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RE: Catherine D. Murdoch, As Next Friend of Amanda E. Murdoch, A Minor Child v. Camp Arrowhead Church Camp, An Unincorporated Association, The Diocesan Council, Inc., A Delaware Corporation, D/B/A The Episcopal Diocese of Delaware and Camp Arrowhead Church Camp; Gabriel Lee Clouser; and Nanese A. Hawthorne
C.A. No.: 02C-06-018

Dear Counsel:

This is the Court's opinion on Defendant Nanese Hawthorne's Motion for Judgment on the Pleadings and to Dismiss for Failure to State a Claim and Defendants Camp Arrowhead Church Camp, the Diocesan Council, Inc., and the Episcopal Diocese of Delaware's Motion to Dismiss in this personal injury action.[1] For the reasons stated herein, the Defendants' Motions are granted and Plaintiff's complaint is dismissed pursuant to 19 Del. C. § 2304, the exclusivity

[1]Defendant Gabriel Lee Clouser does not oppose his co-defendants' Motions to Dismiss and did not file a response.

provision of Delaware's Workers' Compensation law.

FACTUAL BACKGROUND

In June 2000, Amanda E. Murdoch (the "Daughter"), a minor, was employed as a camp counselor by Camp Arrowhead Church Camp ("Camp Arrowhead") in Lewes, Delaware. The Daughter was fifteen years old at the time of her employment. Camp Arrowhead is an unincorporated association owned and operated by The Diocesan Council, Inc. (the "Diocesan Council"). The Daughter, her mother, Catherine D. Murdoch (the "Mother"), and Camp Arrowhead's director signed a Staff Employment Agreement (the "Agreement") on May 5 and 31, 2000, respectively. The Daughter agreed to work from June 11 to August 14, 2000, as a camp counselor. The Agreement stated that "food and lodging will be provided" to the Daughter. Furthermore, the Agreement stipulated:

> staff members will be *required to remain on the premises* of the camp, excepting special nights off given to the entire staff at times during the summer, or, emergencies.
> Since the proper supervision of children in the camp is a twenty-four hour job, you will be *on call at all times* at the discretion of the Camp Director or other authorized persons.[2]

The Murdochs allege the Daughter was sexually propositioned by Mark ("Mark"),[3] an employee of Camp Arrowhead, on June 13, 2000. The Daughter claims that the following night, during an overnight staff camping trip on Camp Arrowhead's grounds, she was sexually assaulted. Nanese A. Hawthorne ("Hawthorne"), a supervisor at Camp Arrowhead, denies that

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[2]The Murdochs dispute these hours, alleging the Daughter only worked from 8 a.m. until 8 p.m.

[3]The Murdochs do not know Mark's last name.

an overnight staff camping trip occurred, but concedes there was a staff campfire event. The Daughter allegedly informed Hawthorne of Mark's unwanted sexual advances on June 15, 2000, whereupon Hawthorne urged her to deal independently with Mark's advances. Hawthorne denies this conversation. According to the Murdochs, Hawthorne's failure to investigate or respond to the Daughter's complaints about Mark was in reckless disregard of the Daughter's personal rights and safety. The Murdochs also claim that on June 21, 2000, the Daughter approached Hawthorne and requested to move to another cabin because she was the sole occupant of her cabin. It is the Murdochs' contention that Hawthorne's failure to respond to the Daughter's concerns led to a sexual relationship between the Daughter and Gabriel Lee Clouser ("Clouser"), a nineteen year old employee of Camp Arrowhead. The Daughter considered Clouser the camp's night supervisor, but Clouser and Hawthorne state he only supervised a small maintenance staff. The Daughter's relationship with Clouser allegedly began after she sought Clouser's advice following the alleged sexual assault at the campfire event. Also, the Daughter confided to Clouser that she did not want to be her cabin's sole occupant and asked Clouser to move her into a cabin with other female staff members. Clouser neither investigated the Daughter's claim of sexual assault nor moved her to another cabin. In spite of his inaction, Clouser assured the Daughter that he would protect her. Thereafter, from June 22, 2000, to July 18, 2000, the Daughter and Clouser engaged in a sexual relationship.[4] All encounters occurred in the Daughter's cabin. During this relationship, the Daughter became withdrawn and emotionally upset. She eventually left Camp Arrowhead. According to the Murdochs, the Daughter's

[4]Clouser admits that he had "a relationship" with the Daughter, but he does not elaborate on the character of this involvement.

relationship with Clouser led to emotional, psychological, and physical injuries, the loss of self-esteem, and pain and suffering. Hawthorne did not investigate the alleged changes in the Daughter's behavior, as Hawthorne contends she was not informed of the sexual relationship or the Daughter's mental health issues.

PROCEDURAL BACKGROUND

The Mother, as the Daughter's Next Friend, filed suit against Camp Arrowhead, the Diocesan Council, d/b/a The Episcopal Diocese of Delaware and Camp Arrowhead, Clouser, and Hawthorne on June 11, 2002. The Mother alleges that actions by Camp Arrowhead, the Diocesan Council, Clouser, and Hawthorne recklessly and negligently disregarded the Daughter's personal rights and safety. The Murdochs also allege that Clouser's decision to engage in a sexual relationship with the Daughter intentionally inflicted emotional distress upon the Daughter, invaded the Daughter's privacy, and was negligence per se. Clouser has filed cross-claims for contribution and indemnification from his co-defendants.

Hawthorne filed a Motion for Judgment on the Pleadings and to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted on December 13, 2002. Hawthorne alleges that Delaware's Workers' Compensation system ("Workers' Compensation") bars this negligence claim against her because she, like the Daughter, was employed by Camp Arrowhead. Hawthorne dismisses the notion she had a duty to protect the Daughter. Thus, Hawthorne contends the Murdochs have failed to state a claim for which relief can be granted. Furthermore, Hawthorne denies any knowledge of the sexual assaults on the Daughter or the Daughter's

declining mental health.

Camp Arrowhead and the Diocesan Council followed with a Motion to Dismiss on December 16, 2002. Camp Arrowhead and the Diocesan Council allege that the Murdochs' tort complaint is barred by Workers' Compensation's exclusivity provision because the Daughter was injured in the scope and course of her employment with Camp Arrowhead. Furthermore, as Camp Arrowhead did not intentionally harm Murdoch, there are no exceptions that would remove the Daughter from the bar created by 19 Del. C. § 2304.

The Murdochs contend that the Daughter was off-duty and not acting in the course of her employment when she was sexually assaulted by Clouser. They argue the personal dispute exception to the exclusivity provision applies to this situation because the Daughter's relationship with Clouser was personal, and not related to her job. According to the Murdochs, the fact both parties were employed by Camp Arrowhead is irrelevant and does not grant the Workers' Compensation Board jurisdiction over this dispute.

STANDARD OF REVIEW

Although Defendants Hawthorne, Camp Arrowhead, and the Diocesan Council have filed motions to dismiss this lawsuit, the parties have submitted evidence outside of the pleadings, including an employment contract and correspondence from Clouser to the Daughter. Consequently, the Motions to Dismiss will be considered motions for summary judgment. Summary judgment may be granted only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact. Moore v. Sizemore, 405 A.2d 679, 680 (Del. 1970). Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact. Id. at 681.

Where the moving party produces an affidavit or other evidence sufficient under Super. Ct. Civ. R. 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of his or her case, then summary judgment must be granted. Burkhart v. Davies, 602 A.2d 56, 59 (Del. 1991), cert. den., 112 S. Ct. 1946 (1992); Celotex Corp. v. Catrett, supra. If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate. Ebersole v. Lowengrub, 180 A.2d 467, 470 (Del. 1962). This Court will now determine whether summary judgment is appropriate in this instance.

DISCUSSION

At issue is whether the Murdochs' action against the Defendants is barred by 19 Del. C. § 2304, Workers' Compensation's exclusivity provision. According to 19 Del. C. § 2304:

> Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by [the Workers' Compensation statute] to pay and to accept compensation for personal injury or death by accident *arising out of and in the course of employment*, regardless of the question of negligence and to the exclusion of all other rights and remedies.

Workers' Compensation guarantees employees compensation for work-related injuries without regard to fault, and relieves the expense and uncertainty of civil litigation. Kofron v. Amoco Chems. Corp., 441 A.2d 226 (Del. 1982). Since its inception, Workers' Compensation has been compulsory and has covered every employer and employee. Walker v. Patterson, 325 F. Supp.

1024 (D. Del. 1971). Workers' Compensation establishes the rights and obligations of employers and employees with respect to injuries occurring at work. Blanco v. Kent Gen. Hosp., 190 A.2d 277 (Del. Super.), aff'd. 195 A.2d 553 (Del. 1963).

According to 19 Del. C. § 2304, the Murdochs' tort lawsuit is barred if the Defendants can prove: "(1) plaintiff is an employee, (2) plaintiff suffered a 'personal injury' and (3) the injury arose out of and in the course of employment." Rose, 668 A.2d 782, 786 (quoting Battista v. Chrysler Corp., 454 A.2d 286, 288 (Del. Super. 1982)). The exclusivity provision bars common-law remedies against an employer, Powell v. Interstate Vendaway, Inc., 300 A.2d 241 (Del. Super. 1972), and suits by one employee against a fellow employee for damages relating to a condition compensable under Workers' Compensation, Ward v. GMC, 431 A.2d 1277 (Del. Super. 1981). It is undisputed that the Daughter was an employee and that she suffered a personal injury that is compensable under the workers' compensation statute. See Konstantopoulos v. Westvaco Corp., 690 A.2d 936 (Del. 1996) (sexual harassment covered by the workers' compensation act).

For an employee to receive Workers' Compensation benefits, a causal relationship between the injury and the employment must exist. Storm v. Karl-Mil, 460 A.2d 519 (Del. 1983). Even if an injury occurs at the time and place of employment, employment may not be considered the cause of injury. Ward v. GMC, 431 A.2d 1277 (Del. Super. 1981). The injury must occur "in the course of employment" and "arise out of the employment" to be compensable under Workers' Compensation. Storm v. Karl-Mil, Inc., 460 A.2d 519 (Del. 1983); see also GMC v. Huester, 242 A.2d 314 (Del. Super. 1968), overruled on other grounds, Chrysler v. Viglino, 260 A.2d 161 (Del. 1969). Thus, the two phrases are not synonymous. Dravo Corp. v.

Strosnider, 45 A.2d 542, 543 (Del. Super. 1945). In order for an injury to arise "in the course of employment," the offending act must arise from "those things that an employee may reasonably do or be expected to do within a time during which he is employed, and at a place where he may reasonably be during that time." Id. at 543-44; see also Rose v. Cadillac Fairview Shopping Ctr. Prop. (Del.) Inc., 668 A.2d 782, 786 (Del. Super. 1995). An injury arises "out of" employment if the injury relates to "the nature, conditions, obligations or incidents of the employment, or has a reasonable relation to it." Id. at 544.

Rose v. Cadillac Fairview Shopping Ctr. Prop. (Del.) Inc., 668 A.2d 782, 786 (Del. Super. 1995), describes the outer limits of Workers' Compensation. In Rose, the plaintiff's employer, complying with the terms of the lease with its landlord, instructed its employees to park in a specific section of a parking lot. The plaintiff followed her employer's directions. One day the plaintiff arrived at work early, as she planned to read the newspaper. Unfortunately, before plaintiff could exit her car, she was robbed and kidnaped. The assailant raped the plaintiff and then returned her to the parking lot. Plaintiff sought damages from her employer, the landlord, and others.[5] The employer moved to dismiss the claim, arguing that the tort action was barred by the exclusivity provision of the workers' compensation statute. This Court agreed with the employer's contention. The parking lot was a part of the employer's premises, the employer required the employees to use the parking lot, and the employer knew the area was open to the public. Even though the plaintiff arrived 50 to 55 minutes before her shift began, her behavior was reasonable. The court found plaintiff's injury arose out of employment because she was "in a place where she could be expected to be" when the injury occurred. Rose, 668 A.2d at 790.

[5]The assailant was never identified.

The Daughter's alleged injuries have a closer relationship to her employment than the attenuated circumstances described in Rose. The Daughter resided in a cabin provided by Camp Arrowhead, her employer. The Agreement required the Daughter to reside at Camp Arrowhead and remain on-call 24-hours a day. The Daughter's presence in the cabin was reasonable, as the job required her to be on the premises. Thus, whether she was actively performing work-related tasks at the time of her injury is inconsequential. Furthermore, the relationship that developed between the Daughter and Clouser was foreseeable. The Daughter, a teenager, was free from parental supervision and, as a counselor, given a measure of independence. Illicit behavior between employees is foreseeable in this situation. Thus, the incidents the Murdochs complain of arose from and were in the course of the Daughter's job as a summer counselor at Camp Arrowhead. Although the harm allegedly endured by the Daughter is unfortunate, this Court is not the proper forum to examine the Defendants' liability.[6]

CONCLUSION

Defendants Hawthorne, Camp Arrowhead and the Diocesan Council's Motions for Dismissal are granted for the reasons previously stated. This Court is barred by 19 Del. C. § 2304 from hearing the Murdochs' complaint.

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[6]The "bunkhouse rule," the reach of which has not been examined by the courts of this State, supports this conclusion. According to the bunkhouse rule:

> an injury to an employee living . . . on employer's premises . . . pursuant to an express or implied requirement of the contract of hiring, if reasonably attributable or incidental to the nature of the employment, or to the conditions under which he lives in the performance of his duties, is to be regarded as having arisen out of and in the course of such employment for purposes of workers' compensation.

82 AM. JUR. 2D *Workers' Compensation* § 274 (1992).

Very Truly Yours,

E. Scott Bradley

cc: Prothonotary's Office