

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: CV-10-337
RAC - CUM 4/20/2011

DOROTHY STANLEY, by her parent
and legal guardian Laurie Stanley,

Plaintiff,

v.

SPURWINK SERVICES, INC.

STATE OF MAINE
Cumberland, ss. Clerk's Office
APR 20 2011
RECEIVED

**ORDER ON MOTION FOR
DISMISSAL**

Plaintiff Dorothy Stanley, by her parent and legal guardian Laurie Stanley, brought this multi-count complaint alleging that the plaintiff was raped by two men due to the negligence of five of Spurwink Services' employees. Defendant Spurwink Services, Inc., argues that Ms. Stanley's claims are subject to the provisions of the Maine Health Security Act, and moves to dismiss this action because the plaintiff has not filed a mandatory notice of claim and because her claims are time barred.

BACKGROUND

Ms. Stanley's complaint alleges the following. Plaintiff Dorothy Stanley is a twenty-two year old woman with developmental disabilities. (Compl. ¶ 6.) She has been diagnosed with disruptive behavior disorder, bipolar disorder, depressive disorder, and mental retardation. (Compl. ¶ 6.) In 2002, when Ms. Stanley was age fourteen, her emotional and psychological development was commensurate with that of a child between the ages of four and six. (Compl. ¶ 7.) Dr. Charles B. Whitehead evaluated Ms. Stanley and wrote: "Although she is

emotionally extremely immature, her physical development is consistent with her chronological age, and she is seeking to live a lifestyle (adolescent) that she is entirely incapable of reasonably negotiating.” (Compl. ¶ 8.)

Ms. Stanley was living in a therapeutic group home in Biddeford in the years of 2003 and 2004. (Compl. ¶ 9.) Starting in the 2003-2004 school year, the Biddeford School Department placed Ms. Stanley at the Cummings School, operated by Spurwink Services,¹ for day treatment.² (Compl. ¶ 9; M. Dismiss Ex. C at 1.) Before she began attending the school, Spurwink was made aware of Ms. Stanley’s “risk of elopement in the community” and that sexual abuse would likely result if she did escape into the community without supervision. (Compl. ¶ 10.)

On January 26, 2004, Ms. Stanley’s “Pupil Evaluation Team” (PET) met to discuss and develop an Individual Service Plan for her while at the school. (Compl. ¶¶ 11, 13.) At this meeting, the PET discussed the risks involved with transporting Ms. Stanley by bus from her group home to the Cummings School. (Compl. ¶ 11.) The Individual Service Plan describes the appropriate level of supervision for Ms. Stanley as:

Eyesight supervision, within ear shot due to inability to maintain safety. Due to history of trauma and sexualized behavior, [Ms. Stanley] is not to be left alone with male staff and it is recommended in any situation to have two staff available due to [Ms. Stanley’s] quick escalation to aggressive behaviors when upset.

¹ The parties refer to the “Cummings School” and the “Spurwink School” interchangeably.

² The complaint quotes extensively from what it labels as the January 26, 2004 Spurwink School Individual Service Plan. The defendant submitted a copy of this plan for the court’s consideration with its motion to dismiss. The court may consider the plan without converting the motion into one for summary judgment because the complaint refers to this document and there is no question as to its authenticity. *Moody v. State Liquor & Lottery Comm’n*, 2004 ME 20, ¶¶ 9–11, 843 A.2d 43, 47–48.

(Compl. ¶ 13; M. Dismiss Ex. C at 1.) Two days later another meeting was held to discuss Ms. Stanley's service plan. (Compl. ¶ 14.) At that meeting, the director of Ms. Stanley's group home wrote the following:

[Ms. Stanley] has had several incidents of exiting off the school bus and eloping in to the community. This has put her at risk. The school department has placed two aides on the bus, however if [Ms. Stanley] gets off the bus, the aides are not permitted to leave the bus. The Team does not feel that the bus is a safe situation for [Ms. Stanley] at this time and feel that [Ms. Stanley] needs to have a safer situation. At this time, [Ms. Stanley] is not happy about going to school with staff, however her Team feels that her unsafe behavior must be a priority.

(Compl. ¶ 14.) Prior to November 2004, on several occasions Ms. Stanley did leave or attempt to leave the Cummings School's grounds and had to be pursued or restrained by Spurwink staff. (Compl. ¶ 15.)

On November 29, 2004, Ms. Stanley rode the bus from her group home to the Cummings School per her usual routine. (Compl. ¶ 16.) She was sixteen years old at this time. (Compl. ¶ 16.) At approximately 8:00 a.m., she exited the bus at the Cummings School where she was met by Robert Cooke and Aaron Sawyer, two educational technicians employed by Spurwink. (Compl. ¶ 17.) Mr. Cooke and Mr. Sawyer were to meet the bus when it arrived and ensure that Ms. Stanley remained on school grounds under close supervision. (Compl. ¶ 18.)

According to Spurwink's Incident Report, on exiting the bus Ms. Stanley informed Mr. Cooke that she was "not going to school." (Compl. ¶ 19.) She then left the school's grounds on foot, traveling in the direction of Washington Avenue. (Compl. ¶ 19.) Neither Mr. Cooke nor Mr. Sawyer followed Ms. Stanley off the property. (Compl. ¶ 20.) Instead, Mr. Cooke borrowed Mr. Sawyer's cell phone to call Wayne Holden. (Compl. ¶ 20.) Mr. Holden was employed by Spurwink as a teacher at the Cummings School, and is listed as one of the

individuals who attended the January 26, 2004 meeting to discuss Ms. Stanley's Individual Service Plan. (Compl. ¶ 20; M. Dismiss Ex. C at 1.)

Ms. Stanley could be seen crossing Ocean Avenue in the direction of Washington Avenue by the time Mr. Holden arrived outside the school. (Compl. ¶ 21.) Mr. Holden, like Mr. Cooke and Mr. Sawyer, declined to follow Ms. Stanley off the grounds. (Compl. ¶ 22.) Instead, he instructed Mr. Sawyer to call Robin Herrick associate director of the Cummings School, and Piper Carey, a generalist at the school. (Compl. ¶ 22.) Ms. Herrick and Ms. Carey were both employed by Spurwink, and Ms. Herrick had attended the January 26, 2004 meeting with Mr. Holden. (Compl. ¶ 22; M. Dismiss Ex. C at 1.) While the calls were being made, Ms. Stanley could be seen entering the Cigarette Shopper, a retail operation on the far side of Washington Avenue. (Compl. ¶ 23.)

By the time Ms. Herrick joined the men outside the school, Ms. Stanley was no longer visible. (Compl. ¶ 24.) Ms. Herrick and Mr. Holden left the school in a car to search for Ms. Stanley, but were unable to find her and were instructed to return to the school after a few minutes. (Compl. ¶¶ 25–26.) Ms. Carey called the police, and Ms. Stanley's mother was notified at approximately 8:15 a.m. (Compl. ¶ 27.) Ms. Stanley reappeared at her group home in Biddeford the next day, November 30, 2004. (Compl. ¶ 28.)

On her return, Ms. Stanley informed the group home staff that she had been sexually assaulted, and later reported two sessions of oral and vaginal penetration by two different men, with a shower between the two events. (Compl. ¶¶ 29–30.) An examination at Maine Medical Center confirmed that she had been assaulted, and revealed that her left nipple had been torn. (Compl. ¶¶ 31–32.) Ms. Stanley has exhibited signs of psychological damage as a result of

this incident. (Compl. ¶¶ 35–36.) On July 28, 2010, Ms. Stanley filed a five-count complaint against Spurwink Services to recover for damages arising out of the November 29, 2004 incident.

DISCUSSION

“A motion to dismiss tests the legal sufficiency of the complaint.” *Heber v. Lucerne-in-Maine Village Corp.*, 2000 ME 137, ¶ 7, 755 A.2d 1064, 1066 (quoting *McAfee v. Cole*, 637 A.2d 463, 465 (Me. 1994)). The court examines “the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Id.* (quoting *McAfee*, 637 A.2d at 465). “For purposes of a 12(b)(6) motion, the material allegations of the complaint must be taken as admitted.” *McAfee*, 637 A.2d at 465. “Dismissal is warranted when it appears beyond a doubt that the plaintiff is entitled to no relief under any set of facts that [s]he might prove in support of [her] claim.” *Johanson v. Dunnington*, 2001 ME 169, ¶ 5, 785 A.2d 1244, 1245–46.

Spurwink Services moves to dismiss Ms. Stanley’s claims as being time-barred by the statute of limitations contained in the Maine Health Security Act (MHSA). The MHSA requires all actions by a minor for professional negligence to “be commenced within 6 years after the cause of action accrues or within 3 years after the minor reaches the age of majority, whichever first occurs.” 24 M.R.S. § 2902 (2004). Ms. Stanley’s Individual Service Plan indicates that she was born on April 11, 1988, meaning that she turned eighteen on April 11, 2006. (M. Dismiss Ex. C. at 1.) The statute of limitations would have run on any claims subject to the MHSA on April 11, 2009, more than a year before this action was initiated.

The MHSA's "[s]tatute of limitations for health care providers and health care practitioners" applies to "[a]ctions for professional negligence" 24 M.R.S. § 2902. The law defines an "[a]ction for professional negligence" to mean "any action for damages for injury . . . against any health care provider, its agents or employees . . . whether based upon tort or breach of contract or otherwise, arising out of the provision or failure to provide health care services." 24 M.R.S. § 2502(6) (2004). The Law Court has described this definition as "very broadly worded and all-encompassing," reflecting "a legislative intent that the MHSA 'occupy the field with regard to actions against health care providers.'" *Saunders v. Tisher*, 2006 ME 94, ¶¶ 9, 13, 902 A.2d 830, 833 (quoting *Musk v. Nelson*, 647 A.2d 1198, 1201 (Me. 1994)).

A "[h]ealth care provider" is "any hospital, clinic, nursing home, or other facility in which skilled nursing care or medical services are prescribed by or performed under the general direction of persons licensed to practice medicine . . . in this State and which is licensed or otherwise authorized by the laws of this State." 24 M.R.S. § 2502(2) (2004). This definition includes facilities that treat mental illness. *Saunders*, 2006 ME 94, ¶ 14, 902 A.2d at 834.

Spurwink argues that it is a health care provider within the meaning of the statute. At the time of the incident, the Spurwink School did hold a Mental Health Agency license from Maine's Department of Health and Human Services.³ (M. Dismiss Ex. F.) This does not, however, show that "skilled nursing care or medical services" were in fact being "prescribed by or performed under the general direction" of licensed medical practitioners at the school.

Furthermore, the complaint and the public documents placed in the record do

³ The license is a public document that may be considered on a motion to dismiss. *Moody*, 2004 ME 20, ¶¶ 9–11, 843 A.2d at 47–48.

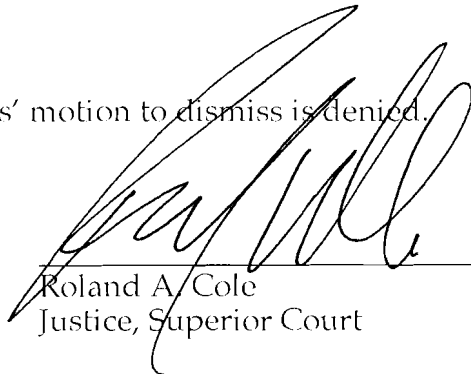
not show that Ms. Stanley was placed in the Cummings School to receive such care and treatment.

On a motion to dismiss, the court's review is narrow and deferential to the plaintiff. It would be premature to determine conclusively whether the Cummings School was a health care provider or whether Ms. Stanley's presence there was connected to the provision of health care services, based solely the complaint and few extraneous documents properly before the court at this stage of proceedings.

The entry is:

Defendant Spurwink Services' motion to dismiss is denied.

DATE: April 20, 2011



Roland A. Cole
Justice, Superior Court

LAURIE STANLEY (PARENT & GUARDIAN OF DOROTHY STANLEY) VS SPURWINK SERVICES INC
UTN:AOCSSr -2010-0070819 CASE #:PORSC-CV-2010-00337

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F LAURIE STANLEY (PARENT & GUARDIAN) PL RTND 07/12/2010
F DOROTHY STANLEY PL RTND 07/12/2010