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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

Case Type: Personal Injury

Doe 602,

Plaintiff,

Court File Number: 02-CV-23-3308

v.

Circle R Ranch,

Defendant.

CIRCLE R RANCH'S MEMORANDUM OF LAW IN SUPPORT OF RULE 12.02(e) PARTIAL-MOTION FOR DISMISSAL

INTRODUCTION

Defendant Circle R Ranch operates a youth summer camp in Long Prairie, Minnesota. Scott Fortier was a camper at the Ranch in the late 1980s and 1990s, and was employed at the Ranch in the late 1990s and early 2000s. Thereafter, Fortier remained a friend of the Ranch's owners, and, from time-to-time, a familiar face around the Ranch. Plaintiff Doe 602 alleges she had a conversation with Fortier at Circle R Ranch in the summer of 2016, when she was a junior counselor at the Ranch. Then, in September 2016, after the close of the summer camping season (and the commencement of the school year), Plaintiff and a friend visited Fortier at his home in Blaine, Minnesota, which is over 100 miles from Circle R Ranch. Fortier sexually assaulted Plaintiff on that day, and he is now serving 25 years in prison.

Plaintiff now brings suit against Circle R Ranch, bringing five counts:

I. Negligence
II. Negligent Supervision
III. Negligent Retention
IV. Negligent Hiring
V. Respondeat Superior

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Three of these counts – Respondeat Superior, Negligent Supervision, and Negligence—are fatally flawed based upon the factual allegations set forth in the Complaint and should be dismissed as a matter of law. At this time, Circle R Ranch does not seek to dismiss the Negligent Hiring and Negligent Retention counts.

Circle R Ranch brings this partial motion in order to narrow the claims and bring efficiency and focus to this litigation. Put concisely, Fortier assaulted Plaintiff after Circle R Ranch was seasonally closed for business and at his home over 100 miles away from the Ranch's premises. Because of this, *even if* Circle R Ranch could have been considered Fortier's employer,[1] Circle R Ranch could not be held liable under theories of Respondeat Superior or Negligent Supervision because the assault did not take place within the *work-related limits of time and place*, and because Fortier's assault of Plaintiff did not involve the use of any Circle R Ranch *chattels*.

Further, because the assault occurred at Fortier's private residence and when the Ranch was seasonally closed for business, the Ranch owed Plaintiff no duties of protection or supervision. In September 2016, Plaintiff was under the care and protection of her parents. Furthermore, the Ranch could have no duty to control Fortier while he was at his private residence in Blaine, Minnesota during the camping off-season. Because the Ranch could have no duties to protect Plaintiff or control Fortier in September 2016, the Ranch cannot be held liable under the theory of ordinary negligence.

The Court should grant this partial-motion to dismiss and narrow the issues. Then discovery and further litigation should proceed on the two remaining counts of Negligent Hiring and Negligent Retention.

[1] This will be disputed in this case.

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STATEMENT OF RELEVANT FACTS

On a Rule 12.02(e) motion, a court is to analyze, "only the facts alleged in the complaint[,] accepting those facts as true." Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 553 (Minn. 2003). Therefore, the allegations from Plaintiff's Complaint detailed herein are presented as facts for purposes of this motion only. The Defense fully reserves the disputes of fact and law that it has asserted, as well as the, denials, qualifications, clarifications, and all defenses set forth in its Answer, as well as those that will be developed in discovery.

Thus, for purposes of this motion, the following are the relevant paragraphs and allegations from Plaintiff's Complaint:

1. …**Scott Fortier sexually abused Doe 602 in Blaine, Minnesota**[2] in Anoka County…
2. At all times material…Circle R Ranch **maintains an office** at 32549 State 27, **Long Prairie, Minnesota** 56347. Circle R Ranch operates a co-ed horseback riding educational **summer** camp for minor children…"the Circle R Ranch is a unique **Summer** Horse Camp that offers a rich experience for youngsters ages 7 through 17." * * *
3. Defendant Circle R Ranch operates a co-ed horseback riding educational **summer** camp for children on 800 acres of land **in Long Prairie, Minnesota**… * * *
5. [Scott] Fortier has been associated with Circle R Ranch since he was approximately 10-years-old in approximately 1988. Fortier was associated with Circle R Ranch from 1988 to 2016 as among other things, a camper, counselor, program director, activities director, entertainment director, DJ, and volunteer, at the camp.
   * * *
38. Doe 602 became an unpaid junior counselor or "counselor in training" at Circle R Ranch when she was approximately 15-years-old, in the **summer of 2016**…

[2] All emphasis in this fact section is added.

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* * *

43. During the **summer of 2016**, Scott Fortier was at Circle R Ranch's property with Circle R Ranch's permission while camp was in session. Doe 602 was a 15-year-old counselor in training at Circle R Ranch at the time. Fortier, then 37-year-old, had a conversation with the 15-year-old Doe 602, in which he told her she could come to parties at his home if she became his friend.
44. **Later that year, in September of 2016**, when Doe 602 was still 15-years-old, Scott Fortier invited Doe 602 and another minor girl he met at Circle R Ranch, **to his home in Blaine, Minnesota**, where he provided the girls with alcohol until they were intoxicated.
45. After providing alcohol to Doe 602 and the other minor Circle R Ranch counselor until they were intoxicated, Fortier sexually assaulted Doe 602 and the other minor girl throughout the night and early next morning. Fortier video recorded himself sexually assaulting both minor girls. Doe 602 was unconscious during some of the sexual assaults Fortier video recorded…

* * *

47. Fortier was convicted of production and possession of child pornography in Federal District Court in January 2018, and was sentenced to 25 years in prison…
48. Fortier pled guilty to sexually abusing Doe 602 in Anoka County District Court in 2019.

LEGAL STANDARD

"Dismissal under Rule 12 serves to eliminate actions which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity." Neitzke v. Williams, 490 U.S. 319, 326-27 (1989).

A motion to dismiss under Rule 12.02(e) "raises the single question of whether the complaint states a claim upon which relief can be granted." Martens v. Minn. Mining & Mfg. Co., 616 N.W.2d 732, 739 (Minn. 2000). In analyzing a Rule 12.02(e) motion, "[t]he reviewing court must accept all the plaintiff's allegations as true, but a dismissal must be affirmed if it is clear that

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no relief can be granted under any set of facts that can be proved consistent with the allegations." Nelson v. Productive Alts., Inc., 715 N.W.2d 452, 454 (Minn. 2006) (citing Radke v. County of Freeborn, 694 N.W.2d 788, 793 (Minn. 2005)).

ARGUMENT

I. Plaintiff's Respondeat Superior count must be dismissed because the assault did not occur during Fortier's *alleged* work-related limits of time and place.

To hold an alleged employer vicariously liability under the employer-employee theory of Respondeat Superior the Plaintiff must prove the necessary and indispensable elements that the employee's tort occurred *within work-related limits of time and place*. Because, by the Complaint's own factual assertions, Fortier's assault of Doe 602 took place in September 2016—after the close of the summer camp season—and at Fortier's private residence in Blaine, Minnesota—over 100 miles away from Circle R Ranch in Long Prairie, Minnesota—the Respondeat Superior claim is fatally flawed and should be dismissed.

In Fahrendorff by & Through Fahrendorff v. N. Homes, 597 N.W.2d 905, 910 (Minn. 1999) the Supreme Court explained that: "[A]n employer may be held liable for even the intentional misconduct of its employees when (1) the source of the attack is related to the duties of the employee, and (2) the assault occurs within ***work-related limits of time and place***." (Emphasis added). See also C.B. v. Evangelical Lutheran Church in Am., 726 N.W.2d 127, 135 (Minn. Ct. App. 2007) ("[A] n employer is liable for even the intentional misconduct of its employees when (1) the source of the attack is related to the duties of the employee, and (2) the assault occurs **within work-related limits of time and place**.") (Emphasis added) (internal quotes omitted).

In Leaon v. Wash. Cty., the plaintiff brought claims against the Washington County Sheriff's Department for assaultive conduct that occurred at a bachelor party which was attended

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almost exclusively by county law enforcement personnel. 397 N.W.2d 867, 874 (Minn. 1986). The Supreme Court dismissed the Respondeat Superior claim holding:

> [A]lthough the sheriff was aware of the stag party, there is no evidence suggesting the party was sponsored or supervised by Washington County. The party was not held at the employer's place of business, nor during normal working hours, nor did the employer furnish any of the refreshments. This was simply a private party by and for people who knew each other at work. An employer is not legally responsible for what his employees choose to do socially when off-duty.

Id.

Likewise, in Wiita v. City of Minneapolis, C0-95-2609, 1996 Minn. App. LEXIS 579, at *6 (Ct. App. May 14, 1996). Minneapolis Police officers at a party were alleged to have assaulted the plaintiff. The Court dismissed the Respondeat Superior claim, holding, "the officers were not acting within the scope of employment. They attended a social party as private citizens, furthering no interests of the city. They were off-duty and not in uniform. They did not display badges or wear guns. The party was not organized or sponsored by the city. The assaults were not the type of conduct authorized by the city. Accordingly, the city cannot be liable under respondeat superior." Wiita at *6.

In this case, the allegations make clear that the Fortier's sexual assault of Plaintiff took place when Plaintiff and a friend visited Fortier at his private residence, over 100 miles from Circle R Ranch, and in the autumn when the Ranch was seasonally closed for business. Plaintiff will never be able to demonstrate that the assault occurred within "work-related limits of time and place," and as such, Plaintiff's Count V, Respondeat Superior, must be dismissed.

II. Plaintiff's Negligent Supervision count must be dismissed because the assault did not occur during Fortier's *alleged* work-related limits of time and place and did not involve use of Circle R Ranch chattels.

Plaintiff's Count II for Negligent Supervision must be dismissed for the same reason. "Negligent supervision derives from the doctrine of respondeat superior so the claimant must prove

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that the employee's actions occurred within the scope of employment in order to succeed on this claim." M.L. v. Magnuson, 531 N.W.2d 849, 858 (Minn. Ct. App. 1995). The Supreme Court has made clear that the doctrine of Negligent Supervision is "unambiguously limit[ed] [in] scope…to a duty to prevent an employee from inflicting personal injury upon a third person **on the master's premises** or to prevent the infliction of bodily harm by use or **misuse of the employer's chattels**." Semrad, 493 N.W.2d at 534 (emphasis added). "[N]egligent supervision derives from the respondeat superior doctrine, which **relies on connection to the employer's premises or chattels**." Yunker v. Honeywell, Inc., 496 N.W.2d 419, 422 (Minn. Ct. App. 1993) (emphasis added). "[T]he rule definitely is that a servant is not within the scope of his employment when he is not doing what he was employed to do and when he departs from the area of his service." Porter v. Grennan Bakeries, 16 N.W.2d 906, 908-09 (Minn. 1944).

Again, Plaintiff's allegations make clear that Fortier's sexual assault took place in Fortier's private residence over 100 miles from Circle R Ranch, and after the Ranch was seasonally closed for business. Plaintiff will never be able to demonstrate that the assault occurred within "work-related limits of time and place," or on while Circle R Ranch's "premises," or while using the Ranch's "chattels." Plaintiff's Count II, Negligent Supervision, must be dismissed. See also Section III.b., infra.

III. Plaintiff's Negligence count fails because Circle R Ranch owed her no duties at the time of the assault, and must be dismissed.

Plaintiff's Count I, Negligence, must be dismissed because Circle R Ranch owed her no duties in September 2016. This was a point in time when the Ranch was seasonally closed for business; when Plaintiff was under her parents' care and custody; and while she was at Scott Fortier's private residence in Blaine, Minnesota, over 100 miles away from Circle R Ranch's premises in Long Prairie, Minnesota.

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"Negligence is the failure to exercise the level of care that a person of ordinary prudence would exercise under the same or similar circumstances. To recover on a claim of negligence, a plaintiff must prove: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." Doe v. Brandon, 845 N.W.2d 174, 177 (Minn. 2014). "Where a party has no duty, there can be no breach." Safeco Ins. Co. of Am. v. Dain Bosworth, Inc., 531 N.W.2d 867, 873 (Minn. Ct. App. 1995). "Generally, the existence of a legal duty is an issue for the court to determine as a matter of law." Larson v. Larson, 373 N.W.2d 287, 289 (Minn. 1985).

Of course, it is rudimentary that: "Ordinarily, there is no duty to control the conduct of a third person to prevent him from causing physical harm to another unless a special relationship exists, either between the actor and the third person which imposes a duty to control, or between the actor and the other which gives the other the right to protection. Such special relationships exist between parents and children, masters and servants, possessors of land and licensees, common carriers and their customers, or people who have custody of a person with dangerous propensities." Delgado v. Lohmar, 289 N.W.2d 479, 483-84 (Minn. 1979) (citation omitted).

a. Circle R Ranch had no special relationship with Plaintiff at the time of Fortier's sexual assault.

Circle R Ranch owed Plaintiff no duty of protection in September 2016 because, at that time, she was not in the Ranch's custody or care and Plaintiff was not deprived of any means of self-protection or protection by her parents. In an illustrative case, Bjerke v. Johnson, 742 N.W.2d 660, 663 (Minn. 2007) the minor plaintiff, Bjerke, stayed at a horse farm owned by Johnson, for progressively longer periods. During this time, Bjerke entered into a sexual relationship with Johnson's adult live-in male friend who was eventually convicted of criminal sexual conduct. Id. Bjerke then sued Johnson for negligence, alleging that Johnson failed to protect her. Id.

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In conducting its analysis, the Supreme Court recognized that, "[g]enerally, no duty is imposed on an individual to protect another from harm, even when she realizes or should realize that action on [her] part is necessary for another's aid or protection. A duty to protect will be found, however, if (1) there is a special relationship between the parties; and (2) the risk is foreseeable." Id. at 665 (internal quotations omitted) (citing Delgado v. Lohmar, 289 N.W.2d 479, 483 (Minn. 1980). (Citing Erickson v. Curtis Inv. Co., 447 N.W.2d 165, 168-69 (Minn. 1989).

Noting that a special relationship duty "arises when an individual, whether voluntarily or as required by law, has **custody** of another person under circumstances in which that other person is deprived of normal opportunities of self-protection," the Supreme Court ultimately found that Johnson owed Bjerke a duty of protection. Id. (emphasis added) (internal quotations omitted) (citing Harper v. Herman, 499 N.W.2d 472, 474 (Minn. 1993); Restatement (Second) of Torts § 314A (1965). The Supreme Court explained that, "[a]lthough Johnson was never given legal custody of Bjerke… Johnson accepted entrustment of some level of care for Bjerke when Bjerke stayed at Johnson's home, at a location distant from her parents' home." The Court continued, "Johnson **provided Bjerke with room and board** and adopted **rules for Bjerke's conduct**. Johnson had **a large degree of control over Bjerke's welfare**, strongly indicating that there was a special relationship between the two." (Emphasis added). The Court further noted that although Bjerke could call her parents for aid or talk to them when she visited home, she was otherwise inhibited in her ability to seek help or support from them. Id. at 666.

See also Erickson v. Curtis Inv. Co., 447 N.W.2d 165, 168-69 (Minn. 1989) ("If the law is to impose a duty on A to protect B from C's criminal acts, the law usually looks for a special relationship between A and B, a situation where B has in some way **entrusted** his or her safety to A and A has **accepted that entrustment. This special relationship also assumes that the harm**

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represented by C is something that A is in a position to protect against and should be expected to protect against.") (Emphasis added).

In this case—distinct from the facts of Bjerke—Plaintiff was not entrusted to the custody, care, or protection of Circle R Ranch at the time of Fortier's sexual assault. The school year had begun, the camping season was over. Plaintiff was over 100 miles away from the Ranch. Plaintiff *could not* have been entrusted to the care or custody of Circle R Ranch. Plaintiff was squarely in the care, custody, and protection of her parents in September 2016. The Ranch was in no position to protect Plaintiff against Fortier in September 2016 and there could have been no expectation that the Ranch could have protected her at that time. Circle R Ranch simply had no special relationship with Plaintiff in September 2016 and her negligence claim is fatal for lack of any duty.

b. Circle R Ranch had no special relationship with Fortier at the time of the sexual assault.

Again, assuming only for purposes of this motion that Fortier was an employee of Circle R Ranch, as explained above, in Semrad v. Edina Realty, Inc., 493 N.W.2d 528 (Minn. 1992) the Supreme Court established the clear limits of the scope of liability that can arise out of the employer-employee special relationship. Semrad explained that Restatement (2d) of Torts § 315 and § 317 define the scope of an employer's liability for the torts of its employees. 493 N.W.2d at 534. Section 315 sets for the basic principle that: "There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless [ ] a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct." Section 317 then provides the legal standard:

> A **master** is under a **duty** to exercise reasonable care so **to control his servant** while acting **outside the scope of his employment** as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, **if**

(a) the servant

(i) is **upon the premises in possession of the master** or upon which the servant is privileged to enter only as his servant, **or**

(ii) is **using a chattel of the master**, and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

(Emphasis added).

In Meany v. Newell, 367 N.W.2d 472, 475-76 (Minn. 1985) the Supreme Court explained that: "Section 317 has typically been used when the employee is acting negligently on the work premises, albeit during off-duty hours, such that the employer could control the employee's action. The difficulty in discerning when the employer's duty to control ends, leads us to **reject extending that duty to off-premises actions**." (Emphasis added). The Meany court then affirmed dismissal of the plaintiff's claim holding that: "Since [the employee] was neither on the premises nor using the employer's chattels, we reject the applicability of the Restatement to this case." Id. See also Restat 2d of Torts, § 317, cmt b., (Explaining that even if an employer owes a duty to control his employees during their lunch break taken on his premises: "He is not required, however, to exercise any control over the actions of his employees while on the public streets or in a neighboring restaurant during the lunch interval, even though the fact that they are his servants may give him the power to control their actions by threatening to dismiss them from his employment if they persist.")

Importantly, the Supreme Court has made clear that Section 317 is the applicable point of law that applies, "when the employee is acting outside the scope of the employment." Semrad, 493 N.W.2d at 534.

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Put simply, the law upholds the common-sense principle that when employees leave the place and instruments of their employment behind, the employer cannot be held liable for the acts of the employee that are conducted on the employee's own time for his or her own purposes. Were it otherwise, every employer would be held liable, in every situation, for every tort committed by every single person that was ever employed. The notion is absurd. Thus, *even if* there was an employer-employee relationship between Circle R Ranch and Fortier, because Fortier's assault of Plaintiff took place in his private residence when the Ranch was seasonally closed for business, and did not involve use of any Ranch chattels, the Ranch had no duty to control Fortier. No *alleged* special relationship between Fortier and Circle R Ranch could support a negligence claim against the Ranch.

c. Any purported duty to warn claim fails as a matter of law.

Finally, paragraph 79 of Plaintiff's Complaint alleges that Circle R Ranch failed to warn Doe 602 about Fortier because it should have known about "Fortier's dangerous propensities to sexually abuse minor girls he met and accessed at Circle R Ranch." The Minnesota Supreme Court, however, has made clear that "...[I]f a duty to warn exists, it does so only when specific threats are made against specific victims." Cairl v. State, 323 N.W.2d 20, 26 (Minn. 1982). "The duty to warn is not owed to statistically probable victims, but rather to specifically targeted victims." Id. at 26 n. 9.

In Cairl, the plaintiffs brought suit for wrongful death and loss of property caused by an arson fire started by a mentally disabled juvenile who had been released two days earlier from commitment to an institution. Id. at 21. The plaintiffs argued that the institutional defendants failed to warn them that the juvenile—having a history of six prior acts of fire-starting arson—was being released to live in their apartment complex. Id. at 22, 25. Even in Cairl, involving the most

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tragic of consequences, the appellate court upheld the district court's dismissal, in part, because the plaintiff "did not pose a danger to plaintiffs different from the danger he posed to any member of the public with whom he might be in contact when seized with the urge to start a fire." Id. at 26.

Similarly, in N.W. v. Anderson, 478 N.W.2d 542, 543 (Minn. Ct. App. 1991) the defendants leased housing on their farm, first to an individual that they knew to have been convicted of sexual assault of a young child, and then also the plaintiffs, a family having young children. Id. While everyone was living together on the farm premises, the plaintiffs' young children interacted with the convicted sex offender on a daily basis. Id. After one of the young children was then sexually assaulted on the farm premises, the parents sued the farm owners based upon a theory of failure to warn. Id. In affirming summary judgment, the Court of Appeals explained, that "the supreme court has developed a rather rigid standard determining a duty to warn exists 'only when specific threats are made against specific victims.'" Id. at 544. Importantly, in upholding the dismissal, the court explained that "this is an extremely tortuous case and we are troubled by the decision we are required to make…Yet under the rule set forth in Cairl--that **there must be a specific threat against a specific victim**--we are compelled to hold the Andersons had no duty to warn appellants." Id. (emphasis added). The court concluded, "we have no choice but to uphold the dismissal of this type of case." Id. at 545.

Likewise, in this case, there is no allegation in the 21 pages and 105 paragraphs of the Complaint, that Fortier had previously made known to Circle R Ranch any desire or intention to sexually engage ***specifically with Doe 602***, or that the alleged danger to Doe 602 was, "different from the danger he posed to any member of the public with whom he might be in contact when seized with the urge to [engage in criminal sexual conduct]." The allegation is that Fortier was a

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threat to all girls he met at the Ranch. Even if true, this allegation could support no failure to warn claim as pertains to *Doe 602*.

There being simply no basis to find any duty to warn, Plaintiff's Count I, Negligence, must be dismissed.

CONCLUSION

Again, at this stage, Defendant Circle R Ranch does not seek to have this case dismissed in its entirety. It only seeks to have the three non-viable claims dismissed so that the case can proceed efficiently and with focus. The Respondeat Superior, Negligent Supervision, and Negligence claims are fatally flawed and should be dismissed so that the case can efficiently proceed on the claims of Negligent Hiring and Negligent Retention.

Dated: 8-25-2023

WALDECK & WOODROW, P.A.

By: _____

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