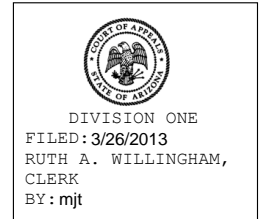


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



PLACIDA MALDONADO, individually) 1 CA-CV 12-0107
and as statutory beneficiary of)
SAMUEL VALDIVIA, deceased,) DEPARTMENT D
)
Plaintiffs/Appellants,) **MEMORANDUM DECISION**
) (Not for Publication-
v.) Rule 111, Rules of the
) Arizona Supreme Court)
THE STATE OF ARIZONA; ARIZONA)
STATE BOARD OF EDUCATION, an)
agency of the State of Arizona;)
THE LEONA ARIZONA EMPLOYMENT)
GROUP, LLC dba El Dorado High)
School, a private company,)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CV2010-011572

The Honorable Mark H. Brain, Judge

AFFIRMED

Aiken Schenk Hawkins & Ricciardi P.C. Phoenix
By J. Tyrrell Taber
And Robert C. VanVoorhees
Attorneys for Plaintiffs/Appellants

Iafrate & Associates Phoenix
By Michele M. Iafrate
And Rebecca Smith Masterson
Attorneys for Defendants/Appellees
State of Arizona and Arizona State Board of Education

Grasso Law Firm, P.C. Chandler

By Robert Grasso, Jr.
And Kim S. Alvarado
Attorneys for Defendant/Appellee
Leona Arizona Employment Group, LLC

T H O M P S O N, Judge

¶1 Placida Maldonado (Maldonado) appeals the trial court's grant of summary judgment in favor of defendants Leona Arizona Employment Group, LLC (Leona), State of Arizona and Arizona State Board of Education (ASBE) (state defendants). For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Maldonado's nineteen-year-old son, Sammy, was stabbed to death by Sixto Balbuena, Jr. (Balbuena) in the early morning hours of April 10, 2009 at the home of Tamara Hofmann (Hofmann). Hofmann was Sammy's teacher at El Dorado High School, a charter school run by Leona. Balbuena was Hofmann's fiancé; he was on leave from the navy when he entered Hofmann's home and stabbed Sammy.

¶3 Prior to Sammy's death, Hofmann had been Balbuena's teacher in the Tempe Union High School District (TUHSD) when police found her alone in a car with Balbuena in November 2006. Earlier that year, a parent complained to TUHSD that Hofmann might be having an inappropriate relationship with a student and might be purchasing alcohol for students. TUHSD commenced an

investigation and advised ASBE of the investigation. Hofmann was disciplined but not terminated by TUHSD; she resigned at the end of the school year and was hired to teach at El Dorado the next school year.

¶4 Balbuena was convicted of second degree murder and sentenced to ten years in prison. In April 2010, Maldonado filed this civil action against Leona, the state defendants, the Arizona State Board of Charter Schools (ASBCS), TUHSD, Hofmann, and Balbuena, alleging various tort claims.

¶5 Leona, the state defendants, and ASBCS filed motions for summary judgment. Prior to the trial court's ruling on the motions for summary judgment, all claims against TUHSD were voluntarily dismissed with prejudice. All claims against ASBCS were dismissed without prejudice by stipulation of the parties. A claim for infliction of emotional distress was voluntarily dismissed as to the state defendants and Leona in September 2011. Additionally, in October 2011, the parties stipulated to dismiss the negligence and negligence per se claims against the state defendants and Leona, with the understanding that negligence would still be the underlying basis for Maldonado's wrongful death claim as to those defendants. Thus, the only claim remaining as to the state defendants and Leona when the trial court ruled on their motions for summary judgment in October 2011 was the wrongful death claim.

¶6 The trial court granted the state defendants' and Leona's motions for summary judgment, ruling that Sammy's death was unforeseeable, and that Balbuena was an intervening, superseding cause of Sammy's death. Maldonado timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003) and 12-2101(A)(1) (Supp. 2012).

DISCUSSION

¶7 Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c)(1). We review the grant of summary judgment de novo to determine whether any genuine issue of material fact exists, and we view the evidence and all reasonable inferences in favor of the nonmoving party. *Chalpin v. Snyder*, 220 Ariz. 413, 418, ¶ 17, 207 P.3d 666, 671 (App. 2008) (citation omitted). Summary judgment should be granted "if the facts produced in support of [a] claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). We will affirm the trial court's decision if it is correct for any reason. *Hill v. Safford Unified Sch. Dist.*, 191 Ariz. 110, 112, 952 P.2d 754, 756 (App. 1997) (citations

omitted). We will affirm summary judgment “when no reasonable juror could conclude that the standard of care was breached or that the damages were proximately caused by the defendant’s conduct.” *Grafitti-Valenzuela v. City of Phoenix*, 216 Ariz. 454, 458, ¶ 13, 167 P.3d 711, 715 (App. 2007) (citation omitted).

¶8 A school owes a duty to its students and must “exercise reasonable care in light of foreseeable and unreasonable risks.” *Hill*, 191 Ariz. at 112, 952 P.2d at 756. Maldonado contends that Leona created an unreasonable risk to Sammy by hiring Hofmann. She argues “[h]ad Leona properly done an investigation into Hofmann’s teaching history, it would not have hired Hofmann. Had Hofmann not been hired, she would not have met Valdivia nor been in the position of trust and confidence with Valdivia that enabled her to seduce him, and lure him to his death that night.” With regard to the state defendants, Maldonado argues that the state failed to exercise reasonable care in maintaining the website that Leona relied on in hiring Hofmann, and failed to adequately investigate the 2006 allegations and suspend or decertify Hofmann.

¶9 In ruling on the motion for summary judgment, the trial court concluded that Sammy’s death was outside of the scope of Leona and the state defendants’ liability:

[T]he court finds Sammy’s death

extraordinary. The risk posed by Hofmann was that she would engage in an improper relationship with a student. The principal events which plaintiff claims result in liability are two steps removed from that risk. First, on the record presented, no reasonable person would foresee that Hofmann would place Sammy in direct contact with Sixto, the third corner of a lover's triangle. Second, no reasonable person would foresee that Sixto would kill Sammy as a result. Sixto's criminal actions were extreme, unforeseeable and extraordinary, even with the benefit of hindsight. As such, Sixto was an intervening, superseding cause of Sammy's death, even viewing the record in the light most favorable to plaintiff and granting plaintiff the benefit of the doubt on all reasonable inferences from the evidence presented.

¶8 We find no error in the trial court's decision. In this case, no reasonable juror could conclude that Sammy's death was proximately caused by Leona's allegedly negligent hiring of Hofmann or the state defendants' allegedly negligent conduct in failing to maintain the database relied on by Leona or discipline Hofmann. Sixto Balbuena's murder of Sammy was an extraordinary superseding intervening cause. See *Robertson v. Sixpence Inns of America, Inc.*, 163 Ariz. 539, 546, 789 P.2d 1040, 1047 (1990) ("A superseding cause, sufficient to become the proximate cause of the final result and relieve defendant of liability for his original negligence, arises only when an intervening force was unforeseeable and may be described, with the benefit of hindsight, as extraordinary.") (citations

omitted). "As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability." W. Page Keeton et al., *Prosser & Keeton on the Law of Torts* 264 (5th ed. 1984). See also *Carlston v. United States*, 671 F. Supp. 1324 (D.N.M. 1987) (school's acts or omissions did not proximately cause student's death where felonious criminal conduct of a third party was an intervening cause). Sammy's murder by Balbuena, while tragic, was not proximately caused by the defendants' alleged negligence.

¶11 For the foregoing reasons, we affirm the grant of summary judgment in favor of the state defendants and Leona.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

DONN KESSLER, Judge