

Black Bear, et al. v. Mid-Central Ed. Coop., et al.

The Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant is designed to help underprivileged students throughout the country graduate high school and enter and succeed in post-secondary education. The South Dakota Department of Education (SDDOE) received the grant in 2011 to provide services to low-income Native American students in South Dakota.

Mid-Central Educational Cooperative (MCEC) contracted with SDDOE to administer GEAR UP, and later contracted with the American Indian Institute for Innovation (AIII) to provide some personnel and services for GEAR UP. SDDOE ended the GEAR UP administration agreement with MCEC in 2015, when it was revealed that Scott Westerhuis, MCEC's business manager and AIII's registered agent and chief financial officer, and his wife Nicole had been mismanaging and embezzling funds from MCEC.

Alyssa Black Bear and Kelsey Walking Eagle-Espinosa sued multiple defendants, on behalf of the students meant to benefit from GEAR UP, alleging the misappropriation of federal GEAR UP funds caused injury to the group. Black Bear and Walking Eagle-Espinosa attended schools that the SDDOE included on the list of those serviced by the GEAR UP grant. Both students now attend college. Their complaint brought claims of civil theft, breach of contract, negligent supervision, vicarious liability, and breach of duty to control.

The defendants resisted the students' request for class action certification and moved for summary judgment on multiple theories: (1) the students are not intended third-party beneficiaries of the SDDOE-MCEC contract and cannot enforce it; (2) the students did not comply with applicable notice requirements; (3) neither MCEC nor AIII can be held vicariously liable for the Westerhuis's torts; and (4) the students do not have standing. Each motion was denied.

The defendants moved for summary judgment again, this time on three bases: (1) there is no evidence that any GEAR UP funds were among the funds misappropriated; (2) the students' claims are preempted by federal law; and (3) the students do not have standing (the court did not readdress this claim). The circuit court denied the motion on the status of the GEAR UP funds, finding there were genuine issues of material fact. The circuit court granted the motion for summary judgment on preemption, finding no private remedy available to litigants under GEAR UP. All claims were dismissed based on the preemption finding.

Black Bear and Walking Eagle-Espinosa appeal, raising one issue:

1. Whether the circuit court erred in ruling that their claims are preempted by federal law.

Through Notices of Review, the various defendants raise six issues:

1. Whether the circuit court erred in ruling that Black Bear and Walking Eagle-Espinosa have standing to bring their claims.
2. Whether the circuit court erred in concluding that Black Bear and Walking Eagle-Espinosa effectively complied with notice requirements.
3. Whether the circuit court erred in finding a genuine issue of material fact regarding whether Black Bear and Walking Eagle-Espinosa were intended third-party beneficiaries of the agreement between SDDOE and MCEC.
4. Whether the circuit court erred in finding a genuine issue of material fact regarding whether MCEC or its executive director can be held vicariously liable for the torts of Scott and Nicole Westerhuis.
5. Whether the circuit court erred in finding a genuine issue of material fact regarding whether GEAR UP funds were missing or misappropriated.
6. Whether the circuit court erred in certifying the lawsuit as a class action.

Mr. John Hinrichs, Mr. Scott Heidepriem, Mr. Matthew Tysdal, and Mr. Steven Emery, Attorneys for Appellants Alyssa Black Bear and Kelsey Walking Eagle-Espinosa.

Mr. Ryland Deinert and Mr. Scott Swier, Attorneys for Appellee MCEC.

Mr. Quentin Riggins and Ms. Katelyn Cook, Attorneys for Appellee AIII.

Ms. Rebecca Wilson, Attorney for Appellee Estate of Nicole Westerhuis.

Mr. Richard Rylance and Ms. Trudy Morgan, Attorneys for Appellee Estate of Scott Westerhuis.

Mr. Eric Steinhoff, Attorney for Appellee Dan Guericke.

Mr. Terry Pechota and Mr. Dana Hanna, Attorneys for Appellee Stacy Phelps.

Mr. Michael Luce and Mr. Samuel Kerr, Attorneys for Appellees MCEC Directors.