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 IN OPPOSITION TO DEFENDANT, ALACHUA COUNTY SCHOOL BOARD'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, ALACHUA COUNTY SCHOOL BOARD'S, ("ACSB"), 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 CLAIMS 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).

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-pled 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 underscores the liberal approach to pleadings, ensuring that cases are resolved on their merits rather than on technicalities.

Plaintiff's Amended Complaint alleges ultimate facts supporting each element of negligent retention and negligence per se, thereby providing a legally sufficient basis for the claims. *See generally,* Am. Compl., Jan. 8, 2025.

II. THE IMPACT RULE DOES NOT BAR RECOVERY

Plaintiff maintains that the Impact Rule does not apply to this cause of action. *See generally Fla. Dep't of Corr. v. Abril,* 969 So. 2d 201(Fla. 2007).

Alternatively, if it does apply, there are exceptions, including: the impact rule—requiring a physical impact for emotional distress claims—does not apply when emotional distress leads to physical injuries. Florida courts recognize an exception where emotional harm manifests in physical symptoms. *See Rowell v. Holt,* 850 So. 2d 474, 478 (Fla. 2003) (holding that physical injuries caused by emotional distress fall outside the impact rule's scope).

Here, Plaintiff alleges emotional distress that directly and immediately caused her physical injuries, including:

> 60. Despite the fact that YECKRING did not physically touch M.A., M.A.'s emotional trauma manifested physically, immediately following each event, in between the events, and long after. M.A. immediately suffered from debilitating physical illness including, but not limited to, migraines-at least one being ocular preventing her from being able to drive, walk, eat, or get out of bed. She also suffered from nausea, sweating, fidgeting, stomach pain, loss of appetite, severe weight loss, hair loss, irregular menstruation cycle, and she was unable to concentrate, retain, or comprehend information which led to her grades significantly declining. Anxiety and depression became her new normal.

Am. Compl., at ¶ 60.

These allegations bring Plaintiff's claims within the recognized exceptions to the impact rule.

III. ACSB EMPLOYEES OWE A HEIGHTENED DUTY OF CARE TO STUDENTS

ACSB's claim of immunity or lack of vicarious liability fails as a matter of law.

Under Florida Statute §39.01, school employees are defined as "caregivers" as follows:

> (10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or otherperson responsible for a child's welfare as defined in subsection (57).
> (57) "Other person responsible for a child's welfare" includes the child's legal guardian or foster parent; anemployee of any school, public or private child day care center, residential home, institution, facility, or agency; alaw enforcement officer employed in any facility, service, or program for children that is operated or contracted bythe Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residentialsetting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmentalinvestigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal orcounty detention facilities; or employees of the Department of Corrections.

Additionally, ACSB employees owe a heightened duty of care to students, as they act *in loco parentis*, stepping into the role of parents during school hours. *See Rupp v. Bryant*, 417 So. 2d 658, 666 (Fla. 1982) (*holding* that schools and their employees owe students a duty of supervision and care commensurate with their in *loco parentis* role) *see also Limones v. School District of Lee Cnty.*, 161 So. 3d 384, 390 (Fla. 2015). This duty requires schools to exercise reasonable care to prevent foreseeable harm to students.

ACSB employees breached this heightened duty by failing to protect Plaintiff from harm caused by an employee whose dangerous propensities were known or should have been known by it. This breach constitutes actionable negligence, because the harm to Plaintiff was foreseeable and preventable through proper oversight and intervention.

Additionally, under Florida law, school employees also have a heightened duty of care to protect children, particularly when it comes to reporting known or suspected child abuse. Florida Statute §39.201 creates a clear legal obligation for ACSB employees to report child abuse.

The failure to do so constitutes negligence per se. As such, ACSB, as the employer, is vicariously liable for the negligence of its employees committed within the scope of their employment.

A. Florida Statute §39.201 Establishes a Mandatory Duty to Report Child Abuse.

Florida Statute §39.201(1)(a) explicitly mandates that any school employee who knows or reasonably suspects that a child is being abused, abandoned, or neglected must report such knowledge or suspicion to the Department of Children and Families ("DCF").

> (1) MANDATORY REPORTING.
>
> (a)1.A person is required to report immediately to the central abuse hotline established in s.
> 39.101 in writing, through a call to the toll-free telephone number, or through electronic reporting, if he or she knows, or hasreasonable cause to suspect, that any of the following has occurred:
> a.Child abuse, abandonment, or neglect by a parent or caregiver, which includes, but is not limited to, when achild is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible forthe child's welfare or when a child is in need of supervision and care and has no parent, legal custodian, orresponsible adult relative immediately known and available to provide such supervision and care.
> b.Child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for thechild's welfare. The central abuse hotline must immediately electronically transfer such reports to the appropriatecounty sheriff's office.
> 2 .Any person who knows, or has reasonable cause to suspect, that a child is the victim of sexual abuse or juvenile sexual abuse shall report such knowledge or suspicion to the central abuse hotline, including if the alleged incident involves a child who is in the custody of or under the protective supervision of the department.

Fla. Stat. §39.201.

This statutory duty underscores the paramount importance of child safety and places a heightened responsibility on school employees due to their unique role as caretakers and mandatory reporters.

Under Florida law, failure to comply with this statutory duty constitutes negligence per se. In *deJesus v. Seaboard Coast Line Railroad Co.*, 281 So. 2d 198, 201 (Fla. 1973), the Florida Supreme Court held that a violation of a statute designed to protect a particular class of persons establishes negligence per se. The mandatory reporting requirements of §39.201 is precisely such a statute, enacted to safeguard children from abuse and neglect.

B. The School Board Is Vicariously Liable for the Negligence of Its Employees.

Under the doctrine of *respondeat superior*, an employer is liable for the negligent acts of its employees committed within the scope of their employment. *See Mallory v. O'Neil*, 69 So. 2d 313, 315 (Fla. 1954). ACSB employees act within the scope of their employment when they interact with students and carry out duties related to their role as educators and caretakers. Reporting suspected child abuse falls squarely within the scope of these responsibilities.

ACSB's assertion that it cannot be held liable for its employees' failure to report child abuse is contrary to established Florida law. In *Nova Southeastern University, Inc. v. Gross*, 758 So. 2d 86, 90 (Fla. 2000), the Florida Supreme Court held that institutions owe a duty of care to prevent foreseeable harm to third parties when such harm arises from the institution's failure to act within its sphere of responsibility.

Here, the failure of ACSB's employees to report YECKRING's abuse directly enabled further harm to the Plaintiff, making the School Board vicariously liable.

C. Public Policy Supports Imposing Liability on the School Board.

Imposing vicarious liability on ACSB aligns with Florida's strong public policy favoring the protection of children. Schools are entrusted with the safety and welfare of their students. Allowing the ACSB to evade responsibility for its employees' statutory violations would undermine the protective purpose of Florida's mandatory reporting laws and place vulnerable children at greater risk.

Florida courts have repeatedly emphasized the importance of holding institutions accountable for breaches of duty that harm children. *See Barnett v. Dept. of Financial Services*, 303 So. 3d 508, 514 (Fla. 1st DCA 2020) (holding that statutory obligations to protect children create actionable duties enforceable in negligence claims).

IV. ACSB IS NOT PROTECTED BY SOVEREIGN IMMUNITY

ACSB argues that sovereign immunity shields it from liability for negligently supervising YECKRING. However, exceptions to sovereign immunity exist for negligence claims, particularly when the alleged conduct falls outside discretionary governmental functions. Courts in Florida have consistently recognized liability for torts arising from operational decisions, such as employee retention. *See Wallace v. Dean*, 3 So. 3d 1035, 1045-46 (Fla. 2009) (distinguishing between discretionary and operational functions).

Here, Plaintiff's negligent retention claim arises from ACSB's operational decision to retain an employee known to pose a foreseeable risk to others. This falls squarely within recognized exceptions to sovereign immunity.

V. NEGLIGENT RETENTION CLAIM IS SUPPORTED BY SUFFICIENT FACTS

To state a claim for negligent retention, Plaintiff must allege that (1) the employee was unfit to perform their duties, (2) the employer knew or should have known of the employee's

unfitness, and (3) the employee's unfitness caused Plaintiff's harm. *See Mallory v. O'Neil*, 69 So. 2d 313, 315.

The Amended Complaint alleges that ACSB knew of its employee's history of misconduct and propensity to harm others yet retained him in a position of trust and authority. *See* Am. Compl. at ¶¶ 33, 38, 45, 49, 51, 55, 56, and 57. ACSB's failure to act on this knowledge directly resulted in Plaintiff's injuries. These allegations are more than sufficient to state a claim for negligent retention.

VI. NEGLIGENCE PER SE IS PROPERLY PLEADED

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 also 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 school employees, 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 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).

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.

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

VII. AN UNDERLYING TORT IS NOT REQUIRED TO MAINTAIN THIS ACTION.

ACSB argues that Plaintiff must plead that the employees committed an "underlying tort" otherwise, ACSB cannot be held vicariously liable for its employees' actions. However, 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, 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).

Florida Statute §39.201 is expressly intended to protect vulnerable children from abuse, abandonment, and neglect. By alleging that ACSB failed to comply with this statutory obligation, Plaintiff has sufficiently stated a claim for negligence per se.[2]

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. ACSB's argument that §39.201 lacks a private cause of action is, therefore, irrelevant to the viability of Plaintiff's negligence per se claim.

VIII. ACSB HAD KNOWLEDGE OF YECKRING'S PRIOR MISCONDUCT

ACSB argues that Plaintiff's claims fail because the Amended Complaint does not allege that the School Board knew of prior similar misconduct by the employees. *See* Am. Compl. at ¶¶ 38, 45, 49, and 55. This argument misconstrues the allegations. Plaintiff's Amended Complaint specifically alleges that employees of the School Board had actual or constructive knowledge of the YECKRING's prior misconduct and dangerous propensities. *Id.* Equally, as soon as WRIGHT,

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

RENDEK, AND FAULK failed to report YECKRING's prior misconduct and dangerous propensities, ACSB became vicariously liable for their failure to report same.

WHEREFORE, Plaintiff respectfully requests that Defendant, ALACHUA COUNTY SCHOOL BOARD's Motion to Dismiss the Amended Complaint be denied.

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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