[Cite as *Arocho v. Ohio Univ.*, 2022-Ohio-4835.]

IN THE COURT OF CLAIMS OF OHIO

ALISON AROCHO Plaintiff v. OHIO UNIVERSITY Defendant	Case No. 2019-00473JD Judge Dale A. Crawford DECISION

Background

{¶1} Plaintiff, Alison Arocho, was a fifteen-year-old high school student who lived near Athens, Ohio in the Spring of 2005. Robert A. Parsons (Parsons) was an Ohio University (University) police officer with general patrol duties on the University campus. Parsons was generally in uniform and driving a patrol car while he was on duty. At times he drove an unmarked vehicle. Parsons met Arocho in June 2005 at a graduation function at Arocho's high school. Arocho gave Parsons her Yahoo Messenger ID and they started communicating. Their relationship progressed into a sexual relationship during the next several months. Parsons testified they had sexual relations three times, in August 2005 and twice in September 2005. Arocho testified they had sex as many as one hundred times ending in either December 2005, January or February 2006. (She was unsure). Arocho testified they had sex in Parsons' cruiser, while he was in uniform, in a local graveyard and one time in an unknown building on the University campus. Parsons denies he ever had sex in his cruiser, while he was in uniform and/or on the University campus. The Court believes Arocho's estimation of the number of sexual encounters is greatly exaggerated and the Court does not believe any encounters took place on the University's campus.

{¶2} Parsons commenced his employment with the University in May 2000. In 2001, authorities from Child Protective Services (CPS) investigated an allegation that off duty Parsons reached from the driver's seat of his vehicle across the lap of a young girl sitting in the passenger's seat. The investigation dealt with an allegation that Parsons was "making a pass" at the young girl. Parsons testified he was only opening the passenger door, which was damaged. After an investigation was completed, it was determined that the allegations against Parsons were "inconclusive."

{¶3} Sometime in the late Fall of 2005 an unspecified complaint was filed with CPS alleging that Parsons was engaged in an inappropriate relationship with a minor who was later identified as Arocho. Parsons was interviewed by CPS and denied the alleged sexual relationship with Arocho. Arocho and her sister also were interviewed and they denied any inappropriate relationship. Arocho and her sister testified that Parsons exerted pressure in the form of a perceived threat to lie to CPS about the relationship. On December 2, 2005, the University Police Department conducted its investigation of Parsons by having him provide a "Garrity" statement.[1] Parsons denied the inappropriate relationship with Arocho during the University Police Department's investigation. The Athens County Sheriff's Department obtained Parsons' computer and saw communications with Arocho. The communications on Parsons' computer were not explicit but it was sufficient for the University to put Parsons on administrative leave effective December 8, 2005. Parsons turned in his badge and gun and was forbidden to come on the premises of the University campus without express approval. There was no evidence that Parsons ever returned to the University campus.

{¶4} On January 10, 2006, Tony Camechis, who at the time was the University's Director of Campus Safety, asked for a pre-disciplinary conference in accordance with the FOP bargaining agreement which Parsons was subject to. On February 10, 2006, Parsons was terminated from his employment based upon allegations of

[1] A *Garrity* statement is defined as a "public employee's oral or written report (as of an incident) obtained under a threat of termination of employment." *Black's Law Dictionary* 823 (11th Ed.2019). *See Garrity v. New Jersey*, 385 U.S. 493, 500, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967) (holding that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic").

(1) insubordination for failing to notify Parsons' supervisor of a criminal investigation involving Parsons and a minor children, (2) insubordination for failing to respond to a meeting and/or show for a meeting with Lt. Noftz while Parsons was on paid administrative leave, (3) dishonesty for failing to be truthful during interviews with Investigator James Thompson, Athens County Sheriff's Department, and Lt. Chris Johnson of the University Police Department, and (4) failure of good behavior and immoral conduct for engaging in inappropriate interactions with minors.

Discussion

{¶5} Arocho filed a complaint in this Court and she filed a complaint in the United States District Court for the Southern District of Ohio. In the District Court she claimed sex-based discrimination pursuant to Title IX of the U.S. Code. The District Court dismissed the claim, which was affirmed on appeal. Previously this Court held a hearing pursuant to R.C. 2743.02(F) and found that Parsons was not immune from liability and that all of his actions toward Arocho were outside the scope of his employment.[2]

{¶6} Plaintiff claims that the University was negligent in not protecting her from the actions of Parsons; that the University negligently supervised Parsons during his employment; the University negligently retained Parsons; and the University negligently inflicted emotional distress upon Arocho.

Negligence

{¶7} Arocho bears the burden to prove by a preponderance of the evidence: (1) the existence of a duty, (2) a breach of the duty, and (3) an injury proximately resulting from the breach of the duty. *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 81 (2003), *Menifee v. Ohio Welding Prod. Inc.*, 15 Ohio St.3d 75, 77 (1984), *Chambers v. St. Mary's School*, 82 Ohio St.3d 563, 565 (1998); *Mirlisena v. Miami University*, Ct. of Cl. No. 2015-00190, 2017-Ohio-822, ¶ 17. Plaintiff claims that the University was negligent in several respects: (1) it should have terminated Parsons in 2001 when Plaintiff believes

[2] Parsons entered a plea of "no contest" on July 2006 on charges of unlawful sexual contact with a minor. He was sentenced in November 2006.

the University had notice that Parsons was likely to sexually harm juveniles and (2) the University should have terminated Parsons in early December 2005 when it heard that CPS was conducting an investigation of a complaint about Parsons' relationship with Plaintiff.

{¶8} Whether a duty exists in a negligence action is a question of law for the Court to determine. In *Mussivand v. David*, 45 Ohio St.3d 314 (1989), the Ohio Supreme Court held at page 318:

> There is no formula for ascertaining whether a duty exists. Duty "* * * is the court's 'expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.' (Prosser, Law of Torts (4th ed. 1971) pp. 325-326.) Any number of considerations may justify the imposition of duty in particular circumstances, including the guidance of history, our continually refined concepts of morals and justice, the convenience of the rule, and social judgment as to where the loss should fall. (Prosser, *Palsgraf Revisited* (1953), 52 Mich. L. Rev. 1, 15). * * *" *Weirum v. RKO General, Inc.* (1975), 15 Cal. 3d 40, 46, 123 Cal. Rptr. 468, 471, 539 P.2d 36,39.

{¶9} Moreover, absent a special relationship between the University and Arocho, the University was under no duty to anticipate or foresee that Parsons, or any other employee or student, would engage in criminal activity on or off campus. The Ohio Supreme Court in *Fed Steel and Wire Corp. v. Ruhlen Const. Co.*, 45 Ohio St.3d 171 (1989) at 174 held: "[T]he law usually does not require the prudent person to expect the criminal activity of others. As a result, the duty to protect against injury caused by third parties, which may be imposed where a special relationship exists, is expressed as an exception to the general rule of no liability." Arocho had no special relationship with the University. "'The existence of a special 'duty' depends on the foreseeability of the injury.' * * * The foreseeability of a criminal act depends on the knowledge of the defendant, which must be determined by the totality of the circumstances." *Mirlisena v. Miami University, supra* at ¶ 20, quoting *Evans v. Ohio State Univ.*, 112 Ohio App.3d 724, 740, 680 N.E.2d 161 (10th Dist.1996 (See *Mirlisena* for further discussion of a university's duty to a sexually assaulted student off campus.) The only possible notice the University

had with respect to Parsons' propensities toward criminal activity existed in 2001 when the previous investigation of an alleged "pass" toward a juvenile was found to be "inconclusive." This unsubstantiated allegation was not sufficient for the University to terminate Parsons (with, or without, a hearing, probably in violation of Parsons' union contract). The Court finds that Plaintiff failed to prove the existence of a duty to protect Plaintiff by firing Parsons in 2001.

{¶10} In December 2005, the University received notice that Parsons was being investigated by CPS for an inappropriate relationship with a juvenile. The Court finds that the University at that time had a duty to investigate and take further action to protect Plaintiff from possible further harm by Parsons. The Court finds that as soon as the University received notice of the allegations it (1) commenced its own police department investigation; (2) interviewed Parsons; (3) investigated Parsons' computer; and, within a few days of the commencement of its investigation, (4) placed Parsons on administrative leave; (5) confiscated his badge and gun; (6) barred him from the University property; and (7) eventually terminated his employment on February 10, 2006.

{¶11} The Court finds the University's actions upon learning of the CPS investigation were reasonable under the circumstances. Firing Parsons without an investigation or hearing would have been unreasonable and probably a violation of his union contract. Parsons was placed on leave and barred from the campus within a few days of the University receiving notice of the claim. The Court finds that the University had a duty after receiving notice of alleged inappropriate activity by Parsons to investigate quickly and take appropriate action resulting from the investigation. The University did this. The Court finds Plaintiff failed to prove that the University breached its duty to Plaintiff.

{¶12} The Court will make a further finding. Plaintiff testified that she and Parsons had continuing sexual relations after the early December 2005 CPS, University, and criminal investigations were taking place. Parsons testified he had relations with Plaintiff three times, none after September. The Court will not make a finding as to how many encounters took place but, it is extremely difficult to believe that there were any encounters in December or January while an internal investigation and police investigation were ongoing. A finding on this matter is moot but would be significant (as

far as damages were concerned) if negligence were found only in December 2005 and no incidents occurred after December 2005.

{¶13} Plaintiff further claims the University was negligent in supervising and retaining Parsons. The court in *Browning v. Ohio State Hwy. Patrol*, 151 Ohio App.3d 798, 2003-Ohio-1108, 786 N.E.2d 94, ¶ 67 (10th Dist.) held:

> The elements of a negligent supervision claim are the same as those for negligent hiring or retention. *Harmon v. GZK, Inc.* (Feb. 8, 2002), Montgomery App. No. 18672, 2002 WL 191598, citing *Peterson v. Buckeye Steel Casings* (1999), 133 Ohio App.3d 715, 729, 729 N.E.2d 813. The foreseeability aspect of a negligent supervision claim is also similar. Based upon our discussion of the negligent hiring and retention claims in deciding the previous assignment of error, we find that there was competent, credible evidence in the record to support the conclusion that Browning failed to establish the negligent supervision claim as well. Since the Highway Patrol had no duty to supervise Trooper Mejia while he was engaged in his own private affairs, the Highway Patrol could not be negligent for failing to supervise him at BW-3, at Shooters, or even in his private sleeping quarters.

See also Crable v. Nestle USA, Inc., 8th Dist. Cuyahoga No. 86746*,* 2006-Ohio-2887*,* ¶ 39 and *Mills v. Deehr,* 8th Dist. Cuyahoga No. 82799, 2004-Ohio-2410. The Court has previously found that the University did not breach a duty to Plaintiff in regard to the 2001 and 2005 incidents. The University admonished Parsons in 2001 by sending a letter from Associate Director Tony Camechis to Parsons stating:

> I have reviewed the investigation conducted by Lt. T. Potts and discussed it with you on February 3, 2001. As stated then, I have concluded that the allegation is "inconclusive" and no disciplinary action is warranted. You are reminded of the importance of notifying a supervisor when your actions may bring recognition to Ohio University and the Ohio University Police Department. It is important to remember that our actions are often looked upon as a reflection of our organizational values.

(Defendant Exhibit A.)

{¶14} This letter was appropriate and the University's decision to retain Parsons on the "inconclusive" finding was also appropriate. With respect to the 2005 incident, the Court has found that the University was not negligent in its response to the investigation and its suspension and ultimate termination were appropriate.

{¶15} The Plaintiff has failed to prove the University was negligent in its retention and/or supervision of Parsons.

{¶16} The Plaintiff's claim for negligent infliction of emotional distress likewise fails. The Court finds that the Plaintiff has failed to prove any negligence on the part of the University that could have proximately caused Plaintiff's emotional distress.

DALE A. CRAWFORD
Judge

[Cite as *Arocho v. Ohio Univ.*, 2022-Ohio-4835.]

ALISON AROCHO Plaintiff v. OHIO UNIVERSITY Defendant	Case No. 2019-00473JD Judge Dale A. Crawford JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶17} For reasons set forth in the Decision filed concurrently herewith, the Court holds that Plaintiff has not proven by a preponderance of the evidence that Defendant is liable on Plaintiff's claims of negligence, negligent supervision, negligent retention, and negligent infliction of emotional distress against Defendant. Judgment therefore is entered in favor of Defendant. Court costs are assessed to Plaintiff. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DALE A. CRAWFORD
Judge

Filed December 28, 2022
Sent to S.C. Reporter 1/12/23