

M.N. v Suffolk County Sheriff's Dept.

2023 NY Slip Op 32911(U)

July 12, 2023

Supreme Court, Suffolk County

Docket Number: Index No. 608712/2020

Judge: Leonard D. Steinman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

-----X
M.N.,

Plaintiff,

-against-

SUFFOLK COUNTY SHERIFF’S DEPARTMENT,

Defendant.
-----X

LEONARD D. STEINMAN, J.

**Part CVA-R
Index No. 608712/2020
Mot. Seq. No. 002**

DECISION AND ORDER

The following papers, in addition to any memoranda of law and/or statement of material facts, were reviewed in preparing this Decision and Order:

Defendant’s Notice of Motion, Affirmation & Exhibits.....	1
Plaintiff’s Affirmation in Opposition	2
Defendant’s Reply.....	3

In this action, plaintiff alleges that he was sexually abused for six years by a neighbor of his mother’s, Robert Weis, commencing in approximately 1999 when plaintiff was 11 years old. Weis was a corrections officer employed by Suffolk County. Weis mainly abused plaintiff in Weis’ home, but on various occasions Weis brought plaintiff to the jail where he worked—under the guise that plaintiff was his nephew—and abused plaintiff in the jail parking lot and bathroom. Suffolk County now moves for summary judgment, pursuant to CPLR 3212, on various grounds. Because the County has not met its *prima facie* burden of establishing that it had no notice of Weis’ propensity to abuse jail visitors, the motion for summary judgment is denied.¹

¹ Plaintiff’s request for punitive damages, however, is stricken. The County is a municipality and may not be held liable for punitive damages. *Dixon v. William Floyd Union Free School Dist.*, 136 A.D.3d 972 (2d Dept. 2016).

LEGAL ANALYSIS

It is the movant who has the burden to establish an entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn.*, 90 N.Y.2d 623 (1997). “CPLR §3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material facts on every relevant issue raised by the pleadings, including any affirmative defenses.” *Stone v. Continental Ins. Co.*, 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden, the motion for summary judgment should be denied. *US Bank N.A. v. Weinman*, 123 A.D.3d 1108 (2d Dept. 2014).

A defendant’s burden cannot be satisfied merely by pointing to gaps in the plaintiff’s proof. *In re New York City Asbestos Litigation (Carriero)*, 174 A.D.3d 461 (1st Dept. 2019); *Vittorio v. U-Haul Co.*, 52 A.D.3d 823 (2d Dept. 2008).

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Zuckerman v. New York*, 49 N.Y.2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065 (1979).

Plaintiff’s amended complaint contains one cause of action alleging negligence on the part of defendant, Suffolk County Sheriff’s Department. Departments of a municipality, such as the Sheriff’s Department, do not have a legal identity separate and apart from the municipality and, therefore, generally cannot independently sue or be sued. *Stevens v. Town of East Fishkill Police Department*, 198 A.D.3d 832, 833 (2d Dept. 2021). Although the Sheriff’s Department is simply an administrative arm of the County, the Second Department nonetheless has held that actions should not be dismissed based on this distinction where the municipal department is the only named defendant since “an action against the Sheriff’s Department is, in effect, an action against the County itself.” *Maio v. Kralik*, 70 A.D.3d 1 (2d Dept. 2009); *see also* CPLR §2001.

To sustain her negligence claims, plaintiff must allege and prove (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom. *Pasternack v. Lab. Corp. of Am. Holdings*, 27 N.Y.3d 817, 825 (2016); *Solomon v. City of New York*, 66 N.Y.2d 1026, 1027 (1985); *see also, Turcotte v. Fell*, 68 N.Y.2d 432, 437 (1986); *Mitchell v. Icolari*, 108 AD3d 600 (2d Dept 2013). The County’s argument that it cannot be held vicariously liable for Weis’ abuse is correct (*see N.X. v. Cabrini Medical Center*, 97 N.Y.2d 247, 251 (2002)), but does not end the required analysis.

Although an employer cannot be held vicariously liable ‘for torts committed by an employee who is acting solely for personal motives unrelated to the furtherance of the employer’s business,’ the employer may still be held liable under theories of negligent hiring, retention, and supervision of the employee. . . . The employer’s negligence lies in having ‘placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring and retention’ of the employee.

Johansmeyer v. New York City Dept. of Ed., 165 A.D.3d 634 (2d Dept 2018) (internal citations omitted).

Because the County has submitted no evidence establishing that it lacked notice of Weis’ propensity to commit sexual abuse in response to plaintiff’s allegations, the court cannot assume that the County lacked such notice.² The County has the burden as the moving party to affirmatively demonstrate that it had no notice, a burden that cannot be satisfied merely by pointing to gaps in the plaintiff’s proof. *Reed v. Watts Water Technologies, Inc.*, 212 A.D.3d 740 (2d Dept. 2023); *Vittorio v. U-Haul Co.*, 52 A.D.3d 823 (2d Dept. 2008). Nor has the County proffered any evidence concerning its policies and procedures for visitors or whether employees can bring visitors to the jail.

² The court is aware that due to the passage of time there may be instances in which there is no available proof to a defendant seeking to defend CVA actions brought decades after the events at issue. In such cases, this court has recognized that it may be appropriate to enter summary judgment in favor of a moving defendant where it is established that a plaintiff cannot prove his or her case. *See Kwitco v. Camp Shane, Inc.*, Westchester Co. Index No. 59823/2020, Decision and Order dated February 21, 2023. But the District has not shown that evidence in support of its defense no longer exists. And the County’s discovery responses reflect that it is in possession of Weis’ personnel file.

Therefore, the central issue before this court is whether the County had a duty to the plaintiff. The County had no general duty to the plaintiff—who at the relevant time was not an inmate or otherwise in the County’s custody—to ensure that its employees did not commit acts of abuse wholly unrelated to the employee’s duties and off of the County’s premises. *See Doe v. Hauppauge Union Free School District*, 213 A.D.3d 809 (2d Dept. 2023); *Roe v. Domestic and Foreign Missionary Society of the Protestant Episcopal Church*, 198 A.D.3d 698 (2d Dept. 2021)(nexus must exist between alleged attacker’s employment and the sexual assault). Here, Weis befriended plaintiff in his neighborhood and home and his interactions with the plaintiff away from the jail had nothing to do with Weis’ employment. The nexus that must be examined is Weis’ abuse of plaintiff on County property.

“[I]f an employer knows that employees are using its property to injure others, especially during working hours, reasonable steps should be taken to prevent foreseeable harm.” *Waterbury v. New York City Ballet, Inc.*, 205 A.D.3d 154, 164 (1st Dept. 2022). A negligent hiring, retention or supervision claim does not require the existence of any particular relationship between the plaintiff and the defendant employer. “Rather, the defendant is responsible for the [foreseeable] harm its negligently hired employee causes to any third party.” *Sandra M. v. St. Luke’s Roosevelt Hosp. Center*, 33 A.D.3d 875, 879 (2d Dept. 2006). Since the County presented no evidence that it was unaware of Weis’ proclivity to sexually abuse people in the jail its motion must be denied absent another persuasive legal defense.

The County argues that it has such a defense: it is purportedly immune from liability for its alleged negligence in hiring, supervising and/or retaining Weis as a corrections officer. But courts in this State have recognized that a municipality may be liable for the negligent retention and supervision of a government employee with dangerous propensities. *See Gonzales v. City of New York*, 133 A.D.3d 65 (1st Dept. 2015); *see also McCrink v. City of New York*, 296 N.Y.99 (1947); *Jones v. City of Buffalo*, 267 A.D.2d 1101 (4th Dept. 1999); *Wyatt v. State*, 178 A.D.2d 574 (1st Dept. 1991) (corrections officer). The tort of negligent

hiring and retention “applies equally to municipalities and private employers.” *Gonzalez v. City of New York*, 133 A.D.3d at 67.

Furthermore, the County points to *no* action or decision made by any of its employees that may be viewed as either discretionary or ministerial. *See Haddock v. City of New York*, 75 N.Y.2d 478 (1990). “The immunity afforded a municipality presupposes an exercise of discretion in compliance with its own procedures.” *Id.* at 485. As in *Haddock*, the County presents no evidence in support of its motion that any decision was made to retain Weis.

Finally, none of the cases cited by the County in support of its immunity argument involve negligence concerning the oversight of jail facilities or prisons and the employees that work there. The government generally bears responsibility for harm caused by its negligence in overseeing its facilities as a landlord, and no exception has been recognized for jails. *See Miller v. State*, 62 N.Y.2d 506 (1984). The County’s oversight of its jail facility is a proprietary function, and the County is not afforded any special protection with respect to injuries caused by its negligence that is wholly unrelated to the County’s oversight of its inmates. “[I]f the municipality’s actions fall in the proprietary realm, it is subject to suit under the ordinary rules of negligence applicable to nongovernmental parties ... [and] is held to the same duty of care as private individuals and institutions” *Ferriera v. City of Binghamton*, 38 N.Y.3d 298, 309 (2022). Therefore, plaintiff, as an invitee upon the County’s premises, was not required to establish a “special duty” as if the County was performing a governmental function.

As a result, the County’s motion must be denied.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of the court.

Dated: July 12, 2023
Tarrytown, New York

ENTER:

A handwritten signature in black ink, appearing to read "L Steinman", written over a horizontal line.

LEONARD D. STEINMAN, J.S.C.