Using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone.[G.C. v. Owensboro Public Schools](15-3-2)

In 2013, the United States Court of Appeals 6th Circuit, held that a general background knowledge of drug abuse or depressive tendencies, without more, does not enable a school official to search a student's cell phone when a search would otherwise be unwarranted (Pre-Riley).

¶ 15-3-2. **G.C. v. Owensboro Public Schools,** No. 11-6476, 711 F.3d 623, (6th Cir., 2013).

Facts: During his freshman year at Owensboro High School, G.C. began to have disciplinary problems. Shortly thereafter, he communicated with school officials that he used drugs and was disposed to anger and depression. The relevant incidents and discussions are as follows. On September 12, 2007, the first incident in the record, G.C. was given a warning for using profanity in class. R. 69-7 (Referral at 1) (Page ID #466). In February 2008, G.C. visited Smith's office and expressed to Smith "that he was very upset about an argument he had with his girlfriend, that he didn't want to live anymore, and that he had a plan to take his life." R. 69-8 (Smith Aff. at ¶ 4) (Page ID #467). In this same meeting, G.C. told Smith "that he felt a lot of pressure because of football and school and that he smoked marijuana to ease the pressure." Id. ¶ 5. As a result of this interaction, Smith met with G.C.'s parents and suggested that he be evaluated for mental health issues. Id. ¶ 6. G.C.'s parents took him to a treatment facility that day. Id.; R. 69-28 (Bio-Psycho Social Assessment) (Page ID #536–48).

On November 12, 2008, G.C. was given a warning for excessive tardies, and on November 17, 2008, G.C. was disciplined for fighting and arguing in the boys locker room. R. 69-12 (Referrals at 1) (Page ID #490). On March 5, 2009, G.C. walked out of a meeting with Summer Bell, the prevention coordinator at the high school, and left the building without permission. R. 69-8 (Smith Aff. at ¶ 7) (Page ID #468); R. 69-10 (Bell Tr. at 40:19–21) (Page ID #484). G.C. made a phone call to his father and was located in the parking lot at his car, where there were tobacco products in plain view. R. 69-8 (Smith Aff. at ¶ 8) (Page ID #468). G.C. then went to Smith's office, and Smith avers that G.C. "indicated he was worried about the same things we had discussed before when he had told me he was suicidal." Id. She states that she "was very concerned about [G.C.'s] well-being because he had indicated he was thinking about suicide again. I, therefore, checked [G.C.'s] cell phone to see if there was any indication he was thinking about suicide." Id. ¶ 9. The record also indicates that G.C. visited a treatment center that day, and the counselor recommended that he be admitted for one to two weeks. R. 69-28 (Bio-Psycho Social Assessment) (Page ID #560–61).

On March 9, 2009, school officials convened a hearing with G.C. and his parents regarding the March 5 incident, at which both G.C. and school officials gave testimony. R. 69-13 (Hearing Minutes at 1–2) (Page ID #491–92). G.C. was placed on probation and assigned four days of in-school suspension. Id. at 3 (Page ID #493). On April 8, 2009, G.C. was suspended

after yelling and hitting a locker. R. 69-15 (Referral at 1) (Page ID #497). At the end of the 2008–09 academic year, Burnette recommended that Vick revoke G.C.'s authorization to attend Owensboro High School. R. 69-17 (Vick Aff. at ¶ 10) (Page ID #500). Vick did not follow this recommendation, and on June 15, 2009, he met with G.C.'s parents to discuss "what was expected of [G.C.] to be permitted to continue attending the [Owensboro Public School District] as an out-of-district student." Id. According to Vick, he described the expectations as follows: At this meeting, I explained to [G.C.'s] parents that they had three options regarding their son's education. First, I told them they could send [G.C.] to the [Daviess County Public School District] since they resided in that school district with their son. I told them their second option was to actually move into the [Owensboro Public School District] and that, upon so doing, [G.C.] would be entitled to all the rights of a resident student. Finally, I told them that despite . . . Burnette's recommendation, I would allow [G.C.] to continue to attend school in the [Owensboro Public School District] as a non-resident student for the 2009–10 school year on the condition and understanding that, if he had any further disciplinary infraction, this privilege would be immediately revoked and he would be required to return to his home school district. Id. ¶ 11.

On August 6, 2009, G.C.'s parents registered G.C. to attend Owensboro High School for the 2009–10 academic year. R. 69-16 (Registration Form at 1) (Page ID #498). Unlike in years past, however, they filled out an in-district registration form and listed G.C.'s physical address as that of his grandparents, who lived in the Owensboro Public School District. Id. On the same form, they stated that G.C. lived with his parents, who maintained their residence in the Daviess County School District. Id.

On September 2, 2009, G.C. violated the school cell-phone policy when he was seen texting in class. R. 69-4 (Brown Aff. at ¶ 4) (Page ID #384). G.C.'s teacher confiscated the phone, which was brought to Brown, who then read four text messages on the phone. Id. ¶¶ 4–6 (Page ID #384–85). Brown stated that she looked at the messages "to see if there was an issue with which I could help him so that he would not do something harmful to himself or someone else." Id. ¶ 6 (Page ID #385). Brown explained that she had these worries because she "was aware of previous angry outbursts from [G.C.] and that [he] had admitted to drug use in the past. I also knew [he] drove a fast car and had once talked about suicide to [Smith]. . . . I was concerned how [he] would further react to his phone being taken away and that he might hurt himself or someone else." Id. ¶ 5 (Page ID #384–85).

After this incident, Burnette recommended to Vick that G.C.'s out-of-district privilege be revoked, and this time Vick agreed. R. 69-17 (Vick Aff. at ¶ 16) (Page ID #501). G.C.'s parents were contacted and told that they could appeal the decision if desired. Id. ¶¶ 17–19. (Page ID #501–02). On October 15, 2009, Vick, Burnette, and other school officials met with G.C.'s parents and their attorney. Id. ¶ 21 (Page ID #502). Vick explained that G.C. "had violated the condition of his out-of-district privilege to attend Owensboro High School by texting in class." Id. Despite the revocation, Vick avers that G.C. continued to have the right to attend high school in Daviess County. Id. ¶ 22 (Page ID #503).

On October 21, 2009, G.C. filed an action for declaratory and injunctive relief, as well as compensatory and punitive damages, in the U.S. District Court for the Western District of Kentucky. R. 1 (Compl.) (Page ID #1). G.C. alleged violations of his First, Fourth, and Fifth Amendment rights as well as violations of the Kentucky Constitution. Id. at ¶¶ 18–37 (Page ID #1–5). G.C. moved for a temporary restraining order and preliminary injunction, seeking to enjoin the defendants from denying G.C. his right to an education, which the district court denied on November 16, 2009. R. 6 (Pl.'s Mot. at 1) (Page ID #36); R. 20 (Order Denying Preliminary Injunctive Relief at 1) (Page ID #123). G.C. then amended his complaint to include a Rehabilitation Act claim. R. 36 (First Am. Compl. at ¶¶ 39–48) (Page ID #195–96). On June 2, 2011, the defendants filed a motion for summary judgment on all of G.C.'s claims, which the court granted as to G.C.'s federal claims. R. 69-1 (Defs.' Mot. for Summ. J. at 1) (Page ID #315); R. 85 (Order at 25) (Page ID #767). The court declined to exercise supplemental jurisdiction over G.C.'s state-law claims. R. 85 (Order at 25) (Page ID #767). In the same order, the district court denied G.C.'s motion requesting a Daubert hearing on the qualifications of the defendants' Rehabilitation Act expert witness. Id. at 19–21.
(Page ID #761–63).

Held: Reversed

Opinion: G.C. argues that the district court erred when it granted summary judgment to the defendants on his Fourth Amendment claim. G.C. conceded at oral argument that the March 2009 search of his cell phone was justified in light of the surrounding circumstances, yet maintains that the September 2009 search was not supported by a reasonable suspicion that would justify school officials reading his text messages. The defendants respond that reasonable suspicion existed to search his phone in September 2009 given his documented drug abuse and suicidal thoughts, particularly under the lower standard applied to searches in a school setting. Appellees Br. at 21–26. They argue that the searches were limited and "aimed at uncovering any evidence of illegal activity" or any indication that G.C. might hurt himself. Id. at 28.

The Supreme Court has implemented a relaxed standard for searches in the school setting:
[T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider whether the action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place. New Jersey v. T.L.O., 469 U.S. 325, 341–42 (1985) (internal quotation marks, citation, and alterations omitted). "A student search is justified in its inception when there are reasonable grounds for suspecting that the search will garner evidence that a student has violated or is violating the law or the rules of the school, or is in imminent danger of injury on school premises." Brannum v. Overton Cnty. Sch. Bd., 516 F.3d 489, 495–96 (6th Cir. 2008). "Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively

intrusive in light of the age and sex of the student and the nature of the infraction." T.L.O., 469 U.S. at 342. "In determining whether a search is excessive in its scope, the nature and immediacy of the governmental concern that prompted the search is considered." Brannum, 516 F.3d at 497 (internal quotation marks omitted). "In order to satisfy the constitutional requirements, the means employed must be congruent to the end sought." Id.

Because this court has yet to address how the T.L.O. inquiry applies to the search of a student's cell phone, the parties point to two district court cases that have addressed this issue. In J.W. v. DeSoto County School District, No. 2:09-cv-00155-MPM-DAS, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010), the case relied upon by the defendants and cited by the district court, a faculty member observed a student using his cell phone in class, took the cell phone from the student, and "opened the phone to review the personal pictures stored on it and taken by [the student] while at his home." Id. at *1. The district court found the faculty member's actions reasonable, explaining that "[i]n assessing the reasonableness of the defendants' actions under T.L.O., a crucial factor is that [the student] was caught using his cell phone at school." Id. at *4. The court further reasoned that "[u]pon witnessing a student improperly using a cell phone at school, it strikes this court as being reasonable for a school official to seek to determine to what end the student was improperly using that phone." Id.

Such broad language, however, does not comport with our precedent. A search is justified at its inception if there is reasonable suspicion that a search will uncover evidence of further wrongdoing or of injury to the student or another. Not all infractions involving cell phones will present such indications. Moreover, even assuming that a search of the phone were justified, the scope of the search must be tailored to the nature of the infraction and must be related to the objectives of the search. Under our two-part test, using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantively or temporally to the infraction. Because the crux of the T.L.O. standard is reasonableness, as evaluated by the circumstances of each case, we decline to adopt the broad standard set forth by DeSoto and the district court.

G.C. directs the panel to Klump v. Nazareth Area School District, 425 F. Supp. 2d 622 (E.D. Pa. 2006), a case in which a student was seen using his cell phone, followed by two school officials accessing the student's text messages and voice mail; searching the student's contacts list; using the phone to call other students; and having an online conversation with the student's brother. Id. at 630. The court initially determined that the school officials were "justified in seizing the cell phone, as [the student] had violated the school's policy prohibiting use or display of cell phones during school hours." Id. at 640. The court found that the school officials were not, however, justified in calling other students, as "[t]hey had no reason to suspect at the outset that such a search would reveal that [the student] himself was violating another school policy." Id. The court further discussed the text messages read by the school officials, concluding that although the school officials ultimately found evidence of drug activity on the phone, for the purposes of a Fourth Amendment claim, the court must consider only that which the officials

knew at the inception of the search: "the school officials did not see the allegedly drug-related text message until after they initiated the search of [the] cell phone. Accordingly, . . . there was no justification for the school officials to search [the] phone for evidence of drug activity." Id. at 640–41. We conclude that the fact-based approach taken in Klump more accurately reflects our court's standard than the blanket rule set forth in DeSoto.

G.C.'s objection to the September 2009 search centers on the first step of the T.L.O. inquiry—whether the search was justified at its inception. G.C. argues that the school officials had no reasonable grounds to suspect that a search of his phone would result in evidence of any improper activity. The defendants counter that the search was justified because of G.C.'s documented drug abuse and suicidal thoughts. Appellees Br. at 26. Therefore, they argue, the school officials had reason to believe that they would find evidence of unlawful activity on G.C.'s cell phone or an indication that he was intending to harm himself or others. Id. at 26–27. We disagree, though, that general background knowledge of drug abuse or depressive tendencies, without more, enables a school official to search a student's cell phone when a search would otherwise be unwarranted. The defendants do not argue, and there is no evidence in the record to support the conclusion, that the school officials had any specific reason at the inception of the September 2009 search to believe that G.C. then was engaging in any unlawful activity or that he was contemplating injuring himself or another student. Rather, the evidence in the record demonstrates that G.C. was sitting in class when his teacher caught him sending two text messages on his phone. R. 69-4 (Brown Aff. at ¶ 4) (Page ID #384). When his phone was confiscated by his teacher pursuant to school policy, G.C. became upset. Id. ¶ 3. The defendants have failed to demonstrate how anything in this sequence of events indicated to them that a search of the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school. On these facts, the defendants did not have a reasonable suspicion to justify the search at its inception.

The defendants further argue that G.C.'s claim must fail because he did not suffer any harm as a result of the search; specifically, they point to the fact that he "was not disciplined based on the contents of his phone." Appellees Br. at 28. However, the issue of injury and compensable damages has not been developed before us. Even if G.C. cannot establish compensable damages, he may be entitled to nominal damages. See Carey v. Piphus, 435 U.S. 247, 266 (1978) ("[W]e believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury."); Slicker v. Jackson, 215 F.3d 1225, 1231 (11th Cir. 2000) ("We have held unambiguously that a plaintiff whose constitutional rights are violated is entitled to nominal damages even if he suffered no compensable injury."); Briggs v. Marshall, 93 F.3d 355, 360 (7th Cir. 1996) (recognizing that nominal damages are available for Fourth Amendment claims). Moreover, punitive damages sometimes attach to an award comprised solely of nominal damages. See Romanski v. Detroit Entm't, L.L.C., 428 F.3d 629, 645 (6th Cir. 2005) ("But this is a § 1983 case in which the basis for the punitive damages award was the plaintiff's unlawful arrest and the plaintiff's economic injury was so minimal as to be essentially nominal."). Therefore, we remand to the district court to address the issue of injury and damages in the first instance.

Conclusion : We therefore REVERSE the district court's grant of summary judgment as to G.C.'s Fourth Amendment claim based on the September 2009 search.