IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

A.R.,

PLAINTIFF,

v.

Civil Action No.: 20-C-571
Judge Kenneth D. Ballard

DUSTIN KINSER, a West Virginia Child Protective Services Worker; and CAPITOL HOTELS, INC., d/b/a/KNIGHTS INN,

and

Civil Action No.: 20-C-963

THE WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES, a West Virginia State agency,

DEFENDANTS.

ORDER DENYING THE WEST VIRGINIA DEPARMENT OF HEALTH AND HUMAN RESOUCES MOTION TO STRIKE AND FOR PARTIAL DISMISSAL OF PLAINTIFF'S AMENDED COMPLAINT

Plaintiff, A.R., by and through counsel, and Defendant, The West Virginia Department of Health and Human Resources ("DHHR") appeared on or about April 11, 2022 for hearing on Defendant DHHR's motion to strike and motion for partial dismissal of Plaintiff's amended complaint. After consideration of the Defendant's motion and supporting memorandum of law, the response in opposition, and the reply brief, addition to the statements and arguments of counsel, this Court does hereby **DENY** Defendant DHHR's motion to strike and for partial dismissal, and further notes that the Plaintiff has agreed to voluntarily dismiss Count III of Plaintiff's Complaint.

Findings of Fact

1. This case arises from the conduct of Dustin Kinser ("Kinser"), a West Virginia child protective services worker, formerly employed by Defendant DHHR.

2. It is alleged that Kinser used his position as a child protective services worker with the

Defendant West Virginia DHHR to identify, groom, and unlawfully abduct A.R. from her home.

3. It is believed that Kinser used the authority provided to him by the DHHR to access internal child protective services databases to obtain relevant information on A.R. and her CWS history which he then used to groom and shape his relationship with A.R. and to convince the child to abscond from what she reported to Kinser as a neglectful home and run off with him purportedly for her safety but in actuality to allow Kinser to sexually assault and abuse A.R.

4. Under the guise of being able to assist her, and after being informed of the potentially dangerous conditions in the home, Kinser took A.R. from the home but failed to make any report or open any official case with CWS.

5. Despite the Complaints that A.R. made to Kinser he failed to report same, though he was a mandatory reporter, and instead proceeded to abduct the child and sexually abuse and assault her himself.

6. Kinser first took A.R. to the Knights Inn, a hotel operated by Capitol Hotels, Inc., located in the Kanawha City section of Charleston, West Virginia.

7. In July of 2018 Kinser was able to obtain a room for him and the minor child at the Knights Inn.

8. Kinser was able to use illegal drugs, supply alcohol to the minor A.R. and sexually abuse and assault her in the Knights Inn hotel room.

9. Kinser then took A.R. to several residences in Kanawha County, West Virginia where he used illicit drugs, injured and further abused the minor child.

10. At various points over the course of several days, Kinser took A.R. with him during his official business as a child welfare services worker.

11. Kinser used illicit drugs including methamphetamine during most of this time and while

actively engaged as a CWS worker.

12. On one occasion, Kinser smoked methamphetamine in a vehicle he used at the West Virginia DHHR's Kanawha County Child Protective Services main office with A.R. in the vehicle and then proceeded to enter the office and engage in work on behalf of other abused and neglected children.

13. On another occasion, Kinser conducted a home visit of a child under CWS' watch, while high on methamphetamine, and under while charged by DHHR to investigate the status of the child, took A.R. with him on this visit, lying to the family he was visiting with and telling them that A.R. was a CWS "intern."

14. It is alleged DHHR failed to conduct an adequate background of Dustin Kinser prior to employing him as a CWS worker and prior to providing him with the authority and detailed information he used to perpetuate his actions on A.R.

15. The West Virginia DHHR failed to conduct adequate drug testing and screening that would have revealed that Kinser was actively using illegal drugs including methamphetamine.

16. Other West Virginia DHHR workers and supervisors that worked with Kinser knew of and/or suspected his drug use and other inappropriate behavior but failed to take action.

17. The Defendant's actions, inactions, and conduct caused injuries to A.R. due to sexual assault, sexual abuse, mental and physical abuse, and other conditions that A.R. was forced to endure.

Legal Standard

18. The Court notes, after review of the Supreme Court of Appeals of West Virginia's decision in *E.K. v. W.Va. Dep't of Health & Human Res.*, 2017 W. Va. LEXIS 894 (W. Va. Nov 17, 2017), that when ruling on a motion to dismiss made pursuant to Rule 12(b)(6) of the West Virginia Rules

of Civil Procedure, a circuit court is limited to considering matters properly alleged in the pleadings; it should not dismiss a complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id* at 9.

19. Notwithstanding this need to factually develop the issues before it, this Court is mindful that in its present posture, where Defendants are seeking to dismiss Plaintiff's Complaint under Rule 12(b)(6) of the W.Va. Rules of Civil Procedure, as such it is imperative:

> "...that all pleadings "be so construed as do substantial justice." To that end, "[f]or purposes of the motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and its allegations are to be taken as true." *John W. Lodge Distrib.*, 161 W.Va. at 605, 245 S.E.2d at 158. In other words, "[a] trial court considering a motion to dismiss under Rule 12(b)(6) must liberally construe the complaint [.]" *Cantley v. Lincoln Cty. Comm'n*, 221 W.Va. at 470, 655 S.E.2d at 492 (2007). (emphasis added).

20. *In Syl. pt. 2 Arbaugh v. Bd. Of Education, 212 W.Va. 677, 591 S.E. 2d 235 (2003),* in a case involving a Plaintiff attempting to hold a mandatory reporter liable for failing to report a suspected occurrence of child abuse as required by the Child Welfare Act, the Court based its decision to not extend a private cause of action to the Plaintiff on a lack of proximate cause. *Id.* As such, the factual nature and legal basis upon which the Court issued its ruling is completely distinct from the facts alleged by Plaintiff in her Complaint. The Court in *Arbaugh* was dealing solely with the issue of failure to act under the "Mandatory Reporter" provisions of the Child Welfare Act, and thus the ruling on that issue is in opposite to the facts of the instant case.

21. However, the Court in *Arbaugh* specifically included language indicating that even in situations confined to the "mandatory reporter" section of the Child Welfare Act, there was not an absolute bar to private causes of action under that provision of the statute. *Id.* The Court in *Arbaugh* stated:

> "In so holding, we have not ignored Mr. Arbaugh's plea to carve out a private cause of action for more egregious situations, such as where an eye-witness has failed to report....We note that children harmed by such egregious circumstances are not without remedy, where in an otherwise proper case a cause of action may be brought based on the negligence with the failure to report admissible as evidence in that context." Id.

22. Thus, despite being factually inapplicable to the instant case, the language of the *Arbaugh* decision asserted by Defendants does, in fact, entertain the possibility of a violation of the specific statute in question in said case to be the basis for a "private cause of action" and/or to be utilized as evidence in a negligence action. The language of the *Arbaugh* decision wherein the Court notes that a private cause of action could be created in more "egregious situations" demonstrates that this count in the Complaint is appropriate. *Id.*

23. Said act, while certainly offering certain instances of discretion to Child Protective Service workers in their investigation of child abuse, offers no such discretion in whether or not they MUST investigate and/or perform certain actions upon receiving a referral of suspected child abuse or neglect. This is especially true when it is alleged that a child is in "imminent danger." One relevant portion of the Child Welfare Act as set forth in West Virginia Revised Code Section 49-2-802, provides that "Each local child protective services office shall:....(4) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As part of this response, within seventy-two hours, there shall be face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the court..." Plaintiff has clearly alleged that after receiving multiple, specific referrals regarding a child being forced to reside with a known sexual predator and further being forced to reside in deplorable, unsafe living conditions, that a Child Protective Services Worker specifically acknowledged receipt of said referral, promised to take action, and then failed

to take appropriate action as legally required. This is precisely the type of egregious situation envisioned by the Court when contemplating private causes of action under the Child Welfare Act in the *Arbaugh* case.

24. Further, the Child Welfare Act appears to specifically contemplate a private cause of action for violations of the same, as WVRC Section 49-2-802, provides:

> "No Child protective services caseworker may be held personally liable for any professional decision or action taken pursuant to that decision in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon. However, nothing in this section protects any child services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct."

Based upon this language, a Child Protective Services worker may be held personally liable for "any loss caused by gross negligence, willful and wanton, or intentional misconduct," and Plaintiff's Complaint clearly alleges, among other things, gross negligence and/or willful and wanton conduct on the part of the Defendants. In light of the foregoing, Defendants motion as to Count I is denied.

25. The plaintiff further contends that at this early stage of this litigation it is unnecessary to strike Court IV of her Complaint, indeed the DHHR fails to identify a West Virginia case that supports its position, that Count IV must be stricken at this early stage of the litigation. However, Plaintiff has agreed to dismiss Count III of her Complaint as to all defendants. In light of the foregoing, Defendants motion to strike Count IV is denied as moot.

26. DHHR contends that there is no implied civil remedy for violation of the West Virginia Human Trafficking statutes W. Va. Code § 61-14-1 *et seq*. The DHHR is the West Virginia State agency that oversees, and is ultimately responsible for, child welfare in West Virginia via its Bureau for Children & Families program known as Child Welfare Services.

27. In 2017 the West Virginia Legislature repealed W. Va. Code § 61-2-17. Human trafficking; criminal penalties. This code section formerly provided both criminal and civil remedies for human trafficking. With respect to the civil remedies, it provided for actual, compensatory, and punitive damages, in addition to attorney's fees and costs and treble damages. At the same time during the 2017 session the West Virginia Legislature enacted W. Va. Code § 61-14-1 *et seq.* with the stated purpose of strengthening and establishing criminal offenses relating to human trafficking. DHHR further directs the Court's attention to the West Virginia House of Delegates Journal from February 10, 2017 when HB 2318 was introduced, the Introduction did in fact state that the bill repealed existing civil remedies. However, the Enrolled Committee Substitute, which included a floor amendment from then House Judiciary Chairman Delegate John Shott, conspicuously removed any reference in the Introduction to repealing civil remedies.

28. The crux of DHHR's argument is that since an express cause of action that provided for increased penalties and fees was removed from the W. Va. Code by the repeal of W. Va. Code § 61-2-17, there cannot be an implied cause of action under the "new" West Virginia Human Trafficking statutes at W. Va. Code § 61-14-1 *et seq.* As noted above, the floor amendment by Delegate Shott removed any reference to repealing civil remedies. By removing this reference, the Legislature was clearly signaling that there is a civil remedy for violation of the West Virginia Human Trafficking statutes. DHHR is attempting to insert protections for itself, the State agency ultimately responsible for child welfare, from liability in this case.

29. Turning to Syl. Pt. 1, *Hurley v. Allied Chem Corp.*, 164 W. Va. 268 (W. Va. 1980), the Supreme Court of Appeals of West Virginia held that the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) consideration must be given to

legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private cause of action must not intrude into an area delegated exclusively to the federal government. *Id.* Through this lens, its is clear (1) that A.R. is a member of the class for whose benefit the West Virginia Human Trafficking statutes was intended, (2) as discussed above, the floor amendment by Delegate Shott amending the introduction and excluding the reference to "removal of civil remedies" clearly indicates the intent for an implied private cause of action, (3) furthermore a private cause of action is consistent with the underlying purposes of the legislative scheme, and (4) a private cause of action does not intrude into an area delegated exclusively to the federal government. Therefore, it is clear that the West Virginia Human Trafficking statutes at W. Va. Code § 61-14-1 *et seq.* provide an implied private cause of action and defendants motion on this count must fail. In light of the foregoing, Defendants motion as to Count V is denied.

30. Defendants' attempt to have the instant matter dismissed via the defense of "qualified immunity" is unfounded and premature at this time and precluded by the facts and allegations advanced in Plaintiff's Complaint. The West Virginia Supreme Court, when discussing the issue of "qualified immunity" has stated:

> "The various holdings against which each particular set of facts must be analyzed lead inevitably to a situation where some allegations fit more comfortably with certain syllabus points than others. Much of the absence of harmony is simply the nature of the beast: ***immunities must be assessed on a case-by-case basis*** in light of the governmental entities and/or officials named and the nature of the actions and allegations giving rise to the claims."

See W.Va. Department of Health and Human Resources v. Payne, 231 W.Va. 563, 571, 746 S.E. 2d 554, 562 (2013) (emphasis added). The relevant case law governing the doctrine of "qualified

immunity" makes it clear that in order for a reviewing court to properly determine whether the doctrine was properly applied, they must "first identify the nature of the governmental acts or omissions which give rise to the suit for purposes of determining whether such acts.....involve discretionary governmental functions", and should such actions ultimately be deemed discretionary functions, a reviewing court must then "determine whether the plaintiff has demonstrated that such acts or omissions are in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive.." *See WVRJCFA v. A.B., 234 W.Va. 492, 514, 766 S.E. 2d 751, 773 (2014).*

31. As stated in *Spry v. The State of West Virginia, 2017 WL 440733 (S.D. W.Va. Feb. 21, 2017)*, the premature nature of Defendants' attempt to have the case dismissed based on their anticipated defense of "qualified immunity" at this point is underscored by the Court's statement:

> "Trooper Belt's qualified immunity defense is premature. The defense of qualified immunity shields a government official from liability for civil monetary damages if the officer's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity protects government officials performing discretionary functions from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights which a reasonable person would have known. Qualified immunity is more than immunity from liability; it is an entitlement not to stand trial or face the other burdens of litigation. A government official asserting qualified immunity defense bears the burden of proof and persuasion. *Ordinarily, the question of qualified immunity should be decided at the summary judgment stage*."

32. The West Virginia Supreme Court of Appeals, based upon the above, has made clear that a "case-by-case" analysis is necessary to make determinations related to "qualified immunity." Defendants seek to deprive Plaintiff of any opportunity to pursue its claims without engaging in any discovery whatsoever, and further, to deprive any Court of law the ability to rule upon and/or

analyze the appropriateness of any potential ruling related to "qualified immunity." The allegations of Plaintiff's Complaint, include, but are not at all limited to, allegations that the actions and inactions of Defendants violated "mandatory" (not "discretionary") duties required by statutory mandates and/or violated various Constitutional laws, that said actions and/or inactions constituted gross negligence and/or gross dereliction of duty, were willful and/or wanton, and that upon information and belief certain actions of Defendants were willful and deceitful and performed with an intent to conceal. Once again, these allegations are not exhaustive, but exhibit that the allegations of Plaintiff, which must be taken as true for purposes of this Motion, strip the Defendants of their untimely advanced defense of "qualified immunity."

33. In *Crouch v. Gillispie, No. 17-0025 (W.Va. Jan., 31, 2018),* the West Virginia Supreme Court was faced with reviewing a Circuit Court's decision to deny summary judgment on the grounds of qualified immunity after the parties had the opportunity to engage in extensive and/or meaningful discovery. In that case, the parties conducted multiple depositions, exchanged written discovery, engaged expert witnesses, and were otherwise able to make a record for review regarding the duties and failures of child protective services. Factually, the case of *Crouch v. Gillispie, No. 17-0025 (W.Va. Jan. 31, 2018)*, is readily distinguishable from the facts advanced by Plaintiff in her Complaint. The "Factual and Procedural Background" section of said case provides that C.P.S., after receiving an "anonymous call" alleging that a child's mother was "unable to care for the child", "accepted the referral" of the phone call the same day (April 19, 2010), and that by April 22, 2010, a C.P.S. Worker, pursuant to the referral, had conducted a "face-to-face" interview at the home of the mother and child and further had completed a "Present Danger and Family Functioning Assessment" the same day (two days after the initial referral). *Id.* In stark contrast to the Crouch case, in the instant case, a C.P.S. worker is alleged to have actually

perpetrated the offenses himself under the color of the State and to have directly abused a child that had previously been in CPS custody. This is a markedly different factual scenario than the one presented to the court in the *Crouch* case and one that warrants discovery.

34. Further, as is true with the *Crouch* case outlined above, the other cases advanced by Defendants in their premature attempt to raise the issue of "qualified immunity" involve what the reviewing Court deemed to be "discretionary governmental functions." In *West Virginia State Police v. Hughes, 238 W.Va. 406, 796 S.E. 2d 193*, the Plaintiff's sought to hold the State Police liable for failing to prevent the suicide of a man that had previously threatened to kill himself and/or to hold the State Police liable for not thoroughly conducting a comprehensive search for a deceased man's remains. In *Hughes*, officers quickly and appropriately acted to encounter and question the person who had allegedly threatened to commit suicide, and subsequent to said encounter, determined that the man did not appear to pose a threat to himself. *Id.* Further in *Hughes*, in dealing with the officers' alleged failure to comprehensively search for the remains of a decedent, it was determined that officers "searched a 6,000 square foot area at least 6 times", that said officers "photographed, documented, mapped and bagged" items found at the scene", and that said officers searched the area for at least "six hours." *Id.* As such, the conduct complained of in *Hughes* clearly involved discretionary, rather than mandatory actions. That is not the case before the Court here. Had the officers in *Hughes*, after being apprised of a potentially suicidal person, affirmatively stated that they would investigate, and/or had said officers sent an email promising action only to do nothing at all, then the decision in the case would likely have been quite different. In the instant case, taking all allegations as true, as the court must in reviewing a motion to dismiss pursuant to W.Va. Rule of Civil Procedure 12(b)(6), there were mandatory, and not discretionary duties, that the child protective services workers and supervisors failed to carry out or actively

engaged in, that directly and proximately caused this minor child to be injured.

35. The Plaintiff's Complaint alleges violations of clearly established statutory and constitutional law by a government agency and government actors performing mandatory, not discretionary, duties. As such, Defendants' attempt to assert "qualified immunity" for Plaintiff's claims is unsupported by the facts of the instant case. *Syl. Pt. 4, Clark v. Dunn, 195 W.Va. 272, 465 S.E. 2d 374 (1995)* provides:

> "If a public officer is either authorized or required, in the exercise of his judgment and discretion, to make a decision and to perform acts in the making of that decision, and the decisions are within the scope of his duty, authority and jurisdiction, he is not liable for negligence or other error in the making of that decision, in a suit of a private individual claiming to have been damaged thereby."

36. Plaintiff has alleged that the actions (and inactions) of Defendants involved mandatory, non-discretionary duties. Further, Plaintiff's Complaint includes, but is not limited to, allegations of "gross negligence, gross dereliction of duty, willful, wanton, deceitful, outrageous conduct, all of which clearly establish that Plaintiff's claims are not simply based on "mere negligence" as Defendants contend. Further, assuming, arguendo, that Plaintiff's Complaint alleged "mere negligence", for Defendants' "qualified immunity" defense to bar such claim, it would first need to be clearly established that the actions (or inactions) of Defendants were discretionary in nature and not in violation of clearly established statutory or constitutional laws that a reasonable person would know, or were not otherwise fraudulent, malicious or oppressive. *See State v. Chase Securities, Inc., 188 W.Va. 356, 425 S.E. 2d 591 (1992).*

37. On October 13, 2020 the West Virginia Supreme Court of Appeals released its opinion in *B.R. v. West Virginia Department of Health and Human Resources, et al.* (Supreme Court Case No. 18-1141) reversing the Circuit Court of Kanawha County's granting of a motion to dismiss sought by the State of West Virginia on qualified immunity grounds. The memorandum decision

was concurred in by all five Justices of the West Virginia Supreme Court of Appeals. In the B.R opinion the Court again cited to *Chase Securities, supra,* stating as follows:

> When analyzing qualified immunity cases, we are guided by the following: A public executive official who is acting within the scope of his authority and is not covered by the provisions of W. Va. Code 29-12-1 *et seq*. [the West Virginia Governmental Tort Claims and Insurance Reform Act], is entitled to qualified immunity from personal liability for official acts if the involved conduct did not violate clearly established laws of which a reasonable official would have known. There is no immunity for an executive official whose acts are fraudulent, malicious, or otherwise oppressive.

Syllabus, in part, *State v. Chase Securities*, 188 W. Va. 356, 424 S.E.2d 591(1992).

38. Turning to Plaintiff's negligent hiring and negligent supervision claims, the Plaintiff's Complaint alleges violations of clearly established statutory and constitutional law by a government agency and government actors performing mandatory, not discretionary, duties. As such, Defendants' attempt to assert "qualified immunity" for Plaintiff's claims is unsupported by the facts of the instant case. *Syl. Pt. 4, Clark v. Dunn, 195 W.Va. 272, 465 S.E. 2d 374 (1995)* provides:

> "If a public officer is either authorized or required, in the exercise of his judgment and discretion, to make a decision and to perform acts in the making of that decision, and the decisions are within the scope of his duty, authority and jurisdiction, he is not liable for negligence or other error in the making of that decision, in a suit of a private individual claiming to have been damaged thereby."

39. Plaintiff has alleged that the actions (and inactions) of Defendants involved mandatory, non-discretionary duties and discovery is in its infancy. Further, Plaintiff's Complaint includes, but is not limited to, allegations of "gross negligence, gross dereliction of duty, willful, wanton, deceitful, outrageous conduct, all of which clearly establish that Plaintiff's claims are not simply based on "mere negligence" as Defendants contend. Further, assuming, arguendo, that Plaintiff's Complaint alleged "mere negligence", for Defendants' "qualified immunity" defense to bar such

claim, it would first need to be clearly established that the actions (or inactions) of Defendants were discretionary in nature and not in violation of clearly established statutory or constitutional laws that a reasonable person would know, or were not otherwise fraudulent, malicious or oppressive. *See State v. Chase Securities, Inc., 188 W.Va. 356, 425 S.E. 2d 591 (1992).*

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Syllabus, in part, *State v. Chase Securities*, 188 W. Va. 356, 424 S.E.2d 591(1992). In light of the foregoing, Defendants motion as to Count VI and VII is denied.

The Defendant seeks dismissal of Plaintiff's claims of vicarious liability, arguing that "vicarious liability is not a standalone cause of action." Count VIII of Plaintiff's Amended Complaint states that West Virginia DHHR is vicariously liable for the actions of its employee Dustin Kisner. The Supreme Court of Appeals of West Virginia held in Syl. Pt. 4 of *Griffith v. George Transfer and Rigging, Inc.*, 157 W. Va. 316, 201 S.E.2d 281 (1973), that whether an agent was "acting within the scope of his employment and

about his employer's business at the time of a collision, is generally a question of fact for the jury and a jury determination on that point will not be set aside unless clearly wrong." (emphasis added). *See also* Syl. Pt. 1, in part, *Laslo v. Griffith*, 143 W.Va. 469, 102 S.E.2d 894 (1958) ("When the facts relied upon to establish the existence of an agency are undisputed, and conflicting inferences can not be drawn from such facts, the question of the existence of the agency is one of law for the court[.]"

Here, there is no basis to dismiss Plaintiff's claim of vicarious liability, that is a factual determination to made by the jury and as such should not be dismissed. Furthermore, discovery has not yet been conducted and a factual record for the Court to review does not yet exist, though ultimately Plaintiff contends that this is a factual determination for the jury. In light of the foregoing, Defendants motion as to Count VIII is denied at this time.

ORDER

In light of the foregoing:

It is **ORDERED, ADJUDGED and DECREED** that Defendants motion to strike and motion to dismiss is **DENIED**. "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that [the plaintiff] can prove no set of facts in support of his claim which would entitle him to relief." *Mey v. Pep Boys-Manny, Moe & Jack*, 228 W. Va. 48, 53, 717 S.E.2d 235, 239 (2011) (internal quotation marks and citations omitted).

Defendants' objections are noted and preserved.

It is further **ORDERED** that a certified copy of this Order be transmitted to all counsel of record.

Entered this 20th day of April, 2022.

Honorable Kenneth D. Ballard

Plaintiff A.R.
By Counsel

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