

PREPARED AND FILED BY THE COURT
FILED
MARCH 5, 2025
HON. KALIMAH H. AHMAD

CHIESA SHAHINIAN & GIANTOMASI PC
105 Eisenhower Parkway
Roseland, NJ 07068
973.325.1500
Jeffrey S. Chiesa (#31271990)
Mauro G. Tucci Jr. (#35822006)
Attorneys for Defendant
Union City Board of Education

JESSICA GARCIA,

Plaintiff,

vs.

UNION CITY BOARD OF EDUCATION
d/b/a UNION CITY HIGH SCHOOL a/k/a
HIGH HALL HIGH SCHOOL; FRANCISCO
REALPE; PIVOTAL DEVELOPMENTS,
LLC; JOHN DOE (1-10) fictitious names; and
JOHN DOE, INC. (1-10) fictitious names,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO. HUD-L-001394-21

Civil Action

**ORDER FOR
SUMMARY JUDGMENT**

DENIED

THIS MATTER having been brought before the Court by way of Motion for Summary Judgment by Shah Law Group, LLC and Chiesa Shahinian & Giantomasi PC, counsel for defendant Union City Board of Education (“UCBOE”) for entry of an Order granting summary judgment and dismissing the Complaint; and the Court having considered the papers submitted and the arguments of counsel; and good cause having been shown,

IT IS on this 5th day of March ~~2024~~, ²⁰²⁵

~~**ORDERED** that the UCBOE’s Motion for Summary Judgment is hereby GRANTED;~~
and ~~it is further~~

~~**ORDERED** that all of Plaintiff Jessica Garcia’s causes of action against the UCBOE are hereby Dismissed With Prejudice; and it is further~~

~~ORDERED~~ that this Order shall be deemed served on parties represented by counsel upon uploading to eCourts; and it is further

ORDERED that counsel for the UCBOE shall serve a copy of this Order on defendant Francisco Realpe within 7 days of this Order.

Kalimah H. Ahmad

HON. KALIMAH H. AHMAD, J.S.C.

This Motion was:
Opposed X
Unopposed

The Decision of the Court was:
Written X DENIED - pursuant to the below statement of reasons.
Oral

STATEMENT OF REASONS

The motion for summary judgment filed by Defendant Union City Board of Education is DENIED pursuant to R. 4:46-2, as there is a genuine dispute of material fact.

The standard for summary judgment is set forth in Rule 4:46-2, and has been clarified by the New Jersey Supreme Court in Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520 (1995). An order for summary judgment “shall be rendered if the pleadings...show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” N.J. Court Rule 4:46-2(c). In Brill v. Guardian Life Ins. Co. of

America, 142 N.J. 520 (1995), the New Jersey Supreme Court held that:

Whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the non-moving party. *Id.* at 540. On a Motion for summary judgment, the judge’s function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995).

Facts

This motion for summary Judgment was filed by Defendants Union City Board of Education. There is opposition filed on Plaintiff Jessica Garcia’s behalf, in addition to a cross-motion filed by Plaintiff. In the case at hand, Defendant Francisco Realpe was allegedly engaged in an inappropriate sexual relationship with Plaintiff Jessica Garcia. Defendant Realpe was Plaintiff’s softball coach during the spring of 2004. Plaintiff and Defendant Realpe engaged in sexual intercourse on the school premises. Ms. Garcia was seventeen years old at the time of the intercourse. During that time, Defendant Realpe also engaged in an inappropriate sexual relationship with another unnamed student. Neither student reported Defendant Realpe’s behavior to any school official at the time and no

school official observed any sexual behavior. However, it was rumored throughout the school at the time that Defendant Realpe was having inappropriate relationships with female students and school officials observed that Defendant Realpe was being flirtatious with female students. To this effect, Defendant Realpe was confronted by David Wilcomes, who was the principal at Union Hill High School during these relevant events, reprimanded Realpe for the relationship he had with a student in 2005 and he was ordered to stay away from her because it looked like he was having a relationship with her.

Defendant Realpe was terminated in 2005. In his final evaluation, Principal Wilcomes noted his inappropriate relationships with students, “In certain circumstances [Realpe] has developed unhealthy relationships with students that has created a negative perception. He has not developed a proper distinction between student and teacher. Realpe Evaluation Forms, UCBOE 2767. The form also stated that “perception among administration, staff, parents, and student is that some of these relationships are not appropriate.” Id.

Defendant’s Summary Judgment Motion

On summary judgment, Defendants seek a dismissal of all of Plaintiff’s causes of action with prejudice. In her complaint, Plaintiff alleges a claim based on negligence, negligent hiring of Defendant Realpe, and a hostile school environment claim under the New Jersey Law Against Discrimination claim against Defendant

UCBOE.

Beginning with the NJLAD claim, Defendants argue that these claims are time barred by the law's two-year statute of limitations. N.J.S.A. 2A:14-2. The incident took place in spring of 2004 and this case was initiated in April of 2021. In addition, New Jersey did not acknowledge hostile school environment claims as a matter of law under NJLAD until it was recognized by the New Jersey Supreme Court in L.W. ex. Rel. L.G. v. Toms River Reg'l Sch. Bd. Of Educ., 189 N.J. 381, 390 (2007). Defendants argue that this would constitute a retroactive enforcement of the law. Defendants then argue that even if this Court were to decide the NJLAD claim on the merits, it would fail because the school board had no reason to know about Defendant Realpe's conduct.

As for Plaintiff's tort claims, Defendants argue that Plaintiff is unable to meet the medical expenses or permanent loss of bodily function thresholds as set forth in the Tort Claims Act. They further argue that the negligent hiring claim is not viable because his actions are beyond the scope of employment and that it was not foreseeable for the Board to be aware of Defendant Realpe's potential misconduct.

New Jersey Law Against Discrimination Claim

In order to proffer a valid prima facie case for a hostile school environment claim under NJLAD, the plaintiff must show "discriminatory conduct that would

not have occurred but for the student's protected characteristic, that a severe or pervasive enough to create to create an intimidating, hostile, or offensive school environment, and that the school district failed to reasonably address such conduct." Id. at 402. In addition, the claim must be made within the two year statute of limitations. N.J.S.A. 2A:14-2.

Though there is generally a two-year statute of limitations, the New Jersey legislature enacted an amendment to N.J.S.A. 2A:14-2 providing that, in part, "an action at law for an injury resulting the commission of sexual assault, any other crime of a sexual nature. . .or sexual abuse. . .that occurred prior to the effective date of []. And which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date." The window for claims that was created by this statute ranged from December 1, 2019 and November 30, 2021.

From the plain statutory language quoted above, it is clear that the legislature intended to include claims filed under NJLAD. Indeed, the harms alleged by Plaintiff Jessica Garcia in this case emulate those outlined in the statute. Plaintiff's claims will not be time-barred and will be reviewed on the merits.

The sole disputed issue as to the NJLAD claim is whether Defendant Union City Board of Education is liable for Defendant Realpe's conduct. The Board maintains that there was no one aware at the time of the alleged incident that

Defendant Realpe was sexually abusing Plaintiff Garcia. However, making all favorable inferences towards the nonmovant Plaintiff, there is a genuine dispute of material fact as to whether the Board or any of its officials had reason to know about Defendant Realpe's conduct. David Wilcomes, who was the principal of Plaintiff Garcia's high school at the time of the incident, cited in a written statement that Defendant Realpe had formed unhealthy relationships with students and did not develop a proper distinction between teacher and student. Defendant Realpe also admitted to being warned by his fellow teachers and his supervisor, Mr. Lupo about his behavior. The Board ignored their suspicions towards Defendant Realpe, did not investigate into Defendant Realpe's relationships with multiple underage students, and allowed him to remain employed until his termination in 2005. This evidence is sufficient to create a genuine dispute of material fact that must be decided by a jury at trial.

Tort Claims

Defendant UCBOE argues that Plaintiff's tort claims must be dismissed because Plaintiff Garcia fails to meet the permanent injury threshold for tort claims and that the Board cannot be held vicariously liable for Defendant Realpe's conduct. In order for a New Jersey Tort Claims Act to be viable, the Plaintiff's pain and suffering must result in the permanent loss of bodily function, permanent disfigurement, or medical treatment expenses in excess of \$3,600. N.J.S.A. 59:9-

2(d).

Here, the record reflects that there is a genuine dispute of material fact as to whether Plaintiff Garcia meets the statutory threshold for damages under the New Jersey Tort Claims Act. Ms. Garcia has incurred medical expenses from treatment in total of \$4,730.00. She also incurred \$27,746.59 in pharmaceutical expenses. Both of these expenses were incurred treating her mental health following Defendant Realpe's alleged abuse. Plaintiff was also diagnosed with chronic Post Traumatic Stress Disorder resulting from her abuse from Defendant Realpe. According to the psychological report produced by Plaintiff, their expert projected \$52,800 in future expenses due to the permanent condition. Giving all favorable inferences to the non-movant, there is a genuine dispute of material fact as to whether permanent injuries have been suffered.

Plaintiff asserts negligence based on vicarious liability and negligence in the hiring, retention, supervision, or training of Defendant Realpe.

Generally, a public entity can be held vicariously liable under the Tort Claims Act for acts of its employees within the scope of their employment. N.J.S.A. 59:2-10. However, it further provides that "immunity from civil liability granted by that act to a public entity shall not apply to an action at law for damages as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act. . . or sexual abuse. . . ." N.J.S.A. 59:2-1.3(a). The statute also states that "A

public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances.” N.J.S.A. 59:2-2(a). This amendment to the Tort Claims Act disabled the immunities public entities enjoy in cases of willful misconduct by their employee when that misconduct is sexual abuse.

Here, Defendant UCBOE argues that they cannot be held vicariously liable for Defendant Realpe’s willful misconduct which far exceeds his scope of employment. However, under the 2019 amendments to the Tort Claims Act, this Court need not consider Defendant Realpe’s scope of employment as it pertains to this issue there is no dispute of material fact as to the fact that Defendant Realpe sexually assaulted Plaintiff Garcia on school grounds while serving in his capacity as teacher and softball coach for UCBOE. Therefore, summary judgment cannot be granted for Defendant UCBOE as a matter of law as Plaintiffs have asserted a viable claim.

Defendants further argue that UCBOE cannot be held liable for negligent hiring, retention, or supervision because they had no reason to foresee Defendant Realpe’s dangerous attributes.

When bringing a negligent hiring, retention, training or supervision claim against an employer, the plaintiff must prove an employer knew or had reason to

know of an employee's "unfitness, incompetence, or dangerous attributes," that the employer could have reasonably foreseen that such qualities created a risk of harm to other persons, and that there must be proof that through the negligence of the employer, that employee's dangerous characteristics proximately caused the injury. Johnson v. Usdin Louis Co., Inc., 248 N.J. Super. 525, 528 (App. Div. 1991) (quoting Di Cosala v. Kay, 91 N.J. 159, 174 (1982)). In support of their motion, Defendant argues that they cannot be liable since none of UCBOE's officials knew of Defendant Realpe's sexual abuse since he acted in secrecy.

Here, Plaintiff never reported Defendant Realpe's abuse and none of the officials were aware of Realpe's abuse. However, the elements for negligent hiring or retention do not require actual or constructive notice of the individual's misconduct. The elements only require that the entity has reason to know of an employee's dangerous characteristics and reason to foresee the action, as well as the dangerous characteristic being a proximate cause of the Plaintiff's injury. UCBOE staff was aware of Defendant Realpe's dangerous attribute of being flirtatious and maintaining inappropriate relationships with several female students, including Plaintiff Garcia. As a result of these inappropriate relationships, Defendant Realpe sexually abused Plaintiff. Therefore, a genuine dispute of material fact exists as to whether Defendant UCBOE negligently hired or retained Defendant Realpe so Plaintiff's claim cannot be dismissed.

The final tort claim Defendant UCBOE seeks to dismiss in this motion is Plaintiff's failure to train.

In order to succeed on a failure to train action, Plaintiff must prove that the employer knew or had reason to know that the failure to supervise or train an employee in a certain way would create a risk of harm and that risk of harm materializes and causes the plaintiff's damages. G.A.H. v. K.G.G., 238 N.J. 401, 416 (2019). Here, Defendant Realpe and the rest of Defendant UCBOE's faculty was not adequately trained regarding educator sexual abuse according to Plaintiff's expert, Charol Shakeshaft. She also opined that UCBOE's failure to train contributed to the district's failure to recognize and report Defendant Realpe's multiple violations of district policy, including prohibited contact and transporting pupils in a personal vehicle. Viewing the facts in favor of the non-moving party, summary judgment cannot be granted for the Defendant UCBOE on this count because Plaintiff has asserted a viable claim for failure to train.

Plaintiff's Cross-Motion for Summary Judgment

In addition to their opposition, Plaintiff has filed a cross-motion for partial summary judgment regarding its counts for negligent training, negligent supervision, and vicarious liability. This motion is DENIED as to the negligent training and supervision because Defendants have asserted a genuine dispute of

material fact. It is GRANTED as to the vicarious liability claim as there is no genuine dispute of material fact.

As stated above, a successful claim for negligent supervision requires the plaintiff to prove that an employer knew or had reason to know of an employee's particular dangerous attributes, those attributes created a risk of harm to other persons, and the employers' negligence towards that risk was the proximate cause of the injury at issue. Plaintiff argues that there is no genuine issue of material fact that UCBOE knew or should have known about the issue of Defendant Realpe's risk of harm towards their students. This is evidenced by the rumors of Defendant Realpe being inappropriate with students, which was discussed by students and graffitied on the bleachers in the gymnasium. They further cite to the fact that Defendant Realpe's flirtatious conduct towards students was in the open and noticed by teachers and administrators.

In opposition, Defendant argues that they did not have reason to know of Realpe's dangerous conduct, could not have foreseen that Realpe's characteristics posed a risk to Garcia, and did not proximately cause Garcia's injury. They argue that, though school faculty have testified that they were aware of rumors that Defendant Realpe was having inappropriate relationships with students and that he was behaving in a flirtatious manner, no one had ever witnessed him behaving in a sexually inappropriate manner, meaning that there was no reason for the school

board to know of his dangerous characteristics. Viewing the facts in the light most favorable to the non-moving party on this cross motion, the Court finds a genuine dispute of material fact raised by UCBOE as to each of the elements necessary to prove a negligent supervision claim.

The New Jersey Supreme Court has held that an employer can be liable for a breach of their duty to train if a plaintiff could “show that an employer was negligent by its failure to have in place well-publicized and enforced anti-harassment policies, effective formal and informal complaint structures, training, and/or monitoring mechanisms.” Lehmann v. Toys ‘R’ Us, 132 N.J. 587, 621 (1993). However, the absence of a training mechanism does not automatically constitute negligence as there still must be a showing of proximate cause to the injury. Id. It is undisputed in this case that UCBOE did not have any training in place regarding sexual harassment, reporting inappropriate behavior, or even training on their own policies. However, Plaintiff fails to satisfy their burden on summary judgment that there is no genuine dispute of material fact as to whether UCBOE’s failure to train Realpe and the rest of its staff was a proximate cause of Garcia’s injuries.

Regarding the issue of vicarious liability, it has been established that the 2019 amendments to the New Jersey Tort Claims Act disabled immunities that public entities previously enjoyed from intentional misconduct of their employees

in the context of sexual abuse. Defendant UCBOE does not raise any issue of material fact as to this issue and argues in their opposition to this motion that vicarious liability is not an available claim as a matter of law, which has been decided above. Therefore, since the 2019 amendment to the Tort Claims Act holds employers liable for their employees' intentional misconduct of a sexual nature outside the scope of employment and there is no genuine dispute of material fact as to this issue, Plaintiff's motion as to the issue of vicarious liability is GRANTED.

Conclusion

In sum, the entirety of Defendant UCBOE's summary judgment motion is DENIED as they failed to satisfy their burden of persuasion in summary judgment. The same is true as to Plaintiff's cross-motion for summary judgment with the exception of the issue of vicarious liability, which was GRANTED.