

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>M.B., a minor, by and through her parent and natural guardian, T.B., Plaintiff,</b>	:	
	:	<b>CIVIL ACTION</b>
	:	
	:	
<b>v.</b>	:	
	:	
<b>CITY OF PHILADELPHIA, et al., Defendants.</b>	:	<b>No. 00-5223</b>
	:	

**MEMORANDUM AND ORDER**

**SCHILLER, J.**

**March , 2003**

**I. INTRODUCTION**

Plaintiff M.B., through her natural guardian, T.B., brought this action alleging civil rights violations and state law claims against the City of Philadelphia, the Philadelphia Department of Human Services, Wayne Gregory, Thomas Cieslinski, Women’s Christian Alliance, Marva Rountree, S. Robinson, Sandra Lewis, Jenlene Jones, Constance Savage, Naomi Byrd, Lisa Kerwin, Mary Barksdale, and Irving Ford.<sup>1</sup> Now before the Court are motions for summary judgment by the City of Philadelphia (“The City”) and Women’s Christian Alliance, Marva Rountree, Sandra Lewis, and Constance Savage’s (collectively “WCA”). For the reasons set forth below, I grant the City’s motion for summary judgment and deny WCA’s motion for summary judgment.

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<sup>1</sup> “Irving Ford” is also referred to as “Erving Ford” in the parties’ memoranda and exhibits.

## II. FACTS

M.B. was born on January 9, 1992 and lived with her biological mother, T.B., for the first several months of her life. (T.B. Dep. at 25.) Thereafter, M.B. was removed from her mother's care and placed in foster care. (*Id.* at 39.) The Philadelphia Department of Human Services ("DHS") contracted with the Women's Christian Alliance to place M.B. in a WCA foster home. (*Id.* at 43.) From September 29, 1993 to August of 1994, M.B. was placed with Mary Barksdale at her foster home in Philadelphia. (*Id.*) From 1993 to the summer of 1995, M.B. returned to live with her biological mother. (*Id.* at 78.) From September 1995 to September 1996, M.B. was again placed at the foster home of Mary Barksdale. (Barksdale Dep. at 8.)

Plaintiff alleges that during this second placement at the Barksdale foster home, Irving Ford, who had a prior drug conviction, lived in the basement for at least three months. (Pl. Am. Compl. ¶¶ 8, 16, 19; Barksdale Dep. at 31; Irving Ford's Guilty Plea Colloquy, dated Oct. 15, 2001, at 10-12, 16.) While living at the Barksdale foster home, Plaintiff alleges that Irving Ford sexually molested and repeatedly raped M.B. (Pl. Am. Compl. at ¶19.) During this time, Ms. Barksdale told Marva Rountree, a WCA employee, that Irving Ford "was living in [the] house for a few days." (Barksdale Dep. at 82.) Mr. Ford also testified that while living at the foster home, he saw and spoke with a WCA employee that would come to the foster home to check on M.B. (Ford Dep. at 85-90.) In the Spring of 1996, Ms. Barksdale noticed that M.B. had developed a rash in her genital area, which was later diagnosed as Human Papilloma Virus ("HPV"). (Barksdale Dep. at 139.) In July of 1996, M.B. underwent surgery for this condition at Children's Hospital of Pennsylvania. (T.B. Dep. at 156.)

The Commonwealth conducted two investigations after learning of M.B.'s condition. (Ellis Dep. at 17.) In the first investigation, Investigator Emory Ellis concluded that the claim of sexual

abuse could not be substantiated. (Ellis Dep. at 18.) In the second investigation, conducted in 1997, Mr. Ellis found that there was substantial evidence of sexual abuse. (*Id.* at 21-28.) In 2001, Irving Ford was arrested and pleaded guilty to statutory sexual assault, indecent assault, and corrupting the morals of a minor. (Irving Ford's Guilty Plea Colloquy, dated Oct. 15, 2001, at 2, 16-17.) In his plea colloquy, Irving Ford admitted to the following factual basis for his plea:

Ms. McCartney [Assistant District Attorney]: Judge, a summary of the facts that the Commonwealth would present, we would first call [M.B.]. . . . She would testify that back when she was four years old she was living in foster care with a Marie [sic] Barksdale. . . . That at the time that she was living with Ms. Barksdale the defendant, who she would identify as Erving Ford, rented or had a space down the basement of Ms. Barksdale's house. She would testify that during the time that she was there the defendant would come upstairs when she was there, take her downstairs, remove her clothing and touch on [sic] her body, and he did at some point in time place his penis inside her vagina. . . .

The Court: Okay. You hear those facts.

The Defendant [Mr. Ford]: Yes, sir.

The Court: Are they substantially correct?

The Defendant: What [the assistant district attorney] said?

The Court: Yes.

The Defendant: Yeah.

Irving Ford's Guilty Plea Colloquy, dated Oct. 15, 2001 at 11-12, 16. At his deposition, however, Mr. Ford denied that he committed these acts and stated that he pleaded guilty to avoid twenty years in prison. (Ford Dep. at 104-106.)

During her second placement at the Barksdale foster home from September 1995 to September 1996, T.B., M.B.'s biological mother, periodically visited M.B. (*Id.*) During those visits,

T.B. saw Irving Ford at the Barksdale home and also saw where he stayed in the basement. In addition, during these visits, M.B. made comments to T.B. about Irving Ford being her boyfriend, “freak[ing]” her, and showing her “porn” books. (T.B. Dep. at 199-211.) After these visits, T.B. contacted Wayne Gregory, the DHS employee assigned to M.B.’s case, regarding Irving Ford’s presence at the home and M.B.’s unusual comments. (*Id.*) T.B. also contacted Thomas Cieslinski, Mr. Gregory’s supervisor, about her concerns. (*Id.*) She was subsequently told by these DHS employees that Irving Ford did not live there. (*Id.*) Wayne Gregory was also required to perform periodic “Risk Assessments” of M.B. (Risk Assessments dated July 5, 1995, February 13, 1996, August 27, 1996, and February 10, 1997, attached to Pl. Resp. to Mot. for Summ. J. of Def. City, Exhibit I.) Plaintiff alleges that Mr. Gregory failed to accurately complete these documents and failed to perform the required assessment as reflected by the inaccurate information recorded in these documents. (Pl. Memo. in. Supp. of Pl. Resp. to Mot. to Summ. J. of Def. City at 4.)

Plaintiff filed suit under 42 U.S.C. § 1983 for constitutional violations against the City, DHS, WCA, Mary Barksdale, individual DHS employees, and individual WCA employees. Under the state-created danger theory of § 1983, Plaintiff claims that Defendants created a danger to her by placing her in the foster home and then failing to adequately monitor her placement. Plaintiff also brought state law claims of negligence against WCA, Mary Barksdale, individual DHS employees, and individual WCA employees, and state law claims of assault, battery, infliction of emotional distress, and false imprisonment against Irving Ford. The City and WCA now move for summary judgment.

### III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of identifying those portions of the record that it believes show the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where the non-moving party has the burden of proof on a particular issue at trial, the moving party meets its burden by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” *Id.* at 325. Once the moving party meets this burden, the non-moving party must offer admissible evidence that establishes a genuine issue of material fact that should proceed to trial. *See id.* at 324; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In order to meet this burden, the opposing party must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *See Celotex*, 477 U.S. at 324. The non-moving party does not, however, need to produce evidence in a form that would be admissible in order to avoid summary judgment, *id.*, “as long as the evidence could be later presented in a form that ‘would be admissible at trial’ -- i.e. reducible to admissible form -- it can be used to defeat summary judgment.” *J.F. Feeser, Inc. v. Serv-A-Portion, Inc.*, 909 F.2d 1524, 1542 (3d Cir. 1990); *Williams v. Borough of West Chester*, 891 F.2d 458, 466 n.12 (3d Cir. 1989). A court

may grant summary judgment if the non-moving party fails to make a factual showing “sufficient to establish an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Id.* at 322. In making this determination, the non-moving party is entitled to all reasonable inferences. *See Pollock v. Am. Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d Cir. 1986).

#### IV. DISCUSSION

##### A. Defendant City of Philadelphia’s Motion for Summary Judgment

The City asks the Court to grant summary judgment because Plaintiff has not established municipal liability as required by *Monell v. City of New York Department of Social Services*, 436 U.S. 658 (1978).<sup>2</sup> In *Monell*, the Supreme Court held that a municipality may not be liable under *respondeat superior* for the acts of its agents or employees, rather a municipality can only be liable when its policy or custom caused the constitutional deprivation. 436 U.S. at 690. The City asserts that Plaintiff has failed to come forward with sufficient evidence for a jury to conclude that there was a municipal policy or custom that caused her injuries. In opposition, Plaintiff argues that the state-created danger theory alone implicates municipal liability, and thus, obviates the additional *Monell* analysis. (Pl. Memo. in. Supp. of Pl. Resp. to Mot. to Summ. J. of Def. City at 10.) Therefore, the Court first must resolve whether the state-created danger theory alone, if proven, is enough to attach municipal liability. If Plaintiff is correct, the Court will limit its analysis to the state-created danger

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<sup>2</sup> The City also moves for summary judgment on Plaintiff’s negligence claim against it. Because Plaintiff has stated that she has made no such claim and does not oppose this aspect of the City’s motion, I strike the state claims of negligence against the City from Plaintiff’s Amended Complaint without further discussion. (Pl. Memo. in. Supp. of Pl. Resp. to Mot. to Summ. J. of Def. City at 5, n. 2.)

theory. If Plaintiff is incorrect then a *Monell* analysis is required.

Section 1983 does not create substantive rights; rather it provides remedies for deprivations of rights established in the Constitution or by federal law.<sup>3</sup> See *Kneipp v. Tedder*, 95 F.3d 1199, 1204 (3d Cir. 1996) (citing *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979); *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995). “In order to establish a section 1983 claim, a plaintiff ‘must demonstrate a violation of a right secured by the Constitution and the law of the United States [and] that the alleged deprivation was committed by a person acting under color of state law.’” *Id.* (citing *Mark*, 51 F.3d at 1141). The Supreme Court has held that “[t]he due process clauses generally do not confer an affirmative right to governmental aid, even where such aid may be necessary to secure, life, liberty and/or property interests.” *DeShaney v. Winnebago County Dep’t of Soc. Serv.*, 489 U.S. 189, 196 (1989).

In *DeShaney*, a child, through his guardian, alleged that the Due Process Clause of the Fourteenth Amendment imposed a duty on the State of Wisconsin to protect him from physical abuse by his biological father. 489 U.S. at 191. The Supreme Court held in *DeShaney* that as a “general matter, . . . a State’s failure to protect an individual against private violence simply does not

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<sup>3</sup> Section 1983 states in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983 (2002).

constitute a violation of the Due Process Clause,” *DeShaney*, 489 U.S. at 195, but noted that “while the State may have been aware of the dangers that [the child] faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them.” 489 U.S. at 201. Many courts, including the Third Circuit, cite this dicta to support two exceptions to the *DeShaney* general rule. Specifically, the Third Circuit has noted that “[a]lthough the general rule is that the state has no affirmative obligation to protect its citizens from the violent acts of private individuals, courts have recognized two exceptions to this rule . . . known as the ‘special relationship’ exception . . . and the ‘state-created danger theory of liability’” that can be used to prove a violation of the Due Process Clause of the Constitution. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 907 (3d Cir. 1997).

In *Kneipp v. Tedder*, 95 F.3d 1199 (3d Cir. 1996), the Third Circuit first recognized that the state-created danger theory can establish a substantive due process violation and give rise to liability under § 1983. Under this theory, there is a substantive due process violation where:

- (1) the harm ultimately caused was foreseeable and fairly direct;
- (2) the state actor acted in willful disregard for the safety of the plaintiff;
- (3) there existed some relationship between the state and the plaintiff;
- (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party’s crime to occur.

*Kneipp*, 95 F.3d at 1208 (quoting *Mark*, 51 F.3d at 1152). Additionally, the Third Circuit held that the deliberate indifference standard was the appropriate lens through which to view such claims.<sup>4</sup>

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<sup>4</sup> The Third Circuit later held that the appropriate standard varies depending upon the underlying facts. See *Schieber v. City of Philadelphia*, \_\_\_ F.3d \_\_\_, 2003 U.S. App. LEXIS 3013 (3d Cir. Feb. 20, 2003) (discussing substantive due process standards); *Brown v. City of Philadelphia*, \_\_\_ F.3d \_\_\_, 2003 U.S. App. LEXIS 953 (3d Cir. Jan. 21, 2003) (holding that “‘shocks the conscience’ standard should be applied in all substantive due process cases if the state actor had to act with urgency”); *Ziccardi v. City of Philadelphia*, 288 F.3d 57, 64 (3d Cir. 2002) (holding that applicable standard of culpability for paramedics seeking to aid accident victim is same as social worker in *Miller*); *Miller v. City of Philadelphia*, 174 F.3d 368, 375-76

*See id.* While it is clear that the Third Circuit has adopted the state-created danger theory of § 1983 liability, it has not squarely addressed the issue of municipal liability when the underlying constitutional violation is based on the state-created danger theory. *See Sciotto v. Marple Newtown Sch. Dist.*, 81 F. Supp. 2d 559, 574 (E.D. Pa. 1999) (discussing Third Circuit’s treatment of municipal liability under state-created danger theory).

The Third Circuit has clearly recognized the “policy or custom” theory of municipal liability as developed by the Supreme Court in *Monell* and its progeny. *Kneipp*, 95 F.3d at 1211. The Supreme Court in *Monell* stated that:

a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

436 U.S. at 690. When discussing claims against a municipality involving the state-created danger theory, however, the Third Circuit has often addressed municipalities and individual state actors together or only applied the state-created danger analysis to individual state actors without reaching the implication of municipal liability. *See Sciotto*, 81 F. Supp. 2d at 574 (stating same) (*citing D.R. v. Bucks County Area Voc. Tech. Sch.*, 972 F.2d 1364, 1376 (3d Cir 1993) and *Kneipp*, 95 F.3d at 1211); *see also Brown v. City of Philadelphia*, \_\_\_ F.3d \_\_; 2003 U.S. App. LEXIS 953, at \*17-19 (3d Cir. Jan. 21, 2003) (analyzing state actors’ conduct and finding that state-created danger elements were not met).

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(3d Cir. 1999) (holding “shocks the conscience” standard applies although a social worker normally did not have to act in “[a] hyper-pressurized environment [like] a prison riot or high-speed chase. . .he or she will rarely have the luxury of proceeding in a deliberate fashion”). For the purposes of this motion, however, the Court does not need to reach this issue.

Some district courts have interpreted Third Circuit caselaw to suggest that the “policy or custom” theory is a “separate and distinct analysis of liability from the state-created danger theory.” See *Sciotto*, 81 F. Supp. 2d at 574; *Combs v. Sch. Dist. of Philadelphia*, 2000 WL 1611061, 2002 U.S. Dist. LEXIS 15682 (E.D. Pa., Oct. 26, 2000) (treating state-created danger theory and policy or custom theory as alternative theories of municipal liability). Other district courts, however, read Third Circuit precedent to create a layered analysis; determining first whether an individual state actor violated a plaintiff’s substantive due process rights under a state-created danger theory and then determining a municipality’s liability under the “policy, custom, or practice” theory derived from *Monell* and its progeny. See *Tazioly v. City of Philadelphia*, 1998 U.S. Dist LEXIS 14603, at \*35 (E.D. Pa., Sept. 10, 1998) (determining that while plaintiffs advanced “tenable theory of liability” based on state-created danger theory, they must establish that municipal policy or custom was proximate cause of violation); *Beswick v. City of Philadelphia*, 2001 U.S. Dist. LEXIS 2162, at \*32 (E.D. Pa., Mar. 1, 2001) (holding that in order to prove municipal liability, plaintiff must prove elements of state-created danger doctrine and that there was “‘deliberate’ choice by a municipality to adopt a policy or custom that actually caused the state actor to act with deliberate indifference to the safety of another” (citing *Kneipp*, 95 F.3d 1199, 1211)). While some courts have attempted to construct a hybrid, *Sciotto*, 81 F. Supp. 2d at 574, I believe those attempts only make more muddy what is becoming murkier.

First, in making my determination, I am compelled by the Third Circuit’s discussions of its holding in *Kneipp*, in which the Third Circuit stated:

We hold that, if proven, the facts alleged will sustain a prima facie case of a violation of Kneipp’s Fourteenth Amendment substantive due process right and her liberty interest in personal security under the theory that city police officers

increased the risk of harm to Kneipp which ultimately resulted in the severe damages she sustained. In so holding, we adopt the “state-created danger” theory as a viable mechanism for establishing a constitutional violation under 42 U.S.C. § 1983. On remand, the municipal liability claims against the City should be reexamined by the district court in light of the appropriate legal standard.

*Kneipp*, 95 F.3d 1199. It is clear from this discussion that the Third Circuit contemplates that proving a constitutional violation of state actors under the state-created danger theory by itself is not enough to implicate municipal liability. Thus, an additional analysis is required in order to attach municipal liability.

Second, I am counseled by the Third Circuit’s further discussion of *Monell* claims in *Kneipp*. In *Kneipp*, the Third Circuit clearly outlined the requirements for proving a *Monell* claim. 95 F.3d 1211. The Third Circuit went on to point out that the district court in *Kneipp* erred in dismissing the municipal liability claims against the City because the plaintiff had failed to establish an underlying constitutional violation. 95 F.3d at 1213. As the Third Circuit explained, “[t]he precedent in our circuit requires the district court to review the plaintiff’s municipal liability claims [under *Monell* and its progeny] independently of the section 1983 claims against the individual [state actors], as the City’s liability for a substantive due process violation does not depend upon the liability of any [state actor].” *Kneipp*, 95 F.3d at 1213 (citing *Fagan v. City of Vineland*, 222 F.3d 1283, 1293-94 (3d Cir. 1994)). From this explanation, it is clear to me that the state-created danger theory analysis and the *Monell* analysis should be separately conducted. Such separate treatment, however, does not mean that the two are alternative theories of municipal liability. In order to attach municipal liability, Plaintiff must prove either that: (1) some municipal policy or custom caused the underlying constitutional violation by state actors under the state-created danger theory; or (2) some municipal

policy or custom itself, without conduct by state actors, caused a substantive due process violation. *Brown*, 2003 U.S. App. LEXIS 953, at \*21.

A policy is shown when “a ‘decisionmaker possessing final authority to establish municipal policy with respect to the action’ issues an official proclamation, policy, or edict.” *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996) (quoting *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990) (citations omitted)). A custom is defined as “such practices of state officials so permanent and well-settled as to virtually constitute law,” which can be established by showing a policy maker’s knowledge and acquiescence to the custom. *Id.* Alternatively, a plaintiff can show that a policy or custom at issue concerns a failure to train or supervise where that failure reflects a deliberate indifference of officials to the rights of persons that come into contact with these municipal employees. *See City of Canton v. Harris*, 489 U.S. 378, 387 (1989); *see also Carter v. City of Philadelphia*, 181 F.3d 339, 357 (3d Cir. 1999); *Reitz v. County of Bucks*, 125 F.3d 139, 145 (3d Cir. 1997). Failure to adequately train or supervise municipal employees “can ordinarily be considered deliberate indifference only where the failure has caused a pattern of violations.” *See Berg v. County of Allegheny*, 219 F.3d 261, 276 (3d Cir. 2000) (citing *Bd. of County Comm’rs of Bryan County v. Brown*, 520 U.S. 397, 408-09 (1997)). Although it is possible to maintain a failure to train or supervise claim without demonstrating a pattern, the burden on the plaintiff is high, requiring a showing that a violation of federal rights is “highly predictable” in order to meet the deliberate indifference standard. *See id.*; *see also Carter*, 181 F.3d at 357.

Here, Plaintiff cannot make the threshold showing as required by *Monell* and related Third Circuit caselaw for three reasons. First, in her response to summary judgment and at oral argument, Plaintiff solely relied upon the argument that proof of the underlying constitutional violation under

the state-created danger theory is enough to implicate municipal liability. As such, Plaintiff offered only the particular facts and the specific conduct of the state actors in her case and failed to articulate any evidence of a municipal policy or custom that caused the alleged constitutional deprivation. While the particular actions of the state actors may prove a constitutional violation under the state-created danger theory, they do not evince a policy or custom that caused such conduct and cannot alone implicate municipal liability as required by *Monell* and its progeny. *See Monell*, 436 U.S. at 691 (holding that municipal liability cannot be based on *respondeat superior*); *see also City of Oklahoma City v. Tuttle*, 471 U.S. 808, 813, 823-24 (1985) (holding municipal liability based on policy of inadequate training or supervision cannot be derived from single incident of misconduct by municipal employee); *Berg*, 219 F.3d at 276.

Second, Plaintiff has failed to evince any evidence that some policy or custom, whether or not based on a failure to train or supervise, caused a violation of her rights. *See Monell*, 436 U.S. at 690 (holding there must be some policy or custom that caused a constitutional violation in order for municipality to be liable); *Fagan*, 22 F.3d at 1291 (“A municipality can be liable for a policy of failing to train [state actors] only if that policy causes a violation of the plaintiff’s constitutional rights.”). Plaintiff merely states that “[m]oving defendant’s actions and omissions . . . clearly took place with deliberate indifference and reckless disregard for the health and safety of plaintiff in the face of a foreseeable danger created by moving defendant.” (Pl. Memo. in. Supp. of Pl. Resp. to Mot. to Summ. J. of Def. City at 10.) Without more than conclusory statements, a reasonable jury could not find that the City’s policy or custom caused a constitutional violation.

Third, assuming *arguendo* that Plaintiff has identified a policy or custom based on a failure to train or supervise, Plaintiff has not shown any evidence that high level officials knew of and were

deliberately indifferent to M.B.'s rights. While the evidence shows some involvement by the supervisor in M.B.'s case, Thomas Cieslinski, this is not enough to show that he was deliberately indifferent to M.B.'s constitutional rights. The supervisor spoke with T.B., M.B.'s natural mother, regarding the possibility that Irving Ford lived at the Barksdale home and Mr. Cieslinski apparently told her that Irving Ford did not live there. (T.B. Dep. at 199-211.) There is nothing, however, that suggests that Mr. Cieslinski knew Mr. Ford was living at the home or that he knew no one had checked the foster home. There is no evidence of a pattern of violations from which a reasonable jury could infer that Mr. Cieslinski had the requisite state of mind. Similarly, Plaintiff has failed to meet the high burden of showing that a violation was "highly predictable" from any alleged failure to train or supervise. Thus, I grant summary judgment in favor of the City.

**B. Defendant WCA's Motion for Summary Judgment**

WCA moves for summary judgment, arguing that: (1) Plaintiff cannot prove by any physical or medical evidence "that Irving Ford raped M.B. and transmitted Human Papilloma Virus to her," (WCA Mem. of Law in Supp. of Summ. J. at 2); and (2) Plaintiff cannot prove liability because there is no evidence that WCA knew that Mr. Ford lived at the Barksdale home for more than "a few days." (WCA Reply Brief at 3.) WCA concedes that the issues before the Court are solely factual. (WCA Mem. of Law in Supp. of Summ. J. at 2.) Moreover, many of WCA's arguments turn on whether certain evidence is admissible at trial. Because I reserve ruling on issues of admissibility, WCA's arguments cannot succeed. For example, when looking at the evidence for purposes of this motion, it is clear that Mr. Ford's guilty plea and his deposition testimony renouncing it create a genuine issue of material fact regarding whether Mr. Ford raped M.B. Similarly, Plaintiff's medical

expert report opining that M.B. contracted HPV from Mr. Ford is enough to raise a genuine issue of material fact regarding this issue. Finally, with respect to WCA's knowledge of Mr. Ford's presence in the home, there is conflicting deposition testimony. On the one hand, there is deposition testimony from the foster mother that she told Ms. Rountree that Mr. Ford was living there for "a few days." (Barksdale Dep. at 82). On the other hand, Mr. Ford testified at his deposition that he saw and spoke with a WCA employee on occasions when she came to the foster home to check on M.B. (Ford Dep. at 85-90.) This deposition testimony is enough to raise a genuine issue of material fact about WCA's knowledge regarding Mr. Ford's presence at the home and potential contact with M.B. In light of these factual disputes, I deny WCA's motion for summary judgment.

## **V. CONCLUSION**

For the reasons stated above, I grant the City's motion for summary judgment and deny WCA's motion for summary judgment. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>M.B., a minor, by and through her parent and natural guardian, T.B., Plaintiff,</b>	:	
	:	<b>CIVIL ACTION</b>
	:	
	:	
<b>v.</b>	:	
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	:	
<b>CITY OF PHILADELPHIA, et al., Defendants.</b>	:	<b>No. 00-5223</b>
	:	

**ORDER**

**AND NOW**, this        day of **March, 2003**, upon consideration of Defendant City of Philadelphia's Motion for Summary Judgment, Defendants Women's Christian Alliance, Marva Rountree, Sandra Lewis, and Constance Savage's Motion for Summary Judgment, and the responses thereto, and oral argument thereon, it is hereby **ORDERED** that:

1. Defendant City of Philadelphia's Motion for Summary Judgment (document no. 47) is **GRANTED**.
2. Any state law claims of negligence against Defendant City of Philadelphia are hereby

**STRICKEN** from Plaintiff's Amended Complaint.

3. Defendant Women's Christian Alliance, Marva Rountree, Sandra Lewis, and Constance Savage's Motion for Summary Judgment (document no. 48) is **DENIED**.

**BY THE COURT:**

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**Berle M. Schiller, J.**