

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JANE DOE #7, :
 : C.A. No: K09C-12-042 (RBY)
Plaintiff, :
 :
v. :
 :
INDIAN RIVER SCHOOL DISTRICT, :
BOARD OF EDUCATION OF THE :
INDIAN RIVER SCHOOL DISTRICT; :
CHARLES M. BIRELEY, KELLEY R. :
WILLING, NINA LOU BUNTING, :
DR. DONALD G. HATTIER, :
RANDALL L. HUGHES, II, DONNA :
M. MITCHELL, PATRICIA S. :
OLIPHANT, ROBERT D. WILSON, :
SHELLY R. WILSON, SUSAN S. :
BUNTING and DANA GOODMAN, :
 :
Defendants. :

Submitted: January 20, 2012
Decided: April 11, 2012

*Upon Consideration of the District Defendants’
Motion for Summary Judgment*
**GRANTED IN PART
DENIED IN PART**

OPINION AND ORDER

Raeann Warner, Esq., Jacobs & Crumplar, P.A., Wilmington, Delaware and Thomas S. Neuberger, Esq., and Stephen J. Neuberger, Esq., The Neuberger Firm, P.A., Wilmington, Delaware for Plaintiff.

David H. Williams, Esq., James H. McMackin, III, Esq., and Allyson M. Britton, Esq., Morris, James LLP, Wilmington, Delaware for the District Defendants.

Dana Goodman, *Pro se*.

Young, J.

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SUMMARY

_____Plaintiff instituted this action seeking damages resulting from a sexual relationship that she maintained with her high school principal, one of the District Defendants' employees, when she was seventeen years old. Plaintiff cannot establish that District Defendants were grossly negligent in the hiring process. There remains, however, a question of fact regarding gross negligence in the supervision and retention process. As to Plaintiff's claim for punitive damages, the record fails to reflect any evidence of intentional or wanton conduct. Hence, the claim for punitive damages cannot be maintained. District Defendants' motion for summary judgment is **GRANTED** in part and **DENIED** in part. _____

FACTS

In early 2008, while employed as the Principal at Sussex Central High School (Sussex Central) in the Indian River School District (the District), Defendant Dana Goodman (Goodman) commenced a sexual relationship with a female student, Jane Doe #7 (Plaintiff). He was arrested for, and plead guilty to, charges in connection with that relationship. After Goodman's incarceration, Plaintiff filed suit alleging gross negligence arising out of the hiring, supervision and retention of Goodman. District Defendants include all defendants but Goodman. Specifically, the District; the Board of Education of the Indian River School District (the Board); the individual members of the Board: Charles Bireley (Bireley), Nina Lou Bunting (N.L. Bunting), Dr. Donald Hattier (Hattier), Randall Hughes, II (Hughes) and Donna Mitchell (Mitchell), in the individual and official capacities of each; and Superintendent Susan Bunting (S. Bunting), in her individual and official capacity (all referred to,

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collectively, as District Defendants).¹

Over the course of the litigation thus far, the parties have conducted extensive discovery. With the benefit of hindsight, they have deposed a series of employees, students, parents and education experts in an effort to catalogue District Defendants' and Goodman's conduct between the hiring process in 2006 and Goodman's arrest in 2008. That information, set forth herein, is pertinent to the instant motion for summary judgment.

The Hiring Process

In May 2006, Goodman submitted an application to the District for the Principal position at Georgetown Elementary School. According to his application, Goodman earned a Bachelor's Degree and a Masters Degree in Education. He served as a fifth grade teacher in Philadelphia, Pennsylvania from 1994 to 1999. From 1999 to 2001, he taught fifth grade in Upper Darby, Pennsylvania. He spent the 2001 to 2002 school year teaching fifth grade in Annapolis, Maryland. Finally, he spent the 2002 to 2003 school year teaching fifth grade in Cordova, Maryland. After teaching, Goodman served as an Assistant Principal at a middle school/high school in the Talbot County School District from 2003 to 2005. Finally, before applying to the District, he served as a Principal at a middle school in Dorchester County for one year.

¹ Pending before the Court is a Motion for Reconsideration of Commissioner's Order challenging Commissioner Freud's ruling joining Celeste Bunting and Mike Owens as defendants. Celeste Bunting served as Personnel Director for the District while Goodman was employed. Owens served as Personnel Director when Goodman was hired. Should they be joined, this decision would apply to them as if they had already been named as defendants.

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Goodman provided the Board with contact information for four references: John Wood, Dorothy Rinehart, Frank Hagen (Hagen) and Patricia Vickers. Each reference provided the District with a positive written recommendation. The District recalls contacting references personally, but only remembers speaking with Hagen specifically. Hagen was Goodman's supervisor in Talbot County. He reaffirmed his positive recommendation.

Goodman informed the Board that his supervisor in Dorchester County was Assistant Superintendent Dr. Larry Patterson (Patterson). Patterson informed the Board that Goodman had trouble dealing with adults and was, generally, not meeting expectations. The Board did not inquire as to what problems he had with adults. The Board did not contact Dr. Frederic Hildenbrand (Hildenbrand), the Superintendent in Dorchester County.

In addition to the foregoing, the Board reviewed Goodman's criminal history and conducted an interview. His criminal background check presented no problems. Finally, it was noted that he interviewed well. On June 20, 2006, Goodman was offered a position as Principal at Sussex Central High School (Sussex Central), another school in the District. Despite having applied for an elementary position, Goodman accepted the offer.

The parties have deposed a number of Goodman's former supervisors, including some that Plaintiff alleges the District should have contacted before Goodman's hire. Most of them provided positive reviews. None of them indicated that Goodman ever harassed or engaged in an inappropriate relationship with a student.

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In fact, the only negative reviews of Goodman's past performance were provided by Hildenbrand and Patterson. They corroborated Patterson's previous affirmations that, while in their employ, Goodman was not living up to expectations. More probative for the purposes of this case, they indicated that Goodman had been sexually harassing adult female staff members. Hildenbrand indicated that he would have disclosed this information had he been contacted. Patterson indicated that he would have disclosed this information if the Board had asked him what types of problems Goodman was having with adults.

Goodman's Employment

Goodman's tenure at Sussex Central was tumultuous. In December 2006, the District began receiving reports from Darnell Hall (D. Hall) that Goodman was engaged in an ongoing, sexual relationship with his wife, Sussex Central's cheerleading coach, Phyllis Hall (P. Hall). According to D. Hall's reports, which continued through January 2007, Goodman and P. Hall engaged in sexual relations on school property. Goodman and P. Hall denied the allegations. Athletic Director Bradley Layfield (Layfield) conducted an investigation in January 2007 and February 2007. Layfield has testified by deposition that he believes the reports to have been true. Further, Layfield claims to believe that Goodman erased security footage at the school in order to hide the affair.

From that point on, Goodman maintained controversial working relationships with various female colleagues. Celeste Bunting (C. Bunting), Susan Bunting (S. Bunting) and Bireley, collectively, received complaints from employees Brosha

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Conaway (Conaway), Debra Weaver (Weaver), Liz Steele (Steele) and Collette Spady (Spady). These complaints alleged that Goodman was verbally abusive and discriminatory towards each of them. The complaints, on the other hand, did not allege sexual harassment.

That is not to say, however, that the District did not receive sexual harassment complaints from employees regarding Goodman. Meg Fillmore (Fillmore) informed C. Bunting and S. Bunting that Goodman complimented her appearance in a manner that made her uncomfortable repeatedly. C. Bunting and S. Bunting instructed Goodman to stop making remarks. Additionally, in 2007, C. Bunting was informed that Goodman had told a female student that she was “sluttish looking.”

According to her deposition testimony, Weaver told her supervisors that she believed that Goodman had the potential to carry on a relationship with a student. She has testified that, although she did not have reason to believe that he was engaged in a relationship with any particular student, it was obvious to her that the risk existed. She reported that feeling to S. Bunting, Bireley and C. Bunting.

Assistant Principal Kris Perfetti (Perfetti) has testified that Goodman maintained inappropriate relationships with students. According to Perfetti and Weaver, Goodman exchanged text messages with multiple students on their cell phones. There is some discrepancy in the record regarding when District Defendants became aware of the text messaging. According to her discrimination complaints regarding Goodman, Weaver disclosed the information to District Defendants in early 2007. S. Bunting testified in her deposition, however, that she was not aware of the messages until early 2008. Although District Defendants may not have been aware,

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the record shows evidence that Goodman exchanged text messages with Plaintiff specifically.

Female students spent significant time in Goodman's office. The record reflects that, at times, female students were present in Goodman's office alone. Further, the record reflects that, at times, Plaintiff was present in Goodman's office alone with the door closed. Assistant Principals Perfetti and Tim Slade (Slade) witnessed two female students pull up their skirts and pull down their shirts upon entering Goodman's office to request permission to leave campus for lunch. Goodman evidently granted permission, even permitting the girls to leave his office with his car keys. Liz Steele (Steele), a secretary, has testified by deposition that she heard the girls say that Goodman had asked them to leave their phone numbers in the console of the car. Perfetti was made aware of the statement, which was not otherwise reported.

The parties have identified other instances of misconduct by Goodman. At one point, female members of the cheerleading squad created posters for a fund-raiser inviting students to kiss or write on a picture of Goodman's head for fifty cents. There is discrepancy in the record as to whether or not Goodman knew of or endorsed the posters. In any event, District Defendants were aware that the posters existed.

Further, the parties have presented two competing versions of comments made by Goodman to a staff member about the high school prom. According to Plaintiff, Goodman joked to Assistant Principal Jason Peel (Peel) about impregnating Peel's wife. According to District Defendants, Goodman joked to Peel about taking girls to the prom himself.

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On May 1, 2008, S. Bunting received an anonymous letter informing her of the relationship between Goodman and Plaintiff. She contacted the police immediately and Goodman was arrested soon thereafter. Up until that point, the incidents regarding Goodman's interaction with students had not been investigated. School employees have testified that complaints about Goodman were ignored. Goodman was not questioned regarding text messaging students nor his relationship with Plaintiff. His evaluations were, primarily, positive. In fact, he received a contract extension prior to his arrest.

STANDARD OF REVIEW

_____ Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.² “Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.”³ The movant bears the initial burden of establishing that no genuine issue of material fact exists.⁴ Upon making that showing, the burden shifts to the non-movant to show evidence to the contrary.⁵ When considering a motion for summary judgment, the Court considers

² *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

³ *Id.*

⁴ *Ebersole v. Lowengrub*, 54 Del. 463 (Del. 1962).

⁵ *Id.*

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the facts in the light most favorable to the non-movant.⁶ “Generally, issues of negligence are not appropriate for summary judgment.”⁷ _

DISCUSSION

Plaintiff alleges that District Defendants were grossly negligent in their hiring, supervision and retention of Goodman. On those grounds, she seeks compensatory damages together with an award for punitive damages. District Defendants seek summary judgment on Plaintiff’s claims for negligent hiring, supervision and retention, and on Plaintiff’s claim for punitive damages. Additionally, Plaintiff seeks summary judgment on the claim for negligent hiring against S. Bunting.

Hiring, Supervision and Retention

“An employer is liable for negligent hiring or supervision where the employer is negligent in giving improper or ambiguous orders or in failing to make proper regulations, or in the employment of improper persons involving risk of harm to others, or in the supervision of the employee’s activity.”⁸ “The deciding factor is whether the employer had or should have had knowledge of the necessity to exercise control over its employee.”⁹ Thus, under either theory, the basis for liability rests upon whether it was foreseeable that the employee would engage in the type of

⁶ *Tedesco*, 2006 WL 1817086 at *1.

⁷ *Id.*

⁸ *Simms v. Christina Sch. Dist.*, 2004 WL 344015 (Del. Super. Jan. 30, 2004).

⁹ *Matthews v. Booth*, 2008 WL 2154391 (Del. Super. May. 22, 2008).

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conduct that caused the injury.¹⁰

Generally, “negligence is based upon a failure to exercise the care that a reasonably prudent person would exercise under the circumstances.”¹¹ “Where, as here, the defendant is a public school district or the employee of a public school district, the State Tort Claims Act grants immunity from liability for acts done in good faith which involve the exercise of discretion, unless the act is done with gross or wanton negligence.”¹²

Perhaps in consideration of the State Tort Claims Act, Plaintiff alleges gross negligence only. Therefore, this review is based upon the standard applicable for that allegation. “Gross negligence is a higher level of negligence representing an extreme departure from the ordinary standard of care.”¹³ “A person acts wantonly when, ‘with no intent to cause harm,’ she ‘performs an act so unreasonable and dangerous’ that the person knows or should know that ‘there is an eminent likelihood of harm which can result.’ Wanton conduct is the ‘I don’t care attitude.’”¹⁴

Hiring

In regard to Plaintiff’s hiring claim, District Defendants suggest that they are

¹⁰ See *Id.*; See also *Smith v. Williams*, 2007 WL 2677131 (Del. Super. Sept. 11, 2007).

¹¹ *Simms*, 2004 WL 344015 at *8.

¹² *Id.*

¹³ *Thomas v. Bd. of Educ. of Brandywine School Dist.*, 759 F. Supp. 2d 477 (D. Del. 2010) (citing *Browne v. Robb*, 583 A.2d 949, 953 (Del. 1990)).

¹⁴ *Id.* (citing *Hughes ex rel. Hughes v. Christina Sch. Dist.*, 2008 WL 73710 (Del. Super. Jan. 7, 2008)).

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entitled to judgment as a matter of law, because the record is devoid of evidence that they were grossly negligent. The question, then, is whether District Defendants are able to show that the record is insufficient to support a jury finding that District Defendants were grossly negligent in hiring Goodman.¹⁵

Opposing that, Plaintiff argues that “the appropriate standard of care for checking references for Principal applicants” includes checking all references listed by the applicant, and contacting the applicant’s current and former direct supervisors. Plaintiff suggests that District Defendants should have contacted Hildenbrand, the Superintendent at Dorchester County, as opposed to Patterson, the Assistant Superintendent. Moreover, according to Plaintiff’s expert, Carol Schreffler (Schreffler), District Defendants should have been concerned with numerous “red flags” exhibited by Goodman’s application. Those “red flags” are alleged to include: frequent job changes, applications for lateral positions, failure to list a supervisor as a reference, and the immediate acceptance of a high school Principal position when the application was for an elementary Principal position.

Notably, even if District Defendants had delved more deeply into Goodman’s background in response to these “red flags,” there would have been no indication that Goodman had a propensity to carry on a sexual relationship with a student. At worst, District Defendants would have learned that Goodman had a propensity to be verbally abusive and discriminatory. Plaintiff has failed to present any evidence to suggest that there was any information, at the time of hiring, that would raise concerns about

¹⁵ See *Simms*, 2004 WL 344015 at *9.

potential sexual improprieties, certainly concerning students.

Moreover, District Defendants' deviation from the standard of care, if any, was not gross negligence. Even assuming that District Defendants failed to perform the background check that Plaintiff suggests was appropriate, the failure to do so does not exhibit the gross deviation or wanton conduct that a claim for gross negligence requires. District Defendants considered four reference letters. They spoke with at least one listed reference. Although they did not contact the Superintendent at Dorchester, they did contact the Assistant Superintendent. At worst, this deviation could, possibly, be classified as negligence. Accordingly, insofar as Plaintiff's gross negligence claim is alleged in regard to Goodman's hiring, District Defendants' motion for summary judgment is **GRANTED**.

Supervision and Retention

District Defendants present the same argument in regard to Plaintiff's negligent supervision and retention claim as had been asserted regarding Plaintiff's negligent hiring claim.¹⁶ As was the case there, District Defendants must show that the record is insufficient to support a jury finding that District Defendants were grossly negligent in their supervision and retention of Goodman.¹⁷ As discussed above, a claim for negligent supervision requires that the injury be foreseeable.

At this juncture, there are genuine issues of material fact remaining. The record does, in fact, present evidence that Goodman's abuse of a student was

¹⁶ To clarify, in *Matthews*, this Court expanded the definition of negligent supervision to include negligent retention.

¹⁷ See *Simms*, 2004 WL 344015 at *9.

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foreseeable. Weaver has testified that she informed the Superintendent and two members of the Board that she felt as though Goodman could carry on a relationship with a student. Further, she testified that she was not surprised when Goodman was arrested because, as she put it, “you could just see the writing on the wall.”

The record presents facts sufficient, if true, to support Weaver’s prognostications. School officials were presented with information regarding text messages between Goodman and students. Two Assistant Principals have testified about female students adjusting their clothing to request favors from Goodman. At least one Assistant Principal, in addition to multiple faculty members, witnessed girls spending inappropriate amounts of time in Goodman’s office.

Moreover, there is evidence of a genuine issue of material fact as to whether or not District Defendants’ supervision and retention of Goodman was a gross deviation from the standard of care. Schreffler has testified that District Defendants, in addition to failing to investigate Goodman’s actions towards faculty members adequately, ignored reports of Goodman’s text messaging with students. According to Schreffler, District Defendants should have interviewed Goodman and the students regarding these reports.

In spite of that, the record cannot be said to contain evidence that District Defendants engaged in intentional conduct or maintained an “I don’t care attitude” regarding the risk posed by Goodman. S. Bunting did contact police when she received a letter alleging that Plaintiff and Goodman were engaged in a relationship. Accordingly, although the record presents genuine issues relative to the claims of gross supervision negligence, there is no evidence of wanton conduct. Insofar as

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District Defendants' motion relates to the claims regarding supervision and retention of Goodman, District Defendants' motion is **DENIED**.

Punitive Damages

District Defendants argue that Plaintiff is not entitled to punitive damages, because she seeks to hold District Defendants vicariously liable for Goodman's conduct. District Defendants' argument on that basis is not well-taken. It is correct that Delaware does not permit punitive damages for claims involving vicarious liability.¹⁸ However, Plaintiff is not asserting a claim of vicarious liability. Rather, Plaintiff's claims argue that District Defendants were grossly negligent in hiring, supervising and retaining Goodman. These claims seek to establish liability on behalf of District Defendants directly, not under a theory of *respondent superior*.¹⁹

In any event, Plaintiff is not entitled to punitive damages in this case. "Punitive damages serve 'to punish the person doing the wrongful act and to deter him, as well as others, from similar conduct in the future.' A court may award punitive damages only for wanton, willful, or reckless conduct."²⁰ Gross negligence, as it exists as an exception to immunity under the State Tort Claims Act, does not justify an award of punitive damages.²¹

¹⁸ *Smith v. New Castle County Vocational Tech. Sch. Dist.*, 574 F. Supp. 813 (D. Del. 1983).

¹⁹ *See Smith*, 2007 WL 2677131 at *1.

²⁰ *Id.* (quoting *Ringgold v. Kohl's Dept. Stores, Inc.*, 2006 WL 3842142 (Del. Super. Dec. 21, 2006)).

²¹ *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 530 (Del. 1987).

The question of punitive damages, is frequently left to the trier of fact.²² However, where the record is insufficient to support the imposition of an award, a punitive damages claim should be dismissed on summary judgment.²³ Here, there is no evidence that District Defendants acted either intentionally or wantonly. The record is sufficient to present the case to a jury on the issue of gross negligence regarding supervision only. Accordingly, District Defendants' motion for summary judgment of Plaintiff's claim for punitive damages is **GRANTED**.

S. Bunting

District Defendants' motion argues that Plaintiff's claim for gross negligence, insofar as it is asserted against S. Bunting in connection with Goodman's hire, should be dismissed. District Defendants' argument does not request summary judgment of the claim against S. Bunting insofar as it pertains to Goodman's supervision. Because District Defendants' motion for summary judgment of Plaintiff's claim in regard to Goodman's hire is granted, District Defendants' argument in regard to S. Bunting is **MOOT**.

CONCLUSION

District Defendants' motion for summary judgment of Plaintiff's gross negligence claim in regard to hiring is **GRANTED**. Insofar as it pertains to Plaintiff's claim regarding supervision and retention, District Defendants' motion is **DENIED**. Further, District Defendants' motion for summary judgment of Plaintiff's claim for punitive damages is **GRANTED**._____

²² *Id.*

²³ *Id.*

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SO ORDERED this 11th day of April, 2012.

/s/ Robert B. Young
J.

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