

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KRISTINA VELLAFANE, a minor : CIVIL ACTION
by and through her parent and :
natural guardian, BONNIE FIELDS :
and BONNIE FIELDS, in her own :
right :
 :
 :
v. :
 :
 :
FOUNDATIONS BEHAVIORAL HEALTH, :
et al. : NO. 03-1019

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 8, 2005

Defendant Foundations Behavioral Health

("Foundations")has moved for judgment on the pleadings. The facts are presented in the light most favorable to Plaintiffs. Because of psychological trauma and other consequences of mistreatment she has suffered, the minor plaintiff, Kristina Vellafane, was placed in a mental health facility operated by Foundations. While in that institution, Kristina was sexually assaulted by Sam Craft, a mental health technician employed at Foundations. Craft pled guilty to assaulting Kristina and three other patients. All of the incidents occurred between October of 2001, when Craft was hired, and January of 2002, when he was placed on leave.

Plaintiff's amended complaint asserts against Foundations negligence (essentially vicarious liability) and negligence in

hiring, supervising, and failing to promptly report the actions of Craft.

Foundations argues that it cannot be vicariously liable because Craft's acts were not within the scope of his employment. I agree. See Sanchez v. Montanez, 645 A.2d 383, 388 (Pa. Commwlth. Ct. 1994) (holding that "[t]here can be no doubt that [the employee's] actions were conducted for personal reasons only and were utterly outrageous in manner. Although we certainly commiserate with [the victim's] plight, we are obliged to follow and not reject the deeply entrenched law on this subject"). Plaintiffs' argument that his victims could have been led to believe that Craft was counseling them is not persuasive. Foundations is not vicariously liable for the despicable actions of Craft.

However, judgment is not warranted for Foundations on the negligent hiring, supervision, and reporting claim. Foundations argues that it had no reason to know that Craft had any propensity for inappropriate sexual conduct with patients, that it determined that he had no criminal record or other known problems before hiring him (other than learning that although he claimed to have a college degree, the college reported he was several credits short of fulfilling the degree requirements). See R.A. v. First Church of Christ, 748 A.2d 692 (Pa. Super. Ct. 2000) If the amended complaint rested solely on a hiring claim,

judgment might be appropriate. However, there is sufficient evidence for a finder of fact to conclude that Foundations failed to train and supervise Craft properly.

Although Foundations only employed Craft from October 2001 until January 2002, when the abuse came to light, Foundations admits that during this short period of time Craft twice was observed engaging in "horseplay" with female patients, including Kristina. See Def.'s Mem Law at 23, 24. The evidence of record would permit the conclusion that Foundations did not adequately supervise its employee and should have noticed something was amiss. Especially given the troubled and vulnerable nature of the patients at Foundations, it would not be unreasonable for a jury to conclude that Foundations should have supervised a new employee more carefully or ensured that he was not left alone with patients. For Foundations to argue, as it does, id. at 25-26, that Kristina, a 14 year old girl diagnosed as depressed and with possible suicidal ideation, contributed to the abuse by using subterfuge to be with Craft, evinces a disturbing attitude toward the patients in its care. It is for the fact finder to determine to whether Foundations properly supervised Craft.

Foundations also argues that under the Mental Health Procedures Act, 50 P.S. § 7114, it has limited immunity in the absence of willful misconduct or gross negligence for claims brought under the Act. It does not appear, however, that

Plaintiffs are proceeding under this statute, and it therefore does not apply.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KRISTINA VELLAFANE, a minor : CIVIL ACTION
by and through her parent and :
natural guardian, BONNIE FIELDS :
and BONNIE FIELDS, in her own :
right :
 :
 :
v. :
 :
 :
FOUNDATIONS BEHAVIORAL HEALTH, :
et al. : NO. 03-1019

ORDER

AND NOW, this 8th day of June 2005, upon
consideration of Defendant, Foundations Behavioral Health's
Motion for Judgment on the Pleadings, and the response thereto,

IT IS ORDERED that the Motion is GRANTED IN PART and DENIED
IN PART. To the extent Plaintiffs seek to hold Foundations
vicariously liability for the actions of Sam Craft, the motion is
GRANTED. In all other respects, the Motion is DENIED.

BY THE COURT:

/s/John P. Fullam, Sr. J.
John P. Fullam, Sr. J.