

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY FLORIDA
CIVIL DIVISION**

K.S., as mother and natural guardian of
JANE A.S. DOE, a minor child,

Plaintiff,

vs.

CASE NO.: 2025-CA-001701-O
DIVISION: 39

CHRISTIAN VARGAS, FLORIDA
MULTICULTURAL DISTRICT
COUNCIL OF THE ASSEMBLIES
OF GOD, INC. and IGNITE LIFE
CENTER, INC.,

Defendants.

_____ /

DEFENDANT IGNITE’S MOTION TO DISMISS COUNT III

Defendant, IGNITE LIFE CENTER, INC. (“Ignite”), by and through undersigned counsel, hereby moves to dismiss Count III of Plaintiff’s Complaint for failure to state a cause of action. In support thereof, Defendant Ignite states:

1. This is a negligence action brought by JANE A.S. DOE (a 17 year old, born in 2008) against Defendants Christian Vargas, Ignite and the Florida Multicultural District Council of the Assemblies of God, Inc. stemming from alleged abuse by Defendant Christian Vargas from March – July 2021.

2. On February 28, 2025, Plaintiff filed a 4 count Complaint, which alleges 2 causes of action against Defendant Ignite: Count II for Negligence and Count III for Vicarious Liability for the alleged acts of Defendant Christian Vargas.

3. The instant Motion seeks dismissal of Count III pending against Ignite in the Complaint, because Defendant Ignite, as a matter of law, cannot be held vicariously liable for the tortious actions of a volunteer that occurred outside the scope of his agency with the organization.

4. For the reasons set forth above, and discussed in greater detail below, Count III of the Plaintiff's Complaint must be dismissed with prejudice.

MEMORANDUM OF LAW

I. LEGAL STANDARD

A complaint must state a cause of action and include a short and plain statement of the ultimate facts showing why the Plaintiff is entitled to relief. Fla.R.Civ.P. 1.110(b). A Complaint, which does not state a cause of action must be dismissed as a matter of law. *See* Fla.R.Civ.P. 1.140(b)(6). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not due." Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949, 173 L.ED.2d 868 (2009) (internal citations omitted).

II. COUNT III MUST BE DISMISSED BECAUSE THE ALLEGED ABUSE WAS OUTSIDE THE VOLUNTEER'S SCOPE

The facts, as alleged by Plaintiff within the four-corners of the Complaint, do not support an action for vicarious liability against Defendant Ignite.

In order for liability to be imputed on Defendant Ignite under a vicarious liability / respondeat superior theory, it must be shown that Christian Vargas was an agent of Defendant Ignite's and was acting in the scope of his agency when he committed the abuse. *See Special Olympics Florida, Inc. v. Showalter*, 6 So.3d 662 (Fla. 5th DCA 2009). In the Complaint, Plaintiff alleges that Christian Vargas was an agent of Defendant Ignite, as a volunteer for the church, and that as a volunteer, Christian Vargas' duties included prayer and counseling with minors, including Plaintiff. *See* Pla. Complaint, ¶ 50. The Complaint alleges that the abuse occurred during his "working hours" and in the course and scope of his duties with Ignite. *Id.* at ¶ 51.

Although Plaintiff makes the cursory statement that the alleged abuse occurred in the course and scope of Christian Vargas' duties, her unsupported legal conclusion is not determinative. "An

employee's conduct is within the scope of his employment, where (1) the conduct is of the kind he was employed to perform, (2) the conduct occurs substantially within the time and space limits authorized or required by the work to be performed and (3) the conduct is activated at least in part by a purpose to serve the master rather than the employee's own interests." *Iglesias Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So.2d 356-357 (Fla. 3d DCA 2001)

"Generally, sexual assaults and batteries by employees are held to be outside the scope of an employee's employment, and therefore, insufficient to impose vicarious liability on the employer." *Iglesias* at 357 (quoting *Nazareth v. Herndon Ambulance Sev., Inc.*, 467 So.2d 1076, 1078 (Fla. 5th DCA 1985))(under the doctrine of respondeat superior, an employer cannot be held liable for the tortious or criminal acts of an employee, unless the acts were committed during the course of the employment and to further a purpose or interest, however excessive or misguided, of the employer); *see also Perez v. Zazo*, 498 So.2d 463, 465 (Fla. 3d DCA 1986)("It is entirely clear that responsibility for the intentional wrongful acts of a servant-employee may be visited upon his master-employer under the doctrine of respondeat superior only when that conduct in some way furthers the interests of the master or is at least motivated by a purpose to serve those interests, rather than the employee's own").

The court in *Hennagan v. Department of High. Saf. & Motor Veh.*, 467 So.2d 748 (Fla. 1st DCA 1985) was asked to determine whether the allegations in the complaint, which alleged that a trooper had lured a minor into his car and molested her under the pretext that she was a shoplifting suspect, were sufficient to survive a motion to dismiss. 467 So.2d at 749. The court found that the allegations were sufficient, holding that it could not be said, as a matter of law, that the acts alleged were or were not done in furtherance of the trooper's duties to apprehend a shoplifting suspect. *Id.* at 751. While the trooper's acts resulted in a criminal offense, the court noted that such a result did not

preclude a determination that the acts were initiated in the course and scope of the trooper's employment and to serve the interests of the employer. *Id.*

Likewise, in *M.V. v. Gulf Ridge Council Boy Scouts of America, Inc.*, 529 So.2d 1248 (Fla. 2d DCA 1988) the court examined another circumstance in which abuse occurred within the scope of an employee's agency. In that case, the court permitted a vicarious liability claim to go to the jury stemming from an allegation of sexual assault by a first aid attendant on a boy scout. The sole reason given, however, was that the intentional tort involved "medically permitted touching followed by unpermitted touching. This created a jury question of whether the employee's intentional tort was within the scope of his employment with appellee." *Id.* at 1249.

Nothing akin to those facts is alleged in Plaintiff's Complaint. In fact, Plaintiff's own allegations confirm that the alleged abuse was outside the scope of his alleged agency (per Plaintiff's Complaint, Christian Vargas' duties were to provide prayer and counseling¹). There are no facts alleged which would support a finding that sexual touching, if it did occur, was in anyway, within the scope of Christian Vargas' agency as volunteer.

In *Agriturf Mgmt., Inc. v. Roe*, 656 So.2d 954 (Fla. 2d DCA 1995), the Second District Court of Appeal distinguished *Hennagan*, noting that unlike the defendant in that case, the company president's sexual abuse of a minor did not have as its source or purpose any intent to serve the employer. *Agriturf*, 656 So.2d at 955. In that case, the company president's six-year old granddaughter would often accompany him to work and help him clean and put away equipment. *Id.* On several of these occasions, the company president sexually abused the child. *Id.* The court reversed the trial court's verdict finding the employer company, a landscaping business, was vicariously liable for the company president's illegal acts. *Id.* at 956. The court found that although the acts of cleaning and putting away equipment occurred within the president's course

¹ See Pla. Complaint, ¶ 50.

and scope of employment, the sexual abuse did not. *Id.* at 955. As a matter of law, the court held, the president's fondling of his six-year old granddaughter did not occur in furtherance of the company's business objectives. *Id.*

Florida law is clear that the sexual abuse alleged falls outside the scope of Christian Vargas' agency with Defendant Ignite as an occasional church volunteer and the allegations are insufficient to impose vicarious liability. Count III of Plaintiff's Complaint, therefore, must be dismissed with prejudice.

WHEREFORE, Defendant, IGNITE LIFE CENTER, INC., respectfully requests that this Court dismiss Count III of Plaintiff's Complaint, and for any other further such relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April 2025, a true and correct copy of the foregoing has been filed through the Florida Courts E-Filing Portal, which will serve a copy via email to all counsel of record pursuant to Rule 2.516 of the Florida Rules of General Practice and Judicial Administration.

Respectfully submitted,

/s/ Madeline S. Villani

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