IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-760

Filed: 31 December 2020

Wake County, No. 18 CVS 9761

DANIEL WEST, Plaintiff,

v.

WILLIAMS ELECTRIC MOTOR REPAIR, INC., WILLIAM R. CLIFTON, JR., and FUTURE CONNECTIONS ELECTRICAL, INC., Defendants.

Appeal by plaintiff from order entered 18 January 2019 by Judge George B. Collins, Jr. in Superior Court, Wake County. Heard in the Court of Appeals 3 March 2020.

Cumalander Adcock, LLP, by Brian P. LiVecchi, for plaintiff-appellant.

Yates, McLamb & Weyher, L.L.P., by Michael C. Gruman and Christopher J. Skinner, for defendant-appellees Williams Electric Motor Repair, Inc. and William R. Clifton, Jr.

Bowden and Gardner, PC, by Edwin W. Bowden, for defendant-appellee Future Connections Electrical, Inc.

STROUD, Judge.

Plaintiff appeals a trial court order dismissing his complaint with prejudice under North Carolina Rule of Civil Procedure 12(b)(6). Because plaintiff's complaint failed to state a claim upon which relief could be granted, we affirm.

I. Background

On 6 August 2018, plaintiff Daniel West filed a complaint against defendants Williams Electric Motor Repair, Inc. ("Williams Repair"), William R. Clifton, Jr. and Future Connections Electrical, Inc. ("Future Electrical"). Plaintiff alleged that he worked as an assistant manager at the Heritage Point pool, and defendants Williams Repair and Future Electrical provided "electrical work" for the pool; defendant Mr. Clifton was an "employee/agent" of defendant Williams Repair. On 3 September 2016, when plaintiff arrived for work in the afternoon he saw a body, later identified as Rachel, floating in the pool. When plaintiff reached for the railing of the ladder to reach for the body he was shocked by an electrical current. Plaintiff called 911 and emergency medical personnel responded. Plaintiff remained at the pool for approximately six hours during the investigation of the incident, was questioned by law enforcement, and gave statements to the North Carolina Department of Labor and OSHA.

Plaintiff alleges he "suffered severe emotional and mental distress in the form of generalized anxiety disorder, post-traumatic stress disorder, irritable behavior, distressing memories and dreams as it relates to his sleep, flashbacks, and negative

emotional state." Plaintiff also alleged he "is regularly employed as a school teacher of children roughly the same age as Rachel[, and his] emotional and mental distress has interfered with his ability to perform his duties to the best of his former ability, and has caused him to seek professional mental health treatment." Plaintiff brings claims against defendants for negligence and negligent infliction of emotional distress ("NIED").

All defendants filed motion to dismiss under North Carolina Rule of Civil Procedure 12(b)(6) alleging that plaintiff had not pled the required elements for either of his claims. On 18 January 2019, the trial court allowed defendants' motions to dismiss with prejudice because "the Complaint fails to state any claims upon which relief may be granted as to any Defendant[.]" Plaintiff appeals.

II. Motion to Dismiss

We turn to defendant's motion to dismiss.

A. Standard of Review

> On a motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, the standard of review is whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory.
>
> A complaint is properly dismissed pursuant to Rule 12(b)(6) when (1) the complaint, on its face, reveals that no law supports the plaintiff's claim; (2) the complaint, on its face, reveals an absence of facts sufficient to make a good

> claim; or (3) some fact disclosed in the complaint necessarily defeats the plaintiff's claim.

Blow v. DSM Pharmaceuticals, Inc., 197 N.C. App. 586, 588, 678 S.E.2d 245, 248 (2009) (citation and quotation marks omitted).

B. Personal Injury from Negligence

As to plaintiff's claim of negligence, "[i]nitially, a plaintiff bears the burden of proving the essential elements of negligence: that the defendant owed the plaintiff a legal duty, that the defendant breached that duty, and that the plaintiff's injury was proximately caused by the breach." *Patterson v. Worley*, ___ N.C. App. ___, ___, 828 S.E.2d 744, 747 (2019) (citation and quotation marks omitted). Plaintiff pled defendants' duty, when he alleged that defendants were responsible for providing the electrical work for the pool, and breach, when he alleged that the defendants failed to perform the work in accord with applicable standards of care such that the electrical wiring caused an electrical current in the pool. *See generally id.* As to plaintiff's injury, in establishing his ordinary negligence claim, as distinguished from his NIED claim, plaintiff argues in his brief that "he suffered an electrical shock which caused him 'personal injuries causing him great pain and suffering, medical expenses, lost wages, permanent injury, and physical and mental anguish."

But despite plaintiff's argument on appeal, plaintiff did not *actually* plead any injury from the electrical shock in his complaint. Plaintiff's brief cites many cases addressing various types of injuries this Court has recognized to be sufficient for a

negligence claim and what may qualify in a court of law as "pain and suffering[;]" but we need not analyze these since plaintiff did not in fact allege *an injury from the electrical shock*. It is common knowledge that an electrical shock can produce results as mild as a momentary tingle in the affected area or as extreme as death. Plaintiff's complaint describes only a momentary mild shock at the most. Plaintiff did not allege any pain or medical evaluation from the electrical shock. Instead, the allegations of the complaint focus on his *emotional* distress from having seen Rachel's body in the pool and from having to stay at the pool to provide information for the investigation of her death.

Plaintiff's complaint includes introductory allegations regarding the parties and jurisdiction, followed by the factual allegations of his claims. After the introductory allegations, plaintiff's complaint makes "factual allegations" numbered 15-28. (Original in all caps.) As to the electrical shock, plaintiff alleged,

> 20. Plaintiff approached the railing for the ladder and attempted to take hold of the railing to reach for Rachel but was immediately shocked by electrical current.
>
> 21. Plaintiff tried a second time to hold on the ladder railing to reach for Rachel, but was shocked again. As a result of this second attempt, Rachel's body floated further out into the middle of the pool, beyond where Plaintiff could reach her without entering the pool himself.

Allegations 20 and 21 are the entirety of plaintiff's "factual allegations" regarding the shocked he received. Plaintiff does not claim he was hurt or in pain from the shock.

Plaintiff called 911 *for Rachel*, not himself, and there is no indication he needed medical treatment or was treated upon arrival of emergency service personnel. Plaintiff's remaining factual allegations detail all he saw and experienced after the first responders arrived, including being questioned and providing statements. Plaintiff then alleges:

> 27. *As a result of what the Plaintiff observed and the subsequent events surrounding this incident*, Plaintiff suffered severe emotional and mental distress in the form of generalized anxiety disorder, post-traumatic stress disorder, irritable behavior, distressing memories and dreams as it relates to his sleep, flashbacks, and negative emotional state.
>
> 28. Plaintiff is regularly employed as a school teacher of children roughly the same age as Rachel. Plainitff's emotional and mental distress has interfered with his ability to perform his duties to the best of his former ability, and has caused him to seek professional mental health treatment.

(Emphasis added.)

Plaintiff then pleads his negligence claim and only one paragraph addresses his injury: "Plaintiff suffered personal injuries causing him great pain and suffering, medical expenses, lost wages, permanent injury, and physical and mental anguish." Plaintiff's own complaint alleges that "[a]s a result of what the Plaintiff observed" he "suffered severe emotional and mental distress" and his "emotional and mental distress" have "interfered with his ability to perform his duties" and "caused him to seek professional mental health treatment." Thus, in plaintiff's factual allegations

his "great pain and suffering, medical expenses, lost wages, permanent injury, and physical and mental anguish" all stem from his emotional trauma, not the electrical shock he received. Plaintiff failed to allege *any* physical injury from his electrical shock, so the trial court properly dismissed his claim under Rule 12(b)(6). *See generally Patterson,* ___ N.C. App. at ___, 828 S.E.2d at 747; *Blow*, 197 N.C. App. at 588, 678 S.E.2d at 248. This argument is overruled.

C. Negligent Infliction of Emotional Distress

The elements of negligent infliction of emotional distress are: "(1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress, and (3) the conduct did in fact cause the plaintiff severe emotional distress." *Acosta v. Byrum*, 180 N.C. App. 562, 567, 638 S.E.2d 246, 250 (2006) (citation, quotation marks, and ellipses omitted). As noted above, plaintiff has alleged that defendants negligently failed to properly maintain the electrical components at the pool, resulting in Rachel's death and his discovery of her body.

Proximate cause includes an element of foreseeability:

> Foreseeability of injury is an essential element of proximate cause. It is not required that the injury in the precise form in which it occurred should have been foreseeable but only that, in the exercise of reasonable care, consequences of a generally injurious nature might have been expected. However, the law requires only reasonable prevision and a defendant is not required to foresee events

> which are merely possible but only those which are reasonably foreseeable.

McNair v. Boyette, 282 N.C. 230, 236, 192 S.E.2d 457, 461 (1972) (citations omitted).

Defendants focus on *Johnson v. Ruark Obstetrics & Gynecology Assoc., P.A.*, 327 N.C. 283, 395 S.E.2d 85 (1990), as the seminal case to guide our analysis regarding a NIED claim. *Ruark* notes the factors to consider as to foreseeability and proximate cause:

> Factors to be considered on the question of foreseeability in cases such as this include the plaintiff's proximity to the negligent act, the relationship between the plaintiff and the other person for whose welfare the plaintiff is concerned, and whether the plaintiff personally observed the negligent act. Questions of foreseeability and proximate cause must be determined under all the facts presented, and should be resolved on a case-by-case basis by the trial court and, where appropriate, by a jury.

Id. at 305, 395 S.E.2d at 98 (1990) (citations omitted).

Plaintiff focuses on *Sorrells v. M.Y.B. Hospitality Ventures of Asheville*, 334 N.C. 669, 435 S.E.2d 320 (1993), instead of *Ruark*; one of plaintiff's headings in his brief is, "[t]he *Ruark* factors are not elements and are not to be mechanically applied." (Italics added.) In *Sorrells*, citing *Ruark*, our Supreme Court clarified,

> In making this foreseeability determination, the factors to be considered include, but are not limited to: (1) the plaintiff's proximity to the negligent act causing injury to the other person, (2) the relationship between the plaintiff and the other person, and (3) whether the plaintiff personally observed the negligent act. However, such factors are not mechanistic requirements the absence of

> which will inevitably defeat a claim for negligent infliction of emotional distress. The presence or absence of such factors simply is not determinative in all cases. Therefore, North Carolina law forbids the mechanical application of any arbitrary factors—such as a requirement that the plaintiff be within a zone of danger created by the defendant or a requirement that the plaintiff personally observe the crucial negligent act—for purposes of determining foreseeability. Rather, the question of reasonable foreseeability under North Carolina law must be determined under all the facts presented, and should be resolved on a case-by-case basis by the trial court and, where appropriate, by a jury. While some may fear that such reliance on reasonable foreseeability, if carried out to its fullest extent, would directly lead to the recovery of damages for all kinds of mental suffering, this Court long ago concluded in emotional distress cases that we are compelled to carry out a principle only to its necessary and logical results, and not to its furthest theoretical limit, in disregard of other essential principles.

Id. at 672–73, 435 S.E.2d at 322 (citations and quotation marks omitted).

In *Sorrells*, after considering the factors, the Supreme Court determined that the plaintiffs failed to state a claim for negligent infliction of emotional distress. *See id.*, 334 N.C. 669, 435 S.E.2d 320. The plaintiffs were the parents of a college student who had allegedly negligently been served alcohol at defendant's business, and thereafter he lost control of his car and died. *See id.* 671, 435 S.E.2d at 321. The Supreme Court noted,

> As in *Neal*, we hold in the case at bar that the plaintiffs' alleged severe emotional distress arising from their concern for their son was a possibility too remote to be reasonably foreseeable. Here, it does not appear that the defendant had any actual knowledge that the plaintiffs

> existed. Further, while it may be natural to assume that any person is likely to have living parents or friends and that such parents or friends may suffer some measure of emotional distress if that person is severely injured or killed, those factors are not determinative on the issue of foreseeability.

Id. at 674, 435 S.E.2d at 323 (quotation marks omitted).

We agree with plaintiff that that we are not to apply *any* set of factors "mechanically" to an NIED claim as "the question of reasonable foreseeability under North Carolina law must be determined under all the facts presented, and *should be resolved on a case-by-case basis* by the trial court and, where appropriate, by a jury." *Id.* at 673, 435 S.E.2d at 322 (emphasis added). However, the law requires some basis in the facts indicating that the severe emotional distress plaintiff alleges was reasonably foreseeable, because "the law requires only reasonable prevision and a defendant is not required to foresee events which are merely possible but only those which are reasonably foreseeable." *McNair*, 282 N.C. at 236, 192 S.E.2d at 461. By focusing so heavily on what this Court should *not* do, plaintiff ignores the actual issue -- an allegation in his complaint that forecasts evidence of reasonable foreseeability. While plaintiff addresses many cases and scenarios and argues why the facts in other cases are *not* controlling, plaintiff fails to properly address the foreseeability element in his own case, but we agree the *Ruark* factors are not to be applied mechanically. *See Sorrells*, 334 N.C. at 672-73, 435 S.E.2d at 322.

As to our first consideration, "plaintiff's proximity to the negligent act[,]" plaintiff argues he "was in close proximity to the negligent act, or at least to the direct results of the dangerous condition which Defendant's past negligence had created[.]" *Id.* at 672, 435 S.E.2d at 322. Plaintiff then directs us to *Newman v. Stepp*, where this Court allowed an NIED claim when plaintiffs' child was accidentally killed when a loaded gun was left on a table in an unlicensed child care facility though the parents had not seen the gun on the table nor observed the accident. *See generally Newman v. Stepp*, ___ N.C. App. __, ___, 833 S.E.2d 353, 355 (2019). *Newman* discusses the fact that the parents of the deceased child were not present in the day care center when the negligent injury occurred but notes the close personal relationship between them and the child and their experience before and after her death:

> The relevant facts show that plaintiffs arrived at the hospital within minutes of the shooting incident and observed Abby wounded by the shotgun blast—Jeromy, in particular, observed Abby as she arrived at the hospital and was transported from the ambulance to the hospital. Delia arrived immediately thereafter and held her fatally wounded two-year-old in her arms for as long as hospital personnel would allow. Plaintiffs—who, as parents to Abby, experienced the events immediately prior to and following Abby's death in the aftermath of her arrival at the hospital—asserted severe emotional distress from the manner in which they suffered the death of their daughter. *The existence of the close parent-child familial relationship, of which defendants were well aware of, supports foreseeability.*

Id. at ___, 833 S.E.2d at 357–58 (emphasis added). In addition, the defendant day care center could reasonably foresee the parents' claim for emotional distress from negligence in the care of a young child entrusted to the day care center. *Newman*'s analysis is plainly based on "the close parent-child familial relationship[,]" and thus is inapposite to the case at bar. *Id.* at ___, 833 S.E.2d at 357-58.

Plaintiff did not know Rachel personally but encountered her only upon finding her body in the pool. We recognize that plaintiff was physically proximate to the results of the negligent electrical wiring at the pool since he felt a mild shock also when he tried to reach Rachel's body, but the electrical shock was not the basis of the harm since the NIED claim is based upon plaintiff's severe emotional distress. *See generally Acosta*, 180 N.C. App. at 567, 638 S.E.2d at 250. We also note, as plaintiff does, this factor is not determinative. *See Sorrells*, 334 N.C. at 672-73, 435 S.E.2d at 322.

Plaintiff also contends he "personally and contemporaneously observed" the results of defendants' negligence in real time. However, plaintiff did not observe the negligent *act*, which in this case would have been the faulty electrical work which was done at some time prior to Rachel's injury and death; this factor alone is not determinative, but in this case it is quite weak. Plaintiff uses the same argument as his proximity argument, but again, the cases he addresses are distinguishable again because foreseeability was based upon a close relationship between the injured

person and the plaintiff and often the defendant's knowledge of this relationship. *See Newman*, ___ at ___, 833 S.E.2d at 357-58. If observing the results of a negligent act were sufficient to give rise to an NIED claim, all of the first responders and law enforcement officers who investigated Rachel's death could also likely have claims for NIED. We again note, as plaintiff recognizes, this factor is not determinative. *See Sorrells*, 334 N.C. at 672-73, 435 S.E.2d at 322.

Plaintiff next contends he was not required to plead a special relationship with Rachel to state a claim. We agree that a "special relationship" is not an essential element of an NIED claim. *See Acosta*, 180 N.C. App. at 567, 638 S.E.2d at 250 (listing elements of NIED, and "special relationship" is not one). But in most, if not all cases where our courts have recognized a valid NIED claim by a person who was not physically injured or personally involved in the same incident which injured or killed the other person, the plaintiff did have a "special relationship" to the person injured or killed. *See, e.g., id.*, 180 N.C. App. 562, 638 S.E.2d 246. For example, in *Acosta*, the plaintiff was both an employee and a patient of the defendant psychiatrist, whom she alleged negligently gave another person access to her medical records in violation of the rules of the medical facility and HIPAA. *Id.* at 565, 638 S.E.2d at 249.

Where the other factors are weaker or more attenuated, the "special relationship" becomes more important, but even a special relationship may not be sufficient to support a claim as in *Sorrells* where our Supreme Court stated, "Here, it

does not appear that the defendant had any actual knowledge that the plaintiff[] existed." *Sorrells*, 334 N.C. at 674, 435 S.E.2d at 323. In *Sorrells*, the Court noted that the special relationship of parent and child was not sufficient under the circumstances of that case:

> Further, while it may be natural to assume that any person is likely to have living parents or friends and that such parents or friends may suffer some measure of emotional distress if that person is severely injured or killed, those factors are not determinative on the issue of foreseeability. The determinative question for us in the present case is whether, absent specific information putting one on notice, it is reasonably foreseeable that such parents or others will suffer "severe emotional distress" as that term is defined in law. We conclude as a matter of law that the possibility (1) the defendant's negligence in serving alcohol to Travis (2) would combine with Travis' driving while intoxicated (3) to result in a fatal accident (4) which would in turn cause Travis' parents (if he had any) not only to become distraught, but also to suffer "severe emotional distress" as defined in *Ruark*, simply was a possibility too remote to permit a finding that it was reasonably foreseeable. This is so despite the parent-child relationship between the plaintiffs and Travis.

Id. at 674, 435 S.E.2d at 323.

It would be natural to assume that a person who finds another person killed by negligent electrical work may be traumatized to some degree by that experience, but plaintiff has not alleged any reason defendants would be on notice that this type of negligence would cause him "severe emotional distress." *See generally id.* If the mere fact of observing the tragic results of a negligent act were sufficient to state a

claim, any first responder, law enforcement officer, or even a casual bystander who observes the victim of a tragic accident may have claim for NIED.

D. Rescue Doctrine

Plaintiff then contends the

> [t]rial court erred in dismissing Plaintiff's action when it failed to consider and apply the effects of the of the 'Rescue Doctrine' to Plaintiff's claim and Plaintiff was not required to forecast evidence that his injuries were foreseeable by Defendants under the doctrine, this matter being properly determined by the jury.

This Court described the rescue doctrine in *Clontz v. St. Mark's Evangelical Lutheran Church*,

> The rescue doctrine encourages the rescue of others from peril and immediate danger by holding the tortfeasor liable for any injury to the rescuer on the grounds a rescue attempt is foreseeable. It recognizes the need to bring an endangered person to safety. Functionally, the doctrine stretches the foreseeability limitation to help bridge the proximate cause gap between defendant's act and plaintiff's injury. The rescue doctrine does not apply unless it be shown that the peril was caused by the negligence of another.

157 N.C. App. 325, 328–29, 578 S.E.2d 654, 657 (2003) (citations, quotation marks, ellipses, and brackets omitted).[1]

Plaintiff argues "[w]hether the rescue doctrine applies to NIED cases is a matter of first impression in North Carolina." But we need not determine today

[1] For a thorough analysis of the rescue doctrine and its applicability both within and outside of North Carolina see *Britt v. Mangum*, 261 N.C. 250, 134 S.E.2d 235 (1964).

whether the rescue doctrine applies to plaintiff's claims as he did not receive any injury in an attempt to rescue Rachel; again, plaintiff has not pled physical injury but only emotional, so he would necessarily need to link his rescue attempt to his emotional and mental injuries. Plaintiff did allege he was shocked when he touched the ladder railing in an attempt to rescue Rachel, but as we have already noted, he alleged no injury from that shock. Instead, plaintiff's severe emotional distress, by his own account, stemmed from arriving at work, discovering Rachel's body, and being questioned afterward regarding what he had seen: "As a result of what the Plaintiff observed and the subsequent events surrounding this incident, Plaintiff suffered severe emotional and mental distress in the form of generalized anxiety disorder, post-traumatic stress disorder, irritable behavior, distressing memories and dreams as it relates to his sleep, flashbacks, and negative emotional state." Because plaintiff's alleged injury, severe emotional distress, does not stem from his attempts to rescue Rachel, the rescue doctrine is inapplicable. *See generally id.*

In summary, plaintiff was not injured in the course of a rescue and therefore we need not consider whether the rescue doctrine extends to claims for NIED. Further, because plaintiff failed to forecast reasonable foreseeability, a required element of NIED, the trial court properly granted defendants' motions to dismiss. *See Acosta*, 180 N.C. App. at 567, 638 S.E.2d at 250.

III. Conclusion

We conclude that the trial court properly granted defendants' motions to dismiss plaintiff's complaint claiming negligence and NIED because plaintiff failed to state a claim upon which relief could be granted, and thus we affirm.

AFFIRMED.

Judge BRYANT concurs.

Judge MURPHY dissents in part, concurs in part, and concurs in result only in part with separate opinion.

No. COA19-760 – *West v. Williams Electric Motor Repair, Inc.*

MURPHY, Judge, dissenting in part, concurring in part, and concurring in result only in part.

I respectfully dissent as to part II-B of the Majority regarding Plaintiff's ordinary negligence claim as Plaintiff alleged sufficient physical injury to survive the motion to dismiss. The Majority holds "Plaintiff failed to allege *any* physical injury from his electrical shock[.]" *Supra* at 6. I disagree. Plaintiff's complaint demonstrates he was shocked by the electrical current, thus providing an alleged physical injury.

"Injury, damage, or loss is, of course, a requisite of any negligence action. But the injury, damage or loss does not have to be either extensive, permanent, serious or substantial; it only has to be actual." *Polk v. Biles*, 92 N.C. App. 86, 88, 373 S.E.2d 570, 571 (1988). The word "shock" generally refers to a "violent collision, impact, or explosion, or the force or movement resulting from this[,]" as well as "[t]he sensation and muscular spasm caused by an electric current passing through the body or a body part." *Shock*, The American Heritage Dictionary of the English Language (5th ed. 2020). Additionally, we have noted, "[p]ain and suffering damages are intended to redress a wide array of injuries ranging from *physical pain* to anxiety, depression, and the resulting adverse impact upon the injured party's lifestyle." *Iadanza v. Harper*, 169 N.C. App. 776, 780, 611 S.E.2d 217, 221 (2005) (emphasis added).

In his complaint, under the factual allegations, Plaintiff claimed

> 20. Plaintiff approached the railing for the ladder and attempted to take hold of the railing to reach for Rachel but was immediately *shocked by electrical current*.
>
> 21. Plaintiff tried a second time to hold on to the ladder railing to reach for Rachel, but was *shocked* again. As a result of this second attempt, Rachel's body floated further out into the middle of the pool, beyond where Plaintiff could reach her without entering the pool himself.

(Emphasis added). Thereafter, under his claim of negligence Plaintiff alleged

> 33. As a direct and proximate result of the negligent acts of Defendants, as set forth above and, more specifically, below, Plaintiff *suffered personal injuries causing him great pain and suffering, medical expenses, lost wages, permanent injury, and physical and mental anguish*. Upon information and belief, Plaintiff will continue to suffer the same in the future, all resulting in damages to his person in an amount in excess of Twenty-five Thousand Dollars, ($25,000.00) in an amount to be proven at trial.

(Emphasis added).

Here, Plaintiff alleged he was shocked by the electrical current. While he does not point to the severity of the shock, as noted above, the injury "only has to be actual." *Polk*, 92 N.C. App. at 88, 373 S.E.2d at 571. Additionally, while most of the damages Plaintiff seeks here refer to the mental suffering he endured as a result of discovering Rachel, he does allege "personal injuries causing him great pain and suffering" which allows his ordinary negligence claim to survive Defendants' motion to dismiss. The Majority's discussion regarding the extent of his pain, is merely an

issue as to the amount of compensation due from Defendants and not a bar to the courthouse doors.[2] *Supra* at 4-5. The trial court erred in granting the Defendants' motion to dismiss and should be reversed to allow Plaintiff to pursue damages arising from the pain and suffering attributable to the electric shocks he alleged. I respectfully dissent in part II-B, concur in part II-C,[3] and concur in result only in part II-D.

[2] I would also note in contrast to the Majority's discussion of the factual allegations, Plaintiff does allege incurring medical expenses in a general manner. At summary judgment or trial, it may turn out to be that these medical expenses are only attributable to the trauma resulting from witnessing the horrific scene and not related to the shock. Such medical expenses would not be recoverable in this action for the reasons given in the Majority opinion.

[3] While I agree with the analysis provided by the Majority, it fails to discuss Plaintiff's "peculiar susceptibility" to severe emotional distress. *Riddle v. Buncombe Cty. Bd. of Educ.*, 256 N.C. App. 72, 77, 805 S.E.2d 757, 762 (2017) ("Nor does plaintiff explain how his friendship with Crotty demonstrates any 'peculiar susceptibility' to severe emotional distress.") (citing *Wrenn v Byrd*, 120 N.C. App. 761, 767, 464 S.E.2d 89, 93 (1995)). I would hold Plaintiff has alleged sufficient facts as to this factor, but remain in agreement with the Majority's analysis of the NIED issue as a whole.