2007 WL 1893591

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Ansonia-Milford.

Jane DOE
v.
Gregory FIRN et al.

No. AANCV065001087S.
|
June 12, 2007.

Attorneys and Law Firms

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ESPOSITO, J.

ISSUE

***1** The issue before the court is the defendants' Suzanne Meyer-Farrell, the city of Milford, and the Milford Board of Education's motion to strike counts two, three, four and five of the complaint (Motion # 104) and the defendant Gregory Firn's motion to strike count one of the complaint (Motion # 106). Both motions are granted.

FACTS

This action arises out of injuries and damages allegedly sustained by the plaintiff as a result of a sexual relationship with her basketball coach while she was a student at Jonathan Law High School. On June 2, 2006, the plaintiff, Jane Doe, filed a five-count complaint against the defendants, Gregory Firn, the superintendent of schools for the Milford board of education, Suzanne Meyer-Farrell, the school social worker at Jonathan Law high school, the city of Milford, and the Milford board of education.

In the complaint, the plaintiff alleges the following facts. The plaintiff was enrolled as a student at Jonathan Law High School from September 2001 until June 2005 and participated in the school's girls' basketball program. During the years of 2002 through 2005, Robert Dulin, who was acting as a coach for the summer and fall basketball leagues and camps in which the plaintiff played basketball, "sexually abused, sexually exploited and sexually assaulted the plaintiff," who was a minor under eighteen years of age. On December 18, 2003, because of rumors circulating at the school, the plaintiff was called into the school guidance counselor's office for investigation and, based on the findings from the investigation, Meyer-Farrell made an oral report to the department of children and family services (DCF) via the telephone hot line and later filed DCF Form 136, a written report of suspected child abuse. On the day the DCF report was made or shortly thereafter, Firn contacted Dulin via telephone calls several times. Neither Firn nor any member of his staff contacted the police. The DCF did not conduct an investigation into the incident because the plaintiff was sixteen at the time the report was made. The police investigation into the December 18, 2003 report began in August of 2005. On August 12, 2005, Firn refused to discuss the matter with the police, but on August 16, 2005, he provided the police with the details regarding the DCF report. Despite these investigations, Firn wrote a letter of recommendation on behalf of Dulin on September 8, 2005. On June 1, 2006, notice of action was provided to the city and the board pursuant to General Statutes § 7-465. [1]

In count one, the plaintiff alleges negligence against Firn as the superintendent of schools. She alleges that Firn, acting as die chief executive officer of the board, was responsible for the supervision of the board and all employees of the Milford public school system. In count two, the plaintiff alleges negligence against Meyer-Farrell,

inter alia, for her allegedly defective report and failure to conduct any follow upon the DCF report as a school social worker. In counts three and four, she alleges that the city is liable to her for the negligent acts of its employees, Firn and Meyer-Farrell, pursuant to General Statutes § 7-465 and § 52-557n. [2] In count five, she alleges that the board is liable for the negligent acts of Firn and Meyer-Farrell pursuant to § 10-235. [3]

***2** On July 27, 2006, the defendants, Meyer-Farrell, the city and the board, filed a motion to strike counts two, three, four and five of the complaint. On July 28, 2006, Firn filed a motion to strike count one of the complaint. On September 28, 2006, the plaintiff filed a memorandum of law in opposition to the motion. On December 1, 2006, Firn filed a reply memorandum of law, and on March 2, 2007, Meyer-Farrell, the city and the board filed a reply memorandum of law.

DISCUSSION

"The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003). "A motion to strike ... requires no factual findings by the trial court." (Internal quotation marks omitted.) *Nazami v. Patrons Mutual Ins. Co.,* 280 Conn, 619, 624, 910 A.2d 209 (2006). The role of the trial court in ruling on a motion to strike is "to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Dodd v. Middlesex Mutual Assurance Co.,* 242 Conn. 375, 378, 698 A.2d 859 (1997). "Moreover ... [w]hat is necessarily implied [in an allegation] need not be expressly alleged." (Internal quotation marks omitted.) *Violano v. Fernandez,* 280 Conn. 310, 318, 907 A .2d 1188 (2006). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003).

Count One: Claims against Firn, the Superintendent of Schools

The defendant Firn moves to strike count one on the ground that he owed no duty to the plaintiff under the child protection statutes, General Statutes § 17a-101 et seq., and that, even if he breached a duty owed to the plaintiff, he would be immune from liability under the doctrine of governmental immunity. He argues that he has no duty to report any suspected child abuse because the superintendent of schools is not a mandated reporter under § 17a-101(b). [4] Alternatively, he argues that, even if he were a mandated reporter under § 17a-101(b), he would not be liable pursuant to § 17a-101e(b) [5] because he failed to report in good faith. He further argues that the complaint lacks any allegation to suggest that he had any knowledge of the incidents before Meyer-Farrell made the DCF reports or that he did not make a report in bad faith.

The plaintiff counters that Firn is a mandated reporter under § 17a-101(b) because the superintendent of schools falls within the definition of a "teacher" or "any person paid to care for a child in any public or private facility." In addition, the plaintiff indicates that her complaint contains ordinary negligence claims. She argues that a motion to strike is an improper method for raising governmental immunity because it must be asserted as a special defense. She further argues that she must be afforded an opportunity to plead facts by way of a reply to an answer establishing matters in avoidance of special defenses. The plaintiff also argues that, if the court finds that Firn properly raised the defense of governmental immunity, the identifiable person-imminent harm exception is applicable to this case.

1. Statutory Claim pursuant to General Statutes § 17a-101 (b)

***3** "In furtherance of th[e] public policy goal of protecting children from abuse, the statute provides a comprehensive list of persons who are 'mandated reporters' ..." *Manifold v. Ragaglia,* 272 Conn. 410, 420, 862 A.2d 292 (2004). Section 17a-101(b) provides a list of mandated reporters, which include, *inter alia,* "school teacher, school principal, school guidance counselor, school paraprofessional ... any person paid to care for

a child in any public or private facility, child day care center ."

The statutory list of mandated reporters does not include the superintendent of schools. Furthermore, General Statutes § 10-157(a) provides that "a superintendent ... shall serve as the chief executive officer of the board ... and have executive authority over the school system and the responsibility for its supervision. Unlike school teachers, however, the superintendent is not charged with direct supervision of students. The plaintiff provided the court with no legal authority to support her argument that the superintendent of schools falls within the category of a "teacher" or a "person paid to care for a child in any public or private facility" for the purpose of the child protection statutes, and research has revealed no such authority. Accordingly, the superintendent of schools is not a mandated reporter under § 17a-101(b), and, as the superintendent of the schools, Firn has no duty to report any suspected child abuse under § 17a-101a. [6]

2. Duty to Report under the Milford Board of Education Policy

The plaintiff also alleges that Firn failed to follow the Milford board of education policy 5141.4(f) titled "Reporting of Child Abuse of School Employees" when he knew or should have known that Dulin, as a basketball coach, had access to students on a regular basis, thereby creating a foreseeable harm to the plaintiff. She argues that she has additional information that Firn was aware of the sexual relationship between the plaintiff and Dulin prior to December 18, 2003 when Meyer-Farrell made her reports to the DCF.

"In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted .) *Faulkner v. United Technologies Corp.,* 240 Conn. 576, 580, 693 A.2d 293 (1997). The facts alleged in the complaint alone are insufficient to show that Firn owed a duty to make a report on the alleged incident under the board's policy. The allegation referring to the board's policy 5141.4(f) states mere legal conclusions without any factual support or specific policy provisions. Accordingly, the plaintiff's claim against Firn under the board's policy is insufficient and is not adequately pleaded.

3. Other Negligence Claims and Governmental Immunity

"[A] motion to strike ordinarily is an improper method for raising a claim of governmental immunity." (Internal quotation marks omitted.) *Violano v. Fernandez,* 88 Conn.App. 1, 8 n. 8, 868 A.2d 69 (2005), aff'd, 280 Conn. 310, 907 A.2d 1188 (2006). "[G]overnmental immunity must be raised as a special defense in the defendant's pleadings ... Governmental immunity is essentially a defense of confession and avoidance similar to other defenses required to be affirmatively pleaded [under Practice Book § 10-50] ... Nevertheless, [w]here it is apparent from the face of the complaint that the municipality was engaging in a governmental function while performing the acts and omissions complained of by the plaintiff, the defendant is not required to plead governmental immunity as a special defense and may attack the legal sufficiency of the complaint through a motion to strike." (Citations omitted; internal quotation marks omitted.) *Violano v. Fernandez, supra,* 280 Conn. at 321.

***4** "[A] municipal employee ... has a qualified immunity in the performance of a governmental duty, but he may be liable if he misperforms a ministerial act, as opposed to a discretionary act ... The word ministerial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion." (Internal quotation marks omitted.) *Prescott v. Meriden,* 273 Conn. 759, 763, 873 A.2d 175 (2005). "Thus, liability may attach for a negligently performed ministerial act, but not for a negligently performed ... discretionary act." (Internal quotation marks omitted.) *Romano v. Derby,* 42 Conn.App. 624, 629, 681 A.2d 387 (1996).

"[T]he immunity from liability for the performance of discretionary acts by a municipal employee is subject to three exceptions or circumstances under which liability may attach even though the act was discretionary: first, where the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm ... second, where a statute specifically provides for a cause of action against a municipality or municipal official for failure to enforce certain laws ... and third, where the alleged acts involve malice, wantonness or intent to injure, rather than negligence." (Internal quotation marks omitted.) *Elliott v. Waterbury,* 245 Conn. 385, 411 n. 17, 715 A.2d 27 (1998).

In the present case, the plaintiff alleges that Firn, as the chief executive officer of the board, was responsible for the supervision of the board and all employees of the Milford public school system. Specifically, she alleges that Firn was negligent in that he knew or should have known that Dulin was sexually abusing, sexually exploiting and sexually assaulting the plaintiff and allowed such conduct to continue; that he failed to properly investigate and supervise Dulin as the basketball league coach for the Jonathan Law High School girls' basketball team; that he failed to prevent sexual exploitation from occurring; that he failed to promulgate proper policies that require immediate police involvement regarding matters of sexual abuse to a minor; that he failed to protect the plaintiff from sexual exploitation by Dulin; that he failed to properly screen, evaluate or determine whether Dulin presented a threat of danger to any student as he was acting as the coach at the high school; that he failed to warn the plaintiff of Dulin's propensities to commit sexual abuse upon children; that he failed to establish and enforce an appropriate policy of reporting and investigating complaints of sexual abuse on minor children; that he was required to contact local law enforcement since he knew that the DCF was not conducting an investigation into the incident; that he failed to conduct any follow up on Meyer-Farrell's reports filed with the DCF; and that he authorized Dulin to operate a youth sports program for basketball camps and leagues, creating a foreseeable harm to the plaintiff.

***5** The plaintiff's allegations against Firn are based on his employment as the superintendent of schools of Milford. It is clear from the face of the complaint that Firn performed the alleged acts or omissions for the direct benefit of the public since they occurred while he was working for the public education system of the city. "[L]ocal boards of education act on behalf of the municipality they serve ..." *Board of Education v. State Employees Retirement Commission,* 210 Conn. 531, 545, 556 A.2d 572 (1989). Accordingly, Firn is not required to assert governmental immunity as a special defense because it is apparent from the face of the plaintiff's complaint that Firn was performing a governmental function at the time of the alleged negligence. As such, it is appropriate for the court to consider the claim of governmental immunity in the context of this motion to strike.

The alleged negligent acts or omissions are discretionary in nature. The supervision of all employees in the Milford public school system is discretionary because they involve the exercise of judgment or discretion. Promulgation of proper policies and proper evaluation of employees are also discretionary functions because they require the exercise of judgment or discretion. *Heigl v. Board of Education,* 218 Conn. 1, 5-6, 587 A.2d 423 (1991). It is settled that "[t]he act of promulgating a policy ... is a discretionary activity [because] [a] policy, by definition, is a definite course or method of action selected from among alternatives ... to guide and determine present and future decisions" and involves the exercise of judgment. *Id.*

The plaintiff's allegation that Firn was required to contact the police after Meyer-Farrell's reports pursuant to the board's policy 5141.4 is a conclusory statement that is not supported by the allegations in the complaint. To support her argument, the plaintiff indicates that the board's policy 5141.4(d) allows police personnel access to a student's records without the student's or his or her parents' permission. This particular policy does not, however, require the superintendent to contact the police or cooperate with the police investigation since it only allows a police officer to have access to students' records. Accordingly, because Firn was a municipal employee of the city of Milford and he was performing discretionary governmental functions at the time of the alleged negligent acts or omissions, [7] he is entitled to a qualified immunity unless this case falls within one of the three exceptions to governmental immunity.

4. Identifiable Person-Imminent Harm Exception

The only exception relevant to the plaintiff's claims against Firn is the identifiable person-imminent harm exception. "The imminent harm exception to discretionary act immunity applies when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm ... By its own terms, this test requires three things: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm ... [T]his exception to the general rule of governmental immunity for employees engaged in discretionary activities has received very limited recognition in this state ... If the plaintiffs fail to

establish any one of the three prongs, this failure will be fatal to their claim that they come within the imminent harm exception." (Citations omitted; internal quotation marks omitted.) *Violano v. Fernandez, supra,* 280 Conn. at 329.

***6** "[The Supreme Court has] construed [the identifiable person-imminent harm] exception to apply not only to identifiable individuals but also to narrowly defined identified classes of foreseeable victims ... Moreover, [the court has] established specifically that schoolchildren who are statutorily compelled to attend school, during school hours on school days, can be an identifiable class of victims." (Citation omitted; internal quotation marks omitted.) *Purzycki v. Fairfield,* 244 Conn. 101, 108-09, 708 A.2d 937 (1998).

"Our Supreme Court [however] emphasized the limited nature of the concept of imminent harm in *Shore v. Stonington,* [187 Conn. 147, 153, 444 A.2d 1379 (1982)], and in *Evon v. Andrews,* 211 Conn. 501, 559 A.2d 1131 (1989). In *Shore,* the undisputed facts revealed that a police officer stopped an intoxicated driver for speeding and crossing the center line of the highway ... The officer gave the driver a warning and allowed him to proceed on his way. Later that night, the driver struck and killed another motorist ... The Supreme Court affirmed the summary judgment in favor of the defendant municipality because, as a matter of law, the officer had no reason to know that his failure to arrest the driver would subject an identifiable person to imminent harm." (Citations omitted.) *Doe v. Board of Education,* 76 Conn.App. 296, 302, 819 A.2d 289 (2003). In *Evon v. Andrews, supra,* 211 Conn. at 502, the plaintiffs whose decedents were killed by a fire in the apartment building brought an action against the municipality for failing to enforce various statutes and codes governing the maintenance of rental dwellings. Addressing the applicability of the identifiable person-imminent harm exception, the Supreme Court held that "the plaintiffs' decedents were not subject to imminent harm" because "[t]he risk of fire implicates a wide range of factors that can occur, if at all, at some unspecified time in the future" and "the fire could have occurred at any future time or not at all." *Id.,* at 508.

"More recently, our courts have applied the identifiable person-imminent harm exception in a series of cases involving injuries to schoolchildren. See *Purzycki v. Fairfield, supra,* 244 Conn. at 101; *Burns v. Board of Education,* 228 Conn. 640, 638 A.2d 1 (1994) ... In each of those cases, the identifiable person-imminent harm exception was applicable because the dangerous condition was sufficiently limited both in duration and in geography to make it apparent to the defendants that schoolchildren were subject to imminent harm. In *Burns,* the plaintiff schoolchild slipped and fell on an icy courtyard in a main accessway of the school campus ... The court stated: 'Unlike the incident in *Evon v. Andrews, supra,* 211 Conn. at 501, this accident could not have occurred at any time in the future; rather, the danger was limited to the duration of the temporary icy condition in this particularly treacherous area of the campus.' " (Citations omitted; internal quotation marks omitted.) *Doe v. Board of Education, supra,* 76 Conn.App. at 303-04. In *Doe v. Board of Education, supra,* 76 Conn.App. at 305, however, where the plaintiff was sexually assaulted in a classroom by other students, the court concluded that the identifiable person-imminent harm exception was inapplicable to that case because "the harm ... potentially could have occurred any time that students traveled without permission to any unsupervised areas of the school."

***7** In the present case, the alleged danger was not limited to a particular area of the school or a particular time period. The alleged sexual abuse, sexual exploitation and sexual assault could occur at any place and at any time, rather than at the school or during school hours. Under the facts alleged, therefore, it would not have been apparent to Firn that his discretionary policy decisions subjected the plaintiff and other students to imminent harm. Accordingly, the present case is more analogous to *Shore* or *Evon* than it is to *Burns,* and, therefore, the imminent-harm exception is inapplicable to the present case. Firn's motion to strike count one is granted.

Second Count: Claims against Meyer-Farrell, the School Social Worker

The defendant Meyer-Farrell moves to strike count two on the ground that § 17a-101e(b) [8] provides her with immunity from liability arising from reporting or failing to report any suspected child abuse and that the doctrine of governmental immunity bars the plaintiff's other claims against her. The plaintiff counters that the statutory immunity under § 17a-101e(b) must be asserted as a special defense. She also argues that Meyer-Farrell failed to act in conformity with the reporting requirements in that

she failed to inform the DCF that Dulin was acting in the capacity of a basketball coach. She argues that, if her report alleged that an athletic coach was involved in the sexual relationship, the DCF automatically would have investigated the case. She further argues that Meyer-Farrell is liable for not performing her duties after the DCF reports were made by failing to take the appropriate steps necessary to protect the plaintiff.

1. Statutory Immunity with respect to Claims resulting from DCF Reports

Statutory immunity may be raised through a motion to strike where it is apparent from the face of the complaint that the defendant was acting as a mandated reporter when the alleged negligent acts or omissions occurred. See *Greco v. Anderson,* Superior Court, judicial district of New Britain, Docket No. CV 00 0501458 (October 23, 2000, Shortall, J.) (28 Conn. L. Rptr. 605). In the present case, it is apparent from the complaint and undisputed by the parties that Meyer-Farrell is a social worker under § 17a-101(b), and, thus, is a mandatory reporter under § 17a-101a. Accordingly, Meyer-Farrell is not required to raise the defense of statutory immunity as a special defense and a motion to strike is an appropriate method for raising the defense.

Under § 17a-101a, "the reporting requirements are triggered whenever a mandated reporter has reasonable cause to suspect or believe that any child under the age of eighteen years is in danger of being abused or has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon him by a person responsible for such child's health, welfare or care or by a person given access to such child by such responsible person, or has been neglected ..." (Internal quotation marks are omitted.) *Ward v. Greene,* 267 Conn. 539, 552, 839 A.2d 1259 (2004).

***8** "Once the requirement to report is triggered, the mandated reporter must report: '(1) The names and addresses of the child and his parents or other person responsible for his care; (2) the age of the child; (3) the gender of the child; (4) the nature and extent of the child's injury or injuries, maltreatment or neglect; (5) the approximate date and time the injury or injuries, maltreatment or neglect occurred; (6) information concerning any previous injury or injuries to, or maltreatment or neglect of, the child or his siblings; (7) the circumstances in which the injury or injuries, maltreatment or neglect came to be known to the reporter; (8) the name of the person or persons suspected to be responsible for causing such injury or injuries, maltreatment or neglect; and (9) whatever action, if any, was taken to treat, provide shelter or otherwise assist the child.' General Statutes § 17a-101d." *Ward v. Greene, supra,* 267 Conn. at 552-53.

"To encourage and facilitate compliance with the reporting statute, § 17a-101e provides several protections for persons or institutions who make reports to the department, among which is immunity from civil or criminal liability. Specifically, § 17a-101e(b) provides: 'Any person, institution or agency which, in good faith, makes, or in good faith does not make, the report pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103 shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report provided such person did not perpetrate or cause such abuse or neglect.' " *Manifold v. Ragaglia, supra,* 272 Conn. at 421. "Indeed, the immunity provision applies expressly to [a]ny person ... wh[o], in good faith, makes ... the report ... [I]t is well established that [the court] will not supply an exception or limitation to a statute that the legislature clearly intended to have broad application." (Citation omitted.) *Id.,* at 422.

"To qualify for the immunity provided by General Statutes § 17a-101e(b), the report to DCF must be made in good faith." *Barrett v. La Petite Academy, Inc.,* Superior Court, judicial district of Hartford, Docket No. CV 03 0827115 (March 18, 2005, Wagner, J.T.R.). "In common usage, the term 'good faith' has a well defined and generally understood meaning, being ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation ... It is a subjective standard of honesty of fact in the conduct or transaction concerned, taking into account the person's state of mind, actual knowledge and motives ... Whether good faith exists is a question of fact to be determined from all the circumstances." (Citations omitted; internal quotation marks omitted.) *Kendzierski v. Goodson,* 21 Conn.App. 424, 429-30, 574 A.2d 249 (1990). "Construing § 17a-101a, which requires 'reasonable cause to suspect or believe' that the child abuse took place and

imposes penalties on the mandatory reporters who fail to report child abuse, in conjunction with § 17a-101e(b), which requires the report to be made in good faith for the statutory immunity to apply, it can be inferred that if the reporter, when making a report, had a reasonable cause to suspect or believe that the child has been abused, the report has been made in good faith." *Parisi v. Johnsky,* Superior Court, judicial district of New Haven, Docket No. CV 05 4009374 (February 20, 2007, Cosgrove, J.).

***9** There is no provision in the statutory scheme that requires the reporter to provide additional information about the suspected abuser. A mandated reporter does not owe a duty to the plaintiff to investigate the incidents prior to making a good faith report. *Morales v. Kagel,* 58 Conn.App. 776, 783, 755 A.2d 915 (2000). It is the duty of the DCF to investigate and make the ultimate decision regarding any abuse allegations. *Id.,* at 782." Accordingly, the plaintiffs claim that Meyer-Farrell is liable for her failure to state that Dulin was the basketball coach at the plaintiff's school, fails because, as a mandated reporter, Meyer-Farrell owes no duty to the plaintiff to describe precisely the occupation of a suspected abuser.

In the present case, the plaintiff does not dispute that Meyer-Farrell had reasonable cause to suspect that the plaintiff had been abused. Therefore, it can be inferred that Meyer-Farrell made the reports in good faith. The plaintiff failed to allege that Meyer-Farrell did not make the reports in good faith. The plaintiff's allegation that Meyer-Farrell failed to report that Dulin was a basketball coach is insufficient to imply bad faith on the part of Meyer-Farrell because it does not pertain to dishonesty or intent to defraud. Meyer-Farrell made an oral report and, subsequently, a written report, in conformity with the requirements of the child protection statutes. Therefore, § 17a-101e(b) provides Meyer-Farrell with immunity from any liability resulting from her reports to the DCF.

The plaintiff also alleges that Meyer-Farrell failed to contact the police pursuant to § 17a-101b. This allegation has no merit as it is unsupported by the law. Section 17a-101b(a) provides in relevant part: "(a) An oral report shall be made by a mandated reporter as soon as practicable but not later than twelve hours after the mandated reporter has reasonable cause to suspect or believe that a child has been abused or neglected or placed in imminent risk of serious harm, by telephone or in person to the Commissioner of Children and Families or a law enforcement agency." The plain language of the statute does not require a mandated reporter to contact the police after he or she made reports to the DCF. Meyer-Farrell owes no such duty to the plaintiff.

2. Governmental Immunity with respect to Other Negligence Claims

The plaintiff also alleges that Meyer-Farrell is liable for her failure to take necessary steps to protect the plaintiff subsequent to her reports to the DCF. She argues that § 17a-101e(b) does not provide Meyer-Farrell with immunity for her negligent acts or omissions that are not related to her reports. Meyer-Farrell counters that she is entitled to governmental immunity because she was performing discretionary governmental functions at the time of the alleged negligence and none of the exceptions to governmental immunity is applicable to the present case.

The same standards for governmental immunity previously articulated in discussing count one are also applicable here. In the present case, the plaintiff alleges that Meyer-Farrell was an employee of the board of education of the city of Milford, who was working for the plaintiff's school at the time of the alleged negligence. "[L]ocal boards of education act on behalf of the municipality they serve ... and ... their professional and nonprofessional employees are employees of the municipality ..." *Cheshire v. McKenney, supra,* 182 Conn. at 260. The plaintiff specifically alleges that Meyer-Farrell was "acting within the discharge of her official duties and scope of her employment." In general, "[t]he duty to supervise students is performed for the benefit of the municipality." *Purzycki v. Fairfield, supra,* 244 Conn. at 112. Accordingly, it is apparent from the face of the complaint that Meyer-Farrell was engaged in a governmental function at the time of the alleged negligence and, thus, she may assert governmental immunity in a motion to strike rather than as a special defense in a pleading.

***10** The plaintiff alleges that Meyer-Farrell was negligent and careless, *inter alia,* in that she failed to properly investigate and supervise Dulin as a coach for the basketball team; that she failed to promulgate policies that require immediate police involvement regarding matters of sexual abuse to a minor; that she failed to protect the

plaintiff from sexual exploitation by not contacting the police pursuant to Milford Board of Education Policy 5141.4(c); that she failed to follow the board's policy 5141.4(f); and that she failed to conduct any follow up on the reports filed with the DCF.

It is well established that the duty to supervise school children is discretionary. *Heigl v. Board of Education,* 218 Conn. 1, 8, 587 A.2d 423 (1991). It is also settled that "[t]he act of promulgating a policy ... is a discretionary activity" because it involves the exercise of judgment. *Id.,* at 5-6. Accordingly, Meyer-Farrell, as an employee of the city of Milford, is entitled to qualified governmental immunity with respect to the alleged negligent acts unless one of the exceptions to governmental immunity is applicable to the present case.

The court has already concluded that the alleged danger was not limited to a particular area of the school or a particular time period because the alleged sexual abuse, sexual exploitation and sexual assault could occur at any place and at any time. Consequently, it would not have been apparent to Meyer-Farrell that her discretionary decisions subjected the plaintiff to imminent harm. Therefore, the imminent-harm exception is inapplicable to the present case. Accordingly, governmental immunity bars the plaintiff's non-statutory negligence claims against Meyer-Farrell and, therefore, count two is stricken.

Count Three: Claims against the City of Milford under § 7-465

The city moves to strike count three on the ground that the plaintiff's filing of the notice of claim pursuant to § 7-465 was untimely as it was filed more than six months after the plaintiff's cause of action accrued, and that its duty to indemnify under § 7-465 attaches only when its employee is found to be liable. The plaintiff counters that the notice of claim was timely filed under § 7-465.

"The municipality's liability [under § 7-465] is derivative." *Ahern v. New Haven,* 190 Conn. 77, 82, 459 A.2d 118 (1983). "While § 7-465 provides an indemnity to a municipal employee from his municipal employer in the event the former suffers a judgment under certain prescribed conditions, it is quite clear that the municipality does not assume the liability in the first instance." (Internal quotation marks omitted.) *Fraser v. Henninger,* 173 Conn. 52, 56, 376 A.2d 406 (1977). "A plaintiff bringing suit under General Statutes § 7-465 first must allege in a separate count and prove the employee's duty to the individual injured and the breach thereof. Only then may the plaintiff go on to allege and prove the town's liability by indemnification ... This is a personal liability requirement that calls for an inquiry independent of the statute itself, an inquiry into the factual matter of individual negligence ... Thus, in a suit under § 7-465, any municipal liability which may attach is predicated on prior findings of individual negligence on the part of the employee and the municipality's employment relationship with that individual." (Citations omitted; internal quotation marks omitted.) *Wu v. Fairfield,* 204 Conn. 435, 438, 528 A.2d 364 (1987).

***11** In the present case, the city's liability pursuant to § 7-465 is only derivative of the liability of its employees, Firn or Meyer-Farrell. There is no claim for indemnity since this court has concluded that the plaintiff's claims against Firn and Meyer-Farrell should be stricken. Therefore, count three is stricken. [9]

Count Four: Claims against the City of Milford under § 52-557n

The city moves to strike count four on the ground that it is entitled to governmental immunity under § 52-557n. The city argues that the plaintiff failed to allege sufficient facts to apply the identifiable person-imminent harm exception. The plaintiff counters that the alleged acts or omissions were ministerial and that, even assuming that it were discretionary, three exceptions to governmental immunity are applicable to this case.

"The tort liability of a municipality has been codified in § 52-557n. Section 52-557n(a)(1) provides that '[e]xcept as otherwise provided by law, a political sub-division of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties ...' Section 52-557n(a)(2)(B) extends, however, the same discretionary act immunity that applies to municipal officials to the municipalities themselves by providing that they will not be liable for damages caused by 'negligent acts or omissions which require the exercise of judgment or discretion as an official function

of the authority expressly or impliedly granted by law.' " *Violano v. Fernandez, supra,* 280 Conn. at 320. Thus, "[a] municipality is immune from liability for the performance of governmental acts as distinguished from ministerial acts ... Governmental acts are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature ... [M]inisterial acts are performed in a prescribed manner without the exercise of judgment or discretion ..." (Internal quotation marks omitted.) *Considine v. Waterbury,* 279 Conn. 830, 854, 905 A.2d 70 (2006).

In the present case, the plaintiff alleges that the city is liable for the negligent acts or omissions of its employees, including Firn and Meyer-Farrell, who were acting within the scope of their employment. The court has decided that the alleged acts or omissions by Firn and Meyer-Farrell were discretionary governmental acts and that the identifiable person-imminent harm exception is not applicable to the facts of the present case. Therefore, the city is entitled to the same immunity as its employees, Firn and Meyer-Farrell, under § 52-557n. Accordingly, count four is stricken.

Count Five: Against the Milford Board of Education under § 10-235

The board moves to strike count five claiming its liability for any negligent acts of Firn and Meyer-Farrell pursuant to § 10-235 on the ground that § 10-235 provides only an. indemnification cause of action for negligent employees of the board, but not a direct liability action. "Section 10-235 is also an indemnification statute contingent on a judgment's being obtained against a board member, teacher, employee or any member of the board's supervisory or administrative staff." *Burns v. Board of Education,* 30 Conn . App. 594, 602, 621 A.2d 1350 (1993), rev'd on other grounds, 228 Conn. 640, 638 A.2d 1 (1994). In the present case, since this court has decided that counts one and two asserting claims against Firn and Meyer-Farrell should be stricken, there is no claim for indemnity against the board. Consequently, count five is stricken.

***12** In conclusion both motions to strike are granted in their entirety.

All Citations

Not Reported in A.2d, 2007 WL 1893591, 43 Conn. L. Rptr. 701

Footnotes

1 General Statutes § 7-465(a) provides in relevant part: "Any town, city or borough ... shall pay on behalf of any employee of such municipality ... all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property ... if the employee, at the time of the occurrence ... was acting in the performance of his duties and within the scope of his employment, and if such occurrence, accident, physical injury or damage was not the result of any wilful or wanton act of such employee in the discharge of such duty ... No action for personal physical injuries or damages to real or personal property shall be maintained against such municipality and employee jointly unless such action is commenced within two years after the cause of action therefor arose nor unless written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality within six months after such cause of action has accrued."

2 General Statutes § 52-557n(a) provides in relevant part: "Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by ... [t]he negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties ..."

3 General Statutes § 10-235(a) provides in relevant part: "Each board of education shall protect and save harmless any member of such board or any teacher or other employee thereof or any member of its supervisory or administrative staff ... from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence ... or any other acts, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not wanton, reckless or malicious, provided such teacher, member or employee, at the time of the acts resulting in such injury, damage or destruction, was acting in the discharge of his or her duties or within the scope of employment or under the direction of such board of education ..."

4 General Statutes § 17a-101 provides in relevant part: "(a) The public policy of this state is: To protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse, investigation of such reports by a social agency, and provision of services, where needed, to such child and family. (b) The following persons shall be mandated reporters: Any physician or surgeon ... any registered nurse ... medical examiner, dentist, dental hygienist, psychologist, coach of intramural or interscholastic athletics, school teacher, school principal, school guidance counselor, school paraprofessional, school coach, social worker, police officer, juvenile or adult probation officer, juvenile or adult parole officer, member of the clergy, pharmacist, physical therapist, optometrist, chiropractor, podiatrist, mental health professional or physician assistant, any person who is a licensed or certified emergency medical services provider, any person who is a licensed or certified alcohol and drug counselor, any person who is a licensed marital and family therapist, any person who is a sexual assault counselor or a battered women's counselor ... any person who is a licensed professional counselor, any person paid to care for a child in any public or private facility, child day care center, group day care home or family day care home licensed by the state, any employee of the Department of Children and Families, any employee of the Department of Public Health who is responsible for the licensing of child day care centers, group day care homes, family day care homes or youth camps ..."

5 General Statutes § 17a-101e(b) provides: "Any person, institution or agency which, in good faith, makes, or in good faith does not make, the report pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103 shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report provided such person did not perpetrate or cause such abuse or neglect."

6 General Statutes § 17a-101a provides: "Any mandated reporter, as defined in section 17a-101, who in the ordinary course of such person's employment or profession has reasonable cause to suspect or believe that any child under the age of eighteen years (1) has been abused or neglected, as defined in section 46b-120, (2) has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon such child, or (3) is placed at imminent risk of serious harm, shall report or cause a report to be made in accordance with the provisions of sections 17a-101b to 17a-101d, inclusive. Any person required to report under the provisions of this section who fails to make such report shall be fined not less than five hundred dollars nor more than two thousand five hundred dollars and shall be required to participate in an educational and training program pursuant to subsection (d) of section 17a-101."

7 In paragraph nine of count one, the plaintiff expressly pleads that the acts of Firn were discretionary. The plaintiff states, however, that she reserves the right to amend this portion of her complaint.

8 See footnote 5.

9 Because of this decision by the court, it is not necessary to address the timeliness of the notice given by the plaintiff.