FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2772

REBECCA P. LEE,

Appellant,

v.

DAVID HARPER, Sheriff, Madison County, Florida; and SIDNEY PRIDGEON,

Appellees.

On appeal from the Circuit Court for Madison County.
Melissa G. Olin, Judge.

October 13, 2021

RAY, J.

Rebecca P. Lee appeals the trial court's order dismissing with prejudice her claims for negligence and negligent supervision against the Sheriff of Madison County ("the Sheriff") in his official capacity. Because the trial court correctly concluded that the Sheriff did not owe Lee a legal duty of care or an obligation to investigate or take action, we affirm.

Facts

According to Lee's complaint, she was released from the Madison County Jail on March 3, 2016, to begin serving a three-

year probationary sentence. Her probation required her to stay in Madison County, but she was from California and did not have anywhere to live or work locally. Sidney Pridgeon, a corrections officer employed by the Sheriff, learned about her plight and offered to allow her to live with him as a roommate. While cohabitation would have violated the Sheriff's office's "no fraternization" policy, which prohibited deputies from socializing with former county jail inmates, Pridgeon obtained an exemption from the deputy chief. Lee moved into his home on March 12, 2016. In the ten months that followed, Pridgeon made inappropriate comments to Lee, touched her without her consent, and made sexual advances. When she rebuffed his advances, he threatened to arrest her, violate her probation, or kick her out of the house. On January 11, 2017, Lee notified her probation officer and the judge assigned to her criminal case. On January 12, 2017, the judge terminated her probation early, and Lee moved out of Pridgeon's home.

Based on these allegations, Lee raised multiple claims against the Sheriff and Pridgeon. In pertinent part, she alleged negligence and negligent supervision against the Sheriff in counts V and VI. The Sheriff moved to dismiss both claims. The trial court granted the motion and dismissed both claims with prejudice, determining that the Sheriff did not owe a legal duty to Lee after her release from the county jail and did not have to intervene in the off-duty relationship between a deputy and his adult roommate. Lee filed this timely appeal.

Existence of a Legal Duty

An order granting a motion to dismiss for failure to state a cause of action is reviewed de novo. *Siegle v. Progressive Consumers Ins. Co.*, 819 So. 2d 732, 734 (Fla. 2002). In considering a motion to dismiss, a trial court should accept the factual allegations as true and construe those allegations in the light most favorable to the plaintiff. *Id.* at 734–35.

A claim for negligence requires "(1) a legal duty owed by defendant to plaintiff, (2) breach of that duty by defendant, (3) injury to plaintiff legally caused by defendant's breach, and (4) damages as a result of that injury." *Barnett v. Dep't. of Fin. Servs.*,

303 So. 3d 508, 513 (Fla. 2020). "Of these elements, only the existence of a duty is a legal question because duty is the standard to which the jury compares the conduct of the defendant." *Limones v. Sch. Dist. of Lee Cnty.*, 161 So. 3d 384, 389 (Fla. 2015). Thus, the existence of a legal duty is a threshold issue in a negligence case. *Wallace v. Dean*, 3 So. 3d 1035, 1046 (Fla. 2009). The same is true of a claim for negligent supervision. *See Dep't of Env't. Prot. v. Hardy*, 907 So. 2d 655, 660 (Fla. 5th DCA 2005). Without a legal duty, neither claim can survive a motion to dismiss.

"The duty element of negligence focuses on whether the defendant's conduct foreseeably created a broader 'zone of risk' that poses a general threat of harm to others." *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992). But "a legal duty does not exist merely because the harm in question was foreseeable." *Aguila v. Hilton, Inc.,* 878 So. 2d 392, 396 (Fla. 1st DCA 2004). "Instead, the defendant's conduct must create the risk or control the situation before liability may be imposed." *Jordan v. Nienhuis*, 203 So. 3d 974, 978 (Fla. 5th DCA 2016).

On appeal, Lee argues that the Sheriff's office had a "no fraternization" policy to avoid the very dangers presented by her complaint—the abuse of a deputy's authority. She contends that as a woman on probation who was dependent upon a male deputy, the Sheriff put her within a foreseeable zone of risk by granting an exemption to the policy. The Sheriff counters that an internal policy does not create a legal duty. The Sheriff notes that the zone of risk was not brought about through any actions of his office but was instead triggered by Lee's decision to move in with Pridgeon over a week after her release from jail.

The Sheriff is correct that his internal policy did not itself create a legal duty of care to Lee. *Cf. Pollock v. Fla. Dep't. of Highway Patrol*, 882 So. 2d 928, 936–37 (Fla. 2004) ("[W]ritten agency protocols, procedures, and manuals do not create an independent duty of care. While a written policy or manual may be instructive in determining whether the alleged tortfeasor acted negligently in fulfilling an independently established duty of care, it does not itself establish such a legal duty vis-a-vis individual members of the public.") (footnote omitted) (internal citations omitted). Nor can it be said that the Sheriff created the risk or

controlled the situation so that a legal duty arose independently of the policy. The two cases Lee relies on to argue otherwise are distinguishable.

In the first case, two deputies detained the plaintiff and his family on the side of the road while they investigated the expired inspection sticker on his truck. *Kaisner v. Kolb*, 543 So. 2d 732, 733 (Fla. 1989). While the plaintiff was interacting with the police, a traffic accident occurred, and he was injured. *Id.* He filed a negligence suit against the sheriff's department, but the trial court granted summary judgment in the sheriff's favor. *Id.* Florida's Second District Court of Appeal affirmed the trial court's order, holding in part that the law enforcement officers did not owe the plaintiff a duty of care. *Id.* On review, the Florida Supreme Court quashed the Second District's decision, concluding that law enforcement officers are liable for injuries that occur when they deprive a person of their liberty or place them in danger. *Id.* at 734. Thus, a duty of care was created when the officers directed the plaintiff to stop and deprived him of the opportunity to protect himself and his family. *Id.*

In the second case, sheriff's deputies pulled over a vehicle occupied by four intoxicated men. *Henderson v. Bowden*, 737 So. 2d 532, 533–34 (Fla. 1999). After arresting the driver, they instructed one of the other men to drive the vehicle from the scene. *Id.* at 534. The man crashed the vehicle and two of the passengers died. *Id.* In the wrongful death suit that followed, the trial court granted summary judgment for the sheriff on the plaintiffs' negligence claim. *Id.* The Second District Court of Appeal reversed, holding that the deputies owed the men a duty of care during the roadside detention. *Id.* On review, the Florida Supreme Court approved the decision of the Second District, concluding that the deputies placed the passengers in a foreseeable zone of risk by directing an intoxicated man to drive the vehicle. *Id.* at 536–37. The supreme court reasoned that "the sheriff's deputies created a risk that, but for the roadside detention and decisions made during that detention, would not have otherwise existed." *Id.* at 537.

Cases like *Henderson*, *Kaisner*, and their progeny rely on the exercise of police authority. The supreme court has explained that a special tort duty arises under these circumstances because "a

police officer's decision to assume control over a particular situation or individual or group of individuals is accompanied by a corresponding duty to exercise reasonable care." *Pollock*, 882 So. 2d at 935. By contrast, here, the Sheriff did not create the danger by forcing Lee into a situation in which she would be unable to protect herself. Nor did he direct her to take an action that would prove injurious. Rather, Lee voluntarily chose to move into Pridgeon's home after she was no longer subject to the Sheriff's authority. At worst, the Sheriff did not invoke an internal policy to interfere with her decision. Yet none of Lee's cited authority shows that he was under any obligation to Lee to do so.

Given this information, the Sheriff's internal policy did not create an independent duty of care. Nor did an independent duty of care arise under these facts because the Sheriff did not create the circumstances that made Lee vulnerable or exercise control over the situation in a way that placed her in danger. The trial court therefore properly dismissed both of her claims with prejudice.

Actual or Constructive Notice

Lee's negligent supervision claim is also deficient for failure to allege that the Sheriff had actual or constructive notice of an issue with Pridgeon's unfitness. "Negligent supervision occurs when during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further actions such as investigation, discharge, or reassignment." *ACTS Ret.-Life Cmtys., Inc. v. Estate of Zimmer*, 206 So. 3d 112, 114 (Fla. 4th DCA 2016) (quoting *Hardy*, 907 So. 2d at 660). "The plaintiff must allege facts sufficient to show that once an employer received actual or constructive notice of problems with an employee's fitness, it was unreasonable for the employer not to investigate or take corrective action." *Hardy*, 907 So. 2d at 660. "[T]here must be a connection and foreseeability between the employee's employment history and the current tort committed by the employee." *Dickinson v. Gonzalez*, 839 So. 2d 709, 713 (Fla. 3d DCA 2003).

Lee alleged below and argues on appeal that the request for an exemption to the "no fraternization" policy triggered a duty to supervise Pridgeon, as the Sheriff should have known how vulnerable she would be to mistreatment. But her arguments pertain to contact with any of the Sheriff's employees under the circumstances. She does not allege that there was anything specifically about Pridgeon that called into question his fitness or created a connection and foreseeability between his employment history and the alleged harassment. Nor does she allege that the Sheriff had actual notice of the problem. By her own allegations, she never advised the Sheriff of the harassment. Instead, ten months after it began, she notified the judge assigned to her criminal case and her probation officer, causing her probation to be terminated so that she could move out.

In sum, Lee failed to allege that the Sherriff had actual or constructive notice to trigger an obligation to intervene. Even if she had been able to show that the Sheriff owed her a duty of care, her negligent supervision claim would still be subject to dismissal on this basis. Under these circumstances, we affirm the trial court's order of dismissal.

AFFIRMED.

MAKAR and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Marie A. Mattox and Ashley N. Richardson of Marie A. Mattox, P.A., Tallahassee, for Appellant.

Matthew Joseph Carson, Michael P. Spellman, and Jeffrey D. Slanker of Sniffen & Spellman, P.A., Tallahassee, for Appellee David Harper, Sheriff of Madison County, Florida.