

IN THE COURT OF CLAIMS OF OHIO

ESZTER PRYOR

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2022-00044JD

Judge David E. Cain

DECISION

I. Introduction

{¶1} This original action stems from sexual misconduct by a former employee of The Ohio State University with plaintiff Eszter Pryor. When the former employee's sexual misconduct with plaintiff began, plaintiff was a member of a diving club affiliated with The Ohio State University and The Ohio State University's former employee was an assistant coach with the diving club.

{¶2} Before the court is a motion filed by defendant The Ohio State University, through counsel, in which defendant seeks a summary judgment in its favor on plaintiff's claims of (1) assault and battery (vicarious liability), (2) negligence, (3) negligent supervision, (4) negligent retention, and (5) negligent infliction of emotional distress. Plaintiff, through counsel, opposes defendant's summary-judgment motion. Defendant's summary-judgment motion is fully briefed and before the court for determination.

{¶3} Because, after the evidence is construed most strongly in favor of plaintiff, no genuine issues of material fact remain to be litigated; because defendant, as a matter of law, is entitled to judgment in its favor; and because, as to all claims asserted against defendant, reasonable minds can come to one conclusion that is adverse to plaintiff, defendant's summary-judgment motion shall be granted.

II. Background

{¶4} Plaintiff alleges that this case arises from the “sexual abuse and exploitation of [plaintiff], a Team USA-hopeful diving athlete, by officials of The Ohio State University (OSU), conducting business as The Ohio State University Diving Club.” (Complaint, ¶ 1.) Plaintiff maintains that, beginning in 2014, William Bohonyi—defendant’s former employee and a former assistant coach with the diving club—repeatedly engaged in sexual misconduct with plaintiff—while plaintiff, a minor at the time, was a member of diving club. At the time that Bohonyi’s sexual misconduct with plaintiff began, Bohonyi was 28 years old and plaintiff was 16 years old. (Attachment Exhibit C-1, Defendant’s Motion For Summary Judgment (MSJ); Attachment A-4, Exhibit A, Defendant’s MSJ).

{¶5} Plaintiff asserts that, before defendant hired Bohonyi, Bohonyi had engaged in inappropriate conduct with at least one female diver in Indiana, that Bohonyi’s inappropriate conduct with the female diver was commonly known, and that, at least one diving coach at The Ohio State University was aware of Bohonyi’s inappropriate conduct with the female diver in Indiana. (E. Pryor Deposition, 110, 111-112; see G. Pryor Deposition, 77.) Pryor also maintains that, at diving practices at OSU, Bohonyi would make boorish comments about divers’ “butts” and “boobs,” purportedly saying, “Man, if I was 17, man, I’d hit that. Man, I -- maybe I need bigger condoms with your mom next weekend” (E. Pryor Deposition, 257), to which parents of divers purportedly “would have to be like, Will, stop saying that.” (E. Pryor Deposition, 257.)

{¶6} Pryor asserts that Bohonyi first behaved inappropriately with her in June 2014 when Bohonyi came to a home where Pryor was babysitting children of a diving-club family, while the children’s parents were out-of-town for the day. According to plaintiff, the parents of the children apparently were aware that Bohonyi might stop by the home while she was babysitting. (E. Pryor Deposition, 116, 117, 119-121.)¹ Plaintiff maintains that, while she was babysitting, Bohonyi engaged in unwanted physical touching, including grabbing Pryor’s butt when Pryor disembarked from a paddleboat on a lake, and putting a hand in Pryor’s lap in front of the children while Bohonyi, Pryor, and the

¹ The father of the children that plaintiff was babysitting presents a different account, testifying in a deposition that plaintiff called Bohonyi to the house while the children’s parents were away and, while Bohonyi was at the house, Bohonyi and plaintiff did not watch the children, and he and his wife did not allow plaintiff to babysit their children again. (S. Skilken Deposition, 24.)

children dined at a restaurant. (E. Pryor Deposition, 121.) Plaintiff further maintains that Bohonyi later sent text messages to her, “acting very desperate about cuddling, snuggling, kissy stuff,” and sending some messages that were threatening. (E. Pryor Deposition, 123.)

{¶7} Plaintiff alleges that, on July 4, 2014, Bohonyi forced plaintiff to send him naked pictures of herself (Complaint, ¶ 28), that on July 7, 2014, Bohonyi forced plaintiff to perform oral sex on him at a parking garage on the campus of The Ohio State University (Complaint, ¶ 29), and that, on or about July 17, 2014, during an out-of-town diving competition in Maryland, Bohonyi forced plaintiff to engage in sexual intercourse. (Complaint, ¶ 31.) Bohonyi’s sexual conduct with plaintiff later became known to defendant in August 2014 at a diving competition in Knoxville, Tennessee. Bohonyi’s sexual conduct with plaintiff has been described as “consensual” in certain investigatory records of defendant—notwithstanding that, at the time of the sexual conduct between plaintiff and Bohonyi, plaintiff was a minor. (Exhibit G, Pryor Deposition; Exhibit C, G. Pryor Deposition.) Following an internal investigation, defendant terminated Bohonyi’s employment in late August 2014. Bohonyi was later criminally prosecuted.²

{¶8} On January 25, 2022, plaintiff filed a complaint against defendant, asserting claims of (1) assault and battery (vicarious liability), (2) negligence, (3) negligent supervision, (4) negligent retention, and (5) negligent infliction of emotional distress. Defendant has answered plaintiff’s complaint, admitting that The Ohio State Diving Club was a non-intercollegiate program within the Department of Recreational Sports in the Office of Student Life at The Ohio State University, admitting that William Bohonyi was formerly employed by The Ohio State University, but denying liability for Bohonyi’s conduct and generally denying liability. (Answer.)

{¶9} The court stayed this case due to the filing of a connected case in federal district court.³ After plaintiff informed this court that related federal proceedings were resolved, the court vacated its stay of this case.

² See *State of Ohio v. William Anthony Bohonyi, Jr.*, Franklin C.P. No. 18CR-5888. See generally Evid.R. 201 (permitting a court to take judicial notice of adjudicative facts).

³ In a connected case, Eszter Pryor brought a Title IX claim against The Ohio State University in a federal district court. See generally 20 U.S.C. 1681 (prohibition against discrimination based on sex). In *Pryor v. Ohio State Univ.*, 139 F.4th 536, 538 (6th Cir.2025), the United States Court of Appeals for the

{¶10} On June 17, 2026, defendant moved for a summary judgment in its favor on all claims against it. In support, defendant urges that

(1) defendant is entitled to summary judgment on plaintiff's vicarious liability claim because it is not responsible for Bohonyi's self-serving, criminal acts, and Bohonyi's misconduct was not calculated to facilitate or promote defendant's purpose;

(2) plaintiff's negligence claim fails because defendant did not breach any duty in response to plaintiff's report of August 10, 2014, about Bohonyi's conduct because defendant's response "was swift, reasonable and appropriate;"

(3) plaintiff's negligent supervision and negligent retention claims fail because defendant did not have actual or constructive notice of Bohonyi's misconduct until August 10, 2014, and defendant's response to such notice "was swift, reasonable and did not cause [plaintiff] harm;" and

(4) plaintiff's negligent infliction of emotional distress claim fails for the same reasons her other negligence-related claims fail, namely, because defendant did not breach any duty and it was not negligent in retaining or supervising Bohonyi.

{¶11} In response, plaintiff contends that defendant's summary-judgment motion must be denied because the evidentiary record, when it is viewed in a light most favorable to plaintiff, demonstrates that "a reasonable Court could return a verdict in her favor on each element of her claims."⁴ Plaintiff contends that, before August 2014, through defendant's performance of review of Bohonyi (which commented on a lack of maturity and professionalism by Bohonyi), defendant knew of Bohonyi's inability to maintain appropriate "boundaries." Plaintiff thus reasons that defendant had notice of the danger that Bohonyi posed and plaintiff further reasons that defendant took no action to protect plaintiff. Plaintiff maintains that, despite defendant's termination of Bohonyi's employment, defendant allowed Bohonyi to continue to "rape" plaintiff after August 2014, because Bohonyi had access to the campus of The Ohio State University where Bohonyi

Sixth Circuit affirmed the district court's dismissal of Pryor's claim as time barred because Pryor filed her complaint beyond the two-year limitations period. The federal court of appeals reasoned that Pryor's Title IX claim accrued when Pryor turned 18 years-old, and the two year-year limitations period expired in July 2017, thereby barring Pryor's claim filed in January 2022 as untimely.

⁴ As a trial court, this court does not render verdicts; rather, it renders judgments. See *Jarupan v. Hanna*, 2007-Ohio-5081, ¶ 7 (10th Dist.) ("[o]nly juries render verdicts; trial courts render judgments").

met with plaintiff after defendant terminated Bohonyi's employment. Plaintiff also distinguishes certain case law cited by defendant in support of its summary-judgment motion.

{¶12} In reply, defendant contends that it is not vicariously liable for Bohonyi's conduct because Bohonyi's conduct was a clear departure from his scope of employment with defendant. Defendant also contends that, as a matter of law, it was not negligent in this case because, according to the evidence, (1) before defendant became aware of Bohonyi's misconduct with plaintiff in mid-August 2014, defendant had no knowledge of Bohonyi's misconduct with plaintiff or of a possible penchant by Bohonyi to engage in misconduct with underage divers, (2) there is no submitted evidence that defendant was aware that Bohonyi returned to the campus of The Ohio State University after having been banned by defendant, and (3) after Bohonyi's misconduct became known to defendant, plaintiff and her parents, asked, in writing, for The Ohio State University police department to suspend its criminal investigation of Bohonyi. Defendant further contends that it was not negligent in its supervision of Bohonyi and, when Bohonyi's misconduct was made known to defendant, defendant immediately suspended Bohonyi and terminated Bohonyi's employment. Defendant also urges that plaintiff has not disputed that, if a summary judgment were to be granted in defendant's favor, then plaintiff's claim of negligent infliction of emotional distress would fail.

III. Law and Analysis

A. Legal Standard

{¶13} Rule 56 of the Ohio Rules of Civil Procedure governs motions for summary judgment. See Civ.R. 56. Under Civ.R. 56(C) summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule." Any evidence that is not specifically listed in Civ.R. 56(C) "is only proper if it is incorporated into an appropriate affidavit under Civ.R. 56(E)." *Pollard v. Elber*, 2018-Ohio-4538, ¶ 22 (6th Dist.) *Accord Barton v. Cty. of*

Cuyahoga, 2020-Ohio-6994, ¶ 21 (8th Dist.). Courts “may consider other evidence if there is no objection on this basis.” *State ex rel. Gilmour Realty, Inc. v. City of Mayfield Hts.*, 2009-Ohio-2871, ¶ 17; *Pollard* at ¶ 22.

{¶14} Under Civ.R. 56(C) a summary judgment “shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.”⁵ The Supreme Court of Ohio has explained that, on motion for summary judgment, the moving party “bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party’s claim.” *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). In *Dresher* the Supreme Court of Ohio stated:

[T]he moving party bears the initial burden of *demonstrating* that there are no genuine issues of material fact concerning an essential element of the opponent’s case. To accomplish this, the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment. The evidentiary materials listed in Civ.R. 56(C) include “the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any.” These evidentiary materials must show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

⁵ Discussing Civ.R. 56(C), the Supreme Court of Ohio has stated:

Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made.

State ex rel. Grady v. State Emp. Rels. Bd., 78 Ohio St.3d 181, 183 (1997), citing *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317, 327 (1977).

(Emphasis sic.) *Dresher* at 292-293.

{¶15} If a moving party “fails to satisfy its initial burden, the motion for summary judgment must be denied.” *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997). See *Omega Riggers & Erectors, Inc. v. Koverman*, 2016-Ohio-2961, ¶ 69 (2d Dist.) (“unless the movant satisfies its initial burden on a motion for summary judgment, the non-movant has no burden of proof”). But if a party who moves for summary judgment has satisfied its initial burden, then a nonmoving party “has a reciprocal burden outlined in the last sentence of Civ.R. 56(E).” *Dresher* at 293. See Civ.R. 56(E) (“[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party”).

{¶16} Under Ohio law a material fact “is an essential element of the claim or defense, as defined by the substantive law.” *Morgan v. Beigel*, 2011-Ohio-406, ¶ 8 (3d Dist.), citing *Mount v. Columbus & S. Ohio Elec. Co.*, 39 Ohio App.3d 1, 2 (5th Dist.1987). “A dispute of fact is ‘material’ if it affects the outcome of the litigation.” *Morgan* at ¶ 8, citing *Mount* at 2. The Tenth District Court of Appeals has discussed a determination of material facts, as follows:

In every lawsuit there are some disputed issues of fact, but Civ.R. 56 focuses on those which are “material.” The materiality determination of facts is discussed in *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202. The mere existence of some factual disputes, if not material, will not defeat a summary judgment otherwise proper. If one’s case is supported only by a “scintilla” of evidence, or if his evidence is “merely colorable” or not “significantly probative,” summary judgment should be entered.

Buckeye Union Ins. Co. v. Consol. Stores Corp., 68 Ohio App.3d 19, 22 (10th Dist.1990).

The Tenth District Court of Appeals, however, has cautioned:

At summary judgment, it is not the role of the court to resolve a disputed fact or weigh the credibility of the evidence, only to determine whether there

exists a genuine dispute of material fact. . . . The trial court is limited to determining whether admissible evidence of the type contemplated by Civ.R. 56(C) gives rise to a genuine dispute of material fact; it is exclusively the role of the fact-finder to determine what weight to give that evidence at trial.

Kiser v. United Dairy Farmers, 2023-Ohio-2136, ¶ 16 (10th Dist.).

B. Discussion

1. Defendant is entitled to summary judgment on plaintiff's claims of assault and battery (vicarious liability).

{¶17} Plaintiff has brought a claim of assault and battery based on vicarious liability against defendant: (Complaint, ¶ 92-96.) Plaintiff alleges: “Defendant employed Bohonyi while he engaged in an unlawful and abusive sexual relationship with the Plaintiff when she was a minor. Said unlawful conduct was undertaken while Bohonyi was under the supervision and authority of Defendant. The unlawful sexual conduct with a minor was committed during the course and scope of his employment with Defendant.” (Complaint, ¶ 93.)

{¶18} The Tenth District Court of Appeals has defined the common-law torts of assault and battery as follows:

[T]he tort of assault is defined as the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact. The threat or attempt must be coupled with a definitive act by one who has the apparent ability to do the harm or to commit the offensive touching. An essential element of the tort of assault is that the actor knew with substantial certainty that his or her act would bring about harmful or offensive contact. See *Scott v. Perkins* (App.1975), 74 O.O.2d 280.

At common law, the tort of assault was clearly distinguished and distinguishable from the tort of battery, which was the actual harmful and/or offensive physical contact.

Smith v. John Deere Co., 83 Ohio App.3d 398, 406 (10th Dist.1993). *Accord Stafford v. Clever Investigations, Inc.*, 2007-Ohio-5086, ¶ 9 (10th Dist.) (defining assault and battery in tort).

{¶19} Vicarious liability by its very terms “attaches to the principal through the agent’s actions, not through the principal’s own actions.” *Auer v. Paliath*, 2014-Ohio-3632, ¶ 27, citing *Comer v. Risko*, 2005-Ohio-4559, ¶ 20-22. The Fifth District Court of Appeals has stated:

The doctrine of vicarious liability imputes liability secondarily to an employer for the torts of its employee, the actual tortfeasor. The employer is charged with passive negligence due to the master/servant relationship. *Reynolds v. Physicians Ins. Co. of Ohio* (1993), 68 Ohio St.3d 14, 1993 Ohio 57, 623 N.E.2d 30.

McLaughlin v. Residential Commun., Inc., 2009-Ohio-6789, ¶ 32 (5th Dist.). The Eighth District Court of Appeals has stated,

With respect to the substantive law, regarding an employer’s liability for those acts of his employee, it is well-settled that vicarious liability may be imposed only for those acts which are performed in the course and scope of the employment. *Posin v. A.B.C. Motor Court Hotel* (1976), 45 Ohio St. 2d 271, 278; *Rogers v. Allis-Chalmers Mfg. Co.* (1950), 153 Ohio St. 513, 526; *Calhoun v. Middletown Coca-Cola Bottling* (1974), 43 Ohio App. 2d 10, 13. Thus, an employer is not liable for those acts which have no relationship to the conduct of the employer’s business. *Thornberry v. Oyler Bros., Inc.* (1955), 164 Ohio St. 395, paragraph two of the syllabus; *Thomas v. Ohio Dept. of Rehab. & Corr.* (1988), 48 Ohio App. 3d 86, 89.

Stavrou v. Cleveland, 1991 Ohio App. LEXIS 4904, at *8 (8th Dist. Oct. 10, 1991).

{¶20} After the submitted evidence is construed in favor of plaintiff, a reasonable person would conclude that Bohonyi intentionally and offensively touched plaintiff through, among other things, sexual encounters with plaintiff on the campus of The Ohio State University and elsewhere. A reasonable person, however, also would conclude that Bohonyi’s sexual misconduct with plaintiff had no relationship to the business of the diving club affiliated with defendant or with the business of defendant. *Accord Sitton v.*

Massage Odyssey, LLC, 2020-Ohio-4282 (1st Dist.) (sexual assault or rape fell outside the scope of employment so that an employer should not be held liable); *Kingston Mound Manor I v. Keeton*, 2019-Ohio-3260, ¶ 25 (4th Dist.) (noting that in Ohio “it has generally been held that an employer is not liable for the rape or sexual assault performed by an employee, even if the employee was on duty at the time the act was committed, because such an act is a clear departure from their scope of employment”).

{¶21} Plaintiff’s assertion that genuine issues of material fact remain as to defendant’s vicarious liability on plaintiff’s claims of assault and battery (count one) fails, because, even when the evidence is construed in plaintiff’s favor, the evidence shows that Bohonyi’s sexual misconduct with plaintiff was a “clear departure” from Bohonyi’s scope of employment with defendant. Defendant’s contention that, as a matter of law, it is entitled to summary judgment on plaintiff’s claims of assault and battery based on vicarious liability (count one) is supported by law, as well as by the evidence submitted to the court, after the evidence is construed in plaintiff’s favor.

2. Defendant is entitled to a summary judgment in its favor on plaintiff’s negligence based claims.

{¶22} Besides asserting torts of assault and battery against defendant, plaintiff has asserted negligence and negligence-based torts, i.e., negligent supervision, negligent retention, and negligent infliction of emotional distress.⁶ See *Simpkins v. Grace Brethren*

⁶ The Tenth District Court of Appeals has discussed requirements for proving claims of negligent hiring, negligent retention, and negligent supervision as follows:

To prove the claims of negligent hiring, retention, and supervision, a plaintiff must establish: (1) the existence of an employment relationship, (2) the employee’s incompetence, (3) the employer’s actual or constructive knowledge of the incompetence, (4) the employee’s act causing the plaintiff’s injuries, and (5) the employer’s negligence in hiring, retaining, or supervising the employee as the proximate cause of the plaintiff’s injuries. [*Ford v. Brooks*, 2012-Ohio-943, ¶ 22 (10th Dist.)]. These elements correspond with the basic elements of negligence—duty, breach, proximate cause, and damages. By establishing the first three elements, a plaintiff proves that the employer had a duty to protect the plaintiff from or to control the acts of a third person. Such a duty arises if: (1) an employment relationship exists between the defendant and the third person who injured the plaintiff, and (2) the injury to the plaintiff was foreseeable given the employee’s incompetence and the employer’s knowledge of that incompetence. [*Wagner v. Ohio State Univ. Med. Ctr.*, 2010-Ohio-2561, ¶ 23-24 (10th Dist.)]; [*Abrams v. Worthington*, 2006-Ohio-5516, ¶ 15-16 (10th Dist.)]. “The test for foreseeability is whether a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of an act.” *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio

Church of Delaware, 2014-Ohio-3465, ¶ 34 (5th Dist.) (claims of negligent hiring, supervision, and retention are negligence-based torts); *Sericola v. Johnson*, 2017-Ohio-8200, ¶ 32 (11th Dist.) (discussing negligent infliction of emotional distress); *Schaney v. Krankovich*, 2021-Ohio-2762, ¶ 39 (7th Dist.) (discussing elements of negligent infliction of emotional distress).⁷

{¶23} The Supreme Court of the United States has explained, “Negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the

St.3d 75, 77, 15 Ohio B. 179, 472 N.E.2d 707 (1984). The foreseeability of harm usually depends on the defendant’s knowledge of unreasonable risk. *Id.* Thus, liability for negligent hiring, retention, or supervision only arises if the employer knew or should have known of the employee’s incompetence and the particular incompetence manifested by the employee would cause a reasonably prudent person to anticipate the employee’s misconduct. *Wagner* at ¶ 23-36; *Staten v. Ohio Exterminating Co., Inc.*, 123 Ohio App.3d 526, 530-31, 704 N.E.2d 621 (10th Dist.1997); *Evans v. Ohio State Univ.*, 112 Ohio App.3d 724, 740-43, 680 N.E.2d 161 (10th Dist.1996).

Ball v. Stark, 2013-Ohio-106, ¶ 76 (10th Dist.). See *Simpkins v. Grace Brethren Church of Delaware*, 2014-Ohio-3465, ¶ 34-35 (5th Dist.) (discussing negligent hiring, supervision, and retention).

⁷ With respect to recovery on a claim of negligent infliction of emotional distress, the Eleventh District Court of Appeals has remarked, ““Recovery on a claim of negligent infliction of emotional distress has been limited “to such instances as where one was a bystander to an accident or was in fear of physical consequences to his own person” and there is “cognizance of a real danger.” (Citations omitted.) *Frazier v. City of Kent*, 11th Dist. Portage No. 2006-P-0082, 2007-Ohio-5782, ¶ 71.” *Sericola v. Johnson*, 2017-Ohio-8200, ¶ 32 (11th Dist.). The Seventh District Court of Appeals has noted:

As for negligent infliction of emotional distress, the elements are: (1) the plaintiff witnessed and/or experienced a real or impending danger to another; (2) the defendant’s conduct negligently caused the dangerous incident; and (3) the defendant’s conduct was the proximate cause of plaintiff’s serious and reasonably foreseeable emotional distress. *David v. Matter*, 6th Dist. Sandusky No. S-17-006, 2017-Ohio-7351, 96 N.E.3d 1012, ¶ 14, 96 N.E.3d 1012, citing *High v. Howard*, 64 Ohio St.3d 82, 86, 1992- Ohio 125, 592 N.E.2d 818 (1992), *overruled on other grounds in Gallimore v. Children’s Hosp. Med. Cent.*, 67 Ohio St.3d 244, 255, 1993- Ohio 205, 617 N.E.2d 1052 (1993); *Paugh v. Hanks*, 6 Ohio St.3d 72, 6 Ohio B. 114, 451 N.E.2d 759 (1983), paragraphs three and four of the syllabus; *Walker v. Firelands Community. Hosp.*, 170 Ohio App.3d 785, 2007-Ohio-871, 869 N.E.2d 66, ¶ 59 (6th Dist.). This tort is generally asserted by a bystander because she witnessed another person in danger and the defendant was unaware of the presence of the bystander. *David*. We have explained:

Negligent infliction is limited “to such instances as where one was a bystander to an accident or was in fear of physical consequences to his own person.” *High v. Howard* (1992), 64 Ohio St.3d 82, 85-86, 1992- Ohio 125, 592 N.E.2d 818, *overruled on other grounds in Gallimore v. Children’s Hosp. Med. Ctr.* (1993), 67 Ohio St.3d 244, 1993- Ohio 205, 617 N.E.2d 1052

Schaney v. Krankovich, 2021-Ohio-2762, ¶ 39 (7th Dist.).

circumstances of the situation, or doing what such a person under the existing circumstances would not have done. The essence of the fault may lie in omission or commission. The duty is dictated and measured by the exigencies of the occasion.” *R.R. Co. v. Jones*, 95 U.S. 439, 441-442 (1877).

{¶24} Based on the court’s careful and searching review of the submitted evidence in this case, and after the evidence is construed most strongly in favor of plaintiff, the evidence shows that (1) before defendant hired Bohonyi, defendant performed a background check of Bohonyi that did not reveal a criminal history of misconduct with minors, (2) after defendant hired Bohonyi, defendant required Bohonyi to complete sexual harassment training, (3) before Bohonyi’s sexual misconduct with plaintiff became known to defendant, plaintiff kept her sexual contact with Bohonyi a secret to her parents, and plaintiff did not divulge the sexual conduct with Bohonyi to other coaches of the diving club or to university staff, (4) Bohonyi’s conduct with plaintiff became known to defendant in mid-August 2014 at a competition in Knoxville, Tennessee, (5) after defendant learned of the allegations against Bohonyi, defendant, through various employees, met with Bohonyi, placed Bohonyi on administrated leave, prohibited Bohonyi from being on campus without pre-approval, conducted an internal investigation, terminated Bohonyi’s employment in late August 2014, and (6) observed Bohonyi as he retrieved his personal effects from his university office on September 4, 2014.

{¶25} Plaintiff nonetheless urges that a performance review of Bohonyi for the period of October 2012-June 30, 2013, with comments about Bohonyi’s maturity and judgment, should have alerted defendant to future predations against plaintiff by Bohonyi. In Bohonyi’s performance review, the following comments, among others, were noted:

Will’s intentions are good. He is sometimes put in a tough spot based on where he falls in the pecking order, and is respectful of this overall. Will is growing and learning what is and is not appropriate in conversations outside of the staff and how to communicate with parents when he may not agree with how something has been handled by his colleagues. My experiences with Will’s written communication thus far are that he communicates well in e-mails though these interactions have been limited. Open communication is one of Will’s strengths and polish is something he

is working on. Will seems to have a good rapport with the divers and their parents.

and

Will is taking in a lot of Information and has learned much in our program since he started. He is adjusting his philosophy, forming more insightful and mature decisions and I look forward to his continued growth and maturity of judgement. As a coach and as an employee he is open to accepting and implementing feedback given by others.

(Plaintiff's Exhibit C, Memorandum in Opposition.) Even when Bohonyi's performance review is construed in plaintiff's favor, a reasonable person would conclude that such evidence fails to establish that defendant should have had constructive knowledge, or constructive notice, of Bohonyi's future predations against plaintiff. When the submitted evidence is construed in plaintiff's favor, a reasonable person would conclude that the evidence supports defendant's contention that, after defendant learned about the allegations against Bohonyi, defendant's response was "swift and "appropriate," as defendant maintains.

{¶26} Plaintiff's deposition testimony suggests that Bohonyi's past conduct with other female divers was commonly known among certain members of the diving community and that Bohonyi's past conduct with other female divers purportedly was known by a coach with the diving club affiliated with defendant (E. Pryor Deposition, 26-27, 110-112). Plaintiff's deposition testimony about a coach's knowledge of Bohonyi's past inappropriate conduct with a diver in Indiana, does not, however, establish that defendant had actual notice of Bohonyi's purported misconduct with other female divers; nor does plaintiff's deposition testimony establish that this coach advised defendant of Bohonyi's alleged past inappropriate conduct with another diver. Under such circumstances, it cannot be presumed that defendant had constructive notice of Bohonyi's alleged past inappropriate conduct with divers. See *Newell v. Brookshire*, 2015-Ohio-4933, ¶ 23 (5th Dist.), quoting *Johnston v. Filson*, 2014-Ohio-4758, ¶ 11 (12th Dist.) ("[c]onstructive notice is defined as notice 'arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of'").

{¶27} Plaintiff's deposition testimony about Bohonyi's past conduct with other divers and plaintiff's deposition testimony about a coach's knowledge about Bohonyi's past conduct with other divers is based on rumors, innuendo, gossip, conjecture, and speculation. Under Ohio law, speculation is insufficient to withstand a motion for summary judgment. See *Gustafson v. Ohio State Univ.*, 2026-Ohio-2792, ¶ 17 (10th Dist.). In *Gustafson* at ¶ 17, the Tenth District Court of Appeals recently explained:

Civ.R. 56(E) requires the non-moving party to set forth specific facts based on personal knowledge, not merely speculation or generality, showing a genuine issue exists for trial. *Woods v. Capital Univ.*, 2009-Ohio-5672, ¶ 40 (10th Dist.), citing *McKenzie v. FSF Beacon Hill Assocs., L.L.C.*, 2006-Ohio-6894, ¶ 16 (10th Dist.) ("Mere speculation does not create a material issue of fact."); *Carroll v. Alliant Techsystems, Inc.*, 2006-Ohio-5521, ¶ 17 (10th Dist.) ("Speculation and conjecture . . . are not sufficient to overcome appellant's burden of offering specific facts showing that there is a genuine issue for trial.").

As noted by courts in other jurisdictions, rumor, innuendo, or gossip in the community typically will be insufficient to establish an entity's actual knowledge, constructive knowledge, or constructive notice, of an entity's employee's propensity, or likelihood, to engage in sexual misconduct, with the result that, a summary judgment in favor of the entity on such a record is typically appropriate. See *Pamela O. v. Auburn Enlarged City Sch. Dist.*, 2024 N.Y. Misc. LEXIS 1632, *3, 206 N.Y.S.3d 925 (2024) ("[t]ypically, rumor, innuendo, or gossip in the community will not be enough to establish a school district's actual or constructive knowledge or notice of an employee's propensity or likelihood to engage in sexually abusive behavior of students and summary judgment in favor of the school district on such a record would be appropriate"); *Johnson v. Elk Lake School Dist.*, 283 F.3d 138, 144 n. 1. (3d Cir. 2002) (until rumors are brought to the attention of a policy maker, rumors cannot constitute evidence that a policymaker knew or should have known of violations).

{¶28} In *Hernandez v. Borough of Palisades Park Police Dept.*, 58 Fed. Appx. 909, 914 (3d Cir. 2003), the United States Court of Appeals for the Third Circuit observed:

In Johnson, this Court declared that summary judgment was properly granted to the defendant school district on plaintiff's Section 1983 claim for sexual abuse by a school counselor because

Johnson presented no evidence that [the rumors] were ever brought to the attention of a supervisory or policymaking official. Moreover even if school officials had been made aware of these stories . . . we share the District Court's reluctance "to impose on the district an obligation to treat as true, all rumors, until proven otherwise." In the absence of any direct complaints made to school officials, the mere floating around of unsubstantiated rumors regarding a particular employee-particularly in the high school setting which is notoriously rife with adolescent gossip - does not constitute the kind of notice for which a school district can be held liable.

{¶29} Applying the summary-judgment standard set forth in Civ.R. 56(C), plaintiff's deposition testimony about Bohonyi's past conduct with other divers in another state—even when construed in plaintiff's favor—is insufficient, as a matter of law, to establish that, in this instance, defendant had actual knowledge, or constructive knowledge, or constructive notice of Bohonyi's propensity to engage in sexual misconduct with plaintiff.

{¶30} Plaintiff's claim that, on this record, a genuine issue of material fact exists about the sufficiency of defendant's confiscation of Bohonyi's key card is not supported by the evidence. Plaintiff contends that a fact-finder "could conclude that reasonable care required more than confiscating a keycard, ... instead of some measure of monitoring or coordination with campus police regarding Bohonyi's continued presence, or safeguards at facilities where the abuse had been reported. Whether [defendant's] chosen measures satisfied its duty of care cannot be resolved as a matter of law on this record."

{¶31} According to submitted evidence, Bohonyi's Buck ID was used on August 10, 2014, at approximately 10:00 p.m., to access both the main entrance and the lower entrance of the McCorkle Aquatic Pavilion; since August 10, 2014, Bohonyi's BuckID had not been used to access any Ohio State University facilities; and Bohonyi's BuckID later

was placed in an employee's drawer until Bohonyi's BuckID was later shredded. (Exhibit C, Defendant's Motion For Summary Judgment, Affidavit of Christine Thompson; Exhibit A, Plaintiff's Response, Deposition of Z. Skinner, 10-11.).

{¶32} Plaintiff, however, points to screen shots of March 15, 2017, purporting to show Bohonyi (i.e., a person named "willbologna") claiming that his Buck ID still was operable, and arranging an on-campus rendezvous with plaintiff. At most, the screenshots offered by plaintiff present a scintilla of evidence to rebut defendant's submitted evidence. More than a scintilla of evidence, however, is required to defeat a summary-judgment motion. *Fitz Simon, Inc. v. JHG, Inc.*, 2019-Ohio-1125, ¶ 22 (8th Dist.); *Peasley v. Comfort Inn*, 2002-Ohio-3423, ¶ 17-19 (6th Dist.); *Buckeye Union Ins. Co. v. Consol. Stores Corp.*, 68 Ohio App.3d 19, 22 (10th Dist.1990).

{¶33} Finally, because the submitted evidence does not support plaintiff's claim of negligence and, given that under Ohio law, recovery on a claim of negligent infliction of emotional distress has been limited to such instances as where a person was a bystander to an accident, or was in fear of physical consequences to himself or herself, and there is a cognizance of real danger, *Sericola v. Johnson*, 2017-Ohio-8200, ¶ 32 (11th Dist.), plaintiff's claim of negligent infliction of emotional distress fails, as a matter of law.

{¶34} In sum, after the summary-judgment standard set forth in Civ.R. 56(C) is applied, as to plaintiff's claims of negligence, negligent supervision, negligent retention, and negligent infliction of emotional distress, defendant is entitled to a summary judgment in its favor on these negligence-based claims, because, after the submitted evidence is construed most strongly in favor of plaintiff, no genuine issues of material fact remain to be litigated; defendant, as a matter of law, is entitled to judgment in its favor; and reasonable minds can come to one conclusion that is adverse to plaintiff.

IV. Conclusion

{¶35} Defendant's motion for summary judgment filed on June 17, 2026, shall be granted, for reasons explained above.

DAVID E. CAIN
Judge

[Cite as *Pryor v. Ohio State Univ.*, 2026-Ohio-3685.]

ESZTER PRYOR

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2022-00044JD

Judge David E. Cain

JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶36} For reasons set forth in the decision filed concurrently herewith, defendant's summary-judgment motion filed on June 17, 2026, is GRANTED. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DAVID E. CAIN
Judge

Filed August 28, 2026
Sent to S.C. Reporter 9/21/26