise care and must be proven. In cases of negligence individuals fail to exercise reasonable standard of care. (G & C, The Paralegal Professional). In the case of Kevin Clash, he failed to exercise reasonable care to protect the children from physical or mental harm. He interacted with children inappropriately by engaging in sexual relationships and phone chats and providing a minor with alcoholic beverages. The allegations against Clash states he was involved with underage males. He selfishly placed himself in a position where he would be around children with the knowledge that he had an ill desire. I do feel that if he had not resigned from the company than his personal matters would have caused even more harm to the reputation of Sesame Street and causing the company to lose millions of dollars and the company forced to shut down. (www.baltimoresun.com).

The writer and author of The Paralegal Professional states that Injury to Plaintiff must result in some type of injury. It has taken the plaintiff in these cases several years to come forward with their accusations against the defendant, some may even feel as though the Statue of limitations should have played a role in the cases; nevertheless, the plaintiff would have to prove that they have been mentally or physically abused by acts of Kevin Clash in order for this unintentional tort to be violated. (G & C, The Paralegal Professional). The injury does not have to be physical, however, it must be proven. The last but not the least of the four elements is Causation, which <https://assignbuster.com/in-defense-of-negligence/>

consist of two parts causation in fact and proximate cause. In the cause of fact if the plaintiff has stated that he has taken an interest in minor boys on a sexual level due to the sexual acts that were done to him as a child than the defendant is not liable, however, if the plaintiff states he is having trouble mentally functioning and is seeing a psychologist because of his sexual encounter he experienced as a child he may have the element of causation in fact to support his case. It is said that in the cause of fact many times unrelated incidence may be brought into play because the element is so broad. Cont' 4. (<http://injury-law, freeadvise. com>). The proximate cause element is one that must be proven in a negligent case, in regards to whether there is a connection between the breach of duty by the puppeteer Kevin Clash (defendant) and the three accusers (plaintiff's) in the case Clash failed to exercise reasonable care (element 2) as a result the breach of duty resulted to the mental state of the three accusers. The element referred to as proximate is one that does not hold the defendant liable for all damages. In the element of proximate it must be proven that the negligence is one that is foreseeable. That is, were the mental states of these males anticipated by the acts of Kevin Clash? If the injuries were foreseen would they have been prevented had Kevin Clash exercised a reasonable standard of care? These questions and many others would be considered in a court of law to establish if the injury of the plaintiff was a natural act or probable cause behind the wrongful behavior of the defendant Kevin Clash. (<http://injury-law, freeadvise. com>). Negligence in this case will not be successful if it can be proven that the accusers (plaintiff) in these cases were grown men at the time of their relationship with the Defendant Kevin Clash. Negligence Defense While providing the defendant Kevin Clash with an <https://assignbuster.com/in-defense-of-negligence/>

appropriate defense I would hope that the consideration of defamation of character against the defendant was being displayed. The allegations of the first plaintiff has caused much controversy surrounding Mr. Clash and his career as the voice of Elmo. The plaintiff has decided shortly after exposing Mr. Clash to such allegations that he did not have sexual relations with the defendant while he was a minor and has recanted his statement indicating the relationship occurred while they were consenting adults. (www.baltimoresun.com). The third plaintiff states he only came forward in support of the first two plaintiffs because he felt his statement would have some barring because he too was involved in a sexual encounter with the defendant, however, his allegations are being considered cont' 5. questionable at this time because he would not have come forward if the cases had not been introduced to the public. The second plaintiff is suing for more than \$5 million dollars in damages only to come forward once the allegations hit the news and the third individual had stated he wanted to be named Mr. D. O. to hide his identity. He also states that he met the defendant on a gay chat line were minor would not be prohibited to use. It would behoove a person when filing such a law suit to be prepared to disclose such information. The plaintiff has showed no interest to file for damages until now. These plaintiffs has shown no evidence of being a character witness in these allegations and has appeared to damage the career and personal reputation of the defendant. Proceeding of the Lawsuit by the Plaintiff Based on the tort of law if the evidence against the defendant is true I would strongly suggest that the plaintiff proceed with the lawsuit, as mention in an early portion of my paper having sex with an underage individual is against the law and can be labeled one of the most heinous

crimes there is. The inappropriate actions of this case not only carries prison time but in many times it comes with a monetary penalty. If a teenager feels as though they have been sexually violated than it is to the best interest of the teenager to report the incident, Although, most victims do not get the courage to come fourth until many others have been victimized. An individual who prey on young children have an illness and that illness needs to be identified and dealt with immediately. If there is a sex predator running around and has not been given the proper treatment needed or hasn't been identified and made to answer for the crime that he has committed will simply leave room for another victim later on. In the case involving Kevin Clash it is unfortunate that these individuals would wait for the defendant to arrive at the height of his career to pursue damages that they say occurred to them years ago, nevertheless, whether this is a cold case or a new case no parent wants to think about their child being sexually taken cont' 6. advantage of and victims of these cases often go on secretly living with torture and shame, while the predator remains having access to innocent and other vulnerable children. Some of these innocent children may be children of their own or other family members. Many people who have this illness have managed to go on living a normal life having no remorse or sympathy for what they have done. If these predators are caught, they are sure to try and talk the individual out from turning them in to the police. It is said that eighty percent of people who have this illness are males and the remaining twenty percent are women. Statistics say over 87 percent of the people who have been identified as a child sexual abusers or child molesters have also been involved with pornography. www.

childmolestationvictim/statistics. com It is also reported that only 35 percent

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of child molestation or sexual abuse is reported and 65 percent of the cases have gone unreported, other facts have reported that sex offense cases involving kids under 18 is one of the fastest growing crimes in the U. S today. It is also been reported that in a ten year period it has increased over more than 322 percent. With all of the facts that have been presented in the research of this serious offense I would hope that Clash is proven innocent. ([www. childmolestationvictim/statistics. com](http://www.childmolestationvictim/statistics.com)). I would hate to think that an individual that has been around children of all ages for over 25 years has an illness that could have affected so many of our vulnerable children. The victims in this case appear to have successful careers and I feel that they have done well in living their lives mentally, however, if these allegations are true I am sorry that it has taken so long for them to come forth and hope that they would be able to proceed with the case; furthermore, there is definitely a negligence when it comes to duty of care. It is sad to think that a man of such prestige and a daughter of his own would be able to stoop so low but there are tough penalties in place that protect children from child molesters and sexual abusers and I certainly hope that justice is served. References Baltimoresun. com (Nov 2012) Goldman & Cheeseman (2011), The Paralegal Professionals <http://injury-law>, [freeadvise. com](http://freeadvise.com) [http://records. txdps. sae. tx. us](http://records.txdps.sae.tx.us) New York Daily News, (Nov 2012) [www. childmolestationvictim/statistics. com](http://www.childmolestationvictim/statistics.com)