IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502008CA028051XXXXMB AB

L.M.

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____/

PLAINTIFF L.M.'s RESPONSE TO DEFENDANT EPSTEIN'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT I OF PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff L.M. hereby responds to defendant Epstein's Motion for Partial Summary judgment on Count I. Epstein claims that he is entitled to summary judgment on Count 1 because there is no private right of action under various criminal statutes. Epstein simply misapprehends basic tort law principles. L.M. is not seeking a right of action under those statutes. Rather, she has filed a tort action in which she intends to use those statutes as proof of Epstein's negligence and violation of standard of care. Because this is indisputably proper, the motion for summary judgment should be denied.

Background

As the Court is aware, this action involves L.M.'s complaint against defendant Jeffrey Epstein for numerous acts of sexual assault committed against her while she was a minor. Relevant to this motion is Count 1, in which L.M. seeks to recovery for Epstein's negligence per se. In relevant part, Count 1 provides:

"In committing various crimes against Plaintiff, Defendant violated penal statutes that were designed to protect a class of persons, of which Plaintiff is a member, against a particular type of harm.

Particularly, the Florida Statutes which Epstein violated include, but may not be limited to:

A. Chapter 800.04(4-7) – Lewd or lascivious offenses; Defendant Epstein engaged in sexual activity with Plaintiff when Plaintiff was less than 16 years of age, and also encouraged or enticed her at that time to become involved in prostitution or some other act of sexual activity; Defendant also violated this statute by touching in a lewd or lascivious manner the breasts, genitals, genital area or buttocks, or the clothing covering them, of Plaintiff at a time when Plaintiff was less than 16 years old, or enticed Plaintiff at that time to so touch Epstein. Epstein masturbated in the presence of Plaintiff when Plaintiff was less than 16 years of age.

B. Section 827.04 – Contributing to the delinquency of a child; Defendant induced or endeavored to induce by act, threat, command, or persuasion, the then minor Plaintiff to commit or perform acts, follow a course of conduct, and live in a manner that caused or tended to cause Plaintiff to become or remain delinquent, when he committed the acts described in paragraphs 12-16 above against Plaintiff.

C. Section 796.03 – Procuring a minor for prostitution; Defendant procured for prostitution, or caused to be prostituted, Plaintiff when Plaintiff was under the age of 18.

D. Section 796.07 – Prohibiting prostitution; Defendant owned, maintained and operated a place, to wit: his home located at 358 El Brillo Way, West Palm Beach, Palm Beach County, Florida, for the purpose of lewdness or prostitution, he received minors into his house for the purpose of lewdness or prostitution, and directed, took, transported, or offered or agreed to transport Plaintiff to and from his house with the reasonable belief that the purpose of such directing, taking, or transporting was lewdness or prostitution;

E. Section 796.045 – Sex trafficking; Defendant knowingly recruited, enticed, harbored, transported, or obtained Plaintiff, knowing that coercion would be used to cause Plaintiff to engage in prostitution;

F. Section 796.04 – Forcing, compelling, or coercing another to become a prostitute; Defendant coerced Plaintiff to become a prostitute; and

G. Section 39.01 (67) – Sexual abuse of a child; Defendant intruded into the genitals of Plaintiff, when Plaintiff was a child, and touched her genitals or intimate parts, he intentionally masturbated in front of her, he intentionally exposed his genitals in her presence, and encouraged Plaintiff to engage in prostitution.

As to each of the above referenced criminal statutes, Plaintiff was a member of the class of persons intended to be protected, the injury was of the type the statute intended to protect, and the injuries suffered by Plaintiff proximately resulted from the violation of the criminal statute."

Epstein has now moved for summary judgment on this count, contending that the criminal statutes L.M. cites do not provide a private right of action.

Analysis

Epstein's motion should be denied. Epstein simply confuses the basis on which L.M. is suing. Epstein does not dispute that L.M.'s allegations provide a clear basis for pursuing (among other things) a negligence action against him. And negligence is obviously a viable cause of action.

Epstein, however, seems to believe that in citing various criminal statutes in her complaint, L.M. is relying on those statutes as the original basis for her cause of action. She is not. Instead, L.M. relies on the statutes to prove (among other things) Epstein's negligence as well as his violation of a standard of care that he owed to her.

Using criminal statutes to prove violation of a standard of care is uncontroversial. It is hornbook law that "[t]he standard of conduct required of a reasonable man may be prescribed by legislative enactment." WILLIAM L. PROSSER, LAW OF TORTS (4th ed. 1971). Indeed, 190; *see also id.* at 190. As the Florida Supreme Court recently explained (in a case that is more recent than any of those cited by Epstein), "The courts of Florida have long recognized that the violation of a statute may be utilized as evidence of negligence." *Florida Dept. of Corrections v. Abril*, 969 So.2d 201, 205 (Fla. 2007).

The only question, then, is how may the statutes be used as evidence of negligence. As the Florida appellate courts have explained, there are three categories of statutory violations:

> (1)Violation of a strict liability statute designed to protect a particular class of persons who are unable to protect themselves, constituting negligence per se; (2) violation of a statute establishing a duty to take precautions to protect a particular class of persons from a particular type of injury, also constituting negligence per se; (3) violation of any other kind of statue, constituting mere prima facie evidence of negligence.

Chevron U.S.A., Inc. v. Forbes, 783 So.2d 1215, 1219 (Fla. App. 2001) (*citing deJesus v. Seaboard Coast Line Railroad Co.*, 281 So.2d 198 (Fla. 1973); *Grand Union Co. v. Rocker*, 454 So.2d 14, 15 (Fla. App. 1984). Here, the statutes that L.M. cites quite clearly fall within the first classification – statutes designed "to protect a particular class of person who are unable to protect themselves," i.e., children who are unable to protect themselves from the sexual depredations of adults (like defendant Epstein). Epstein does not even attempt to argue otherwise. As a result, violation of the statutes is clearly "negligence per se," as L.M. has properly alleged in her complaint.

The cases cited by Epstein are all readily distinguishable, as they address different subjects than the one at issue here. For example, Epstein describes *Horowitz v. Plantation General Hosp. Ltd. Partnership*, 959 So.2d 176 (Fla. 2007), as the "leading" case on private causes of action. But *Horowitz* involves a situation where there was no common law duty imposed on defendant, forcing the plaintiff to discover one in the statutes at hand.

In *Horowitz,* a patient/plaintiff with an unsatisfied money judgment against a physician for medical malpractice sought recovery from a hospital where the physician had staff privileges, alleging that the hospital should be liable to her for failing to ensure that the physician complied with statutory financial responsibility requirements. In rejecting the plaintiff's argument for liability, the Florida Supreme Court started with the proposition that that "there is no recognized common law duty on the part of hospitals to monitor the financial responsibility of physicians and thus no common law cause of action against hospitals for breaching that duty." *Id.* at 181. In view of this law of common law duties, the Court reasoned that "[i]f such a duty and cause of action exist,

they do so by virtue of statutory modification of the common law." *Id.* The Court, however, found that there was no such "modification" of the common law through the financial responsibility statute because the statute did not create a new, private cause of action. In reaching this conclusion, the Court reviewed the standards for whether a cause of action should be "judicially implied." *Id.* at 182.

This case obviously involves a totally different issue. Of course, an action for sexual assault is not a creation of statute but has long existed at common law. *See, e.g., Khianthalat v. State*, 974 So.2d 359, 361 (Fla. 2008) (discussing common law of rape); *Shaw v. Fletcher*, 138 Fla. 103, 189 So. 678 (Fla. 1939) (reviewing challenge to tort claim for damages sustained by father as a result of "the seduction of a fifteen year old minor daughter, carnal intercourse and rape" and concluding "[a] cause of action is stated under the common law in force in this State"). Therefore, this Court does not need to dive into the morass of whether to judicially *imply* a cause of action for sexual abuse, because the cause of action already exists. The only question is the kind of evidence that L.M. is permitted to offer in support of her cause action. As made clear in the Florida cases cited, above, L.M. is permitted to argue that violation of the statute is proof of her claims.

Similarly distinguishable is the other case discussed at length by Epstein, *Mantooth v. Richards*, 557 So.2d 646 (Fla. App. 1990). There the plaintiff sought to create a new cause of action for "parental kidnapping." The plaintiff conceded that there was "no caselaw" in Florida providing such a cause of action. *Id.* at 646. He nonetheless asked the Court to infer one from various statutes, which the Court declined to do. In this case, of course, Florida case law – dating back to common law

days – recognizes a cause of action for sexual assault of a minor. *See, e.g., Shaw v. Fletcher*, 138 Fla. 103, 189 So. 678 (Fla. 1939) . This Court, therefore, need infer such a right from any statute to permit L.M. to proceed under her first cause of action.

The cases cited by Epstein should be contrasted with cases that plainly allow a civil cause of action to be predicated on a criminal statute. A good illustration comes from *Newsome v. Haffner*, 710 So.2d 184 (Fla. App. 1998). There, plaintiff sought to hold a home owner liable for serving alcohol under a criminal statute commonly referred to as the "open house party" statute. *Id.* at 185 (*citing* Fla. Stat. § 856.015). In reversing a district court decision dismissing a civil cause of action based on this criminal statute, the Court of Appeals explained: "

> Section 856.015 extends . . . criminal responsibility to a social host at a residence with an open house party. Although a corresponding civil liability was not previously recognized at common law, a cause of action in negligence per se is created when a penal statute is designed to protect a class of persons, of which the plaintiff is a member, against a particular type of harm. *See Davis; Tamiami Gun Shop v. Klein*, 116 So.2d 421 (Fla.1959), *approving Tamiami Gun Shop v. Klein*, 109 So.2d 189 (Fla. 3d DCA 1959); *Tampa Shipbuilding and Engineering v. Adams*, 132 Fla. 419, 181 So. 403 (Fla.1938); *J. Ray Arnold Lumber Corp. of Olustee v. Richardson*, 105 Fla. 204, 141 So. 133 (1932). By enacting section 856.015, the legislature has therefore imposed a duty of care on social hosts and *created a civil cause of action for a statutory violation*.

710 So.2d at 185 -86 (emphasis added). Of course, exactly the same conditions applies here: The criminal statutes at issue were designed to protect a class of persons (minors) against a particular type of harm (sexual abuse). Accordingly, L.M. has properly stated a cause of action.

Conclusion

For all these reasons, the Court allow L.M. to proceed on her first cause of action and deny with prejudice Epstein's motion for summary judgment on Count I.