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

JOHN DM DOE,

Plaintiff,

vs. CASE NO.: 2024-CA-002142-O

FLORIDA MULTICULTURAL DISTRICT COUNSEL OF THE ASSEMBILIES OF GOD, INC. and IGNITE LIFE CENTER, INC.,

Defendant.
_____/

DEFENDANT IGNITE'S MOTION TO DISMISS
COUNT II OF PLAINTIFF'S AMENDED COMPLAINT

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

1. This is a negligence action brought by JOHN D.M. DOE (a 19 year old, born in 2004) against Defendant Ignite and the Florida Multicultural District Counsel of the Assemblies of God, Inc. stemming from alleged abuse by a volunteer, Gabriel Hemenez, during a summer program in July 2021.

2. On March 12, 2024, Plaintiff filed a 4 count Complaint, which alleges 2 causes of action against Defendant Ignite: I) negligence and II) vicarious liability for the intentional criminal actions of the volunteer.

3. On April 8, 2024, Defendant Ignite filed an Answer and Affirmative Defenses in response to Count I. This instant Motion seeks dismissal of Count II of 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 II 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. Eqbal*, 129 S.Ct. 1937, 1949, 173 L.ED.2d 868 (2009) (internal citations omitted).

II. COUNT II 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 Gabriel Hemenez 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 Gabriel Hemenez, was an agent of Defendant Ignite, as he was a volunteer for the Ignite Summer Internship program, and that as a volunteer, Gabriel Hemenez's duties were to provide spiritual guidance, counseling and mentoring to children, including Plaintiff. *See* Pla. Complaint, ¶ 18. The abuse is not alleged to have occurred during Gabriel Hemenez's guidance or counseling of Plaintiff. *Id*. at ¶ 19.

The doctrine of respondent superior does not impose vicarious liability upon an employer for the tortuous acts of an employee unless "the acts were committed during the course of the

employment." *Iglesias Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So.2d 353, 356 (Fla. 3d DCA 2001). "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." *Id*. at 356-357.

"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.")(footnote omitted).

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, Gabriel Hemenez's duties were to provide spiritual guidance, counseling and mentoring[1]). There are no facts alleged which would support a finding that sexual touching, if it did occur, was in anyway, within the scope of Gabriel Hemenez's 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, ¶ 18.

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 Gabriel Hemenez's agency with Defendant Ignite and the allegations are insufficient to impose vicarious liability. Count II of Plaintiff's Complaint, therefore, must be dismissed with prejudice.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via E-Service to: Jessica D. Arbour, Esq. (jessica@adamhorowitzlaw.com) and Adam D. Horwitz, Esq. (adam@adamhorowitzlaw.com), Counsel for the Plaintiff, on this 8th day of April 2024.

/s/ Madeline S. Villani
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