STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Court File No.: 02-CV-20-2671

Doe 600,

Plaintiff,

vs.

Circle R Ranch,

Defendant.

ORDER DENYING SUMMARY JUDGMENT

The above-captioned matter came before the Honorable Jonathan N. Jasper, Judge of District Court, for a motion hearing on February 22, 2022. The hearing was held remotely via Zoom because of a global pandemic. Attorneys Jeffrey Anderson and Joshua Peck appeared for Plaintiff Doe 600. Attorney Peter Waldek appeared on behalf of defendant Circle R Ranch.

Based on all the memoranda, arguments of the parties at the hearing, files, records, and proceedings herein, the Court makes the following:

SUMMARY JUDGMENT STANDARD

1. "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); Minn. R. Civ. P. 56.03.

2. The non-moving party has the burden to produce sufficient evidence

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that would permit a reasonable fact finder to draw different conclusions about an issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995); *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006).

3. To present a genuine issue of material fact, affidavits must be based on personal knowledge and set forth facts that would be admissible in evidence. Minn. R. Civ. P. 56.05.

4. The Court views evidence in a light most favorable to the non-moving party. *Fabio*, 504 N.W.2d at 761. "Courts should resolve any doubt as to whether there is a genuine issue of material fact in favor of finding that a fact issue exists." *Harvet v. Unity Medical Ctr., Inc.*, 428 N.W.2d 574, 578 (Minn. Ct. App. 1988). It is not for this Court at this stage to resolve issues of material fact in dispute. It is for this Court to determine if there are material facts in dispute and, if there are, to determine how the law applies to the facts when construed most favorably to the non-moving party.

5. There are clearly material facts in dispute here.

FACTS[1]

1. From 2010 to 2016, when she was approximately 10- to 17-years old, Doe 600 was a regular resident camper at Circle R Ranch during the

[1] These disputed facts are presented in the light most favorable to Plaintiff. *See Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Where there are disputes, the Court has adopted the Plaintiff's asserted factual allegation where supported.

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summer seasons. At this time, she met Scott Fortier, who had been associated with the ranch in various capacities since he was about 10-years old around 1988.

2. Fortier was an employee of Circle R Ranch in various capacities after 1996, including as a junior counsellor, counsellor, and program director. Fortier was a prominent staff member who was featured both on the Facebook page and Christmas card of Circle R Ranch. He was also a personal friend of the Ranch's owner.

3. In 1999, Fortier was hired for a newly created position of Entertainment Director. In that position, Fortier ran campouts, sing-alongs, and nightly entertainment like Karaoke, improv., and Friday dance nights. Plaintiff claims Fortier used that position to create relationships with underage campers who he would have sex with. The first identified minor had sex with Fortier when she was 17 in 2001. The next in 2003, again at age 17. In 2004, a 15-year-old camper had sex with Fortier.

4. By 2005, some of these minors had approached and spoke with Circle R Ranch's owner about Fortier pursuing and having sex with underage girls at the Ranch. A minor's parent had called and told the Ranch owner that "Scott Fortier, is using your camp as a hunting ground for underage girls." Ex 6, p.56. After that meeting, the owner fired Fortier and told him to stay away.

5. Fortier would occasionally call to see if he could return to the Ranch but was rebuffed. In 2008, the Ranch's program director called Fortier and asked him to come back. The first minor, in time, came to work as a counsellor

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in 2008 because the Ranch was short-staffed. But she had told the Ranch's owner that she would leave if Fortier were allowed on property. So again, the Ranch's owner sent Fortier away until that girl was done. Then Fortier returned.

6. Plaintiff's first year as a camper was 2010, when she was 11 years old.

7. Fortier testified he had engaged in supervision and training from 2008 through at least 2013. In 2014, Fortier sent an email to staff on behalf of Circle R Ranch regarding training and providing releases to them for that season. In 2014, the Ranch's program director had texted Plaintiff that she could only work one week in August because Fortier had hired too many junior counsellors.[2] Fortier stayed at the camp, provided director responsibilities (whether assigned or assumed), stored property there, and used the amenities like staying in a bunkhouse and riding horses. Though not formally on the payroll, the Owner would introduce Fortier to new campers as "The Man" or "The Legend". In 2014, Plaintiff was a junior counsellor—not a formal employee—but was allowed to stay, was fed, got to ride horses, and take part in other activities for free. Plaintiff recalls Fortier being introduced as the Program Director. Plaintiff recalls that Fortier was clearly in charge when at the camp.

[2] Defendant mocks the idea that Fortier was an employee stating he was just an alumnus. Defendant equates the situation to claiming any alumni that returned to the University of Minnesota would therefore be an employee. Fortier was not an alumnus (former student/former camper) returning to his alma mater. The more apt analogy, again accepting the facts as most favorable to Plaintiff, is that a former University Athletic Director would be considered an employee if the A.D. returned to the University and took up the tasks he performed as A.D., though not being paid. Fortier was not just a former camper; he was the former Program Director.

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8. The many assertions put forward by Plaintiff establish Fortier as an active fixture at the Ranch who was twice allowed to return after repeated reports that he was sexually engaging minors he met at the camp.[3] Fortier provided alcohol to the underaged girls at the camp. The Ranch's management knew of these activities but did not interfere or dispatch Fortier. Fortier invited the 15-year-old Plaintiff to spend a weekend with a group at the Ranch. He provided alcohol to the minor Plaintiff and sexually grabbed her. Doe 600 depo., p. 191. That alone would be a sexual assault under Minnesota criminal law.[4] Off-season weekends were organized by Fortier with the Ranch owner's permission.

9. From approximately 2015 to 2016, Doe 600 and Fortier engaged in five separate sexual encounters.[5] These encounters involved alcohol provided by Fortier and occurred both on Circle R Ranch property and in Fortier's private residence. Doe 600 testified that Fortier told her if she did not have sex with him, they would no longer be friends. Fortier had told her he interviewed for counsellors, which was a position she very much wanted. At the first act of penetration, Doe 600 testified she was in and out of consciousness. Within days of her second sexual penetration with Fortier, Plaintiff was advised by the Program Director that she did indeed get the counselor position.

[3] In addition to the alleged sexual assaults, Fortier solicited and collected nude photos from campers.
[4] Minn. Stat. Sec. 609.3451, Minn. Stat. Sec. 609.341, subd. 5.
[5] Plaintiff Doe 600 alleges these encounters amounted to sexual abuse. Defendant Circle R Ranch contends they were consensual encounters. The difference is whether Fortier were in a position of authority over her.

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10. The facts in this case are very disputed. The facts presented are in the light most favorable to Plaintiff.

11. In December 2016, Mr. Fortier was charged with criminal sexual conduct and using a minor in producing pornography, a case which involved Doe 600 and another minor camper from Circle R Ranch. In January 2018, he was convicted of production and possession of child pornography in federal court and sentenced to 25 years in prison.

12. This matter arises as a civil suit stemming from Mr. Fortier's actions. Plaintiff Doe 600 alleges negligence, negligent supervision, negligent retention, negligent hiring, and respondeat superior against Circle R Ranch.

13. Defendant Circle R Ranch now brings a motion for summary judgment against all claims made by Plaintiff Doe 600.

CONCLUSIONS OF LAW

1. Summary judgment is "[l]ntended to secure a just, speedy, and inexpensive disposition." Vieths v. Thorp Fin. Co., 232 N.W.2d 776, 778 (Minn. 1975). A "motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the declarations, if any, show that there are no genuine issues of material fact and that either party is entitled to judgment as a matter of law." Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). "A 'material' fact for purposes of summary judgment is a fact that, once resolved, will affect the outcome of the case." Antonello v. Comm'r of Revenue, 884 N.W.2d 640, 645 (Minn. 2016). On a

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motion for summary judgment, "the moving party has the burden of proof and the nonmoving party has the benefit of that view of the evidence most favorable to him." 232 N.W.2d at 778.

COUNT I: NEGLIGENCE

2. "The basic elements of a negligence claim are: (1) existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007) (citation omitted).

3. "The first prerequisite to a finding of a duty to protect another from harm is the existence of a special relationship between the parties. A special relationship can be found to exist under any one of three distinct scenarios." *Bjerke v. Johnson*, 742 N.W.2d 660, 665 (Minn. 2007) (quotation marks omitted) (citation omitted). "The second [scenario] arises when an individual, whether voluntarily or as required by law, has custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection." *Id.* (quotation marks omitted) (citation omitted).

4. *Bjerke* concerned a child who stayed at a horse farm for progressively longer periods of time. The Supreme Court of Minnesota found the farm owner and child had a "special relationship," and as such he did indeed owe the child a duty of care. He failed to perform that duty when the child became sexually involved with the owner's live-in male friend.

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5. Defendant argues that Doe 600 did not have a special relationship with Defendant. She was a young camper and then an unpaid employee of the Ranch when she was exposed to Fortier long after the Ranch had received reports of Fortier assaulting children, and long after the Ranch had twice barred Fortier from the Ranch for these inappropriate activities. The question is whether Defendant owed her the duty of keeping Fortier away from the camp—but for which the sexual encounters would never have happened.

6. "Johnson accepted entrustment of some level of care for Bjerke when Bjerke stayed at Johnson's home, at a location distant from her parents' home. Johnson provided Bjerke with room and board and adopted rules for Bjerke's conduct. Johnson had a large degree of control over Bjerke's welfare, strongly indicating that there was a special relationship between the two." Bjerke v. Johnson, 742 N.W.2d 660, 665 (Minn. 2007). The special relationship which creates the duty is a question of fact.

COUNT II: NEGLIGENT SUPERVISION

7. "Negligent supervision derives from the doctrine of respondeat superior, so that a plaintiff must prove that the employee's action occurred within the scope of employment. To make out a successful claim for negligent supervision, the plaintiff must prove (1) the employee's conduct was foreseeable; and (2) the employer failed to exercise ordinary care when supervising the employee." *C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 136 (Minn. Ct. App. 2007) (quotation marks omitted) (citations omitted).

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8. Whether Fortier was an employee of Defendant is a question of fact.

COUNTS III & IV: NEGLIGENT RETENTION & NEGLIGENT HIRING

9. "[N]egligent hiring and negligent retention, are based on direct, not vicarious, liability. Negligent hiring and negligent retention do not rely on the scope of employment but address risks created by exposing members of the public to a potentially dangerous individual." *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 422 (Minn. Ct. App. 1993) (citations omitted). "The difference between negligent hiring and negligent retention focuses on when the employer was on notice that an employee posed a threat and failed to take steps to ensure the safety of third parties." *Id.* at 423.

10. The Ranch had notice of (and had previously acted upon) knowledge of Fortier's involvement with minor girls who were under its care. Nonetheless, the Ranch allowed him to return and kept him at the Ranch despite that knowledge that he was a danger to its minor campers and staff.

COUNT V: RESPONDEAT SUPERIOR

11. "Under respondeat superior, an employer is vicariously liable for the torts of an employee committed within the course and scope of employment. Whether an employment relationship exists is an issue of fact when the evidence is disputed. [F]actors traditionally used to determine the nature of a work relationship are: (1) the right to control the means and manner of performance; (2) the mode of payment; (3) furnishing of materials and tools; (4) control of

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premises where work is performed; and (5) right of employer to hire and discharge. The right to control is the most significant factor." *C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 133 (Minn. Ct. App. 2007) (citations and quotation omitted).

12. Additionally, "it is a question of fact whether the employee's acts were foreseeable, related to, and connected with acts otherwise within the scope of his employment." *Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc.*, 597 N.W.2d 905, 911 (Minn. 1999) (citation omitted). The determination of respondeat superior is very fact intensive. Plaintiff asserts that Fortier, as an employee or agent of the Ranch, was responsible for the safety of the minor girls he worked with there. The scope and existence of Fortier's role as an employee of Defendant is a question of fact. The fact that a camp is responsible for the well-known hazard of sexual abuse of children was presented as the opinion of Plaintiff's expert Dr. Kraizer.

13. It appears that the Ranch recognized the risk Fortier posed when he was barred from coming back in 2005. The fact that he was invited back 3 years later is inexplicable.

ORDER

1. Defendant's motion for summary judgment is DENIED.

IT IS SO ORDERED.

Jasper, Jonathan (Judge)
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Judge Jonathan Jasper