

PREPARED BY THE COURT

HECTOR & RUTH RODRIGUEZ
GUARDIAN AD LITEM FOR THEIR
DAUGHTER, MADELINE RODRIGUEZ,

Plaintiffs,

vs.

EDGEWATER BOARD OF
EDUCATION, EDGEWATER SCHOOL
DISTRICT, DR. LORRAINE CELLA,
ED.D., PAT DESANTO, LSW, PATRICIA
CIVITELLO, JENNIFER BARRY,
EDGEWATER POLICE DEPARTMENT,
STEVEN TIBUS, JOHN DOES 1-10,
JANE DOES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: **BER-L-8045-15**

Civil Action

OPINION

Argued: August 31, 2017
Decided: September 1, 2017

Honorable Robert C. Wilson, J.S.C.

Howard Nirenberg, Esq. from law offices of Nirenberg & Varano, LLP on behalf of the Defendants Edgewater Board of Education, Edgewater School District, Dr. Loraine Cella, ED.D., Pat DeSanto, LSW, Patricia Civitello, and Jennifer Barry.

Richard S. Mazawey, Esq. from the law offices of Richard S. Mazawey on behalf of the Plaintiffs Mr. Hector and Mrs. Ruth Rodriguez Guardian Ad Litem For Their Daughter, Madeline Rodriguez.

PROCEDURAL BACKGROUND

THIS MATTER comes before the Court on a motion for summary judgment filed by Howard Nirenberg, Esq. from law offices of Nirenberg & Varano, LLP on behalf of the Defendants Edgewater Board of Education, Edgewater School District, Dr. Loraine Cella, ED.D., Pat DeSanto, LSW, Patricia Civitello, and Jennifer Barry (hereinafter “Defendants” or “School Defendants”).

Opposition was filed by Richard S. Mazawey, Esq. from the law offices of Richard S. Mazawey on behalf of the Plaintiffs, Mr. Hector and Mrs. Ruth Rodriguez Guardian Ad Litem For Their Daughter, Madeline Rodriguez (hereinafter “Plaintiffs”). Oral argument was heard on August 31, 2017.

FACTUAL BACKGROUND

On December 9, 2013, at around 9:00 a.m., Madeline Rodriguez was called to the principal’s office and was told that she needed to be out of class until she spoke with Mr. Hector and Mrs. Ruth Rodriguez. A member of the principal’s office at the Edgewater School District called Mrs. Rodriguez and advised her to come down to the school for an alleged incident regarding her daughter. The school officials advised that they intended to hold a meeting with Mrs. Rodriguez, Madeline, and the Edgewater Police Department. Madeline Rodriguez was ten years old at the time. Ms. DeSanto, Ms. Civitello, and Detective Sergeant Tibus did not question Madeline until Mrs. Rodriguez arrived at the school to participate in the proceedings.

Until Mrs. Rodriguez arrived, Madeline was allegedly kept standing in the hallway outside of the principal’s office for a long time within sight of the other students. Once Mrs. Rodriguez arrived, Ms. DeSanto, Patricia Civitello, and Detective Sergeant Steven Tibus began the interview of Madeline, questioning her about an e-mail that she allegedly sent to another student using her “Roblox” account. The e-mail was threatening in nature; it was a form of cyber bullying threatening the life of another student. Madeline denied that she sent the e-mail, referring to the use of poor grammar and spelling mistakes to prove that she could not be the author of said e-mail. In spite of Madeline’s assertions, Detective Sergeant Tibus and Ms. DeSanto insisted that they knew that she sent the e-mail and that she should confess to sending it.

According to Mrs. Rodriguez, Detective Sergeant Tibus and Ms. DeSanto became “more and more aggressive with Madeline and treated Madeline like an adult criminal suspect being accused of a serious crime.” Furthermore, Mrs. Rodriguez alleged that Detective Sergeant Tibus, as well as school officials, pressured Madeline to confess by stating that if she admitted fault, “everything was going to be over,” and that if she refused to confess, then further investigation and the imposition of consequences for lying would ensue. Madeline only confessed to writing the message after continued questioning by Ms. DeSanto and Detective Sergeant Tibus first had ended and she was alone with her mother, Mrs. Rodriguez.

Plaintiff first asserts that the defendants used “threats, intimidation and coercion” to violate Madeline’s substantive due process or equal protection rights, privileges and immunities secured by the Constitution or laws of the United States, or those same rights as secured by the laws or Constitution of New Jersey. Plaintiff points toward the allegedly custodial nature of the interview between Madeline, Detective Sergeant Tibus, Ms. DeSanto, and Ms. Civitello as the basis for this claim. Plaintiff argues that the meeting, held “under the auspices of Defendants Tibus, DeSanto, and Civitello” was an improper inquest which resulted in a false confession. Plaintiffs assert that subsequent text messages from the recipient of the Roblox e-mail demonstrate that the victim “screwed up and she was sorry” further showing that Madeline did not send the Roblox message.

Additionally, on March 23, 2014 the Plaintiffs traveled as a family to the Roblox corporate headquarters in California in order to investigate the origin of the message. According to Hector Rodriguez, it was determined during this trip that Roblox could not locate the message on its internal servers or link the message to Madeline’s account. Plaintiffs argue that this is further indication that the email was not sent by Madeline.

Finally, Plaintiff contends that defendants failed to appropriately enforce its own Harassment, Intimidation, and Bullying Policy. Specifically, plaintiffs contend that defendants improperly failed to consider Madeline's age and disciplinary history when responding to the apparent threat of the email; that the defendants failed to consider the availability of counseling and other intervention methods during the initial meeting and interview; and that the defendants failed to perform necessary due diligence by not first conducting an investigation of the grammar and style of the email before questioning Madeline.

RULE OF LAW

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, 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.S.A. § 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under N.J.S.A. § 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on N.J.S.A. § 4:37-2(b) or N.J.S.A. § 4:40-1, or a judgment notwithstanding the verdict under N.J.S.A. § 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of N.J.S.A. § 4:46-2." Id. at 540.

DECISION

This Court has determined that the Motion filed on behalf of the Defendants shall be granted as there are no genuine issues of material fact. The Plaintiffs' Complaint and any and all claims against these Defendants are now hereby dismissed with prejudice.

The rules of qualified immunity are set forth in Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975), and in Endress v. Brookdale, 144 N.J. Super. 109 (App.Div.1976).

The latter court said:

There should have been a consideration of the objective and subjective criteria of good faith mandated by Wood v. Strickland; that is, the subjective aspect of whether the official acted sincerely and with a belief that he was doing right, and not with a malicious intention to cause a deprivation of constitutional rights; and, if that test was met, the objective standard of whether the official knew or reasonably should have known that his act would violate the clearly established constitutional rights of plaintiff. Id. at 136-137.

New Jersey courts have adopted the "objective reasonableness" standard of Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). See Hayes v. Mercer County, 217 N.J. Super. 614, 526 A.2d 737 (App. Div. 1987). The Hayes Court explained: "To prevail on a motion for summary judgment, a public employee need not establish his subjective, *i.e.*, actual, good faith if his conduct was objectively reasonable." Id. at 622, 526 A.2d 737. In Harlow the Supreme Court sought to avoid the disruption of effective government caused by litigation through resolution on summary judgment. It held, therefore, that a public official is immune from liability unless he or she violates a clearly established law of which a reasonable person would have known. 457 U.S. at 817-818, 102 S.Ct. at 2737-38.

Following Harlow and its progeny, Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987), the test becomes whether a public employee would have reasonably believed that his or her actions were lawful in light of clearly established law. Anderson, supra, 107 S.Ct. at 3040. The law violated must be sufficiently clear that a reasonable public employee would understand that what he or she is doing violates that law. The unlawfulness must be apparent from preexisting law. Id. at 3039.

In the case at bar, the Defendants were performing their roles as the School Board or as employees of the school district when they sought to investigate the threatening email or call the Police Department to do so. The crux of the Plaintiffs' case against these Defendants rests upon the presumption that these Defendants "violated the rights" of the Plaintiff Madeline when they questioned her about her role in sending the threatening email, allowed others to commence questioning without first investigating the matter, or held her in the hallway while waiting to be questioned. The Defendants are entitled to immunity in this matter to the extent that their conduct was objectively reasonable.

This Court has already held that the Police Defendants' actions when interviewing Madeline were not malicious or intentional acts which would negate their qualified immunity. The Plaintiffs have failed to show that the actions of the School Defendants, who only peripherally participated in the questioning by Defendant Detective Sergeant Tibus, met the "malicious or intentional" standard which would forfeit their immunity. The only action that the School Defendants took was to recommend that Madeline undergo psychological counselling. Further, while Ms. DeSanto and Ms. Civitello were in the room during the questioning and also asked some questions, Ms. Rodriguez, who was present for the entire period of questioning, indicated in her deposition that Defendant Tibus seemed to be in charge. Given these circumstances, and the lesser

involvement in the questioning of the School Defendants, the Plaintiffs have failed to show a malicious or intentional act which would result in a loss of immunity.

Similarly, The School Defendants are immune from the allegations made against them because they were merely exercising their judgment or discretion. See N.J.S.A. § 59:3-2(a) (“[a] public employee is not liable for an injury resulting from the exercise of judgment or discretion vested in him”); see also Delbridge v. Schaeffer, 238 N.J. Super. 323, 351 (Law Div. 1989), aff’d, 297 N.J. Super. 1 (App. Div. 1993) (“Pursuant to N.J.S.A. § 59:3-2, decisions of this type have been immunized, recognizing that public employees, such as the above defendants, frequently engage in a wide range of discretionary decision-making, not all of which could be anticipated but which often affect, and possibly disgruntle, vast numbers of people.”). Here, the School Defendants are vested with discretion as to how to proceed in any particular situation. This discretion included whether or not to be present for the interview of Madeline, whether to question Madeline, whether to call the Police Department, and whether to take her out of class. The e-mail that Madeline allegedly sent contained a threatening message to another student. The School Defendants exercised their discretionary authority in order to call the police, to question Madeline, to remove her from class to keep her isolated from other students in the hallway, and request that she undergo psychological evaluation.

The Plaintiffs emphasize that Madeline was 10 years old and was detained by the School Defendants from 9:00 am until 2:00 pm. They assert that this fact, along with Madeline’s unblemished disciplinary record, illustrate that the School Defendants violated their own Harassment, Intimidation, and Bullying Policy. They also point to the failure of the School Defendants to perform any due diligence or investigation before questioning Madeline as an illustration of their violation of her rights. However, these were discretionary actions that the

School Defendants took in light of the threat against another student. Further, the School Defendants' decision to call the police without first conducting a "due diligence investigation" was another reasonable discretionary action. The police are far more equipped to investigate threats than the School Defendants, particularly when the Roblox Servers are located in California as plaintiff claims. As a result, the School Defendants do not lose their immunity as a result of taking the above actions.

To reiterate, the Plaintiffs fail to articulate how Madeline was unlawfully pressured to give a statement and/or confession after having a private meeting with her mother. Mrs. Rodriguez states in her certification that Madeline was pressured to give a statement/confession to an act that she did not do. Plaintiffs claim that the "session and improper inquest that was held at the school, wherein the police under the auspices of Detective Sergeant Tibus, De Santo, and Civitello was more like a 'star chamber inquiry' than a quest for knowledge and truth." (See Plaintiffs' Opposition to Mot. To Dismiss, p.5). However, the facts show that the School Defendants carried out their duties in an objectively reasonable manner, in the presence of Madeline's mother, with the intent to obtain information regarding the serious offense of cyber bullying. The Defendants' limited questioning to elicit information, their isolation of Madeline in response to a perceived threat on another student, and their recommendation of psychological evaluation cannot in of itself amount to an intentional, malicious, or willful act in contravention of the Plaintiffs' legal and civil rights. As such, the School Defendants cannot be held liable and are entitled to statutory immunity. See N.J.S.A. § 59:2-10.

With respect to Plaintiffs' § 1983 claims, the Plaintiffs' Complaint fails to adequately allege that the Plaintiffs Mrs. Rodriguez and Madeline Rodriguez had been denied a right secured

by the Constitution or by federal law as a result of the School Defendants' actions. Section 1983, governing "civil action[s] for deprivation of rights", provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable[.]

See 42 U.S.C. § 1983.

Section 10:6-2 of the New Jersey Civil Rights Act, N.J.S.A. § 10:6-1 et seq., mirrors its federal counterpart and provides that:

Any person [1] who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or [2] whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

See N.J.S.A. § 10:6-2(c).

Setting aside the issue of qualified immunity, which is applicable here, the plaintiff bears the burden to establish a civil rights violation. To state a claim pursuant to 42 U.S.C. § 1983 a litigant must provide two elements: (1) that he/she was deprived of a federal right secured by the Constitution; and (2) that the action was performed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 42 n.3 (1988); Rezem Family Assoc., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011); Kirk v. City of Newark, 109 N.J. 173, 185 (1988); see also T&M Homes v. Mansfield, 162 N.J. Super. 497 (Law. Div. 1978) (holding that public officials

were absolutely immune from suit under the Civil Rights Act, at least as to claims for compensatory damages, while municipalities were qualifiedly immune).

In Count One of the Complaint, Plaintiffs assert a violation of Due Process and Equal Protection under the New Jersey State Constitution pursuant to the NJCRA arising from an alleged custodial-like interrogation of Plaintiffs which purportedly took place at Madeline's school. The New Jersey Supreme Court has held that in order to successfully allege a violation of Due Process, and in turn establish a § 1983 claim, the complainant must show that the defendant engaged in "egregious misconduct that shocks the conscience in the sense of violating civilized norms of governance" or engaged in "invidious discrimination on the part of a board member or board", or in this case, the remaining School Defendants. Rivkin v. Dover Township Rent Leveling Bd., 143 N.J. 352, 358 (1996).

First, the Plaintiffs assert a claim generally for a violation of their rights because Detective Sergeant Tibus and Ms. DeSanto questioned Madeline without the presence of an attorney, with aggressive interrogation tactics, and with the intent of eliciting a confession. Schools are required to provide students with some level of due process, but to "maintain security and order in the schools requires a certain degree of flexibility in school disciplinary procedures." Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 686 (1986). As established herein, Ms. DeSanto and the other School Defendants' involvement in this context was to merely question Madeline about the incident of cyber bullying and only did so in the presence of her mother. No facts presented by counsel indicate that any actions by the School Defendants went so far as to violate a right.

Secondly, the Plaintiffs assert substantive due process violations because Madeline was supposedly not free to leave and was subjected to a custodial interrogation, which implicated her Fifth Amendment privilege against self-incrimination. This claim originates with the School

Defendants' having Madeline wait in the hallway from 9:00 am until 2:00 pm. However, given the severity of the threat, having Madeline isolated from other students for five hours until the investigation could be underway does not satisfy the "shock the conscious" standard required to show a procedural or substantive due process violation.

In addition, the facts show that Defendants questioned Madeline in the presence of her mother and ceased questioning when asked by Mrs. Rodriguez. Even though they may have raised their voices, this alleged conduct does not rise to the "shock the conscience" level sufficient to state a procedural or due process violation. Therefore, the Plaintiffs fail to state a cause of action under § 1983 or the NJCRA.

Similarly, the Plaintiffs' Complaint failed to set forth a viable equal protection claim. The Plaintiffs have not alleged any facts that Madeline was treated differently from similar situated persons, was singled-out because of membership in a protect class, or subject to any differential treatment because of her protected class, such as race. Rivkin v. Dover Township Rent Leveling Bd., 143 N.J. 352, 381 (1996). Therefore, the Plaintiffs fail to state a viable equal protection claim.

Lastly, the Plaintiffs' Complaint has failed to set forth viable claims of intentional and negligent infliction of emotional distress. Count Two of the Complaint alleges that "Defendants' intentional conduct...was severe and outrageous." The severe and outrageous behavior of the Defendants caused Madeline to miss days of school; resulted in a record of the incident in her academic file; caused Madeline to suffer mental and psychological damage; and caused Madeline to suffer severe, serious, and permanent emotional distress. Plaintiffs' Complaint has not specifically plead any facts to support a claim that her emotional distress is significant or permanent in nature, nor has the Complaint plead a severe and disabling emotional or mental condition. The Complaint merely alleges that she has missed a few days of school, must now deal

with a record of the incident in her academic file, and suffers some unspecified mental and psychological problems. Additionally, Plaintiffs' counsel admitted at oral argument that their own expert reports indicate that the level of emotional or mental distress does not rise to the level required to state a claim for intentional or negligent infliction of emotional distress. Plaintiffs' conclusory allegations are therefore insufficient to state claims of intentional infliction of emotional distress. See Buckley v. Trenton Sav. Fund Soc., 111 N.J. 355, 366 (1988) (holding that in order to state of claim for intentional infliction of emotional distress, the plaintiff must prove that there was a dramatic impact on his/her every-day activities or on his/her ability to function daily).

Count Three of the Plaintiffs' Complaint, alleging negligent infliction of emotional distress, fails on the same accord. Again, Plaintiffs' rely on conclusory statements that Madeline suffered severe, serious, and permanent emotional distress as a result of the School Defendants' actions.

A cause of action for negligent infliction of emotional distress involves traditional concepts of duty, breach, and causation. Caputzel v. The Lindsay Co., 48 N.J. 69, 74-75, 222 A.2d 513 (1966). To establish liability for this tort, 'a plaintiff must prove that defendant's conduct was negligent and proximately caused plaintiff's injuries.' Decker v. Princeton Packet, 116 N.J. 418, 429, 561 A.2d 1122 (1989). Determining defendant's negligence 'depends on whether defendant owed a duty of care to the plaintiff, which is analyzed in terms of foreseeability.' Ibid.

Williamson v. Waldman, 150 N.J. 232, 239 (1997).

Here, the Plaintiffs' Complaint and Mrs. Rodriguez's Certification has not sufficiently alleged that the record of the incident in Madeline's academic file was foreseeable from the Defendants' questioning or other actions and therefore, fails to establish causation. Furthermore, the Plaintiffs' Complaint and Mrs. Rodriguez's Certification does not allege sufficient facts

detailing how Madeline's emotional injury, if any, was genuine or substantial. Decker v. Princeton Packet, Inc., 116 N.J. 418, 429 (1989).

In conclusion, the Defendants' motion for summary judgment, is **GRANTED** for the aforementioned reasons.