

In the Circuit Court of Logan County, West Virginia

ELIZABETH VESTAL,
Plaintiff,

v.

Case No. CC-23-2023-C-10
Judge Kelly Codispoti

**LOGAN COUNTY BOARD OF
EDUCATION,
BRANDON WILLARD,**
Defendants

**Plaintiff's Proposed Order Denying Defendant Logan County West Virginia Board
of Education's Motions to Dismiss**

On Monday, May 22, 2023, the parties came before this Court for oral argument on the Defendants' Motions to Dismiss filed in response to the Plaintiff's Amended Complaint. The briefs have been considered and both sides have had the opportunity to be heard. The matter is ripe for decision. For the reasons below, the Court DENIES Defendant Logan County Board of Education's Motions to Dismiss. More specifically, the Court FINDS the following:

A. FINDINGS OF FACT

1. This lawsuit arises out of sexual assaults committed by Defendant Brandon Willard (hereinafter referred to as "Defendant-Willard") on the Plaintiff while the Plaintiff was a student at Logan High School. (*See* Compl. Generally).
2. In the Plaintiff's Amended Complaint, she alleges that she was a student of Logan High School (Compl. ¶ 6).
3. Defendant-Willard was the then-band teacher and band director of Logan High School during Plaintiff's high school career. (Compl. ¶ 7).
4. At all times material hereto, Defendant-Willard was an employee of Defendant Logan County Board of Education (hereinafter referred to as "Defendant-Board"). (Compl. ¶ 8).

5. Beginning in May 2003, when the Plaintiff was a sophomore at Logan High School, Defendant-Willard began to sexually assault the Plaintiff. (Compl. ¶ 10)
6. During the Plaintiff's sophomore year of high school, Defendant-Willard exposed his penis to the Plaintiff and grabbed her breasts while the two were alone in his office. (Compl. ¶¶ 11-20).
7. While attending the high school band camp in the summer of 2003, Defendant-Willard sexually assaulted the Plaintiff by forcing her up against a wall and digitally penetrating her vagina. (Compl. ¶¶ 21-29).
8. Also, while at band camp during the summer of 2003, Defendant-Willard forced the Plaintiff to grab his penis and masturbate him until he ejaculated. (Compl. ¶¶ 30-35).
9. Defendant-Willard threatened to get the Plaintiff in trouble if she told anyone what he did to her. (Compl. ¶ 36).
10. Defendant-Willard continued to sexually assault the Plaintiff into her junior year of high school. (Compl. ¶ 50).
11. During her junior year, Defendant-Willard isolated her in his office and exposed himself to her while asking her to perform stretches. (Compl. ¶¶ 51-57).
12. When the Plaintiff refused to perform the stretches, he grabbed her legs and forced it upwards, causing her hip to pop and caused her immense pain. (Compl. ¶¶ 57-59).
13. In October of her Junior year, Defendant Willard isolated the Plaintiff in the second-floor concession storage room and he forced the Plaintiff on her back on a table, removed her clothes, and performed oral sex, with digital penetration, for fifteen minutes. (Compl. ¶¶ 66-73).
14. In the Spring of 2004, during the auditions for drum major, Defendant-Willard offered the Plaintiff the position of drum major if she would "suck his dick." (Compl. ¶¶ 80-85). Plaintiff refused.

15. During the final week of her junior year, Defendant-Willard trapped the Plaintiff in the woodwind room and forced her to perform oral sex on him. (Compl. ¶¶ 88-94).
16. When the Plaintiff attended band camp during the summer before her senior year, Defendant-Willard sexually assaulted the Plaintiff one time while riding a golf cart. (Compl. ¶¶ 95-100).
17. During the Plaintiff's senior year, Defendant-Willard repeatedly sexually assaulted the Plaintiff. (Compl. ¶¶ 101-107).
18. In March 2005, Defendant-Willard raped the Plaintiff at a basketball game. (Compl. ¶¶ 108-112). Defendant-Willard waited for the Plaintiff to enter a room to get a drink of water and attacked her from behind. (Compl. ¶¶ 108-112). Defendant Willard ejaculated on her back when he finished. (Compl. ¶ 111).
19. After the violent rape, the Plaintiff felt depressed and contemplated suicide. (Compl. ¶ 114.).
20. Unfortunately, that was not the last assault by Defendant Willard.
21. In April 2005, the Plaintiff went to Disney World with the Logan High School Marching Band. (Compl. ¶ 117).
22. On the bus ride to Disney World, Defendant-Willard sexually assaulted the Plaintiff by grabbing her breasts while she was asleep, and later by forcing her to manually stimulate his penis with her hand. (Compl. ¶¶ 117-121).
23. While in Florida for the Disney trip, Defendant again sexually assaulted the Plaintiff while in the hotel's hot tub. (Compl. ¶¶ 122-123).
24. Defendant-Willard threatened to harm the Plaintiff if she ever told anyone about the sexual assaults.
25. Specifically, at the end of her senior year, on the night awards were given, Defendant-Willard grabbed her by throat and told her if, "she ever told anyone he would ruin her."

(Compl. ¶ 125). The Plaintiff believed that Defendant-Willard would kill her if she ever told anyone about the assaults. (Compl. ¶ 126).

26. After the Plaintiff graduated from High School, she taught at the Cedar Lakes Band Camp in the summer of 2005. (Compl. ¶¶ 127-130).

27. While at band camp in the summer of 2005, Defendant-Willard entered the Plaintiff's room while she was asleep and forcibly raped and strangled the Plaintiff until she lost consciousness. (Compl. ¶¶ 131-136).

28. The Plaintiff went to Lee University that fall as a freshman. (Compl. ¶ 139).

29. Meanwhile, Defendant-Willard got a job at the University of Charleston. (Compl. ¶ 140).

30. Defendant-Willard began to solicit the Plaintiff to attend the University of Charleston and offered her a job as his office assistant. (Compl. ¶ 141).

31. Initially the Plaintiff's parents pressured the Plaintiff to consider the offer, but the Plaintiff broke down and finally told her parents of the repeated sexual assaults and rapes that she endured at the hands of Defendant-Willard. (Compl. ¶¶ 142-147).

32. As a result of the aforementioned conduct, the Plaintiff initiated a civil action against Defendant-Willard and Defendant-Board on October 5, 2022 by filing a civil Complaint.

33. On October 6, 2022, the Plaintiff filed an Amended Complaint containing the following twelve (12) Counts:

- a. Count I: Violation of West Virginia Code § 61-8D-5: All Defendants;
- b. Count 2: Sexual Assault and Harassment at School and School Related Events:
All Defendants;
- c. Count 3: Intentional Infliction of Emotional Distress: All Defendants;
- d. Count 4: Sexual Battery: All Defendants;

- e. Count 5: False Imprisonment: All Defendants;
- f. Count 6: Violation of West Virginia Code § 61-8b-7 (Sexual Abuse in the First Degree): All Defendants;
- g. Count 7: Violation of West Virginia Code § 61-8b-4 (Sexual Assault in the Second Degree): All Defendants;
- h. Count 8: Violation of West Virginia Code § 61-8D-5 Sexual Abuse by a Parent, Guardian, Custodial or Person in a Position of Trust to a Child: All Defendants;
- i. Count 9: Negligent Hiring: Defendant Logan County Board of Education;
- j. Count 10: Negligent Retention: Defendant Logan County Board of Education;
- k. Count 11: Negligent Supervision: Defendant Logan County Board of Education;
and
- l. Count 12 Negligence *per se*: Defendant Logan County Board of Education.

34. On October 11, 2022, both Defendants were served with the Amended Complaint.

35. On October 27, 2022, Defendant-Board filed its Motion to Dismiss or Transfer Venue in response to Plaintiff's Amended Complaint (hereinafter referred to "Defendant-Board MTD No. 1"). In that motion, Defendant-Board requested that this case either be dismissed or transferred to Logan County, West Virginia.

36. On October 31, 2022, Defendant-Willard filed a Notice of Bona Fide Defense.

37. On November 9, 2022, Defendant-Willard filed his Motion to Dismiss and Memorandum of Law in Support in response to the Plaintiff's Amended Complaint.

38. Also on November 9, 2022, Judge Tera Salango entered an Order stating, in part, "[t]he Court hereby **ORDERS** any responsive briefing be filed on or before November 23, 2022. Reply briefing shall be filed on or before December 2, 2022. . . The parties shall provide the Court with proposed final orders with appropriate findings of fact and conclusions of law no later than December 5, 2022."

39. On November 17, 2022, (after the Court's Briefing Order of November 9, 2022) Defendant-Board filed, without seeking leave of Court, "Defendants' Motion to Dismiss Claim for Punitive Damages" with a Memorandum of Law. (hereinafter referred to "Defendant-Board MTD No. 2"). The Plaintiff, however, did not seek punitive damages in her Amended Complaint.
40. On November 21, 2022, (after the Court's Briefing Order of November 9, 2022) Defendant-Board filed, without seeking leave of Court, "Defendant's Amended Motion to Dismiss" (hereinafter referred to "Defendant-Board MTD No. 3"). No memorandum of law was filed at that time. Defendant-Board MTD No. 3 simply stated that it moves to dismiss Plaintiff's causes of action "on grounds of immunity, failure to state a claim, statute of limitations, constitutional grounds, and judicial estoppel." In support of this Amended Motion, Defendant relies upon its Memorandum of Law previously filed on November 14, 2022." However, no memorandum of law was filed on November 14, 2022.
41. On December 5, 2022, (after the Court's Briefing Order of November 9, 2022) Defendant-Board filed, without seeking leave of Court, its "Renewed Motion to Dismiss or Transfer Venue" (hereinafter referred to "Defendant-Board MTD No. 4"). Again, Defendant-Board requested in its fourth motion that this case either be dismissed or transferred to Logan County, West Virginia.
42. On December 6, 2022, Plaintiff filed a Motion for Leave to File her Response to [Defendant-Board MTD No. 1] Out of Time and attached her response to Defendant-Board MTD No. 1 as an exhibit.
43. On December 6, 2022, Judge Tera Salango entered an Order granting the Plaintiff's Motion for Leave to File her Response Out of Time and ordered that the Plaintiff's responsive motion be filed.
44. On December 27, 2022, Defendant-Board filed its Reply to Plaintiff's Response to Defendant-Board MTD No. 1.
45. On January 5, 2023, Plaintiff filed her Response to Defendant-Board's MTD. No. 2, 3, and 4.

46. On January 5, 2023, Plaintiff filed her Response to Defendant-Willard's Motion to Dismiss.
47. On January 9, 2023, Defendant-Willard filed his Reply to Plaintiff's Response to his Motion to Dismiss.
48. On January 9, 2023, Defendant-Board filed its Reply to Plaintiff's Response to Defendant-Board's MTD. No. 2, 3, and 4.
49. On January 10, 2023, Plaintiff filed both a Motion for Leave to File Sur Reply to Defendant-Willard's Reply to Plaintiff's Response, and the Plaintiff filed her Sur Reply to Defendant-Willard's Reply to Plaintiff's Response.
50. On January 11, 2023, the parties appeared before Judge Tera Salango for a hearing on the Defendant-Board's MTD No. 1 and 4, and Defendant-Willard's Motion to Dismiss as only those motions were noticed by the Defendants.
51. On January 24, 2023, Judge Tera Salango entered an Order granting Defendant-Board's Motion to Transfer Venue and ordered that the case be transferred to Logan County.
52. On February 28, 2023, Defendant-Board filed its Answer and raised its defenses against the Plaintiff's Amended Complaint.
53. Thereafter, on April 13, 2023, Defendant-Board filed a Notice of Hearing for Defendant-Board's MTD No. 1 and 4, despite those motions being ruled upon by Judge Tera Salango.
54. On April 18, 2023, Defendant-Willard filed a Notice of Hearing for his Motion to Dismiss for the same time.
55. On May 18, 2023, Plaintiff filed a Supplemental Response to Defendant Board's Motions to Dismiss.
56. On May 19, 2023, Defendant-Board filed an Amended Notice of Hearing noticing only its Amended Motion to Dismiss, Defendant-Board MTD No. 3.
57. Also on May 19, 2023, Defendant-Board filed its Reply to Plaintiff's Supplemental Response.
58. On May 22, 2023, the parties appeared before this Court for oral argument on the Defendants'

Motions to Dismiss.

59. The Court has been fully briefed on these matters.

B. CONCLUSIONS OF LAW

60. West Virginia Rule of Civil Procedure 12 governs how a party must respond to a complaint.

Specifically, Rule 12(a)(1) provides:

A defendant shall serve an answer within 20 days after the service of the summons, unless before the expiration of that period the defendant files with the court and serves on the plaintiff a notice that the defendant has a bona fide defense, and then an answer shall be served within 30 days after the defendant was served; except that when service of the summons is made on or accepted on behalf of a defendant through or by an agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of such defendant or when service of process is made upon a defendant in the manner provided in Rule 4(e) or (f), the answer shall be served within 30 days after service of the summons or not later than the day specified in the order of publication. Every answer shall be accompanied by a completed civil case information statement in the form prescribed by the Supreme Court of Appeals.

61. Defendant-Board filed its Defendant-Board MTD No. 1 on October 27, 2022 in response to the Amended Compliant.

62. With respect to Defendant-Board MTD No. 1, the Court finds that Defendant-Board timely filed its response, under Rule 12(b), to the Plaintiff's Complaint.

63. The Court finds that Kanawha County Judge Tera Salango granted the affirmative relief sought by Defendant-Board on January 24, 2023 by transferring the case to Logan County.

64. Furthermore, the Court finds that none of Defendant-Board's three subsequent Motions to Dismiss were timely filed, and none were filed with leave of Court.

65. Defendant-Board's failure to timely file its three subsequent Motions to Dismiss, or to seek leave of Court to do so, means that those motions were untimely.

66. Defendant-Board's assertion that Defendant-Board MTD No. 2, Defendant-Board MTD No. 3, and Defendant-Board MTD No. 4 were amendments to Defendant-Board MTD No. 1, and were

therefore timely, are not well taken by this Court.

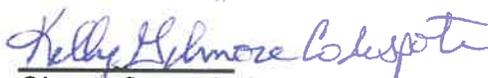
67. The Court finds that Defendant-Board failed to file Defendant-Board MTD No. 2, Defendant-Board MTD No. 3, or Defendant-Board MTD No. 4 in a timely manner, and therefore, the same are DENIED.

Therefore, the Court **DENIES** all of Defendant Logan County Board of Education's outstanding Motions to Dismiss, specifically, its Motions filed on November 17, 2022, November 21, 2022, and December 5, 2022, with prejudice.

Objections of the Defendant are noted for the record.

The Circuit Clerk is directed to provide a certified copy of this Order to all counsel of record.

Enter this 16th day of February, 2023.


Circuit Court Judge
7th Judicial Circuit

Drafted by:

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