

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Stacey Grist as Agent under a Power of)
 Attorney for Stanford W. Grist and as)
 Trustee of the Second Amended Trust of)
 Stanford W. Grist living Trust dated)
 December 5, 2005, Stanford Grist)
 Veterinary Services, LLC, Chestnut Ridge)
 Farm, LLC, and Hilly Street, LLC,)
)
 Plaintiffs,)
)
 v.)
)
 Priscilla Mickie Grist, Caroline York Grist)
 Lyon, Leyland H. Lyon, Jr., Jennifer)
 Browning, Browning Geriatrics Consulting,)
 LLC, Tracy Parson, Kiki's Kare, LLC d/b/a)
 Comfort Keepers, Erin Couchell)
 Individually and as a member of Kiki's)
 Kare, Chris Couchell Individually and as a)
 member of Kiki's Kare, LLC, and Kerry)
 Burnett McCreary,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 Civil Action No.: 2022-CP-23-04055

**ORDER GRANTING KIKI’S KARE, LLC
 d/b/a COMFORT KEEPERS, ERIN
 COUCHELL INDIVIDUALLY AND AS A
 MEMBER OF KIKI’S KARE, LLC, AND
 CHRIS COUCHELL INDIVIDUALLY AS
 A MEMBER OF KIKI’S KARE, LLC
 MOTION FOR SUMMARY JUDGMENT**



This matter came before the Court on October 16, 2024, upon Defendants Kiki’s Kare, LLC’s d/b/a Comfort Keepers (hereinafter “Kiki’s Kare”), Erin Couchell (hereinafter “Couchells”), and Chris Couchell (hereinafter “Couchells”) Motion for Summary Judgment. Counsel for Kiki’s Kare and The Couchells were represented by Robert M. Peele, III Esquire. Plaintiffs were represented by Devon M. Puriefoy, Esquire.

BACKGROUND

This case has a long and tortured history, and several iterations of this case have been filed in the Greenville County Probate Court. Dr. Stanford W. Grist was a prominent veterinarian in Greenville and formed a trust for his wife and children. Years later, Dr. Grist developed dementia

and his competency was contested. A dispute grew between family members as to who was Dr. Grist's Power of Attorney, as well as the issue of the competency of Dr. Grist. Litigation ensued where the Probate Judge appointed a Temporary Guardian and a Guardian Ad Litem.

On July 20, 2020, Kiki's Kare was selected as the 24-7 caregiver by the Court Appointed Guardian Ad Litem for Dr. Stanford Grist, Jennifer Browning (hereinafter "Browning") when Browning contacted Chris Couchell, principal of Kiki's Kare, and asked if Kiki's Kare would be able to provide 24-7 around the clock care for Dr. Grist. Kiki's Kare began providing care for Dr. Grist on September 8, 2020, and provided care to Dr. Grist until June 28, 2022, when Dr. Grist was admitted to the hospital with dementia related issues. On August 8, 2022, when Dr. Grist was being released from the hospital, it was recommended by Browning and Tracy Parsons to Chris Couchell for Kiki's Kare to have two caregivers providing around the clock care for Dr. Grist. Mr. Couchell told both Browning and Parsons that he did not think that would be possible.

On August 21, 2021, Plaintiffs filed a Summons and Complaint in this matter against Kiki's Kare, Chris Couchell, and Erin Couchell, among seven other defendants, an Amended Summons and Complaint on August 15, 2022 and a Second Amended Summons and Complaint on January 24, 2024. In the 2nd Amended Complaint, Plaintiffs assert the following causes of action against Kiki's Kare and Couchell: Negligence/Gross Negligence (1st); Negligent hiring, negligent training and Negligent supervision (2nd); Abuse of Process/Aiding and Abetting Abuse of Process (3rd); Civil Conspiracy (4th); Violation of Unfair Trade Practice Act (5th); and Violation of the Power of Attorney Act (8th).

On May 22, 2024, Kiki's Kare and The Couchells filed a Motion to Sever several causes of action pertaining to probate issues; while having nothing to do with Kiki's Kare or The Couchells, which this Court granted on August 9, 2024.

On May 22, 2024, Kiki's Kare and The Couchells filed the instant Motion for Summary Judgment, asking this Court to dismiss the remaining causes of action against Kiki's Kare and The Couchells as there is no issue of material fact and Kiki's Kare and The Couchells are entitled to Summary Judgment as a matter of law.

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. A fact is "material," for summary judgment purposes, if it might affect the outcome of the suit under the governing law. See Hupp v. Cook, 931 F.3d 307 (4th Cir. 2019) (interpreting Federal Rules of Civil Procedure equivalent of Rule 56, SCRPC); see also Salmonsén v. CGD, Inc., 377 S.C. 442, 661 S.E.2d 81 (2008) (noting that interpretations of the Federal Rules of Civil Procedure are instructive in interpreting their South Carolina counterparts); S.C. Tax Com'n v. Union Cty. Treasurer, 295 S.C. 257, 368 S.E.2d 72 (Ct. App. 1988) (the same).

In determining whether any triable issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. See Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000). Nonetheless, a court, "cannot ignore facts unfavorable to the [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue rather than a formal, perfunctory or shadowy one. See Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. See Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001). With respect to an issue on which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party's case. See Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001). The non-moving party must then "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with *specific facts* showing that there is a genuine issue for trial." Id. (Emphasis added). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

On August 23, 2023, the Supreme Court of South Carolina handed down an opinion in Kitchen Planners, LLC v. Friedman, clarifying the applicable standard for motions for summary judgment under Rule 56, SCRPC. The Court rejected the "mere scintilla" standard and restored Rule 56(c)'s plainly stated standard "requiring the party opposing the motion show a 'reasonable inference' to be drawn from the evidence." Kitchen Planners, LLC v. Friedman, No. 2020-001669, 2023 WL 5420401, at *2 (S.C. Aug. 23, 2023).

Ultimately, the Supreme Court opined,

We now clarify that the "mere scintilla" standard does not apply under Rule 56(c). Rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule. As we stated in Town of Hollywood v. Floyd, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." 403 S.C. at 477, 744 S.E.2d at 166. To the extent what we said in Hancock is inconsistent with our decision today, Hancock is overruled.

Id. at *3.

DISCUSSION

For the reasons set forth below, summary judgment in favor of Kiki's Kare and The Couchells is appropriate.

I. The Court grants Kiki's Kare and The Couchells Summary Judgment as to the allegations that Kiki's Kare overly prescribed medications to Dr. Stanford Grist.

One of the claims asserted in the Second Cause of Action allege that the employee of Kiki's Kare and Couchells overprescribed medications. The Plaintiffs have failed to submit any evidence that Kiki's Kare, Couchells or their agents or employees prescribed medications to *any* client, much less to Dr. Stanford Grist. Chris Couchell testified in his deposition and an affidavit submitted in support of his Motion for Summary Judgment that Kiki's Kare is not a physician, hospital, or a pharmacy. Plaintiffs presented no evidence in support of its allegations of over prescribing medications and failed to establish a genuine issue of material fact; therefore, Kiki's Kare and The Couchells are entitled to Summary Judgment as a matter of law as to this claim.

II. Negligence, Negligent Hiring, Negligent Training, and Negligent Supervision.

a. Kiki's Kare actions surrounding the sexual encounter between Kerri McCreary and Dr. Grist

In their first cause of action, the Plaintiffs allege that Kiki's Kare, as employer of McCreary, was negligent and/or grossly negligent as a result of McCreary's sexual abuse of Dr. Grist. The Second Cause of action for Negligent hiring, supervision and training are based on the same allegations. The record clearly shows that Kiki's Kare was alerted to a possible allegation of sexual abuse performed by Kerri McCreary on Dr. Grist on or about May 25, 2021. According to the record, Tracy Parsons advised Kiki's Kare that Stacey Grist had reported that her father told her that he had a sexual encounter with Kerri McCreary. The same day, Kiki's Kare immediately removed McCreary from Dr. Grist's shift and started an investigation.

On May 27, 2021, Kerri McCreary was brought into Kiki's Kare's office for questioning about Stacey Grist's allegation of a sexual encounter. Three Kiki's Kare employees were present at the meeting. At this meeting, McCreary described the various instances of inappropriate conduct involving her and Dr. Grist. There is no evidence that Kiki's Kare had any knowledge of McCreary's conduct prior to her admission on May 27, 2021. The same day Comfort Keepers fired her and reported the incident to DHEC and the Greenville County Sherriff's Office.

The Court finds that the Plaintiffs have failed to provide any evidence that Kiki's Kare or Couchells were negligent in the handling of this situation, negligent in supervising or training McCreary.

Kiki's Kare and Couchell argue that they are immune from civil liability under The Omnibus Adult Protection Act (the "Act") and the case of Williams v. Watkins, 379, SC 530, 665 S.E.2d 243 (Ct. App. 2008). Their argument is misplaced. In Williams, a supervisor for the Babcock center reported to the Sheriff's department that a caregiver and her husband had sexually abused a disabled child. As a result, the caregiver and her husband sued the supervisor and Babcock Center for defamation and intentional infliction of emotional distress as a result of the reporting of the alleged abuse. In Williams, the Court of Appeals held that the Act provided immunity from civil liability for claims "stemming from their reporting the suspected abuse of a vulnerable adult." Ibid at 533. But Williams nor the Act stand for the proposition that a mandatory reporter is immune from all civil liability, but only if the claims arise out of the reporting of the alleged abuse—which is not the basis of Plaintiffs' claim in this case. Therefore, the Court rejects these defendants' argument under the Act and Williams.

b. Negligent Hiring and Liability under Respondeat Superior

Before McCreary was hired, Kiki's Kare required her to fill out an application, where Kiki's Kare contacted her previous employers to conduct a background check and to verify her references, a perfectly acceptable criteria before deciding whether or not to hire a perspective employee. McCreary's actions after being hired, while not desirable, does not subject Kiki's Kare, or The Couchells to any civil liability under the law.

The case of Jenkins v. CEC Entertainment Inc., 421 F.Supp.3d 257 (2019) is illustrative. There Jenkins, a Plaintiff, attempted to sue tortfeasor employer CEC Entertainment under a negligent hiring theory, among others. In regards to the negligent hiring theories, the Jenkins court determined, “[W]here an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training ... the employee.” James v. Kelly Trucking Co., 377 S.C. 628, 661 S.E.2d 329, 330 (2008). “Negligent hiring cases ‘generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties.’” Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456, 459 (2011) (quoting Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447, 450 (2005)). “The issue of an employer's knowledge concerns the employer's awareness that the employment of a specific individual created a risk of harm to the public.” Holcombe v. Helena Chemical Co., 238 F. Supp. 3d 767, 770 (D.S.C. Feb. 23, 2017) (quoting Williams v. Preiss–Wal Pat III, LLC, 17 F. Supp. 3d 528, 538 (D.S.C. 2014)). As for foreseeability, while it “is usually an issue of fact, ‘the court should dispose of the matter on a dispositive motion when no reasonable factfinder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.’” Kase, 707 S.E.2d at 459. The claim of negligent supervision also hinges on foreseeability. “An employer owes a duty of care to a third party when the possible harm resulting to the third party by the employee could have been reasonably anticipated by the

employer.” Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292, 299 (1996). See Holcombe, 238 F. Supp. 3d at 772 (recognizing that “although some South Carolina cases mention intentional harm as an element of negligent supervision claims, others do not,” and explaining that the “unifying feature of the latter line of cases is that the employee caused the harm while acting within the scope of his employment”).

Claims of negligent hiring and negligent supervision typically concern the tortious actions of a specific, individual employee, and the employer's knowledge or lack thereof that the employee would cause harm to the public. See, e.g., Holcombe, 238 F. Supp. 3d at 770 (granting summary judgment on negligent hiring claim where record contained “no evidence of any pre-hiring acts of wrongdoing by [the employee], let alone acts that might be similar to the incident [at issue therein]”). Jenkins v. CEC Entertainment Inc., 421 F.Supp.3d at 264-265 (2019).

The Jenkins Court ruled that CEC Entertainment did not have the requisite knowledge that tortfeasor employee would have participated in the negligent conduct that subjected him to liability which would attach to the employer. The lack of foreseeability that CEC Entertainment was subjected to absolved it of liability.

This Court finds that Kiki's Kare did not have the requisite knowledge and lacked the foreseeability requirements as outlined in Jenkins and Kelly Trucking in knowing that McCreary would be involved in a sexual relationship with a client. Her proclivity for sexual relations was not uncovered through a background check of her as well as verifications from prior employers. In other words, Ms. McCreary did not have any documentative history of sexual misconduct in her past.

The alleged conduct of Ms. McCreary was clearly outside the scope of employment and therefore, her actions would not bind Kiki's Kare or Couchells for this conduct under respondeat

superior. Criminal conduct—particularly an intentional sexual assault against a vulnerable adult—is not within the scope of any employment. Such behavior is never “reasonably necessary to accomplish the purpose of the servant’s employment” or “done in furtherance of the master’s business.” Rather, it is “wholly disconnected with [the servant’s] employment” and furthers only the employee’s personal satisfaction. Courts across the country, including in South Carolina, have so held. See, e.g., Anderson v. United States, No. 8:12-cv-3203-TMC, 2016 U.S. Dist. LEXIS 9225, at *31 (D.S.C. Jan. 27, 2016) (“South Carolina courts have specifically considered whether an employee was acting within the scope of his employment when he commits a sexual assault. In all four cases, South Carolina courts have found that the sexual advances were outside the scope of employment.”) (citing Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587 (2004); Doe v. S.C. State Budget & Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997); Loadholt v. S.C. State Budget & Control Bd., 339 S.C. 165, 528 S.E.2d 670 (Ct. App. 2000); Padgett v. S.C. Ins. Reserve Fund, 340 S.C. 250, 531 S.E.2d 305 (Ct. App. 2000)); Lee v. Jones, No. 1:14-cv-04159-JMC, 2015 U.S. Dist. LEXIS 78325, at *19 (D.S.C. June 17, 2015) (“[P]ursuant to South Carolina agency law, [the employee] was not furthering his employer’s interest in sexually assaulting Plaintiff.”)

As discussed above, the Plaintiffs have failed to establish any genuine issue of material fact as to the various causes of action based on negligence, therefore, Kiki’s Kare and the Couchells are entitled to Summary Judgment as to the First and Second Causes of Action.

The Court makes no finding whether Ms. McCreary sexually abused Dr. Grist. Since the Court has granted Summary Judgment as to the Plaintiffs’ claims relating to this issue, there is no need to address her conduct and whether it constituted abuse or not.

ADDITIONAL CAUSES OF CAUTION AGAINST THESE DEFENDANTS

In the Second Amended Complaint, the Plaintiffs asserts various other claims against Kiki's Kare and/or the Couchells, either by way of specific allegations in the causes of action or through general allegations against "all Defendants". These include the claims for Abuse of Process/Aiding and Abetting Abuse of Process (3rd); Civil Conspiracy (4th); Violation of Unfair Trade Practice Act (5th); and Violation of the Power of Attorney Act (8th). Even though these claims have been asserted against Kiki's Kare and/or Couchells, they were not addressed in Defendants' Motion for Summary Judgment nor their Memorandum in Support of their Motion for Summary Judgment, oral argument nor the proposed Order by counsel. Therefore, the Court's ruling does not address these specific causes of action in this Order, but these Defendants are not foreclosed from asserting their right to Summary Judgment in a future Motion.

CONCLUSION

Therefore, the Court grants Kiki's Kare and the Couchell's Motion for Summary Judgment as to the 1st Cause of action for negligence/gross negligence and the 2nd cause of action for negligent hiring, training and supervision. The remaining causes of action against these defendants have not been addressed in this order.

IT IS SO ORDERED.

E-signature of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Stacey Grist , plaintiff, et al vs. Priscilla Mickie Grist , defendant, et al

Case Number: 2022CP2304055

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755