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

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

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 2024 CA 003461
DIVISION: K

PLAINTIFF'S RESPONSE AND OPPOSITION TO DEFENDANT, CITY OF ALACHUA'S, MOTION TO DISMISS AMENDED COMPLAINT

COMES NOW, Plaintiff, ANNEKE ACREE, as parent and natural guardian of minor child M.A., and respectfully submits her RESPONSE IN OPPOSITION TO DEFENDANT, CITY OF ALACHUA's ("COA") Motion To Dismiss Amended Complaint and states the following.

MEMORANDUM OF LAW WITH ARGUMENT

I. UNDER FLORIDA'S MOTION TO DISMISS STANDARD, THE AMENDED COMPLAINT SUFFICIENTLY STATES A CLAIM FOR RELIEF

In Florida, the standard for pleading allegations sufficient to withstand a Motion to Dismiss is governed by the principle that the complaint must contain a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, as outlined in Florida Rule of Civil Procedure 1.110(b). Plaintiff's Amended Complaint alleges ultimate facts supporting each element of negligence per se, thereby providing a legally sufficient basis for the claims. *See generally,* Am. Compl., Jan. 8, 2025.

The First District Court of Appeal has consistently emphasized that a motion to dismiss is limited to testing the legal sufficiency of the complaint, and all well-pleaded allegations must be accepted as true. For example, in *Varnes v. Dawkins*, 624 So. 2d 349 (Fla. 1st DCA 1993), the court

reiterated that the focus is not on whether the pleader can ultimately prove their allegations but rather whether the allegations, if true, establish a prima facie case. Consequently, dismissal is inappropriate unless the complaint affirmatively demonstrates that no set of facts could support the claim.

This standard underscore the liberal approach to pleadings, ensuring that cases are resolved on their merits rather than on technicalities.

The COA's argument appears to conflate Florida's notice pleading standard with a heightened pleading requirement, such as the federal "plausibility" standard established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Florida law does not require the detailed factual specificity demanded by the COA. *See Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA) (recognizing Florida's more lenient pleading standard). Ultimate facts, rather than evidentiary facts, are sufficient to withstand a motion to dismiss.

Even assuming arguendo that the Amended Complaint contains technical deficiencies, dismissal with prejudice is unwarranted. Florida courts generally favor granting leave to amend pleadings to correct technical deficiencies, provided the privilege to amend has not been abused.

Here, Plaintiff has neither abused her amendment opportunity nor has she pled a defect that cannot be cured.

II. THE COA IS NOT PROTECTED BY SOVEREIGN IMMUNITY

a. Florida Law Imposes a Mandatory Duty to Report Child Abuse Under §39.201.

Under Florida Statute §39.201, mandatory reporters, including law enforcement officers and school resource officers, are required to report known or suspected child abuse to the Florida

Department of Children and Families (DCF). This statutory duty is operational and applies equally to all individuals and agencies listed in the statute.

Florida courts have consistently held that failure to comply with a statutory duty, especially when that duty is mandatory, may give rise to liability for negligence. *See Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009) (holding that sovereign immunity does not shield a government entity from liability when an officer fails to carry out a nondiscretionary duty).

a. Sovereign Immunity Does Not Apply to Violations of Mandatory Statutory Duties.

Sovereign immunity protects governmental entities from liability for discretionary or policy-making decisions but does not shield them from liability for operational-level acts or omissions. Florida courts distinguish between "discretionary" and "operational" functions:

> -Discretionary functions involve policy-making decisions for which sovereign immunity applies.
> -Operational functions involve the implementation of policy or carrying out specific statutory duties.

Id.

The failure of SROs to report suspected child abuse as required by Florida Statute §39.201 constitutes an operational-level act, as it involves the execution of a clear and mandatory statutory duty rather than a discretionary policy decision. *See Wallace v. Dean*, 3 So. 3d 1035, at 1045-46 (distinguishing between discretionary and operational functions).

b. The Duty to Report Child Abuse is Not Subject to Sovereign Immunity.

In *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979), the Florida Supreme Court established the discretionary-versus-operational distinction, emphasizing that operational-level conduct is not immune from liability. The duty to report child abuse under

§39.201 is operational in nature because it requires immediate action by the individual mandated reporter upon knowledge or suspicion of abuse. *Id.*

Moreover, in *Pollock v. Florida Department of Highway Patrol*, 882 So. 2d 928, at 933 (Fla. 2004), the Florida Supreme Court reinforced that sovereign immunity does not protect government employees or entities from liability for failing to fulfill specific operational duties imposed by statute.

d. First District Court of Appeal Precedent Supports Liability for Failing to Fulfill Statutory Duties.

Negligence per se applies when a defendant violates a statute designed to protect a particular class of individuals, and the violation causes harm of the type the statute was intended to prevent.[1] *See deJesus v. Seaboard Coast Line R. Co.*, 281 So. 2d 198, 201 (Fla. 1973).

Florida Statute §39.201 imposes a mandatory reporting requirement for individuals, including SROs, who have reasonable cause to suspect that a child is abused, abandoned, or neglected. The statute establishes a heightened duty of care for individuals in positions of trust, particularly those charged with the care, safety and supervision of children. Failure to report suspected abuse or neglect constitutes a breach of this statutory duty and is recognized as negligence per se. *See Florida Dept. of Health and Rehabilitative Services v. Yamuni*, 529 So. 2d 258, 260, at 9 (Fla. 1988) (recognizing mandatory reporting statutes as creating duties enforceable under tort law).

[1] See Fla. Std. Jury Instr. (Civ.) 401.8 (2024).

Plaintiff's Amended Complaint alleges that Defendant failed to report known or suspected abuse or neglect in violation of §39.201. This statutory violation directly contributed to Plaintiff's harm, satisfying the elements of negligence per se.

e. Plaintiff's Claims Fall Within Recognized Exceptions to Sovereign Immunity.

Plaintiff's claims do not seek liability for discretionary or policy-level actions but rather for the failure of SROs to comply with operational obligations mandated by statute. This distinction places Plaintiff's claims squarely within the exceptions to sovereign immunity recognized by Florida courts.

The COA's argument that it is entitled to sovereign immunity for the actions of its employees is contrary to Florida law. The duty imposed by §39.201 is nondiscretionary, and the failure to report suspected child abuse is an operational-level omission for which sovereign immunity does not apply. *Pollock v. Florida Department of Highway Patrol*, 882 So. 2d 928, at 933.

III. THE PUBLIC DUTY DOCTRINE IS INAPPLICABLE

The COA erroneously invokes the public duty doctrine, which generally bars claims alleging breaches of duty owed to the public at large. However, an exception applies where a "special duty" exists. *See Wallace v. Dean*, 3 So. 3d 1035, 1045-46 (Fla. 2009) (noting that the doctrine does not apply when a specific duty is owed to an individual or identifiable class).

a. Duty of Care Owed by School Resource Officers.

Under Florida law, SROs often occupy dual roles as law enforcement officers and participants in the educational environment. Courts have addressed the extent to which this dual role imposes specific duties of care to students, the identifiable class. *Id.*

The Florida Supreme Court in *Nova Southeastern University, Inc. v. Gross*, 758 So. 2d 86 (Fla. 2000), established that a duty of care arises when a special relationship exists, such as that between schools and their students. Although *Nova* addressed a university's obligations, its reasoning extends to K-12 settings, where schools owe heightened duties to protect students from foreseeable harm.

This principle implies that SROs, as extensions of the school environment, share in this special duty to ensure student safety.

In *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA 1992), the First DCA recognized that school officials, including agents acting on behalf of the school, have a duty to protect students from foreseeable risks. While this case primarily concerned school employees, its rationale can be applied to SROs, who often act under agreements between school boards and law enforcement agencies.

The First DCA's reasoning supports the argument that SROs share the school's obligation to safeguard students, especially when their law enforcement role intersects with educational responsibilities. *Id.*

The duty of SROs to students is heavily influenced by the foreseeability of harm. Courts have consistently held that liability hinges on whether the harm was reasonably foreseeable and whether the SRO's actions or inactions proximately caused the harm. *McCain v. Florida Power Corp.*, 593 So. 2d 500 (Fla. 1992).

In *McCain v. Florida Power Corp.*, 593 So. 2d 500, the Florida Supreme Court emphasized that foreseeability is the cornerstone of duty. SROs, given their daily presence in schools and their awareness of student interactions, are uniquely positioned to foresee potential threats to student safety.

This precedent reinforces the argument that SROs should take reasonable measures to prevent foreseeable harm, including intervening in fights, addressing bullying, reporting child abuse, or responding to threats of violence.

Florida Statute §1006.12 requires school boards to establish safe school officers, including SROs, whose primary purpose is to maintain a safe learning environment. While the statute does not explicitly create a private cause of action, it establishes a baseline for the expectations placed on SROs.

Agreements between school boards and law enforcement agencies often delineate the specific duties of SROs, including responsibilities for student safety, conflict resolution, and emergency response. Courts have considered such agreements in evaluating whether an SRO's conduct meets the standard of care. *Id.*

The duty of School Resource Officers to students in Florida is supported by both legal precedent and statutory frameworks. The First DCA has held that entities with special relationships to students, including schools and their agents, owe duties to protect against foreseeable harm. *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA). SROs, by virtue of their embedded role in schools, share in this obligation and may be held liable for breaches that proximately cause student injuries. *Id.*

Plaintiff's Amended Complaint alleges that the COA owed a specific duty to Plaintiff, arising from its knowledge of YECKRING's dangerous propensities and its decision not to report the reported child abuse, mandated by Florida Statute §39.201, despite foreseeable risks. This special duty removes Plaintiff's claims from the scope of the public duty doctrine. *Wallace v. Dean*, 3 So. 3d 1035, at 1045-46.

IV. VIOLATION OF FLORIDA STATUTE §39.201 IS NEGLIGENCE PER SE

Plaintiff's claim is not based on a statute itself providing a private cause of action. Rather, Plaintiff relies on the doctrine of negligence per se[2], which allows the violation of a statute to serve as evidence of negligence when the statute is designed to protect a particular class of individuals and the harm suffered is of the type the statute intended to prevent. *See deJesus v. Seaboard Coast Line R. Co.*, 281 So. 2d 198, 201 (Fla. 1973).

In *Florida Dept. of Health and Rehabilitative Services v. Yamuni*, 529 So. 2d 258, 260, at 9 (Fla. 1988) the Florida Supreme Court explicitly recognized that the failure to comply with mandatory reporting statutes, such as §39.201, can constitute negligence per se. The Court held that such statutes impose specific duties on individuals, including school employees, to report known or suspected abuse and that violations of these duties may result in liability for the harm caused. *Id.*

Florida Statute §39.201 is expressly intended to protect vulnerable children from abuse, abandonment, and neglect. By alleging that COA failed to comply with this statutory obligation, Plaintiff has sufficiently stated a claim for negligence per se. *deJesus v. Seaboard Coast Line R. Co.*, 281 So. 2d 198, 201.

This approach is entirely consistent with Florida law, which allows statutory violations to form the basis of a negligence claim when the statute serves a protective purpose. COA's argument that §39.201 lacks a private cause of action is, therefore, irrelevant to the viability of Plaintiff's negligence per se claim. *Id.*

WHEREFORE, Plaintiff respectfully requests that Defendant, CITY OF ALACHUA'S Motion to Dismiss the Amended Complaint be denied.

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[2] See Fla. Std. Jury Instr. (Civ.) 401.8 (2024).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed electronically and was sent by E-Mail from the Florida Courts' E-Filing Portal system, on all Counsel or parties of record listed below, this 29th day of January, 2025

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