Logan et al v. Sycamore Community School Board of Education et al Doc. 109

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CYNTHIA A. LOGAN, et al.,	:	NO. 1:09-CV-00885
Plaintiffs,	:	
v.	:	**OPINION AND ORDER**
SYCAMORE COMMUNITY SCHOOL BOARD OF EDUCATION,	:	
Defendant.	:	

This matter is before the Court on Defendant's Motion for Summary Judgment (doc. 79), Plaintiffs' Response in Opposition (doc. 98), and Defendants' Reply (doc. 107). For the reasons indicated herein, the Court DENIES in part and GRANTS in part Defendant's Motion for Summary Judgment.

I. Background

Plaintiffs are parents of decedent Jessica Logan, ("Logan"), who committed suicide on July 3, 2008, after allegedly suffering harassment from other high school students who were allegedly "sexting"[1] a nude picture of Logan among themselves (doc. 1). Logan was a senior at Sycamore High School ("SHS") during the 2007-2008 school year (doc. 98).

Plaintiffs brought suit against the students who allegedly harassed decedent; against Sycamore Community School District Board of Education for failing to protect Logan from

[1]"Sexting" is the act of sending sexually explicit messages or photographs, primarily between mobile phones.

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harassment; and against School Resource Officer Paul Payne as well as Payne's employer, the City of Montgomery. The students have since settled with Plaintiffs (doc. 66). This court granted Defendants' Officer Payne and the City of Montgomery's Motion for Summary Judgment and found that Officer Payne was entitled to qualified immunity (doc. 70).

In the instant motion, Defendant Sycamore Community School District Board of Education ("Sycamore") moves for summary judgment on all of plaintiff's claims (doc. 79). Sycamore argues that no Sycamore employees or Board members had knowledge of the harassment, and thus there is no evidence to support plaintiff's claims of unconstitutional treatment, discrimination, or negligence (Id.).

Plaintiffs oppose Defendant's motion, arguing that there are material facts in dispute that preclude summary judgment from being granted (doc. 98). Defendant has replied (doc. 107), such that this matter is ripe for consideration.

II. Applicable Legal Standard

Although a grant of summary judgment is not a substitute for trial, it is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56; see also, e.g.,

Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464 (1962); LaPointe v. United Autoworkers Local 600, 8 F.3d 376, 378 (6th Cir. 1993); Osborn v. Ashland County Bd. of Alcohol, Drug Addiction and Mental Health Servs., 979 F.2d 1131, 1133 (6th Cir. 1992) (per curiam). In reviewing the instant motion, "this Court must determine whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Patton v. Bearden, 8 F.3d 343, 346 (6th Cir. 1993), quoting in part Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986) (internal quotation marks omitted).

The process of moving for and evaluating a motion for summary judgment and the respective burdens it imposes upon the movant and the non-movant are well settled. First, "a party seeking summary judgment ... bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact [.]" Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); see also LaPointe, 8 F.3d at 378; Guarino v. Brookfield Township Trustees, 980 F.2d 399, 405 (6th Cir. 1992); Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989). The movant may do so by merely identifying that the non-moving party lacks evidence to support an essential element of its case. See Barnhart v. Pickrel,

Schaeffer & Ebeling Co., L.P.A., 12 F.3d 1382, 1389 (6th Cir. 1993).

Faced with such a motion, the non-movant, after completion of sufficient discovery, must submit evidence in support of any material element of a claim or defense at issue in the motion on which it would bear the burden of proof at trial, even if the moving party has not submitted evidence to negate the existence of that material fact. See Celotex, 477 U.S. at 317; Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). As the "requirement [of the Rule] is that there be no genuine issue of material fact," an "alleged factual dispute between the parties" as to some ancillary matter "will not defeat an otherwise properly supported motion for summary judgment." Anderson, 477 U.S. at 247-248 (emphasis added); see generally Booker v. Brown & Williamson Tobacco Co., Inc., 879 F.2d 1304, 1310 (6th Cir. 1989). Furthermore, "[t]he mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." Anderson, 477 U.S. at 252; see also Gregory v. Hunt, 24 F.3d 781, 784 (6th Cir. 1994). Accordingly, the non-movant must present "significant probative evidence" demonstrating that "there is [more than] some metaphysical doubt as to the material facts" to survive summary judgment and proceed to trial on the merits. Moore v. Philip Morris Cos., Inc., 8 F.3d 335, 339-340 (6th Cir. 1993); see

also Celotex, 477 U.S. at 324; Guarino, 980 F.2d at 405.

Although the non-movant need not cite specific page numbers of the record in support of its claims or defenses, "the designated portions of the record must be presented with enough specificity that the district court can readily identify the facts upon which the non-moving party relies." Guarino, 980 F.2d at 405, quoting Inter-Royal Corp. v. Sponseller, 889 F.2d 108, 111 (6th Cir. 1989) (internal quotation marks omitted). In contrast, mere conclusory allegations are patently insufficient to defeat a motion for summary judgment. See McDonald v. Union Camp Corp., 898 F.2d 1155, 1162 (6th Cir. 1990). The Court must view all submitted evidence, facts, and reasonable inferences in a light most favorable to the non-moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); United States v. Diebold, Inc., 369 U.S. 654 (1962). Furthermore, the district court may not weigh evidence or assess the credibility of witnesses in deciding the motion. See Adams v. Metiva, 31 F.3d 375, 378 (6th Cir. 1994).

Ultimately, the movant bears the burden of demonstrating that no material facts are in dispute. See Matsushita, 475 U.S. at 587. The fact that the non-moving party fails to respond to the motion does not lessen the burden on either the moving party or the Court to demonstrate that summary judgment is appropriate. See Guarino, 980 F.2d at 410; Carver v. Bunch, 946 F.2d 451, 454-455

(6th Cir. 1991).

III. Analysis

Plaintiff maintains three claims against Defendant Sycamore School District: 1) that Sycamore was deliberately indifferent to the sexual harassment of Logan in violation of Title IX; 2) that Sycamore violated Logan's due process and equal protection rights under 42 U.S.C. § 1983 by responding to Logan's complaints of harassment differently than those of other students; and, 3) that Sycamore negligently inflicted severe emotional distress on Logan and her parents (doc. 98). Taking all inferences in the light most favorable to the non-moving party, as the Court is required to do upon a summary judgment motion, Matsushita Elec. Indus. Co., 475 U.S. 574, 587,the Court concludes the evidence on the first two claims presents a sufficient disagreement to require submission to a jury. Patton v. Bearden, 8 F.3d 343, 346 (6th Cir. 1993). For the reasons discussed below, the Court finds the evidence is not so one-sided that Defendant must prevail as a matter of law. Id. However, the Court finds that Sycamore is entitled to immunity as a political subdivision of the state of Ohio with regard to the negligent infliction of emotional distress claim. In the interest of efficiency and clarity, the Court will address the parties' arguments by claim after a brief overview of relevant factual contentions.

A. Factual Background

Plaintiffs allege that on or around May 5, 2008, Jessica Logan and her friend Lauren Taylor, ("Taylor"), went to the counselor's office where they informed student counselors that a nude photo of Logan was circulating around the school (doc. 98). According to Plaintiffs, Logan and Taylor spoke with counselor intern Elizabeth Vorholt, who referred Logan to another counselor, Brenda Fisher (Id.). Plaintiffs allege the Logan and Taylor told counselor Fisher a nude photo of Logan was being sent around school and they wanted it to stop (Id.). Fisher then gave them a pass to see the School Resource Officer, a City of Montgomery Police Officer, Paul Payne (Id.). While Fisher testified she did not remember if she met with Logan, there was a note in her planner on May 7, 2008 with Logan's name (Id.). Counselor Canter testified he met with two girls on May 6, 2008 who asked about how to stop someone from texting private information. Since he was unavailable to meet with them, he told them to talk to Officer Payne who happened to be nearby (doc. 79). On May 7, Logan and Taylor went back to the counselor's office to meet with a counselor, but counselor Susan Warm was not able to meet with Logan that day (doc. 98, doc. 107).

On May 5, 2008, Logan informed Officer Payne that her nude photograph had been sent to students at SHS by students at Loveland High School ("LHS") (doc. 98). Payne documented this

conversation in a police incidence report stating that the photo was sent "to several students at Loveland and Sycamore HS during school" (doc. 98). Payne testified that Logan was upset and angry about the photo being out at SHS and text messages she received about the photograph (Id.). However, neither Taylor nor Logan identified any student at SHS who had circulated the photo (doc. 79). On May 6, 2008, after speaking with the LHS students identified by Logan, Payne spoke with some SHS principals about what had happened at LHS (doc. 79).

Taylor testified that she had seen students in her ceramics class hold up their cell phones, presumably looking at Logan's photo, and overheard students calling Logan a "whore" and saying "what does she think she is, a porn star?" (doc. 79). Taylor stated in her deposition that she told Payne the names of the girls in her ceramics class who had the photo on their phones and that Payne told her he would have them delete the photo from their phones (doc. 98).

Sycamore also notes that Michael Anderson, an Academic or Comprehensive Counselor at SHS, met with Logan during her senior year about meeting her graduation requirements (doc. 79). Anderson contends no one reported to him that Logan was having trouble with bullying about the photograph or about sexting (Id.). Similarly, SHS Teacher Tom Beschler spoke with Mrs. Cynthia Logan about Jessica Logan's truancy sometime between May 6, 2008 and SHS

graduation (doc. 79). Mrs. Logan testified that she told Beschler that Jessica Logan was being "extremely harassed" but did not mention the photo, or describe the harassment. Beschler testified he was not aware of the naked photograph at that time, and that Jessica Logan never mentioned she did not like going to school because of harassment (doc. 79).

Jessica Logan participated in a television interview on the subject of "sexting" (doc. 1). Plaintiffs allege that after the interview aired, Logan's harassment became worse (Id.). Students allegedly chastised her with epithets and derogatory remarks, threw things at her while she was at school and at school-sponsored events, harassed her by phone and online, and even threw things at her during her graduation ceremony (Id.).

Plaintiff contends that Associate Principal Skoog also knew the photo was being circulated at SHS (doc. 98). Plaintiff further contends that several administrators saw the television interview about sexting with Jessica Logan and knew the crying student was Jessica Logan despite her disguised voice and covered face (doc. 98). Plaintiffs argue that Superintendent James saw Jessica Logan cry in the television interview, knew she was upset about the photo being circulated and related harassment, but assumed none of this occurred at SHS and so failed to ask anyone to investigate whether harassment was occurring at SHS (doc. 98).

As a result of the above incidents, Plaintiffs contend

that SHS officials knew a naked photograph of Jessica Logan was circulating among the students at SHS (doc. 98). Officer Payne informed all five principals at SHS about the photo and Jennifer Ulland, the Dean of Students, testified that she learned from Officer Payne that the photo was circulating around SHS (doc. 98).

Sycamore contends that since neither Payne or Taylor saw the photograph, Plaintiffs' statement that the photograph was sent to Sycamore students is pure speculation (doc. 107). As a result, Defendant contends that school officials could not have had notice that Logan's picture was circulating at SHS or that Logan was facing harassment from SHS students (doc. 79).

B. Title IX

Title IX provides:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ."

20 U.S.C. §1681 (a). To establish a claim of recipient misconduct under Title IX, the plaintiff must demonstrate:

> (1) the sexual harassment was so severe, pervasive, and objectively offensive that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided by the school,
>
> (2) the funding recipient had actual knowledge of the sexual harassment, and
>
> (3) the funding recipient was deliberately indifferent to the harassment.

Patterson v. Hudson Area Schools, 551 F.3d 438, 444-45 (6th Cir.

2009) (citing Vance v. Spencer County Public Sch. Dist., 231 F.3d 253, 258-59 (6th Cir. 2000). Furthermore, a "damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond." Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998).

Defendant contends reasonable minds could not conclude that the Board or any of its employees possessed knowledge that SHS students had subjected Logan to sexual harassment (doc. 79). Defendant argues there is no evidence that Jessica Logan or her friend Lauren Taylor made a report of sexual harassment to anyone. Defendant points out that Officer Payne was not a Board employee and contends that Payne did not tell SHS administrators that any SHS students had received the photo or were harassing Logan (doc. 79).

Defendant also contends that Mrs. Logan's statements to teacher Beschler do not establish knowledge of "sexual harassment" as nothing sexual or gender-related was conveyed to Beschler (doc. 79). Defendant argues the alleged communications between Logan and Taylor and the three non-employees Payne, Fisher, and Vorholt did not involve a report of sexual harassment and did not result in notice to any Board employee of sexual harassment. According to

Defendant, the evidence does not demonstrate the Board was deliberately indifferent to any student-on-student harassment of Logan, and therefore Plaintiffs cannot establish any of the elements of a Title IX claim (doc. 79).

On the other hand, Plaintiffs insist they have submitted sufficient facts for this Court to deny summary judgment on the Title IX claim, and, viewing all submitted evidence, facts, and reasonable inferences in a light most favorable to the non-moving party, See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), this Court agrees. The names ("porn queen," "slut," "whore," etc.,) that Logan was allegedly called after the photo began circulating support Plaintiff's contention that Logan was sexually harassed (doc. 98). Plaintiff contends Principal Davis, Dean Ulland, and the Associate Principals are all appropriate persons as they each had authority and responsibility under school district policies to investigate sexual harassment complaints and enforce sexual harassment and bullying policies (doc. 98). Plaintiff also contends these individuals either knew Logan's photograph was circulating at SHS or viewed the television interview where Logan described the harassment she faced at school (Id.).

While the Sixth Circuit has not addressed what constitutes notice in a Title IX case, several district courts in the circuit have held that the appropriate persons do not need to

be aware of the exact details of a plaintiff's experience to have notice, as long as they "reasonably could have responded with remedial measures to address the kind of harassment" that was reported. Johnson v. Galen Health Institutes, 267 F. Supp.2d 679, 687 (W.D. Ky. 2003), see also Massey v. Akron City Bd. of Educ., 82 F. Supp.2d 735, 744 (N.D. Ohio 2000). Applying this standard, Plaintiff has demonstrated that material facts are in dispute as to whether appropriate persons had actual notice of Logan's harassment, whether the school district was deliberately indifferent to the harassment, and whether Logan was deprived of access to education as a result of the harassment (doc. 98).

C. 42 U.S.C. § 1983

Plaintiffs allege Sycamore violated Logan's due process and equal protection rights pursuant to 42 U.S.C. § 1983. Sycamore responds that Plaintiffs cannot establish municipal liability upon the Board, and therefore cannot establish a claim under Section 1983, which requires Plaintiffs to "identify a right secured by the United States Constitution and deprivation of that right by a person acting under color of state law." Russo v. City of Cincinnati, 953 F.2d 1036, 1042 (6th Cir. 1992) citing West v. Atkins, 487 U.S. 42, 48 (1988). This Court must consider: (1) whether Plaintiff have asserted the deprivation of a constitutional right and (2) whether the Board is responsible for that deprivation. Doe v. Claiborne County, 103 F.3d 495, 505-06 (6th

Cir. 1996) (overruled on other grounds). To establish the Board's liability, Plaintiff must demonstrate "that an officially executed policy, or the toleration of a custom within the school district" led to, caused, or resulted in the deprivation of a constitutionally protected right." Doe, 103 F.3d at 507. Defendant argues there is no evidence establishing the existence of such a policy or custom at Sycamore (doc. 79).

Plaintiffs have submitted sufficient facts for this Court to deny summary judgment on the Section 1983 claim. Specifically, Plaintiffs assert deprivation of Logan's constitutional right to equal protection by treating her complaints of harassment differently from the complaints of others (doc. 98). In addition, Plaintiffs allege Principal Davis is the final policymaker for implementing the sexual harassment policy at SHS and his actions in implementing the policy bind the Board (doc. 98). The Court has determined that there are material facts in dispute regarding whether a final policymaker executed a policy that resulted in the deprivation of Logan's rights, including questions of which school officials were aware of the harassment, which preclude granting Defendant's motion for summary judgment on this claim.

D. Negligent Infliction of Emotional Distress

Plaintiffs allege that Sycamore negligently inflicted severe emotional distress on Jessica Logan and Mr. And Mrs. Logan (doc. 1). Defendant contends that Sycamore is immune from this

tort liability under Ohio Revised Code Chapter 2744 (doc. 79). The Court agrees.

A school district is a political subdivision, and Chapter 2744 of the Ohio Revised Code codifies tort liability for political subdivisions. R.C. §2744.01(F). Determining whether a political subdivision is immune from tort liability under Ohio involves a well-established three-tiered analysis. See, e.g., O'Toole v. Denihan, 118 Ohio St. 3d 374, 381 n.2 (Ohio 2008). "The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental function or proprietary function." Cramer v. Auglaize Acres, 865 N.E.2d 9, 13 (Ohio 2007), quoting Colbert v. Cleveland, 790 N.E.2d 781, 783_(Ohio 2003). In this case, Defendant Sycamore qualifies for immunity under the first tier as it was performing the governmental function of operating a public school. R.C. §2744.01(C)(2)(c). However, the "second tier of the analysis requires a court to determine whether any of the five exceptions to immunity listed in R.C. §2744.02(B) apply to expose the political subdivision to liability." Cramer, 865 N.E.2d at13, quoting Colbert, 790 N.E.2d at 783. The five exceptions listed in R.C. §2744.02(B) are aptly summarized by the Defendant as follows:

1. Negligent operation of a motor vehicle by a governmental employee;

2. Negligent performance of a proprietary function;

3. Negligent failure to keep the public roads open and in repair;
4. Negligence of employees that occurs in the buildings or on the grounds of the political subdivision and is due to physical defects within or on the grounds;
5. Express imposition of liability by statute.

(doc. 79). Defendant contends plaintiffs have put forth no evidence that Sycamore falls within one of these exceptions of immunity (doc. 79). Therefore, the immunity analysis is at an end (doc. 107). Plaintiffs counter that the Defendant's analysis ignores the third tier of the Chapter 2744 analysis, which, in the Plaintiffs' view provides the school district is not immune if the injury resulted from an act or omission that was reckless (doc. 98, citing R.C. § 2744.03(A)(5)).

The Court, after carefully reviewing Ohio law on political subdivision immunity, agrees with the Defendant. Since the Plaintiffs have failed to demonstrate, or even claim, that Sycamore's actions fall within one of the five exceptions to immunity in R.C. §2744.02(B), Sycamore is entitled to immunity and the analysis is at an end. See O'Toole v. Denihan, 118 Ohio St. 3d 374, 386 (Ohio 2008) ("[A] political subdivision's immunity can be removed only through one of the enumerated exceptions found in R.C. 2744.02(B)(1) through (5)"); Fincham v. Geauga County Bd. of Health, 2011 Ohio 5338, P49 (Ohio Ct. App. Oct. 14, 2011) ("Under the three-tier analysis, the end of inquiry is reached when the

acts or omissions of a political subdivision do not fit under any of the five exceptions enumerated in R.C. 2744.02(B). In other words, the courts do not engage in the third-tier analysis regarding available defenses provided in R.C. 2744.03, if no exception under R.C. 2744.02(B) can be found to remove the general grant of immunity."); Roberts v. Columbus City Police Impound Div.,958 N.E.2d 970, 975 (Ohio Ct. App. 2011) ("Without any grounds for liability under R.C. 2744.02(B), there is no occasion to even consider R.C. 2744.03.").

While Plaintiffs attempt to establish Sycamore's liability through R.C. § 2744.03(A)(5), Ohio courts have held that "the defenses and immunities under R.C. 2477.03 are only available as a defense to liability, not as a direct way to establish liability." Wright v. Mahoning County Bd. of Comm'rs, 2009 Ohio 561, P32 (Ohio Ct. App., Mahoning County Feb. 5, 2009). Therefore, the Court finds that Defendant Sycamore is entitled to summary judgment on this claim.

IV. Conclusion

In summary, the Court concludes that genuine issues of material fact preclude summary judgment for Sycamore on Plaintiffs claims under Title IX and Section 1983. However, the Court finds that Sycamore is entitled to immunity on the negligent infliction of emotional distress claim. Accordingly, the Court GRANTS in part and DENIES in part Defendant's Motion for Summary Judgment (doc.

79), such that Plaintiffs' federal claims remain, while their state law claim is dismissed. The Court further sets this matter for final pretrial conference on July 17, 2012 at 2:00 P.M., and for four-day jury trial to commence August 14, 2012, on an on-deck basis.

SO ORDERED.

Dated: June 5, 2012

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge