

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

ASHLEY DRURY,)
)
Plaintiff,)
)
v.)
)
VOLUSIA COUNTY, FLORIDA,)
a political subdivision of the State of Florida,)
ROBERT PAUL TAMERIS, individually, and)
JEOA DUANE SIMMONS, individually,)
)
Defendants.)

2012-10226 - CIDC
CASE NO.:

01

2012 JAN 20 PM 4:11
CLERK OF THE CIRCUIT
& CITY COURT VOLUSIA CO., FL
OC 23

FILED

COMPLAINT

Plaintiff ASHLEY DRURY sues Defendants, VOLUSIA COUNTY, ROBERT PAUL TAMERIS, individually, and JEOA DUANE SIMMONS, individually, and alleges:

1. This is an action for damages that exceed \$15,000.00, exclusive of interest, costs and attorney's fees.

2. Plaintiff has satisfied the notice requirements of §768.28(6) Fla.Stat. by notifying VOLUSIA COUNTY and the Florida Department of Financial Services by letter dated June 29, 2010. A copy of that correspondence is attached as Exhibit "A" to this Complaint.

3. This action is filed within thirty (30) days of the dismissal of Plaintiff's Federal civil rights action in Drury v. Volusia County, et al., Case No.: 6:10-cv-1176-Orl-18DAB (M.D. Fla.) and is therefore timely pursuant to 28 U.S.C. §1367(c).

VENUE

4. Venue is proper in Volusia County, Florida, as all of the actions and omissions complained of occurred in Volusia County.

2

PARTIES

5. Plaintiff, ASHLEY DRURY, is an individual, *sui juris*, who resided in Volusia County, Florida at all times material to this action.

6. Defendant, VOLUSIA COUNTY, Florida (hereinafter "COUNTY" or "VOLUSIA COUNTY") is a political subdivision of the State of Florida.

7. Defendant ROBERT PAUL TAMERIS ("TAMERIS") is a natural person, *sui juris*, residing in Volusia County, Florida.

8. Defendant JEOA DUANE SIMMONS ("SIMMONS") is a natural person, *sui juris*, residing in Volusia County, Florida.

BACKGROUND FACTS

9. The Volusia County Beach Patrol is a division of the Volusia County Department of Public Protection. The Volusia County Department of Public Protection is in turn a Department of Volusia County, Florida.

10. Volusia County, Florida is governed by its elected Board of County Councilmen, and is managed by the County Manager, James Dinneen.

11. Kevin Sweat is the director of the Volusia County Beach Patrol.

12. Employees of the Volusia County Beach Patrol include both sworn law enforcement officers and unsworn lifeguards. The law enforcement officers employed by the Volusia County Beach Patrol are cross-trained in lifeguard and rescue techniques.

13. At all times material hereto Defendant TAMERIS was a sworn law enforcement officer with the Volusia County Beach Patrol.

14. At all times material hereto Defendant SIMMONS was a Captain with the Volusia County Beach Patrol and a sworn law enforcement officer.

15. The Volusia County Beach Patrol has employed minor children as summer lifeguards for several decades and continues to do so.

SEXUAL ABUSE OF PLAINTIFF

16. Plaintiff was born on August 16, 1991. While now over the age of majority, Plaintiff was a minor child at all times material to this Complaint.

17. During the summer of 2008, Plaintiff was employed as a lifeguard by the Volusia County Beach Patrol. Plaintiff was sixteen (16) years of age at the beginning of her employment as a lifeguard and turned seventeen (17) toward the end of her employment by the County.

18. Plaintiff was introduced to Defendants TAMERIS and SIMMONS while employed as a lifeguard during the summer of 2008. SIMMONS was Plaintiff's direct supervisor.

19. TAMERIS and SIMMONS established an intimate "relationship" with Plaintiff while she was a lifeguard employed by the Volusia County Beach Patrol. TAMERIS and SIMMONS utilized their position as Plaintiff's superior officers to foster that "relationship".

20. Plaintiff first met TAMERIS in April of 2008 while stationed at the lifeguard tower just north of Sunsplash Park. TAMERIS, who was then on duty, initiated a conversation with Plaintiff and followed that initial casual contact with numerous telephone calls and text messages. Many of those text messages were sexually explicit.

21. Plaintiff advised TAMERIS at the time they met that she was only sixteen. TAMERIS responded that she should "just keep quiet about that".

22. On August 16 or 17, 2008, TAMERIS engaged in sexual intercourse with Plaintiff. Plaintiff had just turned seventeen (17) years of age and TAMERIS was approximately forty-three (43) years old.

23. Plaintiff engaged in sexual intercourse with TAMERIS on a total of three occasions between August and September 2008.

24. In later conversation with another underage victim of his sexual abuse [W.C.], TAMERIS described his seduction of Plaintiff and opined that "she was easy".

25. At some point after August 2008, SIMMONS engaged in sexual intercourse with Plaintiff. Plaintiff had just turned seventeen (17) years of age and SIMMONS was approximately thirty-five (35) years old.

26. The sexual encounter between SIMMONS and Plaintiff took place at the Main Street lifeguard tower, which is owned and operated by Volusia County.

27. By engaging in sexual intercourse with the Plaintiff, TAMERIS and SIMMONS violated §794.05, Fla.Stat. which prohibits sexual activity with a minor child.

28. Plaintiff did not give consent to sexual intercourse with TAMERIS, or SIMMONS because she was a minor child at the time of the sexual contact and was therefore legally incapable of giving consent.

29. Furthermore, the sexual intercourse between TAMERIS and SIMMONS took place in a coercive environment where voluntary consent was not possible by virtue of Plaintiff's age and the Defendants' position as law enforcement officers supervising her work.

30. While the Volusia County Beach Patrol is part of the organizational structure of Volusia County, the Beach Patrol has been relatively autonomous.

31. The employment of 16 and 17 year old children as lifeguards is an unusual, if not unique, feature of the Volusia County Beach Patrol; other lifeguard agencies typically do not employ minor children in this role.

32. VOLUSIA COUNTY owed a duty of care to all of its employees to safeguard them from sexual abuse perpetrated by other employees.

33. This duty of care was heightened where the individuals employed as lifeguards were minor children, as was the case with Plaintiff. In this instance, VOLUSIA COUNTY acted *in loco parentis* with a duty of care equivalent to a public school or other government facility charged with the care of children.

34. The environment or culture at the Volusia County Beach Patrol was sexually charged and the potential for sexual contact between minors and older employees was both obvious and well known to County administrators. Plaintiff points to the following particulars as evidence of that sexually charged workplace:

A. The employees, including the minor lifeguards wore skimpy attire at work commensurate with what other citizens wear at the beach.

B. The workplace was exceptionally casual, with only a loose chain of command and none of the formality one would usually find in a law enforcement agency (*e.g.* use of first names was common instead of references to rank or title).

C. The Beach Patrol had no anti-fraternization policy. As a result, workplace sexual relationships and affairs were common, including relationships between supervisors and their lower-ranking employees.

D. Senior-level personnel regularly organized parties which were attended by other beach employees, including minor lifeguards.

E. As far back as 1996, a Volusia County Beach Patrol spokesman was quoted in a national publication as saying that the lifeguards employed by the Volusia County Beach Patrol were "sexaholics" and "hustlers" for whom having sex on their lunch hour was routine.

35. Plaintiff was not the only minor child to suffer sexual abuse and coerced intercourse at the hands of Volusia County Beach Patrol employees. Plaintiff's inquiries have discovered that other minor children have suffered the same abuse she was forced to endure. Plaintiff alleges the following particulars:

A. In 2001 a Beach Patrol Officer by the name of Stephen Booth had sexual intercourse with a minor female who was approximately fifteen (15) years of age. That incident was reported through the chain of command (Capt. David Williams; who reported to Asst. Director William Bussinger; who reported to Director Kevin Sweat). Furthermore, the result of the police investigation by the New Smyrna Beach Police Department was communicated to County administrators, including Director Sweat.

B. On or about January 17, 2007, Curtiss M. Geber, then employed by Volusia County as a Beach Patrol Officer, engaged in an act of oral sex with Danielle Smith, a junior lifeguard also employed by the Beach Patrol, when Ms. Smith was seventeen (17) years of age. That incident was also reported up the chain of command and was known to Director Sweat.

C. Beginning in September or October of 2007, TAMERIS engaged in sexual intercourse with a minor known as "W.C.", then 16 years of age. TAMERIS met and seduced W.C. while working as a lifeguard with the Volusia County Beach Patrol. The sexual relationship lasted until March 2008 when the victim turned 17. There were approximately 20-25 incidents of sexual activity between TAMERIS and W.C.

TAMERIS also sent sexually explicit photographs and text messages to W.C. One such photograph of TAMERIS' erect penis was taken on the third floor of the Main Street lifeguard tower.

D. In July and August of 2009, TAMERIS kissed and propositioned a minor known as "N.L." then 17 years of age. N.L. was employed by the Volusia County Beach Patrol as a lifeguard beginning in May 2008, when she was 16 years of age.

E. During the summer of 1999, TAMERIS engaged in sexual intercourse with a minor known as "J.A.", then 17 years of age. TAMERIS met and seduced J.A. while working as a lifeguard with the Volusia County Beach Patrol. The sexual relationship lasted for approximately 2-3 years and included 3 or 4 instances of sexual intercourse when J.A. was 17. One of those sexual encounters took place at the Main Street lifeguard tower.

F. It was commonplace knowledge that members of the Volusia County Beach Patrol viewed pornographic materials on their computers while on duty and kept pornographic materials in their lockers.

36. Both SIMMONS and TAMERIS are also known to have engaged in sexual intercourse with adults while on duty as lifeguards for the Beach Patrol. Many of those encounters also occurred at the Main Street lifeguard station.

37. In addition to the incidents between adult lifeguards and minor children described above, the County was aware of at least two other incidents of sexual harassment at the Beach. Plaintiff alleges the following particulars:

A. In 2001, Shawn Jones, a lifeguard working in the New Smyrna Beach zone, exposed his penis to two Beach Patrol employees, Tammy Marris and Christine Dobmeier. Director Sweat was personally aware of that incident.

B. On August 29, 2003 a Beach Patrol officer named Daryl Shone groped a seasonal lifeguard named Sophie Abdennabi while bragging rather explicitly about the prowess of his tongue. Ms. Abdennabi had just turned 18 years of age at the time of this incident. Director Sweat was personally aware of that incident.

38. The County's training in prevention and reporting sexual harassment and abuse was limited to law enforcement officers and full-time employees. Seasonal lifeguards such as Plaintiff did not receive any training with respect to sexual harassment and abuse.

39. No training programs or instructions were offered to minor lifeguards to alert them to the danger of sexual abuse or to educate them concerning any policies the COUNTY may have with respect to sexual harassment.

40. The County has actual knowledge that the sexually charged environment at the Volusia County Beach Patrol had led to instances of sexual harassment and abuse, including the abuse of minor children by its employees.

41. Those incidents which were actually reported to the County and its officials were sufficient to put a reasonable administrator on notice that the institutional safeguards in place were either deficient or were being ignored.

42. All of the instances of prior sexual harassment and abuse were known to the County or should have been known to the County had County officials exercised ordinary care and diligence.

43. Furthermore, all of the instances of prior sexual harassment and abuse were known to the County or should have been known to the County prior to Plaintiff's abuse at the hands of TAMERIS and SIMMONS.

44. Given the unusual employment of underage lifeguards, the sexually charged culture of the Beach, the lack of an anti-fraternization policy, and the occurrence of actual instances of sexual abuse and molestation by and among Beach employees, the County had a duty to provide additional instruction and training for its employees and to undertake institutional reforms to guard against future abuse.

45. Given the sexually charged culture of the Beach, the lack of an anti-fraternization policy, and the occurrence of actual instances of sexual abuse and molestation by and among Beach employees, the County had a duty to protect minors against abuse by discontinuing its unusual practice of hiring underage lifeguards.

46. No remedial action was taken by the COUNTY despite actual knowledge of prior instances of sexual harassment and abuse by and among its Beach employees. There was no effort to protect minor lifeguards from similar acts of sexual abuse by adult lifeguards and Beach Patrol officers.

47. Had VOLUSIA COUNTY and its various officers, agents and employees, taken timely action to correct the lack of training and the long-standing culture of abuse at the Beach Patrol, Plaintiff, and other minor children, would not have been sexually abused by TAMERIS and SIMMONS.

DAMAGES

48. Plaintiff has suffered damages as a direct result of Defendants' actions. Plaintiff's damages include physical and emotional injuries, pain and discomfort, embarrassment, humiliation and psychological harm.

COUNT I

(Negligent Training)

49. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 48 of this Complaint and incorporates them herein by reference.

50. This is an action under Florida law for damages against the Defendant VOLUSIA COUNTY for its failure to adequately train its employees, including Plaintiff.

51. At all times material hereto, Defendant VOLUSIA COUNTY was the Plaintiff's employer as well as the employer of TAMERIS and SIMMONS.

52. Minor lifeguards, including the Plaintiff, were especially at risk of sexual abuse given their immaturity and the above-described sexual atmosphere at the Beach, the loose supervision of Beach employees and the close physical proximity to scantily-clad older lifeguards in supervisory positions.

53. VOLUSIA COUNTY owed a duty of care to its employees to safeguard them from sexual abuse perpetrated by other employees.

54. VOLUSIA COUNTY was aware that it had offered no training in the prevention and reporting of sexual abuse to its seasonal lifeguards since at least 2001.

55. VOLUSIA COUNTY was also aware that it lacked any anti-fraternization policies at the Beach Patrol and that the lack of such a policy had encouraged sexual relationships and affairs among its employees at the Beach Patrol, including relationships between senior supervisors and their subordinates.

56. VOLUSIA COUNTY was also aware of prior instances of sexual harassment and abuse, as above-described and was aware that similar instances were likely to recur in the future.

57. VOLUSIA COUNTY took no remedial action even in the face of actual knowledge of prior instances of sexual harassment and abuse.

58. Plaintiff received no training in the prevention and reporting of sexual abuse at any time during the course of her employment by VOLUSIA COUNTY.

59. Had VOLUSIA COUNTY offered training to its minor lifeguards, including Plaintiff, the incidents complained of would not have occurred.

60. VOLUSIA COUNTY was negligent and breached its duty to Plaintiff by failing to adequately train Plaintiff and other seasonal lifeguards with respect to risks which were known and foreseeable to the COUNTY.

61. Plaintiff suffered damages as a direct and proximate result of Defendant VOLUSIA COUNTY's failure to implement a reasonable training program.

WHEREFORE, Plaintiff demands judgment against Defendant VOLUSIA COUNTY for damages, both general and special, together with the costs of this action.

COUNT II

(Negligent Supervision)

62. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 48 of this Complaint and incorporates them herein by reference.

63. This is an action under Florida law for damages against the Defendant VOLUSIA COUNTY for its failure to adequately supervise its employees, TAMERIS and SIMMONS.

64. At all times material hereto, Defendant VOLUSIA COUNTY was the Plaintiff's employer as well as the employer of TAMERIS and SIMMONS.

65. VOLUSIA COUNTY owed a duty of care to its employees to safeguard them from sexual abuse perpetrated by other employees.

66. VOLUSIA COUNTY knew or should have known that TAMERIS and SIMMONS engaged in illegal sexual relations with minors employed by the County as lifeguards.

67. VOLUSIA COUNTY knew or should have known that TAMERIS and SIMMONS made use of County facilities to engage in sexual relations with lifeguards and other individuals.

68. VOLUSIA COUNTY knew or should have known that TAMERIS presented a particular risk for sexual harassment and abuse of others, including Plaintiff. Plaintiff alleges the following particulars:

A. While an employee of the COUNTY, TAMERIS was arrested and detained by the Daytona Beach Shores Police Department for purchasing alcohol for minor children and then partying with them. Daytona Beach Shores police alerted Eileen Prugar, an employee of the COUNTY, that TAMERIS was in custody for that offense.

B. TAMERIS left the employment of the Beach Patrol for a period of time after he insulted Ms. Prugar using vulgar and sexually explicit language (insinuating that her then-husband was engaging in sexual relations with another employee).

C. Defendant SIMMONS personally witnessed TAMERIS engaging in sexual intercourse while on duty at the Main Street lifeguard station.

D. TAMERIS had a well-known reputation among Beach employees as a womanizer who often flirted with young ladies while on duty and in uniform.

69. While Plaintiff was still employed by VOLUSIA COUNTY as a life guard, the Defendant VOLUSIA COUNTY had actual and imputed knowledge that officers and senior life guards at the Volusia County Beach Patrol were engaging in illegal sexual relations with minors.

70. While Plaintiff was still employed by VOLUSIA COUNTY as a life guard, the Defendant VOLUSIA COUNTY, knew or should have known that TAMERIS and SIMMONS were engaging in illegal sexual relations with minors, including Plaintiff.

71. At least one of those sexual liaisons between Plaintiff and SIMMONS took place at a life guard station owned and maintained by VOLUSIA COUNTY.

72. Reasonable managers and supervisors would have recognized the dangers posed by TAMERIS and SIMMONS and would have taken remedial action to guard minors, including Plaintiff, against ongoing sexual abuse.

73. Rather than take any such remedial action, VOLUSIA COUNTY allowed TAMERIS and SIMMONS to sexually abuse Plaintiff over the course of several months.

74. VOLUSIA COUNTY was negligent and breached its duty to Plaintiff by failing to timely discover and remedy the ongoing sexual abuse of Plaintiff and other minors employed as Beach Patrol life guards.

75. Plaintiff suffered damages as a direct and proximate result of Defendant VOLUSIA COUNTY's failure to exercise reasonable supervision of its employees.

WHEREFORE, Plaintiff demands judgment against Defendant VOLUSIA COUNTY for damages, both general and special, together with the costs of this action.

COUNT III

(State Law Tort Claim – Battery - Tameris)

76. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 48 of this Complaint and incorporates them herein by reference.

77. This is an action under Florida law to recover damages for battery against Defendant TAMERIS, individually.

78. Defendant TAMERIS, had offensive, non-consensual sexual relations with Plaintiff at a time when she was a minor and incapable of giving consent.

79. The sexual contact between TAMERIS and Plaintiff was a criminal violation of §794.05, Fla.Stat.

80. TAMERIS' actions were taken intentionally, maliciously and with complete disregard for the Plaintiff's rights.

81. As a direct and proximate result of Defendant's physical assaults on Plaintiff, Plaintiff has suffered severe harm and ongoing psychological injuries.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause.
- B. That this Court award Plaintiff money damages against TAMERIS for the unlawful battery against her.
- C. That this Court award Plaintiff her recoverable costs.
- D. That this Court award Plaintiff all other relief in law to which she may be entitled.

COUNT IV

(State Law Tort Claim – Battery - Simmons)

82. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 48 of this Complaint and incorporates them herein by reference.

83. This is an action under Florida law to recover damages for battery against Defendant SIMMONS, individually.

84. Defendant SIMMONS, had offensive, non-consensual sexual relations with Plaintiff at a time when she was a minor and incapable of giving consent.

85. The sexual contact between SIMMONS and Plaintiff was a criminal violation of §794.05, Fla.Stat.

86. SIMMONS' actions were taken intentionally, maliciously and with complete disregard for the Plaintiff's rights.

87. As a direct and proximate result of Defendant's physical assaults on Plaintiff, Plaintiff has suffered severe harm and ongoing psychological injuries.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause.
- B. That this Court award Plaintiff money damages against SIMMONS for the unlawful battery against her.
- C. That this Court award Plaintiff her recoverable costs.
- D. That this Court award Plaintiff all other relief in law to which she may be entitled.

COUNT V

(State Law Tort Claim - Intentional Infliction of Severe Emotional Distress)

88. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 48 of this Complaint and incorporates them herein by reference.

89. This is an action under Florida law to recover damages for intentional infliction of emotional distress, against Defendants, TAMERIS and SIMMONS individually.

90. Defendants TAMERIS and SIMMONS, had offensive, non-consensual sexual relations with Plaintiff at a time when she was a minor and incapable of giving consent.

91. The sexual contact by TAMERIS and SIMMONS with Plaintiff was a criminal violation of §794.05, Fla.Stat.

92. TAMERIS and SIMMONS acted intentionally, maliciously and with complete disregard for the Plaintiff's constitutional and state law rights.

93. Defendants acted recklessly and with complete indifference to Plaintiff's right of privacy, and emotional and physical well-being.

94. The emotional and psychological harm which Plaintiff suffered as a result of the illegal sexual abuse was completely foreseeable and was an intended consequence of those illegal sexual acts.

95. As a direct and proximate result of Defendants' outrageous conduct, Plaintiff has suffered severe emotional distress and ongoing psychological injuries.

96. The emotional distress suffered by Plaintiff is unusually extreme and severe and is a direct and intended consequence of the intentional and outrageous conduct of the Defendants.

WHEREFORE, Plaintiff prays for the following relief:

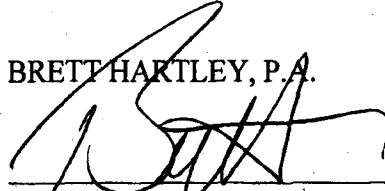
- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court award Plaintiff money damages against Defendants TAMERIS and SIMMONS, individually for intentional infliction of emotional distress.
- C. That this Court award Plaintiff her recoverable costs.
- D. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

GARY S. EDINGER, P.A.

BRETT HARTLEY, P.A.

A handwritten signature in black ink, appearing to read 'Brett Hartley', is written over a horizontal line.

GARY S. EDINGER, Esquire
Florida Bar No.: 0606812
305 N.E. 1st Street
Gainesville, Florida 32601
(352) 338-4440/ 337-0696 (Fax)
GSEdinger@aol.com

BRETT HARTLEY, Esquire
Florida Bar No.: 140317
102 S Riverside Dr
New Smyrna Beach, FL 32168
(386) 427-1006/ (386) 427-1065 (Fax)
bretthartley@cfl.rr.com

Attorneys for Plaintiff