VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-00597

Michael Desautels et al v. North Country Supervisory Union

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 7)
Filer: Sean M. Toohey
Filed Date: November 01, 2023

The motion is GRANTED.

Defendant North Country Supervisory Union ("NCSU") has filed a motion for summary judgment seeking to dismiss Plaintiffs' remaining claim of Intentional Infliction of Emotional Distress. Plaintiffs have not filed an opposition or reply to this motion. Defendant's Motion is **Granted.**

Undisputed Material Facts

Prio to the 2021–22 school year, NSCU adopted a mandatory mask policy. The policy had an exception for students who qualified for medical or psychological reasons. The policy required certifications from a licensed health care provider and formal application process. At the beginning of the school year, Plaintiffs submitted a one-sentence letter from a doctor seeking an exemption from the mask mandate for their daughter. The letter cites no specific medical or psychological ailment but makes a generalized statement that it was in the interest of the child's health not to wear a mask. NSCU requested additional information in a timely manner, but Plaintiffs refused to provide any additional information. Plaintiffs' daughter attended school without a mask and was placed in a separate room for the health and safety of other students and consistent with the school's policy. Plaintiffs' daughter had an opportunity to interact with other students at lunch and during outdoor recess. In mid-September, NCSU began the process under Section 504 of the federal Rehabilitation Act to assess Plaintiffs' daughter's needs for reasonable accommodations. Again, Plaintiffs refused to cooperate with the process or provide information.

After this additional refusal , NCSU required Plaintiffs to comply with the school's mask policy. Plaintiffs' daughter stopped attending school and became repeatedly absent. Under 16 V.S.A. §§ 1121, et seq., NCSU referred Plaintiffs to a truancy officer. Plaintiff's son was absent 57 days between August 24, 2021 and December 21, 2021. Beginning on December 21, 2021, Plaintiffs' daughter began wearing a mask and attending school on a regular basis.

Plaintiffs base their claim of intentional infliction of emotional distress on four separate incidents. First, Plaintiffs claim that the school's request for information beyond the initial doctor's note constituted an invasion of privacy and use of confidential medical information to allow non-medical professionals to make judgment. Second, Plaintiffs claim that the Section 504 process was mere pretext to make further inquiries into Plaintiffs' daughter's confidential medical information when Plaintiffs refused to comply. Third, Plaintffs claim that they were threatened with arrest by a Vermont State Tropper for trespassing on NCSU property. Fourth, Plaintiffs claim that they were harmed by the threats of prosecution by the Vermont State Trooper that they would lose custody of their child, a threat made more realistic by the truancy officer's request for a CHINS petition. Plaintiffs contend that they felt extreme distress at the possibility that they might lose their child, who they love.

Plaintiffs' daughter cites to similar concerns, but she also notes that she was forced to study alone in a windowless room and then later forced to wear a mask against her doctor's recommendations, which caused her anxiety. Neither Plaintiffs, nor their daughter have sought medical care or mental health care to address the emotional distress they claim to have suffered, and they have not produced any medical or psychological records that would support their claims of extreme or severe emotional harm.

Standard for Summary Judgment

Summary judgment is appropriate if the evidence in the record, found in the statements required by V.R.C.P. 56(c)(2), shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. V.R.C.P. 56(c)(3); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994). The Court derives the undisputed facts from the parties' statements of fact submitted under V.R.C.P. 56(c)(2), and the supporting documents. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 29. A party opposing summary judgment may not simply rely on

allegations in the pleadings to establish a genuine issue of material fact, but it must produce evidence or affidavits to support the opposition. *Murray v. White*, 155 Vt. 621, 628 (1991).

Legal Analysis

While NCSU seeks summary judgment on several points, the Court focuses for purposes of the present analysis on two key areas. The first is sovereign immunity. The second is the determination that the alleged actions do not rise to the level of intentional infliction of emotional distress.

As noted by NCSU in its motion, "Schools and school districts are municipal entities supported by taxpayers." *Blondin v. Milton Town Sch. Dist.*, 2021 VT 2, ¶ 63 (citations omitted). "Pursuant to well-established common law, a municipality is generally immune from suit based on the negligent performance of 'governmental' functions." *Civetti v. Turner*, 2020 VT 23, ¶ 6 (citing *Lorman v. City of Rutland*, 2018 VT 64, ¶ 9). In this case, the actions on which Plaintiffs base their claims were governmental activities, namely operating and maintaining a school for the residents of the district. 16 V.S.A. § 822. The policies that NCSU created were promulgated to state and federal guidance and were aimed to create a safe school environment. As such, the actions in Plaintiffs' complaint appear to fit squarely under the purview of operating and administering a public school district, which is a governmental function and entitled to sovereign immunity.

Finally, there is a question of whether sovereign immunity applies to a claim of intentional infliction of emotional distress. The Vermont Supreme Court has ruled that when such a claim arises from the government's disregard of a statutory duty, then sovereign immunity is waived. *Czechorowski v. State*, 2005 VT 40, ¶ 31 (citing *Sabia v. State*, 164 Vt. 293, 302 (1995)). In this case, however, the contention is that NCSU followed its policy and procedures, which led to the Plaintiffs' distress. The Court is further persuaded by the cases cited by Defendant on page 7 and 8 of its brief, which collects cases where courts in other jurisdictions have dismissed intentional infliction of emotional distress claims on sovereign immunity grounds where the alleged behavior was not a violation or dereliction of duty, but a fulfillment. For these reasons, Defendant is entitled to summary judgment on sovereign immunity grounds.

To the extent that Plaintiffs seek to hold Defendant liability for the actions of Defendants' employees. The Court finds that 24 V.S.A. § 901a excludes a town or school district from having liability for the intentional actions of an employee. *Grundy v. City of Burlington*, Dckt. No. 21-CV-

03247, 2022 WL 17251723, at *4 (Vt. Super. Ct. Nov. 15, 2022) (Hoar, J.) (rejecting IIED claims against the City for the actions of employees). Even if NCSU was liable either direction under 24 V.S.A. § 901a or under the doctrine of respondeat superior, the actions of the school employees fit within the discretionary acts of school employees, and Defendant is entitled to qualified immunity. *Rich v. Montpelier Supervisory District*, 167 Vt. 415, 506–07 (1998).

For these reasons, Defendants have demonstrated sufficient basis to dismiss the present claim on immunity grounds.

Beyond, the issue of immunity, the Court also finds sufficient grounds for dismissal of Plaintiffs' claims under the requirements and standards of intentional infliction of emotional distress. As the Vermont Supreme Court has noted:

> To sustain a claim for IIED plaintiff must show defendants engaged in "**outrageous conduct**, done intentionally or with reckless disregard of the probability of causing emotional distress, resulting in the suffering of extreme emotional distress, actually or proximately caused by the outrageous conduct." *Sheltra v. Smith*, 136 Vt. 472, 476, 392 A.2d 431, 433 (1978). Plaintiff's **burden on this claim is a "heavy one**" as he must show defendants' conduct was **"so outrageous in character and so extreme in degree as to go beyond all possible bounds of decent and tolerable conduct in a civilized community and be regarded as atrocious and utterly intolerable**." *Dulude*, 174 Vt. at 83, 807 A.2d at 398. The court makes the initial determination of whether a jury could reasonably find that the alleged conduct satisfies all the elements of an IIED claim. *Jobin v. McQuillen*, 158 Vt. 322, 327, 609 A.2d 990, 993 (1992) (citing RESTATEMENT (SECOND) OF TORTS § 46, cmt. h (1965)).

Fromson v. State, 2004 VT 29, ¶ 14.

In the present case, Plaintiffs cite a number of actions by NCSU and its employees to which Plaintiffs assign negative intentions, but the actions themselves are not extreme or outrageous. It is important to note that the action as well as Plaintiffs' objections appear to arise from the imposition of a mask mandate. Such objections have arisen in a number of communities where some in the community have taken issue with masking rules. The Court is not here to offer a gloss on this political topic. Masking, like many areas, have become a litmus test for many, and one's belief and intensity with which it is held is a synecdoche of one's larger political beliefs. It is enough for the Court to note that the concerns driving state and local governments to enact mask mandates were grounded in public health concerns that are a necessary component of modern society. At the same time, mask resistance is emblematic of American skepticism and the fight for civil liberties, which

has a long history of pushing back against mandates and imposed obligations. Each strain of thought has a place in our society and an important function in keeping society safe, orderly, and free. See *J. Alexander Navarro*, Mask Resistance During a Pandemic Isn't New—in 1918 Many Americans Were "Slackers," The Conversation (Jul. 13, 2020), available at https://theconversation.com/mask-resistance-during-a-pandemic-isnt-new-in-1918-many-americans-were-slackers-141687 (discussing the history of masking enforcement, public health concerns, and mask resistance in the early 20th century).

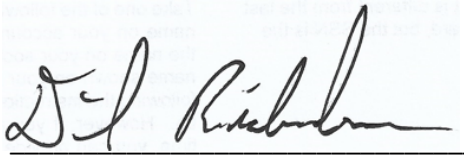
This is to say that while Plaintiffs likely felt that the NCSU's actions were outrageous, they objectively fall short of this standard as a matter of law. *Cate v. City of Burlington*, 2013 VT 64, ¶ 28 (holding that outrageous conduct must be assessed by the Court on an objective standard). The Court finds no objectively outrageous conduct, and Plaintiffs fail to meet their heavy burden on this point.

For this additional reason, the Court finds that NCSU is entitled to summary judgment and dismissal of all remaining claims, which solely consist of Intentional Infliction of Emotional Distress.

ORDER

Based on the Defendant's Motion, the Court **Grants** summary judgment to Defendant. This matter is dismissed as no further issues remain. Plaintiffs' intentional infliction of emotional distress are denied, and Defendant is entitled to summary judgment as a matter of law.

Electronically signed on 1/30/2024 2:26 AM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge