IN THE CIRCUIT COURT OF THE 8TH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ANNEKE ACREE, as parent and natural guardian of M.A.,
Plaintiff,

vs.

CASE NO.: 01-2024-CA-3461
DIVISION: J

CITY OF ALACHUA, FLORIDA, and the ALACHUA COUNTY SCHOOL BOARD,
Defendants.

ORDER GRANTING DEFENDANT ALACHUA COUNTY SCHOOL BOARD'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This cause having come before this Court for hearing on Alachua County School Board's ("School Board") Motion to Dismiss Plaintiff's Amended Complaint, and the Court having considered the motion, Plaintiff's response in opposition, oral argument from the parties, and being otherwise advised in the premises, the Court finds as follows:

COUNT I, NEGLIGENT SUPERVISION

1. In Count I, Plaintiff alleges a Negligent Supervision claim against the School Board. The Amended Complaint alleges that employee Travis Yeckring, sometime during the 2022-2023 school year, during a two week time span, engaged in two inappropriate acts involving M.A. The first incident involved showed M.A. a nude photograph of himself while in the hallway at school and the second incident involved making "sexually charged" comments to M.A. The dates of the incidents are unclear. The Amended Complaint references three other employees, Timothy Wright, Mac Rendek, and Michelle Faulk, to whom M.A. reported Travis Yeckring's misconduct after the second incident. It is unclear from the allegations whether Plaintiff is claiming that each of these employees were somehow responsible for supervising Yeckring or how their conduct supports a claim for negligent supervision when there are no

inappropriate acts alleged after M.A. reported the two incidents to these employees. It appears Plaintiff is relying on various vague allegations about prior complaints of inappropriate conduct being reported to School Board employees to state this claim; however, these allegations are insufficient as she fails to include any information about the nature of the complaints, to whom they were made, and when they were made. It is also unclear what specific cause of action Plaintiff is asserting as Count I is framed as a Negligent Supervision claim yet Plaintiff's Response to the School Board's Motion to Dismiss characterizes the claim as a Negligent Retention Claim.

2. The Defendant's Motion to Dismiss Count I primarily focuses on Plaintiff's inability to establish the damages element of her claim due to the impact rule. Plaintiff clearly alleges that Yeckring did not physically touch M.A. but then alleges that "the emotional trauma manifested physically immediately following each event" and that she suffered generalized complaints of migraines, nausea, sweating, fidgeting, stomach pain, loss of appetite, weight loss, hair loss, irregular menstruation cycle, anxiety, depression, and difficulty concentrating.

3. The impact rule provides that if Plaintiff never suffered an impact, the mental or emotional distress must be manifested by a discernable physical injury within a short time of the incident. *Willis v. Gami Golden Glades, LLC*, 967 So.2d 846 (Fla. 2007). "Such psychological trauma must cause a demonstrable physical injury such as death, paralysis, muscular impairment, or similar objectively discernible physical impairment." *Brown v. Cadillac Motor Car Division*, 468 Sp.2d 903, 904 (Fla. 1985). A clear example occurs where the plaintiff "was so overcome with shock and grief that she collapsed and died on the spot" upon arriving at the scene of her daughter's death. *Champion v. Gray*, 478 So.2d 17, 18 (Fla. 1985).

4. The following claims have been found insufficient to overcome the impact rule: insomnia, depression, short term memory loss, extreme fear of loud noises, a blockage in the esophagus, and fibromyalgia, *Zell v. Meek*, 665 So.2d 1048, 1053-54 (Fla. 1995); exacerbation of preexisting diabetes and memory loss, *LeGrande v. Emmanuel*, 889 So.2d 991, 995 (Fla. 3d DCA 2004); headaches, diabetes, sleep apnea, stress, insomnia, anxiety, loss of appetite, hair loss, and bowel trouble, *Elliot v. Elliott*, 58 So.3d 878, 882 (Fla. 1st DCA 2011); weight gain, nightmares, and feelings of anxiety, *G4S Secure Sols. USA, Inc. v. Golzar*, 208 So.3d 204 (Fla. 3d DCA 2016) (where the security guard filmed high-school-plaintiff undressing; "while we… find [the employee's] behavior to be reprehensible, in our view, these considerations are not sufficient to waive the applicability of Florida's impact rule"); co-worker sexual harassment, *Resley v. Ritz–Carlton Hotel Co.*, 989 F. Supp. 1442, 1449 (M.D. Fla. 1997); and aggravation of pre-existing conditions, such as diabetes and asthma, mood swings, and difficulty in school, *Gonzalez–Jimenez de Ruiz v. U.S.*, 231 F. Supp. 2d 1187, 1201–02 (M.D. Fla. 2002), *aff'd*, 378 F.3d 1229, 1231 (11th Cir. 2004).

5. The Florida Supreme Court has crafted limited exceptions to the impact rule by acknowledging that certain recognized torts are necessarily devoid of physical harm and are of such a nature that the only foreseeable damages resulting from those torts are emotional damages that are non-economic in nature. *See Rowell v. Holt*, 850 So.2d 474, 478 (Fla. 2003) (exception for intentional torts of defamation, invasion of privacy, and intentional infliction of emotional distress); *Holt*, 850 So.2d 474 (special relationship between attorney and client); *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992) (wrongful birth); *Tanner v. Hartog*, 696 So.2d 705 (Fla. 1997) (stillborn birth).

6. The Florida Supreme Court has consistently reaffirmed the impact rule, noting that these exceptions "have been narrowly created and defined in a certain very narrow class of cases in which foreseeability and gravity of the emotional injury involved, and lack of countervailing policy concerns, have surmounted the policy rationale undergirding the application of the impact rule." *Champion*, 478 So.2d 17 ("for this purpose we are willing to modify the impact rule but are unwilling to expand it"); *Holt*, 850 So.2d 474 ("our holding today is limited to matters involving wrongful, not justifiable, extended pretrial confinement where the incarcerated individual's attorney holds the key to freedom").

7. The cases relied upon by Plaintiff are distinguishable. Both *Fla. Dep't of Corr. v. Abril*, 969 So.2d 201 (Fla. 2007) and *Gracey v. Eaker*, 837 So.2d 348 (Fla. 2002) involved breaches of statutorily protected, confidential information. In those cases, the Florida Supreme Court stressed the importance of privacy and confidentiality rights and concluded that the parallel policy considerations expressed in the confidentiality provisions outweighed the rationale of the impact rule's requirements.

8. The Plaintiff's allegations in this case do not involve confidential protected information or similar parallel policy considerations and are insufficient to fall within any established exception to the requirements of the impact rule. In fact, the allegations as to Plaintiff's symptoms fall squarely within those symptoms which the courts have repeatedly held are insufficient to overcome the impact rule. Therefore, the Court finds that Plaintiff fails to state a cause of action and Count I must be dismissed.

9. The Court does not address the remainder of Defendant's arguments as to Count I due to the above determination.

COUNT II, NEGLIGENCE PER SE

10. Plaintiff's negligence per se claim incorrectly relies upon § 39.201, Fla. Stat. as Chapter 39 does not create a civil cause of action. Rather, the penalty for failing to comply with the requirements of Chapter 39 is a criminal action, as set forth in Section 39.205(1), Florida Statutes, which provides that "[a] person who knowingly and willfully fails to report to the central abuse hotline known or suspected child abuse, abandonment, or neglect, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree." *Fla. Stat.* §39.205(1). It is well-settled that where a statute does not expressly provide for a civil cause of action and the legislative history did not reveal intent to create a cause of action, a Florida statute does not create a private cause of action upon which a party is entitled to relief. *Murphy v. Sinha Corp.*, 644 So. 2d 983, 986 (Fla. 1994). Florida courts have consistently held that Chapter 39 and its predecessor versions do not create an implied cause of action for failure to report child abuse. *See Welker v. Southern Baptist Hosp. of Fla., Inc.*, 864 So.2d 1178 (Fla. 1st DCA 2004)(quashed on other grounds); *J.B. v. Department of Health & Rehabilitative Servs.*, 591 So. 2d 317 (Fla. 4th DCA 1991); *Fischer v. Metcalf*, 543 So. 2d 785 (Fla. 3d DCA 1989). Therefore, Plaintiff's negligence per se count must be dismissed.

For the reasons set forth above, it is **ORDERED AND ADJUDGED** that:

A. The School Board's Motion to Dismiss is **GRANTED**.

B. Count I is dismissed without prejudice. The Court believes additional amendment of the Complaint is likely futile as the detailed facts previously alleged clearly fail to state a cause of action against this Defendant due to the impact rule. However, the Court will allow Plaintiff an opportunity to amend as all doubts should be resolved in favor of allowing amendment so that cases may be resolved upon their merits.

C. Plaintiff may file a Second Amended Complaint within 10 days.

D. Defendant shall have 10 days thereafter to file a response.

E. Count II is dismissed with prejudice as leave to amend would be futile.

F. The Court will close this case without further notice if the Plaintiff fails to file a Second Amended Complaint within 10 days of the entry of this order.

Done and Ordered in Chambers in Gainesville, Alachua County, Florida on this Tuesday, April 1, 2025.

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Donna M. Keim, Circuit Judge
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above has been served by e-portal or by First Class US Mail on this Tuesday, April 1, 2025.

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