

NO. A05-1524

State of Minnesota
In Court of Appeals

JAMES D. STUEDEMANN AND JEANNE R. STUEDEMANN,
as Co-Trustees for the Heirs and Next of Kin of
Jolene Stuedemann, Decedent,

Appellants,

vs.

TONY ALLEN ROMAN NOSE, R-HOME OF WOODBURY, INC.,
ROBERT RITTER AND DONNA RITTER, INDIVIDUALLY
AND AS PROPRIETORS OF PROLAWN LANDSCAPING,
AND KEVIN FLYNN,

Respondents.

RESPONDENT R-HOME OF WOODBURY, INC.'S BRIEF AND APPENDIX

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STATEMENT OF THE ISSUE¹

When a foster care group home resident leaves the home without permission, consumes illegal drugs and alcohol with high school friends, and later commits a murder, did the trial court properly hold that any alleged negligence by the group home was not the proximate cause of the murder?

The trial court held that any negligence on the part of the group home was not the proximate cause of the murder.

Apposite Authorities:

Lewellin v. Huber, 465 N.W.2d 62 (Minn. 1991)

Harpster v. Hetherington., 512 N.W.2d 585 (Minn. 1994)

Danielson v. City of Brooklyn Park, 516 N.W.2d 203 (Minn. Ct. App. 1994)

¹ At the trial court, Respondent R-Home of Woodbury, Inc. briefed and argued its Motion for Summary Judgment based on Appellants' failure to establish the element of proximate cause. R-Home joined in Respondents Robert and Donna Ritter's Summary Judgment Motion on the issues of duty and foreseeability. Respondent again hereby adopts the arguments and reasoning contained in the Respondents Ritter's Appellate brief as if fully set forth herein. In the interest of judicial economy, R-Home will not address Appellants' arguments with respect to duty and foreseeability, and will rely on the submissions of Respondents Ritter.

STATEMENT OF THE CASE

Appellants James D. Stuedemann and Jeanne R. Stuedemann (“Appellants”) brought this wrongful death action to recover for the death of Jolene Stuedemann, who was murdered by Tony Allen Roman Nose on July 11, 2000. Appellants brought this claim against Mr. Roman Nose and the three additional Respondents claiming that Respondents breached a duty to control Mr. Roman Nose’s conduct. Respondent R-Home of Woodbury, Inc. (“R-Home”) is a system of group homes owned by Respondents Robert and Donna Ritter (the “Ritters”) that provided foster care to children in need. Respondent Kevin Flynn (“Flynn”) is a licensed psychologist who provided psychological treatment to the foster children, including Mr. Roman Nose.

R-Home, the Ritters and Flynn joined in Motions for Summary Judgment on the grounds that they had no duty with respect to Jolene Stuedemann, that Mr. Roman Nose’s heinous crimes were not foreseeable and that any alleged negligence was not the proximate cause of Ms. Stuedemann’s murder. The Honorable Gary R. Schurrer granted Respondents’ motions on all three grounds and certified the entry of partial judgment under Minn. R. Civ. P. 54.02. (A. 78).² The trial court also granted Appellants’ motion for summary judgment with respect to Mr. Roman Nose’s liability. Appellants timely commenced this appeal. (A. 1).

² References to “A. *” are to the Appendix to Appellants’ Brief.

STATEMENT OF FACTS

This is an appeal from summary judgment. R-Home admits, for purposes of this Appeal, that there are no genuine issues of material fact and adopts the Statement of Facts contained in Appellants' Brief, to the extent that such statements included citations to the record.³ R-Home provides the following Statement of Facts to supplement the facts Appellants presented.

A. R-Home of Woodbury, Inc.

Tony Roman Nose was a resident in the R-Home group home located at 7177 Sherwood Road in Woodbury ("Sherwood Group Home"). (R. 2).⁴ The Ritters owned and operated the Sherwood Group Home through R-Home. The Ritters have served as foster parents for over 23 years and have helped 800-900 children. (R. 2). R-Home hired house parents to live in and provide for the day-to-day operation of the Sherwood Group Home. The house parents at the Sherwood Group Home at the time of the Ms. Stuedemann's death were Cindy Bruss and Wayne Borowick. (R. 2). Ms. Bruss and Mr. Borowick were licensed foster care providers who had cleared background checks. (R. 2).

The Sherwood Group Home was licensed as a Rule VIII group home by the State of Minnesota. (R. 2). Pursuant to the Rule VIII provisions, R-Home required that its residents attend school, obtain employment if possible, and abide by the group home rules and regulations. (R. 2). In addition to the supervision

³ Similarly, the trial court indicated that it was accepting as true all facts offered by Appellants. (A. 74).

⁴ References to "R.*" are to the Appendix to Respondent R-Home's Brief.

provided by the house parents, the Ritters themselves maintained daily contact with the house parents and children at each home. (R. 2).

B. Tony Allen Roman Nose

Tony Allen Roman Nose was born in Montana and is a member of the Northern Cheyenne Indian tribe. Mr. Roman Nose was first admitted into R-Home's group home program in 1997, when he was 15 years old. (R. 2). Mr. Roman Nose remained in the R-Home system for the following three years. (R. 2). On June 14, 1999, Mr. Roman Nose returned to the reservation in Montana for the summer to be with his ill sister. (R. 2-3).

While on the reservation, Mr. Roman Nose was involved in a fight in which he hit a man in the head with a baseball bat. (R. 3). As a result of this incident, Mr. Roman Nose was arrested and held in jail in Montana for approximately one month. (R. 30). The Montana court ordered that a psychological assessment be conducted, which was completed by a clinical psychologist with Tribal Health (R. 30). The court also indicated that it did not want Mr. Roman Nose in jail and requested that R-Home be contacted regarding his return. (R. 30). Mr. Roman Nose's case worker from Northern Cheyenne Social Services, Althea Foote, also approved Mr. Roman Nose's release to Minnesota. (R.3). Mr. Roman Nose was returned to the Sherwood Group Home pursuant to the multi-state compact for the interstate placement of juveniles. *See* Minn. Stat. § 260.851 and (Affidavit of Arlo H. Vande Vegte ("Vande Vegte Aff."), Exhibit ("Ex.") 33, p. 14-15).

C. Mr. Roman Nose's Return to R-Home

Dr. Flynn evaluated Mr. Roman Nose in August 1999 and recommended that he return to R-Home's group home program. (R. 5). Mr. Roman Nose returned to the Sherwood Group Home on approximately August 3, 1999. Following his return, Dr. Flynn evaluated Mr. Roman Nose further and recommended that he participate in the following programs:

- (1) AA solutions group,
- (2) attend ALC School,
- (3) group meeting, and
- (4) anger control, therapist.

(Vande Vegte Aff., Ex. 9, p. 7). During the next eleven months, Mr. Roman Nose participated in each of these programs. (R. 3).

The following table lists Mr. Roman Nose's one-on-one sessions with therapist Kevin Flynn, R-Home's monthly progress reports and the anger management classes Mr. Roman Nose attended:

Tony Roman Nose Therapy Sessions

Date	Session
8/99	Progress Report
8/6/99	Clinical assessment and treatment plan
8/6/99	One to one session with Kevin Flynn
8/27/99	One to one session with Kevin Flynn
9/99	Progress Report
9/17/99	One to one session with Kevin Flynn
9/22/99	One to one session with Kevin Flynn
10/99	Progress Report

10/7/99	One to one session with Kevin Flynn
10/21/99	One to one session with Kevin Flynn
11/5/99	One to one session with Kevin Flynn
11/18/99	One to one session with Kevin Flynn
12/1999	Progress Report
12/9/99	One to one session with Kevin Flynn
1/2000	Progress Report
1/28/2000	One to one session with Kevin Flynn
2/2000	Progress Report
2/9/2000	One to one session with Kevin Flynn
3/2000	Progress Report
3/9/2000	One to one session with Kevin Flynn
3/23/2000	One to one session with Kevin Flynn
5/16/200	Anger management class
5/18/2000	Anger management class
5/20/2000	Anger management class
6/2000	Progress Report

(Vande Vegte Aff., Ex. 16, 19, 20, p. 5). In addition to the above therapy sessions, Mr. Roman Nose attended weekly Alcoholics Anonymous classes, both at the Sherwood Group Home and in the community. (R. 3-4, 12-13). Mr. Roman Nose also participated in R-Home's weekly group meetings and daily house meetings during which Mr. Roman Nose's progress was evaluated and discussed. (R. 3-4).

Despite all of these therapeutic interventions, Mr. Roman Nose continued to have problems. He was involved in several altercations with classmates and other R-Home residents during the 1999-2000 school year. This led to disciplinary measures at school and Mr. Roman Nose's arrest for fifth degree assault by the Woodbury Police Department following R-Home's report of an incident involving another foster child. (R. 6-7). Each of Mr. Roman Nose's transgressions were met with consequences from the R-Home staff, including

study time, the loss of privileges, deductions from Mr. Roman Nose's allowance, and other appropriate consequences. (R. 16).

Mr. Roman Nose also continued to struggle with chemical dependency issues, which had plagued him since he was 13 years old. Mr. Roman Nose tested positive on a drug test R-Home administered in the fall of 1999. (R. 16). Mr. Roman Nose passed more than 20 additional drug tests between January 2000 and July 2000. (R. 20-23).

D. The Events of July 10, 2000

On July 10, 2000, at approximately 8:00 p.m., Mr. Borowick was in the backyard of the Sherwood Group Home with several of the residents. Mr. Roman Nose and a fellow resident began walking toward the edge of the yard, as if to leave. Mr. Borowick asked them where they were going and they responded that they were going for a walk. (R. 17). Mr. Borowick told them that it was against house rules to leave without permission and that they were not permitted to go. (R. 17). Mr. Roman Nose and the other resident left anyway. (R. 17-18). It is undisputed R-Home did not provide the two boys access to alcohol or other drugs before they left the premises that evening.

After they left, Mr. Borowick went inside the home and discussed the matter with Ms. Bruss. They contacted Robert Ritter to further discuss the situation. (R. 17). Mr. Ritter told them to wait for a little while to see if the boys returned, and then call the police. (R. 17-18). Ms. Bruss believed that Mr. Roman Nose had just talked with his family by telephone, that the conversation

had not gone well, and that Mr. Roman Nose simply needed to take a few moments to collect himself. (R. 8). Mr. Roman Nose did not have a history of running away from the Sherwood Group Home and Dr. Flynn had previously issued a report indicating that Mr. Roman Nose did not pose a risk to run away. (R. 32, Vande Vegte Aff., Ex. 9, p. 3).

In the meantime, one of the other residents indicated to Ms. Bruss that he may know where Mr. Roman Nose had gone. (R. 9). Ms. Bruss asked the resident to accompany her in the house van to show her where the boys might be. The two drove to a cul-de-sac in the neighborhood where they found Mr. Roman Nose and the other resident talking with another boy. (R. 9). Ms. Bruss drove past them and gave them a look that indicated that they were in trouble and should return home. (R. 9). Ms. Bruss did not otherwise confront the boys because, based on her more than 20 years of experience dealing with teenagers, she did not believe it would have been effective. (R. 9-10).

Ms. Bruss returned to the Sherwood Group Home. The other resident that left with Mr. Roman Nose returned a short while later, clearly having received the message, and reported that Mr. Roman Nose said he would "be home in a little while." (R. 10). Ms. Bruss again contacted Mr. Ritter to discuss the situation. (R. 10). Mr. Ritter advised Ms. Bruss to wait a little while longer to see if Mr. Roman Nose would return on his own accord before reporting him to the police as a runaway. (R. 10). Mr. Roman Nose did not return to the residence and Ms. Bruss contacted the Woodbury Police Department at approximately 11:00 p.m. (R. 11).

The Woodbury Police Department decided not to investigate the runaway report until the following morning. (Vande Vegte Aff., Ex. 36, p. 47).

That same evening, Jolene Stuedemann was helping her boyfriend, Andy Reimen, write a homework assignment for his chemical dependency treatment class. (R. 34). Mr. Reimen was on probation at the time and was subject to house arrest and electronic surveillance. (R. 40). After Mr. Reimen completed his treatment class, he and Ms. Stuedemann went back to his house just in time to meet his 10:00 p.m. court-ordered curfew. (R. 40). When Mr. Reimen and Ms. Stuedemann arrived at the Reimen home, they met Mr. Roman Nose, whom they both knew from school. (R. 39-40). Although both of Mr. Reimen's parents were home, they were not aware that Mr. Reimen had visitors. (R. 38). At approximately midnight, the three teenagers began to consume beer. They each consumed approximately 5-6 beers. (R. 42).⁵

After consuming the beer, Mr. Reimen and Ms. Stuedemann engaged in sexual intercourse while Mr. Roman Nose was in the room. (R. 36). According to Mr. Roman Nose, Ms. Stuedemann invited him back to her house in order to use cocaine, opium and marijuana.⁶ (R. 48). No other Stuedemann family members were home that night. (R. 21-22). Although the final sequence of events was

⁵ Ms. Stuedemann also had a significant problem with drug and alcohol use. She had been in and out of treatment programs since the age of 13 without ever successfully completing a program. (R. 42-44).

⁶ A toxicology analysis performed along with the autopsy revealed that Ms. Stuedemann had a blood alcohol level of 0.107 gm/dl and a cocaine metabolite level of 813.8 ng/ml. at the time of her death (R. 44). Ramsey County Medical Examiner Michael B. McGee testified that Ms. Stuedemann had used cocaine within hours of her death. (R. 46).

highly disputed in the criminal trial, it appears Mr. Roman Nose walked back to Ms. Stuedemann's house. Mr. Roman Nose became enraged and stabbed Ms. Stuedemann to death with a screwdriver. Following the murder, Mr. Roman Nose returned to the group home. The house parents called the Woodbury Police Department upon his return. (R. 12).

Mr. Roman Nose was subsequently arrested, charged, tried and convicted of the rape and murder of Ms. Stuedemann. *See State v. Roman Nose*, 649 N.W.2d 815 (Minn. 2002), *affirmed after remand*, 667 N.W.2d 386 (Minn. 2003).

ARGUMENT

In jure non remota causa, sed proxima spectator.

[In law, the near cause is looked to, not the remote one.]

Francis Bacon, *Maxims of the Law*, Reg. I (1630)

I. Summary of Argument and Standard of Review.

R-Home submits this Brief on the sole issue of whether its conduct was the proximate cause of Jolene Stuedemann's murder. It is without question that Mr. Roman Nose's criminal acts were particularly depraved and heinous. Appellants have experienced a terrible loss and, as the trial court noted "nothing can replace [Ms. Stuedemann] in Plaintiffs' lives." (A.77). It is equally unquestioned that Mr. Roman Nose was rightly charged and convicted of the rape and murder of Ms. Stuedemann.

The question before this Court is whether R-Home and the other Respondents are legally liable in negligence for Mr. Roman Nose's crimes. On

this issue, the trial court recognized that “the placement of legal responsibility [for Ms. Stuedemann’s] death must be upon Tony Roman Nose alone.” (A. 77). On the specific issue of proximate cause, the trial court held:

Any actions taken or not taken by R-Home were not the proximate cause of Jolene Stuedemann’s murder. The proximate cause of her death was Tony Roman Nose. Even a lengthy and voluminous recitation of actions which should or should not have been taken regarding Mr. Roman Nose extending over many months, even years, does not change that indisputable fact.

(A. 75). Because the trial court’s decision was well-informed and well-reasoned it should not be disturbed on appeal.

Appellants ask this Court to overturn the lower court’s findings on a number of misguided grounds. First, Appellants appear to argue that the trial court overstepped its bounds in even considering the well-settled doctrine of proximate cause. Second, Appellants invite the Court to apply the long rejected “but-for” causation analysis. Finally, Appellants suggest that the doctrine of proximate cause does not apply to claims asserted under the Restatement (Second) of Torts § 319.

The trial court correctly framed the issue as “whether any actions or inactions on the part of R-Home or the Ritters are ‘so close to the result’ or ‘of such significance’ that the law is justified in imposing liability.” (A. 74). Where, as here, the relevant facts are undisputed, proximate cause is a legal question that may be disposed of by summary judgment. *Allianz Ins. Co. v. PM Services of Eden Prairie, Inc.*, 691 N.W.2d 79, 86 (Minn. Ct. App. 2005). On review of a

grant of summary judgment, this Court need not defer to the trial court's analysis of purely legal issues. *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 572 N.W.2d 321 (Minn. Ct. App. 1997).

II. Appellants Failed to Establish that any alleged Negligence of R-Home was the Proximate Cause of Jolene Stuedemann's Death.

Proximate cause is an essential element of a negligence claim. *See Gilbertson v. Leininger*, 599 N.W.2d 127,130 (Minn. 1999). The proximate cause analysis is based in law, policy and common sense, and requires that legal responsibility be limited to those causes which are "so close to the result" or "of such significance" that the law will impose liability. Here, it is undisputed that Mr. Roman Nose brutally raped and murdered Ms. Stuedemann, after having left the Sherwood Group Home without permission the previous night. It is further undisputed that R-Home did not provide Mr. Roman Nose or Ms. Stuedemann with access to any drugs or alcohol and that R-Home reported Mr. Roman Nose's unauthorized absence to the police before the murder occurred. It is against this undisputed factual backdrop that this Court must apply the doctrine of proximate cause.

A. The Proximate Cause Element of a Negligence Claim Requires Both Causation in Fact and a Showing that Public Policy Supports a Finding of Responsibility for the Consequences of the Particular Conduct.

Appellants do not argue the trial court misapplied the law relating to proximate cause to the facts of this case. Rather, Appellants focus on causation in fact, asserting that fact issues preclude summary judgment on this element of their

negligence claim. This oversimplification of the law relating to causation ignores the legal and policy aspects of proximate cause.

Although stated as one element, the proximate cause analysis contains two components: causation in fact and true proximate cause. See *Lewellin v. Huber*, 465 N.W.2d 62 (Minn. 1991). As the Minnesota Supreme Court explained in *Lewellin*, “[c]ourts have always used the tort doctrine of proximate cause, as distinguished from causation in fact, to implement public policy in establishing the parameters of liability.” *Id.* at 65. Commentators have long noted that the dual elements of causation—causation in fact and proximate causation—are “often hopelessly confused.” W.P. Keeton, *Prosser and Keeton on Torts* (5th ed.1984) at 273. The proximate cause side of the equation “is primarily a problem of law.” *Id.*

This case presents a legal issue with respect to the second aspect of proximate cause: “whether the policy of the law will extend the responsibility for the [negligent] conduct to the consequences which have in fact occurred....” *Id.* In that regard, the focus for this Court is on “those more or less undefined considerations which limit liability even where the fact of causation is clearly established.” *Id.* Minnesota courts frequently quote Prosser for the proposition:

As a practical matter, legal responsibility must be limited to those causes which are *so close to the result*, or of *such significance* as causes, that the law is justified in imposing liability. This limitation is not a matter of causation, it is one of policy.

Lewellin v. Huber, 465 N.W.2d at 65, quoting Prosser, *The Minnesota Court on Proximate Cause*, 21 Minn.L.Rev. 19, 22 (1937) (emphasis added).

In *Lewellin*, the Minnesota Supreme Court affirmed summary judgment in favor of the owner of a dog whose distracting conduct inside of a vehicle caused the driver to lose control of the vehicle and ultimately strike and kill a child who was near the roadside. The plaintiffs claimed the dog owner was responsible for their child's death under the dog owner's absolute liability statute. The *Lewellin* court noted there was causation in fact but found no proximate cause in the legal sense. The Court found there was no "direct, immediate connection" between the dog's action and the child's death and that the driver's efforts to calm the dog constituted "another link in the chain of causation." *Lewellin*, 465 N.W.2d at 65-66. Although *Lewellin* involved an absolute liability statute, it is instructive with respect to the policy analysis upon which the doctrine of proximate cause is grounded.

Appellants attempt to argue, without citation, that the trial court improperly failed to consider whether Mr. Roman Nose's criminal acts were merely a "concurring cause" of Ms. Stuedemann's murder, together with Respondents' acts of negligence. (Appellants' Brief at p. 39). However, as explained by the Court of Appeals for the Eighth Circuit: "the concurring negligence of another cannot transform an act of negligence which is so remote a cause of an injury that it is not actionable into a cause so proximate that an action can be maintained upon it." *Cole v. German Savings & Loan Soc.*, 124 F. 113, 117 (8th Cir. 1903). Causation in fact is not the issue here. Rather, the sole question before this Court is whether

R-Home's alleged negligence was "so close to the result, or of such significance" as to justify the imposition of liability.

B. This Court Should Reject Appellants' Invitation to Engage in "But-For" Causation Analysis.

At its most basic level, Appellants' claims can best be summarized as follows: "If Respondent had done something different⁷ over the course of the preceding days, weeks and months, Mr. Roman Nose would not have had the occasion to murder Jolene Stuedemann." Appellants ask this Court to consider a causation chain that leads back to R-Home's agreement to accept Mr. Roman Nose back into the Sherwood Group Home in August 1999- almost one year before the murder occurred. Appellants conclude that "had Roman Nose not even been an R-Home resident on July 10, 2000, his opportunity to kill Jolene Stuedemann would have been non-existent." (Appellants' Brief at p. 39). This statement is at once likely true and illustrative of Appellants' misunderstanding of the doctrine of proximate cause.

Appellants' statement is a classic example of what has become known as the "but-for" causation test: but-for defendant's negligence, the harm would not have occurred. Minnesota courts have long rejected the "but-for" test because of its tendency to identify the *occasion* of an injury but not the *cause* of the injury. *See Childs v. Standard Oil Co.*, 149 Minn. 166, 170, 182 N.W. 1000, 1001 (1921)

⁷ As discussed *infra* at pages 21-22, Appellants proffer five "control mechanisms" as that "something different." (Appellants' Brief at pp. 14-23).

(holding that the fact that damage would not have happened but for defendant's tortious act does not, as a matter of law, necessitate the conclusion that such act was the proximate cause of the damage).

In *Kryzer v. Champlin American Legion No. 600*, 494 N.W.2d 35 (Minn. 1992), the Minnesota Supreme Court rejected the “but for” causation test in the context of a dramshop claimant whose wife was injured while being ejected from a bar. The Supreme Court found the wife’s intoxication was “merely the occasion for her ejection, not the cause of her injury.” *Id.* at 37. More recently, the Minnesota Supreme Court rejected the “but for” analysis in a case where a woman slipped and fell on the front steps of her home while trying to catch a dog that had escaped through a broken gate in the backyard. *Harpster v. Hetherington*, 512 N.W.2d 585 (Minn. 1994). In reversing a jury verdict against the owner of the broken gate, the *Harpster* court noted the problems inherent in the “but for” test: “with a little ingenuity it converts events both near and far, which merely set the stage for an accident, into a convoluted series of ‘causes’ of the accident.” *Id.* at 586. A convoluted series of “causes” is exactly what Appellants present in this appeal.

This Court also rejected the kind of “but for” analysis Appellants urge in *Danielson v. City of Brooklyn Park*, 516 N.W.2d 203 (Minn. Ct. App. 1994), *review denied* (Minn. July 27, 1994). In *Danielson*, the City of Brooklyn Park ordered the Danielsons to remove a tree on their property that was infected with Dutch Elm disease. Mr. Danielson was injured in the course of attempting to

remove the tree himself. Following the accident, the Danielsons obtained professional opinions that the tree was not diseased. They sued the City of Brooklyn Park on the grounds it was negligent in its diagnosis of the tree and ordering its removal. *Id.* at 204-205.

In affirming summary judgment on behalf of the City, this Court rejected the “but for” causation test. This Court determined there was no causal relationship between the City’s incorrect diagnosis of the tree’s condition and the Danielsons’ injuries. In addition, this Court affirmed the trial court’s conclusion that it was the manner in which Mr. Danielson tried to remove the tree that caused his injury. *Id.* at 207.

The distinction between the *occasion* and the *cause* of an injury is further explored in Comment A to the Restatement (Second) of Torts § 431 as follows:

In order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent...This is necessary, but it is not of itself sufficient. The negligence must also be a substantial factor in bringing about the plaintiff's harm. [The word “cause” is used] in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called “philosophic sense,” which includes every one of the great number of events without which any happening would not have occurred.

Seward v. Minneapolis St. Ry. Co., 25 N.W.2d 221, 224, 222 Minn. 454, 459 (1946), *quoting* Restatement (Second) of Torts § 431, Comment A.

Here, although the acceptance and retention of Mr. Roman Nose certainly placed him in proximity with Ms. Stuedemann, it did not *cause* the murder in anything but a “philosophic” sense. Instead, Mr. Roman Nose’s proximity to Ms.

Stuedemann merely provided the *occasion* for the murder to occur. Thus, regardless of whether it is true that “but-for” R-Homes’ alleged negligence, the harm would not have occurred, the Court must still return to the issue of whether any alleged negligence was the legal, proximate cause of Ms. Stuedemann’s death.

C. Restatement (Second) of Torts §319 does not Alter Well-Settled Law Requiring a Plaintiff to Establish Proximate Cause.

Appellants assert they have brought their case not under traditional negligence, but under a novel cause of action that Appellants claim was codified in the Restatement (Second) of Torts § 319.⁸ Appellants cite to three cases applying the Section 319 duty, *Rum River Lumber Co. v. State*, 282 N.W.2d 881 (Minn. 1979), *Huttner v. State*, 637 N.W.2d 278 (Minn. Ct. App. 2001), and *Lundgren v. Flultz*, 354 N.W.2d 25 (Minn. 1984). Reliance on these cases and the Restatement provision in the context of proximate cause is misplaced.

Restatement § 319, even if it applies, does not create a new cause of action for which there is no element of causation as Appellants appear to suggest. Instead, at its best, Restatement § 319 provides an exception to the general rule that one is under no duty to control the conduct of another. As such, § 319 applies only to the *duty* element of negligence, and has no application to the proximate cause element. This distinction is made apparent in *Rum River*:

The scope of such a *duty* is defined in Restatement (Second) Torts, § 315 It is generally held that a person charged with the custody of a

⁸ Respondents Ritter are addressing the issue of whether this section creates a duty in a foster care setting. R-Home adopts and incorporates the Ritters’ arguments in that regard.

dangerous individual has the *duty* to exercise reasonable care to prevent his charge from injuring a third person. In those cases, the *duty* is said to flow from the special relationship between the custodian and the prisoner. Thus, Restatement (Second) Torts, § 319, states “one who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a *duty* to exercise reasonable care to control the third person to prevent him from doing such harm.”

Rum River, 282 N.W.2d at 886 (emphasis added, internal citations omitted).

Section 319 relates only to the question of whether a duty exists. Proximate cause is an independent element that must be addressed in its own right. On this issue, nothing the Appellants cite calls into question the trial court’s holding that any alleged negligence by R-Home was not the proximate cause of Jolene Stuedemann’s murder.

D. The Chain of Events Starting with Mr. Roman Nose’s Unauthorized Departure from the Group Home, Continuing with the Illegal Consumption of Alcohol and Drugs with School Friends, Including Ms. Stuedemann, and Concluding with the Rape and Murder was too Attenuated to Constitute Legal Causation as to R-Home.

Appellants raise five negligence theories in this appeal. Analysis of the five demonstrates that none of R-Home’s alleged conduct or inaction proximately caused Ms. Stuedemann’s death.

First, Appellants argue that R-Home should have refused to accept Mr. Roman Nose back into the foster care system in August 1999. (Appellants’ Brief at p. 14-16). This claim ignores the fact that Mr. Roman Nose was placed in R-Home by Northern Cheyenne Social Services after being screened by at least two psychologists. (R. 5, 30). The allegation also ignores the real separation between

this event and Ms. Stuedemann's death. In order to draw a causal connection between R-Home's readmission of Mr. Roman Nose on August 3, 1999 and Jolene Stuedemann's death on July 11, 2000, one would have to ignore the more than 300 intervening calendar days, a full year of high school, dozens of therapy sessions, group meetings, Alcoholics Anonymous classes, a series of anger management classes, and all of the other intervening events discussed above. (R. 3-4, 12-13). To find that R-Home's acceptance of Mr. Roman Nose, or any of Plaintiffs' other potential "control mechanisms," was the proximate cause of Ms. Stuedemann's murder would be to abandon the unbroken line of cases that have held for more than 100 years that only "consequences which follow in unbroken sequence . . . from the original negligent act, are natural and proximate." *Christianson v. Chicago, St. P., M & O Ry.*, 67 Minn. 94, 97, 69 N.W. 640, 641 (1896).

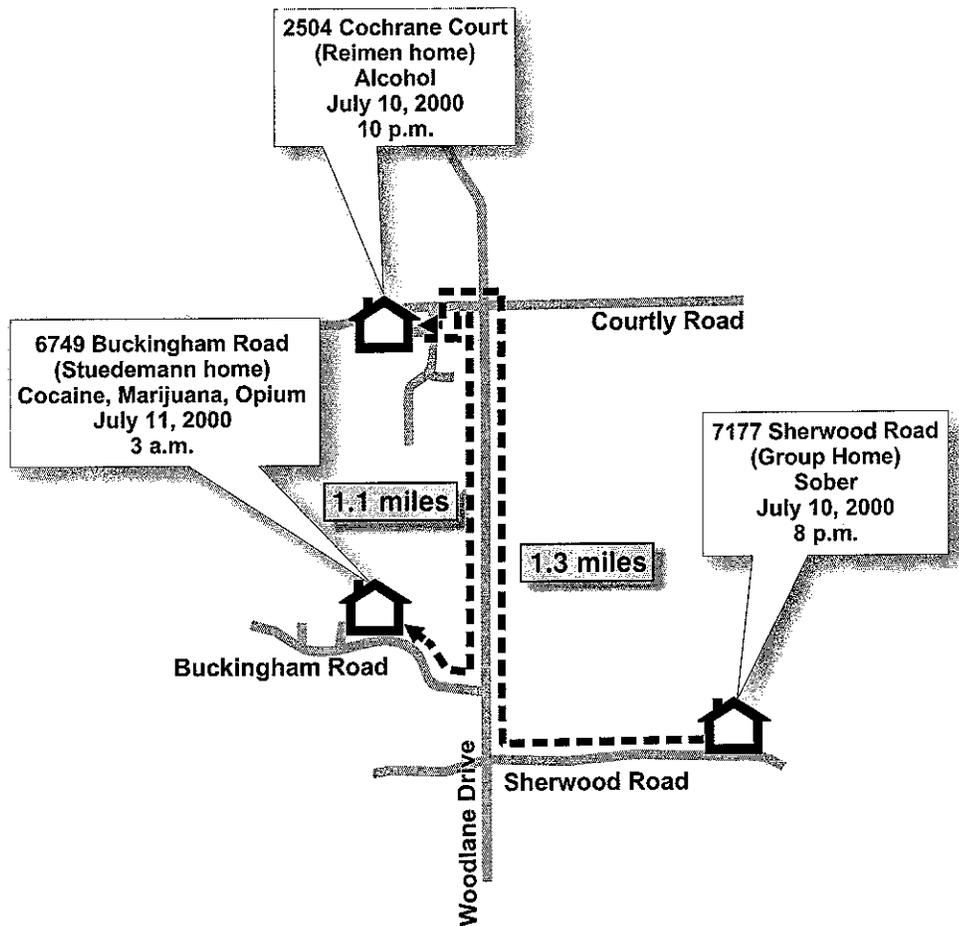
Second, Appellants' additional allegations of negligence—that Respondent failed to discharge Mr. Roman Nose, enlist the aid of the juvenile court, and report their own neglect of Mr. Roman Nose⁹—similarly ignore the close and significant causes of Ms. Stuedemann's murder in favor of distant and unrelated acts. (Appellants' Brief at p. 16-21). As with the misdiagnosis of the Dutch Elm disease in *Danielson* and broken backyard gate in *Harptster*, none of these alleged acts of negligence have any real connection to the sequence of events leading up to

⁹ R-Home does not concede the factual basis for these claims, as ample evidence exists that R-Home continuously reported Mr. Roman Nose's behavior to the police, did not neglect Mr. Roman Nose's treatment plan, and placed real restrictions on Mr. Roman Nose's behavior.

the ultimate harm, Ms. Stuedemann's death. As such, they cannot provide the basis of a claim of negligence.

Finally, Appellants' claim that R-Home failed to "remove Roman Nose from the streets on July 10, 2000." (Appellants Brief at p. 21-23). As with all of Appellants' allegations of negligence, this claim ignores the sequence of events that occurred on July 10 and 11, 2005 and all of the other causative factors. It is undisputed that Mr. Roman Nose left the Sherwood Group Home with another boy against the direction of house parent Wayne Borrowick at approximately 8:00 p.m. on July 10, 2000. Mr. Roman Nose was sober at the time he left the home. House parent Cindy Bruss located the two boys shortly thereafter and clearly signaled to them that they needed to return home. (R. 9). In response, the other boy returned home, but Mr. Roman Nose did not. (R. 10). R-Home subsequently contacted the Woodbury Police Department to report Mr. Roman Nose's absence. (R. 11).

Mr. Roman Nose's subsequent activities, as depicted in the following diagram, further demonstrate the attenuated causal chain between any alleged negligence by R-Home and Ms. Stuedemann's death:



After refusing to return home, Mr. Roman Nose walked 1.3 miles to Mr. Reimen's house. Mr. Reimen, Mr. Roman Nose and Ms. Stuedemann consumed beer at the Reimen residence. (R. 42). Both of Mr. Reimen's parents were home the entire time, but were apparently unaware of the activity occurring in their home. (R. 38).

According to Mr. Roman Nose, Ms. Stuedemann invited him back to her house to use cocaine, marijuana and opium. (R. 48). At approximately 3:00 a.m. on July 11, 2000, Ms. Stuedemann returned home. Mr. Roman Nose met Ms. Stuedemann at her house sometime later. No one else was home at the

Stuedemann residence because Ms. Stuedemann's parents had left her home alone while they vacationed. (R. 27). Mr. Roman Nose and Ms. Stuedemann used cocaine and engaged in other unknown activities prior to Ms. Stuedemann's murder. (R. 43, 46). Given the above chain of events, Appellants cannot establish that R-Home's alleged negligence was the proximate cause of Ms. Stuedemann's death.

The factors other than R-Home's alleged negligence that contributed to Ms. Stuedemann's death are substantial, both in number and significance. First, as the trial court acknowledged, the only person responsible for the murder is Tony Roman Nose. (A. 77). Other factors include the empty Stuedemann home, the unsupervised Reimen residence, the alcohol consumption, the drug abuse, the Woodbury Police Department's decision not to investigate the runaway report until the next morning and other reasons that are known only to Mr. Roman Nose. When viewed in context, the significance of any alleged negligence on the part of R-Home is limited and the causal link is attenuated, at best. Even if such negligence set the stage or provided the occasion for Mr. Roman Nose to act, it did not cause Ms. Stuedemann's death to occur. The only cause is Mr. Roman Nose himself.

III. Expansion of the Proximate Cause Standard to Assess Liability to a Foster Care Group Home for the Criminal Acts of a Resident who Leaves the Premises Without Permission, Consumes Drugs and Alcohol and Commits a Heinous Criminal Act Would Contravene Public Policy.

Numerous public policy factors also weigh against the imposition of liability in this case. As noted by the Supreme Court of Minnesota, “courts have always used the tort doctrine of proximate cause, as distinguished from causation in fact, to implement public policy in establishing the parameters of liability.” *Lewellin v. Huber*, 465 N.W.2d at 65. Thus, the trial court was entirely within its province in considering such factors.¹⁰

First, as a practical matter, the trial that would result if Appellants are permitted to submit their numerous allegations of negligence to the jury would be a waste of judicial resources. Plaintiffs intend to argue that nearly every event that occurred within R-Home from Mr. Roman Nose’s return to the home on August 3, 1999 until Ms. Stuedemann’s death on July 11, 2000 is a potentially negligent act. Each event—each missed opportunity to discharge Mr. Roman Nose, each purported instance of “neglect” of Mr. Roman Nose, each alleged failure to report Mr. Roman Nose to the authorities, and numerous others—would be litigated as its own mini-trial, with Appellants bearing the burden of establishing each of the

¹⁰ The consideration of public policy factors is to be distinguished from the immunity to suit enjoyed by state and local agencies. Appellants imply that the trial court improperly granted Respondents immunity from suit. (Appellants’ Brief at p. 30). However, the trial court was doing no more than noting the public policy factors that support the court’s decision that liability for Jolene Stuedemann’s death should not extend to R-Home.

elements of negligence. Such a trial would span many weeks if not months, while skirting the actual issue of Mr. Roman Nose's criminal acts.

It is precisely to avoid such a situation that the doctrine of proximate cause was established to limit the allegedly negligent acts placed before the jury to just those that form an "unbroken sequence" from act to injury, and that are "so close to the result, or of "such significance as causes", that the law is justified in imposing liability." *See Prosser, The Minnesota Court on Proximate Cause*, 21 Minn.L.Rev. 19, 22 (1937). To this end, the trial court correctly applied the law of negligence in finding that "even given the benefit of hindsight regarding the tragic events resulting in the death of Ms. Stuedemann, the Court cannot, as a matter of law, establish proximate cause." (A. 74-75).

Second, as correctly considered by the trial court, public policy in support of the foster care system also requires a finding that R-Home is not responsible for the heinous crimes of Mr. Roman Nose. R-Home owned and operated several group homes, which were part of the Minnesota foster care system. Each home accepted children in need of protection and provided them with a stable home life and an opportunity for success. Because of the nature of the care provided, foster homes should not be held strictly liable for the independent and criminal actions of foster children, particularly in cases such as this where the acts occur away from the supervision afforded by the home. As the trial court concluded, "serious issues of public policy affecting the entire state juvenile system would result if R-Home" were to be held liable. (A. 70).

The trial court also correctly noted that “[j]uvenile group homes are an important factor in addressing the needs of juveniles who, almost by definition, often encounter issues regarding chemical dependency and anger.” (A. 70). The purpose of group homes is to “provide a type of care that is not available through traditional foster families or institutions.” Minn. R. 9545.1410.¹¹ The importance and value of group homes is without dispute. As noted by the trial court, if liability of foster care providers were to include a case such as this one, “enormous issues of liability would arise which could result in the collapse and failure of the system.” (A. 70). Therefore, especially in the arena of foster care, the trial court was correct in applying the doctrine of proximate cause and finding that the actions of Mr. Roman Nose were simply too remote for liability to attach to R-Home.

CONCLUSION

This is a tragic case and it is undisputed that the actions of Mr. Roman Nose were depraved and heinous. It is equally undisputed that R-Home attempted to prevent Mr. Roman Nose from leaving, reported Mr. Roman Nose to the Woodbury Police Department and did not provide Mr. Roman Nose access to drugs and alcohol. Any actions or inactions by R-Home are simply not “so close to the result or of such significance” that legal liability should be imposed. As a policy matter, as a matter of law, and as a matter of common sense, R-Home’s

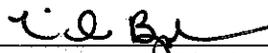
¹¹ At all times relevant to this case, group homes were licensed by the Department of Human Services under Minn. R. 9545.1400 to 9545.1480. These rules were repealed on July 1, 2005, and were replaced with Minn. R. 2960.0010 to 2960.0710.

actions were not the proximate cause of Jolene Stuedemann's death. For the foregoing reasons, R-Home respectfully requests that the trial court's entry of dismissal be affirmed in its entirety.

Dated: October 3, 2005.

Respectfully submitted,

LARSON • KING, LLP



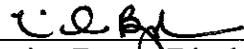
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CERTIFICATE

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,213 words and 606 lines. This brief was prepared using Microsoft Word XP.

Dated: October 3, 2005.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).