

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

ANIYA HARMON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SUSSEX CENTRAL HIGH SCHOOL, )  
 INDIAN RIVER SCHOOL )  
 DISTRICT, BRADLEY LAYFIELD, )  
 and MATTHEW JONES, )  
 )  
 Defendants. )

C.A. No. N23C-09-087 CLS

Date Submitted: November 21, 2023  
Date Decided: January 29, 2024

*Upon Defendants' Motion to Dismiss. GRANTED.*

**ORDER**

Raj Srivatsan, Esquire, The Igwe Firm, Wilmington, Delaware 19801, Attorney for Plaintiff, Aniya Harmon.

James H. McMackin, III, Esquire, Allyson M. Britton, Esquire, and Michelle G. Bounds, Esquire, Morris James LLP, Wilmington, Delaware 19801, Attorney for Defendants, Sussex Central High School and Indian River School District.

**SCOTT, J.**

## INTRODUCTION

Before the Court is Defendants Sussex Central High School and Indian River School Districts' ("District Defendants") Motion to Dismiss ("Motion") Plaintiff Aniya Harmon's ("Ms. Harmon") Complaint pursuant to Del. Super. Civ. R. 12(b)(1) and 12(b)(6). The Court has reviewed the Motion and Ms. Harmon's opposition. For the reasons below, Defendants' Motion to Dismiss is **GRANTED**.

## ALLEGED FACTS

Ms. Harmon filed this action against District Defendants, Bradley Layfield ("Mr. Layfield") and Matthew Jones ("Mr. Jones") for vicarious liability for Mr. Layfield and Mr. Jones' tortious conduct under the theory of *respondeant superior*. The following facts come directly from Ms. Harmon's Complaint:

Ms. Harmon walked into the middle of a disagreement between two other students on the morning of May 17, 2023. Ms. Harmon asked the students to calm down and a "female employee of Sussex Central then interceded and pulled [her] jacket, bra strap and tank top blouse, which caused [her] clothes to come apart, exposing her entire right breast." The incident was caught on the high school's security cameras. Mr. Jones, the Assistant Principal of Sussex Central, "created a meme of the above-described school surveillance video footage of the incident, replacing [Ms. Harmon's] face with that of iconic singer, Janet Jackson." Using his school issued laptop, Mr. Jones

showed the meme to other vice principals, administrators, teachers and other recipients. Mr. Layfield showed other vice principals, administrators, teachers and other recipients the surveillance video depicting Ms. Harmon's exposure.

Ms. Harmon further alleges Mr. Jones and Mr. Layfield were put on administrative leave due to "unauthorized publication of the school surveillance video depicting [Ms. Harmon's] exposed breast."

As against District Defendants, Ms. Harmon alleges: "At all times relevant, Mr. Jones and Mr. Layfield were working within the time, space, and scope of their employment and/or agency with Sussex Central and Indian River when they published and disseminated the video surveillance of Plaintiff's exposed breast to third parties. As the principal of Mr. Jones and Mr. Layfield, Sussex Central and Indian River are liable for its agents' and/or employees' torts under the doctrine of *respondeat superior*."

## **PARTIES POSITIONS**

### *District Defendants' Position*

Although District Defendants' papers mention its Motion was brought pursuant to Superior Court 12(b)(1) and 12(b)(6), no argument focusing on 12(b)(1) was made.

District Defendants argue that (1) no vicarious liability for the tortious conduct of Mr. Jones and Mr. Layfield exists because neither Mr. Jones nor Mr. Layfield were acting within the course and scope of their employment and (2) no vicarious liability for tortious conduct of Mr. Jones and Mr. Layfield exists because the exceptions identified in the Restatement of Agency (Second), Section 219, have not been met.

*Ms. Harmon's Opposition*

Ms. Harmon argues the term “scope of employment” is “somewhat amorphous.” Further Ms. Harmon argues that both the actions of Mr. Jones and Mr. Layfield were within the scope of employment because the actions took place during school hours and for investigatory purposes. Ms. Harmon argues that because Mr. Jones and Mr. Layfield had access to the surveillance footage, District Defendants could foresee and had reason to anticipate the actions. Ms. Harmon contends viewing a video of an incident occurring during school hours involving school students was within the scope of employment, so Mr. Jones and Mr. Layfield were serving the District Defendants.

**STANDARD OF REVIEW**

The Defendants move to dismiss on Superior Court Civil Rule 12(b)(6) claiming that Ms. Harmon has failed to state a claim in which relief can be sought. The test for sufficiency of a complaint challenged by a Rule 12(b)(6) motion to

dismiss is whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.<sup>1</sup> In making its determination, the Court must accept all well-pleaded allegations in the complaint as true and draw all reasonable factual inferences in favor of the non-moving party.<sup>2</sup> The complaint must be without merit as a matter of fact or law to be dismissed.<sup>3</sup> Therefore, if the plaintiff can recover under any conceivable set of circumstances susceptible of proof under the complaint, the motion to dismiss will not be granted.<sup>4</sup>

## ANALYSIS

### *Respondeat superior/vicarious liability*

For Plaintiff's claim against District Defendants to survive this Motion, she must have alleged facts in her Complaint that would constitute *respondeat superior* liability. An employer is liable for the tortious acts of an employee under *respondent superior* if the acts are performed "within the scope of employment."<sup>5</sup> "Conduct is within the scope of employment if it (i) is of the type the employee was hired to

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<sup>1</sup> *Spence v. Funk*, 396 A.2d 967, 968 (1978); see *Cambium Ltd. v. Trilantic Capital Partners III L.P.*, 2012 WL 172844, at \*1 (Del. Jan. 20, 2012)(citing *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011)).

<sup>2</sup> *Ramunno v. Cawley*, 705 A.2d 1029, 1034-36 (Del. 1998); *Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. Ct.1983).

<sup>3</sup> *Diamond State Tel. Co. v. University of Delaware*, 269 A.2d 52 (Del. 1970).

<sup>4</sup> *Ramunno*, 705 A.2d at 1034; see *Cambium*, 2012 WL 172844, at \*1 (citing *Cent. Mortg.*, 27 A.3d at 537)).

<sup>5</sup> *Drainer v. O'Donnell*, No. CIV.A. 94C-08-062, 1995 WL 338700, at \*1 (Del. Super. Ct. May 30, 1995).

perform; (ii) takes place ‘within the authorized time and space limits’; and (iii) is at least partially motivated by a purpose to serve the employer.”<sup>6</sup> “The question of whether conduct is within the scope of employment is generally a question for the jury, unless the facts are so clear that they must be decided as a matter of law.”<sup>7</sup> The alleged facts are so clear in this case that the scope of employment must be decided as a matter of law.

In *Draper*, the court approved the Restatement of Agency (2d), § 228, which sets forth factors which should be considered in determining whether unauthorized conduct is within the scope of employment. They include such factors as whether or not the act is one commonly done by such servants; the time, place and purpose of the act; whether or not the act is outside the enterprise of the master; whether or not the master has reason to expect that such an act will be done; the similarity in quality of the act done to the act authorized; the extent of departure from the normal method of accomplishing an authorized result; and whether or not the act is seriously criminal.<sup>8</sup>

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<sup>6</sup> *Id.* (citing *Wilson v. Joma, Inc.*, 537 A.2d 187, 189 (Del.1988)).

<sup>7</sup> *Id.* (citing *Draper v. Oliver Paving & Constr. Co.*, 181 A.2d 565, 570 (Del.1962)).

<sup>8</sup> *Simms v. Christina Sch. Dist.*, 2004 WL 344015, at \*5 (Del.Super.) (citing *Draper v. Oliver Paving & Const. Co.*, 181 A.2d 565, 569 (1962)).

Mr. Jones and Mr. Layfield certainly held an employer relationship with District Defendants. However, District Defendants are liable for the tortious acts of their employees if the acts are performed “within the scope of employment.” Ms. Harmon argues that viewing a video of an incident occurring during school hours involving school students is an employment related activity. This Court would agree that ordinarily such act would be within the scope of employment for a Principal and Vice Principal, that is not the alleged wrongdoing in this case. It is not alleged that the viewing of the footage is the tortious conduct, rather, according to Ms. Harmon’s Complaint the tortious conduct is the publication of an exposed student and use of the footage to create a meme. The acts of Mr. Jones and Mr. Layfield are not within the scope of their employment because publication of school surveillance footage depicting an exposed student’s breast is certainly not a type of conduct of administrative work Mr. Jones and Mr. Layfield were hired to do. Additionally, Mr. Jones and Mr. Layfield’s conduct is not at all motivated to serve an educational establishment like District Defendants.

Even if the conduct is not within the scope of employment, District Defendants could be liable for unauthorized conduct. To make a finding that unauthorized conduct is not within the scope of employment, the Court looks to the factors outlined in the Restatement of Agency (2<sup>nd</sup>) and explained in *Draper*. Here, the act of publishing school surveillance footage depicting an exposed student’s

breast or using of the image to make a meme is certainly not an act commonly done by a Principal or Vice Principal. While the time and place of the tortious conduct is alleged to be during school hours and on school property, the purpose of the act was for Mr. Jones and Mr. Layfield because it did not further the purpose of District Defendants. The act is outside the enterprise of the master as the enterprise of District Defendants is educating students. There is no similarity in quality of the act done to an act that is authorized by District Defendants. There was an extreme departure from the normal method of accomplishing an authorized result. Because this case does not allege a crime, the act is not criminal. None of the factors greatly support that the Court find the unauthorized conduct was within the scope of employment.

### **CONCLUSION**

For the foregoing reasons, District Defendants' Motion to Dismiss is **GRANTED.**

**/s/ Calvin L. Scott**  
**Judge Calvin L. Scott, Jr.**