2026 IL App (2d) 250326-U
No. 2-25-0326
Order filed November 3, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAMES DOE, a Minor by his Mother and Next Friend, JENNIFER DOE, and JENNIFER DOE, Individually, Plaintiffs-Appellants,

v.

COMMUNITY UNIT SCHOOL DISTRICT 300, and LINDSAY SHARP, Defendants-Appellees,

(Carlos Bedoya, Defendant).

Appeal from the Circuit Court of Kane County.
Honorable Kevin T. Busch, Judge, Presiding.
No. 18-L-312

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in granting defendant's motion for summary judgment where factual questions remained as to whether defendants' conduct rose to the level of willful and wanton negligence; trial court abused its discretion in not allowing plaintiffs to amend complaint where amendment would not prejudice defendants.

¶ 2 Plaintiff, Jennifer Doe, filed a complaint against Community Unit School District 300 and Golfview Elementary Principal Lindsay Sharp (collectively the District defendants) alleging that her son, plaintiff James Doe, was sexually abused because of the District defendants' willful and

wanton supervision of its employee, defendant Carlos Bedoya. The circuit court of Kane County granted the District defendants summary judgment on plaintiffs' complaint. The trial court also denied plaintiffs' motion to file an amended complaint. Plaintiffs appeal. We vacate in part, reverse in part, and remand for additional proceedings.

¶ 3 I. BACKGROUND

¶ 4 From 2015 to 2017, while James Doe was in second and third grade at Golfview Elementary School (Golfview) in Carpentersville, he was allegedly sexually abused by Bedoya. Bedoya was employed by District 300 at Golfview as a teacher's aide and substitute teacher. During that time, he allegedly abused numerous boys who were in kindergarten to third grade. Bedoya was convicted of eight counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2020)) and sentenced to a total of 112 years' imprisonment. *People v. Bedoya*, 2021 IL App (2d) 191127, ¶ 1. Bedoya's conviction was based on his assault of a child other than James Doe. Bedoya later pled guilty to sexually abusing 12 other children, including James Doe, and was sentenced to an additional 60 years' imprisonment.

¶ 5 On June 6, 2018, plaintiffs filed a complaint against the District defendants and Bedoya.[1] As relevant to this appeal, plaintiff ultimately filed a four-count fourth amended complaint on November 23, 2020. Counts I and II were against the District defendants and alleged willful and wanton supervision. Count III alleged sexual battery against Bedoya. Count IV alleged a family expense act claim against all defendants. (Neither count III nor count IV is at issue on appeal).

[1]Plaintiffs' complaint was initially consolidated, for discovery purposes, with several other cases filed against defendants arising from Bedoya's abuse of children at Golfview. After fact discovery was completed, the trial court severed the cases for trial and also severed plaintiffs' claims against the Boys & Girls Club.

¶ 6 In Counts I and II of the complaint, plaintiffs alleged that the District defendants willfully and wantonly failed to properly supervise Bedoya and monitor his interactions with children. The complaint asserted that Bedoya was involved with numerous incidents that should have put the District defendants on notice that Bedoya was inappropriately seeking out and creating opportunities for him to be alone with children. The complaint alleged that those incidents should have been reported to the Illinois Department of Children & Family Services (DCFS) for an investigation. Such an investigation would have prevented Bedoya from being alone around children.

¶ 7 In response, defendants raised five affirmative defenses, three of them related to the Illinois Tort Immunity Act: (1) discretionary immunity (745 ILCS 10/2-201 (West 2016)); (2) immunity for failing to enforce a law (*id.* § 10/2-103); and (3) immunity for acts of a third person (*id.* § 10/2-204). Defendants also raised the defenses that they were not responsible for the intervening acts of a third party nor were they potentially liable for a third party's criminal acts.

¶ 8 On September 10, 2024, defendants filed a motion for summary judgment as to counts I and II of plaintiffs' complaint. In its motion, the District defendants argued that plaintiffs had developed no facts which indicated the District defendants knew of Bedoya's misconduct prior to June 2017 when they were first informed that Bedoya was under investigation.

¶ 9 On September 20, 2024, plaintiffs filed an amended motion for leave to file an amended complaint. Plaintiffs also requested leave to file a late answer to the District defendants' affirmative defenses. On October 15, 2024, the trial court denied plaintiffs leave to file an amended complaint. The trial court did allow plaintiffs leave to file answers to the District defendants' affirmative defenses.

¶ 10 On October 28, 2024, the District defendants filed a motion seeking a protective order to prevent plaintiffs from taking their own expert's deposition. In response, plaintiffs asserted that they needed to depose their own expert to be able to respond to the pending motion for summary judgment. On October 29, 2024, the trial court granted the District defendants' motion. The trial court found that as plaintiffs knew what their expert would say, there was nothing that would prevent them from executing their expert's affidavit.

¶ 11 On November 26, 2024, the plaintiffs filed their response to the motion for summary judgment. Plaintiffs argued that, as they were alleging that the District defendants' supervision of Bedoya was negligent, they did not need to prove that the District defendants had actual knowledge that Bedoya was abusing children. Plaintiffs further argued that the evidence that the District defendants had violated their own operating procedures and policies regarding individuals such as Bedoya being left unsupervised with children demonstrated that they had engaged in willful and wanton conduct.

¶ 12 The District defendants supported its summary judgment motion, and plaintiffs supported its response, with deposition testimony and exhibits. We summarize that testimony and other relevant evidence below.

¶ 13 A. James Doe

¶ 14 Doe testified that he first met Bedoya in first or second grade at the school. Bedoya assisted Doe's regular teacher, Ms. Cano, in helping students learn how to read. Bedoya began sexually abusing him while he was a student in Ms. Cano's class. Bedoya would unzip Doe's pants and touch Doe while he was sitting down and reading. This happened more than 20 times in Ms. Cano's classroom.

¶ 15 B. Beth Ponsot

¶ 16 Ponsot was a teacher at Golfview between 2008 and 2016. She testified that the District had a policy that paraprofessionals, like Bedoya, were never to be alone with one or more children. In the spring of 2015, she, along with Rebecca Hendricksen, observed a group of children at a table in the library who appeared to be without adult supervision. They asked the children what they were doing. The children responded that they were getting help with their homework from their soccer coach. They also stated that he was going to be taking them home. Shortly thereafter, Bedoya walked in. He was wearing neither any soccer gear nor anything that identified him as being part of the Boys & Girls Club. She asked Bedoya what he was doing. He stated that he was there with the Boys & Girls Club. Ponsot and Hendricksen then left to verify this with the Boys & Girls Club supervisor. The supervisor stated that "oh, he's not with us." Ponsot and Hendriksen then went to the principal, Patricia Whitecotton, to report this incident. Whitecotton stated that she would talk to Bedoya.

¶ 17 On another occasion, Bedoya approached her about tutoring students of hers for whom she had not initiated any tutoring programs. She found this to be "strange."

¶ 18 C. Rebecca Hendricksen

¶ 19 Hendricksen was a teacher at the school from 2010 through 2020. She explained that the school had an after-school peer-tutoring program that was conducted between 3:30 and 4:30 p.m., and that Bedoya was involved with that at some point. Because he was a paraeducator, a full-time teacher was required to be present with him during after-hours peer tutoring.

¶ 20 Hendricksen's testimony regarding the "library" incident was consistent with Ponsot's. She explained that if a teacher or staff member saw a paraprofessional alone with students, they were to report that to the principal, which she did.

¶ 21 Hendricksen also testified that she informed Whitecotton that Bedoya was violating District policy by driving students home in his personal vehicle. Whitecotton indicated that she was aware of that.

¶ 22 On another occasion during the 2015-2016 school year, she went to Ashley Farmer's second or third grade to cover the classroom while Farmer attended a meeting. After talking with Farmer in the hallway outside the classroom, she heard loud noises, so she went into the classroom, She observed Bedoya in a chair in the back of the room with a child on his lap, and with other children lined up to do the same. She then reprimanded both Bedoya and the children. She told Bedoya that his conduct was unacceptable because he was not allowed to have children sit on his lap. Bedoya responded "Oh, okay. Okay." Hendriksen did not report this incident to the principal.

¶ 23 Hendriksen further testified that she had observed Bedoya handing out candy, toys, and stickers to students in the hallways. She had not observed anyone else handing out candy or stickers to children in the hallways.

¶ 24 D. Matilde Ramon

¶ 25 Ramon was an attendance and record secretary at the school. On one occasion, she saw Bedoya alone with a student in a small room used for computer equipment and storage. Bedoya was sitting close to the child. She asked him what he was doing there. He stated that he was tutoring a child. She assumed that he was tutoring through the Boys & Girls Club. As such, she immediately reported this to a Boys & Girls Club supervisor. She did not report her observations to the staff or the administration of Golfview.

¶ 26 E. Carlos Bedoya

¶ 27 Bedoya testified that District 300 employed him as a paraprofessional, or teacher's aide, at Golfview for three school years from 2013 to 2016. During the 2016-2017 school year, District 300 employed him as a substitute teacher.

¶ 28 While he worked at Golfview, the Boys & Girls Club operated a tutoring program after school. He was never paid to be a tutor as part of that program. His only relationship with the Boys & Girls Club was that he volunteered as a soccer coach during the summer.

¶ 29 Bedoya acknowledged that the District had a policy in place that prohibited him from remaining at the school after the school day ended. Another policy prohibited him from being left alone with students (either one-on-one or in a group) without a teacher being present. Nonetheless, he would stay after school three times a week to tutor students in math or Spanish. He tutored students in the library, the cafeteria, in teacher Pilar Nieto's office (on at least two occasions), and in a storage room next to the library.

¶ 30 On one occasion, Nieto saw him using her office. He was alone with a student and had the door closed. She asked him if he was going to stay there. After he said "yes," she left.

¶ 31 F. Fredrick Heid

¶ 32 Heid was the superintendent of the District from approximately 2014 through 2021. He testified that "one of [the District's] primary responsibilities is the health, safety and welfare of our students." He stated that all District employees were obligated to follow the Board's policies and administrative procedures. He testified that if a paraprofessional like Bedoya was found alone with a student after hours in a storage room, that should have been reported to the principal and investigated. He further testified that a "storage room would not be an appropriate location for tutoring to take place."

¶ 33 As to the library incident, he testified that if Whitecotton knew that Bedoya was lying about his reason for being in the library, she should have proceeded with some form of investigation and disciplinary action. There also should also have been an investigation about why he was driving students home without written parental permission.

¶ 34 He noted in September 2015, Bedoya was reprimanded by an assistant principal for an inappropriate incident involving multiple children being on top of Bedoya on the preschool playground. He testified that teachers and paraprofessionals were prohibited from giving gifts to students. Pursuant to District policy, if an employee observed a paraprofessional passing out gifts to children, that employee was to report that observation to an administrator.

¶ 35 On cross-examination, Heid testified that defendant's "mere presence" in any particular space with children, including the library, "is not something that, in and of itself, gives rise to a duty to report to DCFS." He also testified that if someone is passing candy out in the hallway to children in the presence of others, and no particular child is being singled out to receive candy, then that would not give rise to a duty to report. In fact, Heid testified that it was "a common practice amongst our staff to incentivize students."

¶ 36 G. Dr. Michael G. Kozak

¶ 37 Dr. Kozak is an assistant clinical professor of educational administration at Drexel University. He has prior experience as a professional educator, a principal, and a superintendent of schools. In an affidavit, he testified that, although the District Defendants were notified by teachers in the school that Bedoya had children alone in secluded areas of the school, they failed to launch a proper investigation, notify the District administrators, and contact DCFS and police. He asserted that the District Defendants failed to adequately discipline Bedoya and instigate proper disciplinary procedures, including job termination, after having actual notice of multiple violations

of school procedures, Board policies, administrative procedures, and state statutes. He also asserted that the District failed to ensure that all District personnel complied with all the District 300 administrative procedures and Board policies.

¶ 38 H. Additional testimony

¶ 39 In support of its motion for summary judgment, the District defendants filed a "statement of undisputed facts." This statement referred to additional deposition testimony and indicated that testimony was based on accompanying exhibits. Those exhibits are not included in the record. For the purposes of our review, we will consider that the alleged testimony would be supported by the missing exhibits.

¶ 40 Patricia Whitecotton testified that she learned from Ponsot that Bedoya was in the library with students after the school day had ended. She went to the library with Nicole Murphy and told Bedoya that he was not allowed to do that as a paraprofessional and asked him to leave. One of the students told Whitecotton that his parents had asked Bedoya to tutor him.

¶ 41 Whitecotton acknowledged that she was aware of Bedoya's time clock violations. She was not aware of any professional boundary violations that he had committed. She had not received any complaints about him. She did not have any experience with Bedoya that gave her any concerns. She noted that he had a reputation of being well-liked by the students.

¶ 42 Nicole Murphy testified that she had filed an incident report regarding Bedoya on the playground. She testified that she was surprised when she learned that Bedoya had committed crimes against children.

¶ 43 Ann McMahon, who worked in the school office, testified that some employees forgot to punch out on a weekly basis. She would constantly send emails because they forgot to punch out. She did not become aware of any allegations against Bedoya until after he was arrested.

¶ 44 Diane Gomez De La Torre testified that everyone was told to punch out. However, there were times that she had forgotten to do so. She also testified that it was common practice within the school for teachers or paraprofessionals to give trinkets or candy to students.

¶ 45 I. Trial Court Rulings

¶ 46 On March 27, 2025, the trial granted the District defendant's motion for summary judgment.[2] The trial court subsequently denied plaintiffs' motion to reconsider and granted defendant's motion for a Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016) finding. Plaintiffs thereafter filed a timely notice of appeal.

¶ 47 II. ANALYSIS

¶ 48 A. Whether a Question of Material Fact Exists

¶ 49 On appeal, plaintiffs contend that whether defendants' failure to supervise Bedoya constituted willful and wanton conduct is a disputed question of fact. As such, plaintiffs argue that the trial court erred in granting summary judgment in the District defendants' favor.

¶ 50 Summary judgment is appropriate where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of

[2]The parties dispute whether the trial court required the District defendants to have actual notice of Bedoya's misconduct before they could potentially be liable for his actions. Actual notice is not a requirement for a claim of wrongful supervision. *Doe v. Coe*, 2019 IL 123521, ¶¶ 52, 61. However, because our review of the trial court's order is *de novo*, we need not consider whether its rationale for granting summary judgment was proper. See *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 115 (1993) ("It is the judgment and not what else may have been said by the lower court that is on appeal to the reviewing court").

law. *Hall v. Henn,* 208 Ill. 2d 325, 328 (2003). When reviewing a trial court's award or denial of summary judgment, we must construe the pleadings, depositions, admissions, exhibits, and affidavits strictly against the moving party and liberally in favor of the nonmoving party. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). The standard of review for the entry of summary judgment is *de novo*. *Kornick v. Goodman*, 2023 IL App (2d) 220197, ¶ 12.

¶ 51 Plaintiffs' complaint sounds in willful and wanton supervision. There is no separate, independent tort of willful and wanton conduct; rather, willful and wanton conduct is regarded as an aggravated form of negligence. *Doe—3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 19. "The elements of a negligent supervision claim are that (1) the defendant had a duty to supervise the harming party, (2) the defendant negligently supervised the harming party, and (3) such negligence proximately caused the plaintiff's injuries." (Internal quotation marks omitted.) *Doe v. Coe,* 2019 IL 123521, ¶¶ 52, 61. In the employment context, in order to impose a duty to supervise, general foreseeability of the injury is required, rather than prior notice of a particular unfitness, as a reasonable performance of the duty to supervise will put a supervisor on notice of an employee's conduct or perhaps prevent the tortious conduct altogether. *Id.* ¶ 61. "An employer has a duty to supervise all employees; the extent to which she must do so depends on many factors, such as the work performed, the employees performing it, the size of the business, the type of work, and the employer's clientele, among others." *Id.* ¶ 58.

¶ 52 "Foreseeability of harm, in connection with a duty, is not a magical concept that ignores common sense." *St. Paul Insurance Co. of Illinois v. Estate of Venute*, 275 Ill. App. 3d 432, 436, (1995). Foreseeability is not boundless and does not include everything that might conceivably occur; rather, something is foreseeable only if it is objectively reasonable to expect. *Bruns*, 2014 IL 116998, ¶ 33. Commission of a serious crime, such as sexual assault, is generally not

foreseeable to an employer because an employee is not expected to commit crimes. *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 238 (2000). There are some situations in which an act of sexual assault is generally foreseeable, however, such as programs that provide adults with unsupervised access to children. *Noto v. Shlifka*, 2024 IL App (2d) 240093, ¶ 32 (citing *Doe*, 2019 IL 123521, ¶ 62).

¶ 53 The District defendants enjoy limited immunity in tort pursuant to section 3–108(a) of the Act and section 24–24 of the School Code (Code). 745 ILCS 10/3–108(a) (West 2008); 105 ILCS 5/24–24 (West 2024). Each of those sections provides immunity against negligent conduct but not against willful and wanton conduct. *In re Estate of Stewart*, 2016 IL App (2d) 151117, ¶ 73. Section 3–108(a) of the Act states:

> "Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury." 745 ILCS 10/3–108(a) (West 2024).

¶ 54 "Willful and wanton conduct" means a course of action that shows an actual or deliberate intention to cause harm, or that, if not intentional, shows an utter indifference to, or conscious disregard for, the safety of others or their property. 745 ILCS 10/1-210 (West 2016). Utter indifference to, or conscious disregard for, the safety of others consists of more than mere inadvertence, incompetence, or unskillfulness. *Geimer v. Chicago Park District*, 272 Ill. App. 3d 629, 637 (1995). As at issue in this case, an omission, or failure to act against a known danger, may substantiate a claim of utter indifference or conscious disregard. See *Doe*, 213 Ill. 2d at 28 (the failure to take action to protect other students against a harmful student could constitute willful

and wanton conduct). One must consider the totality of the circumstances in deciding whether a defendant acted with utter indifference or conscious disregard. *Harris*, 2012 IL 112525, ¶ 45. *Stewart*, 2016 IL App (2d) 151117, ¶ 75.

¶ 55 Based on these principles, we consider whether the trial court properly granted summary judgment for the District defendants.

¶ 56 Plaintiffs argue that Bedoya exhibited behavior over time, consisting of multiple incidents, witnessed by District employees demonstrating a pattern of seeking out opportunities to be alone and unsupervised with children. Plaintiffs specifically point to the following eight incidents; (1) Bedoya stayed at school "well after school hours multiple days per week in violation of District policy for paraprofessionals;" (2) he "was found alone in a classroom with a child on his lap with others lined up to do the same;" (3) he was found alone with a student behind a closed door in teacher Pilar Nieto's office in violation of District policy for paraprofessionals; (4) he was found alone with a student in a storage room, in violation of District policy for paraprofessionals; (5) he was found alone with multiple students in the library, in violation of District policy for paraprofessionals; (6) he made contact with children that was "not appropriate" when multiple children were laying on top of him in the playground; (7) he drove students home from school in violation of District policy; and (8) he handed out candy, stickers and toys to students.

¶ 57 We believe the most egregious incident described above is the library incident. There, Bedoya was violating District policy by being alone with multiple children. When two teachers, Ponsot and Hendricksen, discovered him with those children, he stated that he was there with the Boys & Girls Club. That was a lie. Ponsot and Hendricksen learned the untruthfulness of Bedoya's statement when they talked to the Boys & Girls Club supervisor who told them that Bedoya was not with them. Ponsot and Hendricksen then reported this to Principal Whitecotton.

Superintendent Heid testified that this incident should have led to an investigation, but it did not. As such, this incident raises an inference, and thus a material question of fact, that the District's conduct constituted willful and wanton negligence due to the utter indifference to or a conscious disregard that it showed for their students' welfare.

¶ 58 This inference is supported by Heid's testimony that other incidents plaintiffs described warranted an investigation but did not receive one. Specifically, Heid acknowledged that Bedoya being found alone in a storage room with a child and driving children home without parental supervision should have been investigated

¶ 59 We note that there was testimony that indicated that some of the things that Bedoya did, such as staying late after school and giving gifts to children, were done by other District employees as well. Thus, those incidents did not in and of themselves necessarily merit an investigation. However, when those incidents are considered in conjunction with the other incidents that plaintiffs list, an inference is created that the District was demonstrating utter indifference towards "one of [its] primary responsibilities [of protecting] the health, safety and welfare of [its] students." Accordingly, as material questions of fact remain in this case, summary judgment in the District defendants' favor was improper. *Hall*, 208 Ill. 2d at 328.

¶ 60 B. The District Defendant's Arguments in Support of the Trial Court's Ruling

¶ 61 In so ruling, we note that the District defendants raise numerous reasons why the trial court's ruling should be affirmed. We will consider each of those arguments in turn.

¶ 62 1. Discretionary Tort Immunity

¶ 63 The District Defendants urge us to affirm summary judgment on alternative grounds not addressed by the trial court; that being that they have discretionary tort immunity. This argument lacks merit. For a public entity to have discretionary immunity, it must show that it was in a

position to determine policy and that the decision at issue was both an exercise of discretion and a determination of policy. 745 ILCS 10/2-201 (West 2016). Accordingly, a public entity claiming immunity for an alleged failure to act must present sufficient evidence that it made a conscious decision not to perform. *Monson v. City of Danville*, 2018 IL 122486, ¶ 33. The failure to do so is fatal to the claim. *Id.*

¶ 64 Here, the District defendants claim that they were unaware of any danger that Bedoya posed until after he was arrested. Thus, its interactions with Bedoya prior to his arrest cannot demonstrate that it was making any deliberate choice how to handle the wrongful conduct alleged. Moreover, to the extent that the District defendants were making any conscious decisions involving Bedoya, Heid testified that many of those decisions violated District policy. As such, it cannot be said that the District defendants' violations of their own policies was a determination of policy.

¶ 65 2. Sufficiency of the Record

¶ 66 The District defendants argue that the record that plaintiffs filed on appeal is incomplete as there are 33 exhibits missing. The District defendants do not specify what is in those missing exhibits. Presumably, however, those exhibits include the deposition testimony of Whitecotton, Murphy, McMahon, and Gomez De La Torre that we discussed earlier. The District defendants argue that in the absence of a complete record, we should summarily affirm the trial court's decision. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 67 In *Foutch*, our supreme court explained that: (1) the appellant bears the burden to present a sufficiently complete record; (2) in the absence of such a record the trial court's order is presumed to conform with law and have a sufficient factual basis, and (3) any doubts from incompleteness are resolved against the appellant. *Id.* at 391-92. Here, as the record on appeal is sufficient for our review, we need not summarily rule in the District defendants' favor. See *MIFAB, Inc. v.*

Illinois Human Rights Comm'n, 2020 IL App (1st) 181098, ¶ 34 (considering merits of the appeal where the incompleteness of the record did not hinder review).

¶ 68 3. Bedoya's conduct did not give the District Defendants Notice that He was Abusive

¶ 69 The District defendants argue that the record does not show that Bedoya's interactions with any Golfview students gave "any" cause for the concern of any student, let alone James Doe. They refer specifically to three incidents—the "storage room" incident, the "playground" incident, and the "library incident," and insist that none of them ever gave anyone who witnessed them reason to suspect that any child was in danger.

¶ 70 As to the "library incident," the District defendants note that this happened in 2015, before James Doe was enrolled at Golfview, and there was "evidence that no teacher who witnessed the event had any reason to be concerned for the safety of the students who were in the library with Bedoya or any reason to suspect that Bedoya was using his position to abuse any Golfview students."

¶ 71 This is not an accurate characterization of the record. In making this argument, the District defendants point only to Ponsot's deposition testimony and not Hendricksen's, who was also present at the library incident. The District defendants point to Ponsot's testimony that she did not witness any behavior that endangered the students in the library. However, just because she did not witness any child being abused does not mean she was not concerned about what she saw. This is evident from her and Hendricksen going to the Boys & Girls Club supervisor to verify Bedoya's explanation of why he was with the children in the library and then going to see the principal when they learned that Bedoya was untruthful. Such actions do indeed demonstrate that they were concerned about Bedoya's behavior. See *In re Schonhoff's Estate,* 65 Ill. App. 2d 147, 150 (1965) ("It is truism to say that actions speak louder than words)."

¶ 72 The District defendants further contend that this case is analogous to *Doe v. Bridgeforth*, 2018 IL App (1st) 170182, where there was nothing that put the defendant school district on notice that its employee was abusing a child. *Bridgeforth* is distinguishable for multiple reasons. First, at issue in *Bridgeforth* was whether the trial court erred in not granting the plaintiff's motion for a judgment notwithstanding the verdict (JNOV) after the jury ruled in the school district's favor. *Bridgeforth*, 2018 IL App (1st) 170182, ¶ 43. A motion for a JNOV should not be granted "unless the evidence, when viewed in the light most favorable to the opponent, so overwhelmingly favors that movant that no contrary verdict based on that evidence could ever stand." *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 109 (1997). As such, procedurally, *Bridgeforth* is the exact opposite of this case. There, all the evidence was viewed in the light most favorable to the defendant. *Bridgeforth*, 2018 IL App (1st) 170182, ¶ 43. Here, since we are reviewing an order of summary judgment, we construe all the evidence in favor of plaintiffs. *Hall*, 208 Ill. 2d at 328.

¶ 73 Second, in *Bridgeforth*, there was only one type of incident at issue—the employee giving the victim rides home in his personal vehicle without written permission. *Bridgeforth*, 2018 IL App (1st) 170182, ¶ 53. However, the victim's mother testified that she "never had any suspicion" about the employee and would have given him permission to drive the victim had it been formally requested. *Id.* ¶ 55. Moreover, numerous other people who worked at the school testified that "there were no red flags" about the employee abusing the victim.

¶ 74 Conversely, here there were multiple incidents involving Bedoya which Heid testified should have warranted an investigation. As such, it is apparent that the District defendants' failure to conduct any investigations into Bedoya's conduct raises a factual question as to whether their failure to do so constituted willful and wanton conduct.

¶ 75 As to the other incidents the District defendants refer—the storage room incident and the playground incident—even if they could be construed in an innocent fashion, we note that only one material fact needs to be in question for an award of summary judgment to be improper. *Hall*, 208 Ill. 2d at 328. Hence, because the library incident raises such a question of fact, it is for the trier of fact, not this court, to determine whether those other incidents can be viewed in a way favorable to the District defendants. See *Siegel v. Village of Wilmette*, 324 Ill. App. 3d 903, 907 (2001) (where reasonable persons could draw divergent inferences from the undisputed facts, the issue should be decided by a trier of fact).

¶ 76 C. Remaining Issues

¶ 77 Plaintiffs raise additional arguments that we need not consider—such as whether the trial court erred in not considering Dr. Kozak's affidavit in ruling on the motion for summary judgment and whether the trial court erred in denying its motion to reconsider—because our ruling on the summary judgment issue is dispositive. The only other remaining issue is whether the trial court erred in denying the plaintiffs' leave to file a fifth amended complaint.

¶ 78 Section 2-616(a) of the Code of Civil Procedure provides in pertinent part:

> "(a) At any time before final judgment amendments may be allowed on just and reasonable terms, * * * changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim." 735 ILCS 5/2-616(a) (West 2016).

¶ 79 The right to amend a pleading is not absolute but rather is a matter within the trial court's discretion. *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 44. Accordingly, we will

not reverse the trial court's decision absent an abuse of that discretion. "A court abuses its discretion only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted by the court." *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 12.

¶ 80 The relevant factors considered in determining whether to grant leave to amend a pleading are: "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992). *Loyola* does not require that a proposed amendment meet all four factors. *Hiatt v. Illinois Tool Works*, 2018 IL App (2d) 170554, ¶ 38. Rather, "as a general matter, when a party seeks leave to amend, the ultimate question is whether the amendment would further the ends of justice; the *Loyola* factors are guidelines for the court's liberal exercise of its discretion, not strictures, to that end." *Id.* (citing *Lake County Grading Co. v. Forever Construction, Inc.*, 2017 IL App (2d) 160359, ¶ 87).

¶ 81 Here, plaintiffs sought to amend their complaint to add facts adduced in discovery to support their already existing theories and conform their pleadings to the proofs. Thus, the first factor is inapplicable. See *id*. (the first factor was not applicable because the defendant was not trying to cure a defective pleading but rather was trying to add a new affirmative defense).

¶ 82 As to the prejudice factor, the District defendants argue that plaintiffs' "purpose of seeking to amend the complaint was to derail the summary judgment motion." The District defendants insist that plaintiffs' motivation was to reset the pleadings so that the District defendants would file their new answer and affirmative defenses which plaintiffs had previously failed to respond to.

As the case had already gone on for six years and the summary judgment motion was now pending, they maintain that it would be prejudicial to them to have to respond to an amended complaint. However, as we have determined that the trial court improperly granted summary judgment in the District defendants' favor, the District defendants purported basis for prejudice no longer exists.

¶ 83 As to whether the proposed amendment was timely and whether there were previous opportunities to amend, we note that this consideration is intricately connected with whether the party opposing the motion is prejudiced. See, *Flynn v. Maschmeyer*, 2020 IL App (1st) 190784, ¶ 126 (plaintiffs' motion untimely where filed a month before the scheduled trial date, would have added a number of claims, including a new defendant and would have required discovery to be reopened); *Tongate v. Wyeth Laboratories, a Division of American Home Products Corp.*, 220 Ill. App. 3d 952, 970, (1991) (motion was made five weeks before trial, after discovery had been closed, plaintiff had previous opportunity to add the new cause of action, and the new claim would prejudice defendant). Here, absent any prejudice to the District defendants, the trial court abused its discretion not allowing plaintiffs to amend their complaint.

¶ 84 III. CONCLUSION

¶ 85 For the reasons stated, we vacate the judgment of the circuit court of Kane County granting the District defendants summary judgment; we reverse the trial court's order not allowing plaintiffs to amend their complaint; and we remand for further proceedings.

¶ 86 Vacated in part and reversed in part and remanded.