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Superior Court - Norfolk
Docket Number 2282CV01197

Docketed 1/9/2023

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. SUPERIOR COURT DEPARTMENT

DARLENE SMITH as the PERSONAL REPRESENTATIVE OF THE ESTATE OF SANDRA BIRCHMORE,
Plaintiff
v.

MATTHEW FARWELL, WILLIAM FARWELL, And ROBERT DEVINE Individually
THE TOWN OF STOUGHTON, and THE STOUGHTON POLICE DEPARTMENT
Defendants

Docket No.: 2282CV1197

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

I. Nature of Action

A. This is an action brought by the Plaintiff, Darlene Smith as the Personal Representative of the Estate of Sandra Birchmore, (hereinafter referred to as "Plaintiff"), for wrongful death, negligence, negligent supervision, negligent retention, pain and suffering, and emotional distress as against the Defendants, Matthew Farwell, William Farwell, Robert Devine, the Town of Stoughton, and the Stoughton Police Department (hereinafter referred to collectively as "Defendants") for claims arising out of an ongoing scheme of grooming Sandra Birchmore (hereinafter referred to as "Decedent" or "Ms. Birchmore") and misconduct that ultimately led to the loss of Ms. Birchmore's life on February 4th 2021, after the Defendants, Matthew and William Farwell, and Robert Devine (hereinafter collectively the "Officers"), undertook to engage in inappropriate relationships with the Decedent, abusing her trust and

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adoration of law enforcement, which through their inappropriate and undue influence, ultimately led her to allegedly take her own life.

B. Plaintiff brings this action against the Town of Stoughton (hereinafter referred to as "Stoughton"), and the Stoughton Police Department (hereinafter referred to as "PD") for claims arising from the conduct of its Officers and its negligence in its supervision of said Officers over the duration of the Stoughton Police Explorers Program and thereafter.

II. Jurisdiction and Venue

A. The Norfolk Superior Court has jurisdiction over the claims asserted herein pursuant to M.G.L. c. 212 § 3.

B. Venue is proper in Norfolk County pursuant to M. G. L. c. 223.

III. Parties

1. The Estate of Sandra Birchmore is a Probate Estate, Docket no. 21P1289EA, for which Darlene Smith of 40 Holbrook Ave, Stoughton, MA, 02072 was appointed as Personal Representative on July 12, 2021.
2. Defendant, Matthew Farwell (hereinafter "M. Farwell"), is an individual residing upon information and belief at 187 Chestnut St., North Easton, MA, 02356-2610.
3. Defendant, William Farwell (hereinafter "W. Farwell"), is an individual residing upon information and belief at 170 Howland Rd., Stoughton, MA, 2072-3971.
4. Defendant, Robert Devine (hereinafter "Devine"), is an individual residing upon information and belief at 28 Esten Rd., Stoughton, MA, 02072.
5. Defendant, Stoughton Police Department is a municipal agency located at 26 Rose St., Stoughton, MA, 02072.

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6. Defendant, Town of Stoughton is a municipality located in Norfolk County with its at 10 Pearl St., Stoughton MA, 02072.

IV. FACTS

7. On February 4, 2021, the Canton Police Department responded to a welfare check at the Decedent's apartment, located in Canton, Massachusetts, following a request from her employer who was justifiably concerned, as she had not reported to work for several days. It was during this welfare check that the body of the Decedent was discovered, and she was pronounced dead at the scene by the responding paramedics. At the time of her death, upon information and belief, Ms. Birchmore was three months pregnant with her first child allegedly by one of the Defendants.
8. Ms. Birchmore's death was the culmination of a near decade long scheme of grooming[1] and repeated assaults from a young age by certain police officers employed by the PD.
9. The Decedent, from her youth, suffered from a difficult home life. She struggled as a child with the loss of her grandmother and mother, and as she grew up, dealt with some significant mental and emotional problems for which she sought psychological care from adolescence into adulthood. Despite these issues, Ms. Birchmore deeply respected authority figures, most notably police officers. As a result of this admiration, she joined the Stoughton Police Department Explorers Program (hereinafter referred to as the

[1] "Grooming is a method used by offenders that involves building trust with a child and the adults around a child in an effort to gain access to and time alone with her/him. In extreme cases, offenders may use threats and physical force to sexually assault or abuse a child. More common, though, are subtle approaches designed to build relationships with families.
The offender may assume a caring role, befriend the child or even exploit their position of trust and authority to groom the child and/or the child's family. These individuals intentionally build relationships with the adults around a child or seek out a child who is less supervised by adults in her/his life. This increases the likelihood that the offender's time with the child is welcomed and encouraged."
Understanding Sexual Grooming in Child Abuse Cases (americanbar.org)

"Program") in her early teenage years. It was through this program that the Decedent was introduced to Defendants Devine, M. Farwell and W. Farwell.

10. The Defendant, Devine was the head of the Program, and the Defendants, M. Farwell and his twin brother W. Farwell both worked within the Program in their individual capacities as officers and educators.

11. M. Farwell was seen on video surveillance at Ms. Birchmore's apartment approximately four days prior to the discovery of her body and upon information and belief, was the last person to see Ms. Birchmore alive. It was later revealed by the PD internal investigation report that M. Farwell had known the Decedent since age 13, due to her participation in the Program, and soon therefore began a sexual relationship with her when she was 15. The investigation revealed that M. Farwell had a continuous sexual relationship with Ms. Birchmore that started while she was still a minor. The same investigation determined that M. Farwell later used some type of location sharing application to track and determine Ms. Birchmore's location.

12. The PD internal investigation determined by a preponderance of the evidence that Defendants W. Farwell and Devine had similar sexual relationships with Ms. Birchmore, and that both had repeated contacts with the Decedent while on duty.

13. That same investigation determined that not only did all three of the Officers have sexual relationships with Ms. Birchmore, but that Devine effectively established the Farwells as his understudies in using their position and influence to engage in inappropriate behaviors with minors during the Program and with the Decedent while on duty.

14. It was this ongoing pattern of abuse and behavior over the near decade long relationship that created and exacerbated the underlying trauma, mental, and emotional distress

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suffered by Ms. Birchmore that ultimately overwhelmed the Decedent's will to live, and in turn, caused her death.

COUNT I

(Wrongful Death v. Defendants M. Farwell, W. Farwell, and Devine)

15. The Plaintiff restates and incorporates by reference paragraphs 1 through 14 as if fully set forth herein.

16. On February 4, 2021, Ms. Birchmore was found to be deceased following a welfare check by the police.

17. The last person to have seen the Decedent alive several days prior was M. Farwell.

18. Devine, M. Farwell, and W. Farwell's years long pattern of grooming and abuse, beginning when Ms. Birchmore was a minor, over the duration of the Program and beyond, further exacerbated the Decedent's underlying mental health issues and difficult home life and subverted her appreciation and adoration for authority figures, namely the Officers she idolized, through a campaign of inappropriate and undue influence resulting from the Officer's actions as such.

19. It was this continuous pattern of grooming and abusive behavior over many years, which was wanton and reckless, that ultimately overcame Ms. Birchmore's will to live and resulted in her alleged suicide.

WHEREFORE, the Plaintiff prays that judgment be entered against W. Farwell, M. Farwell, and Devine, for wrongful death, in an amount that will fairly and adequately compensate for the loss of Ms. Birchmore's life, and all other damages recoverable together with interest, costs and such other relief as this Honorable Court deems appropriate.

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COUNT II

(Negligence v. Defendants M. Farwell, W. Farwell and Devine)

20. The Plaintiff restates and incorporates by reference paragraphs 1 through 19 as if fully set forth herein.

21. M. Farwell, W. Farwell, and Devine owed Ms. Birchmore and the other members of the Program a duty to protect this vulnerable class of minors from the very sort of abusive and grooming behavior conducted by these Officers.

22. M. Farwell, W. Farwell, and Devine breached that duty by undertaking their inappropriate actions against Ms. Birchmore.

23. Moreover, these Defendants, due to their position as Officers and educators within the Program, held a special relationship with Ms. Birchmore and other children in the Program. This special relationship also created a duty to Ms. Birchmore and the rest of the children within the Program.

24. It was this willful and wanton breach of duty, trust and confidence on the part of M. Farwell, W. Farwell, and Devine that ultimately lead to the death of Ms. Birchmore.

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants, M. Farwell, W. Farwell, and Devine for negligence hereunder, in an amount that will fairly and adequately compensate for all other damages recoverable together with interest, costs and such other relief as this Honorable Court deems appropriate.

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COUNT III

(Negligence v. Defendant Devine)

25. The Plaintiff restates and incorporates by reference paragraphs 1 through 24 as if fully set forth herein.

26. Devine, through his position as the head of the Program, owed a duty of care to the Decedent and the rest of the Explorers due to the special relationship created by that position.

27. The Court has held that while the public duty rule limits liability of governmental units, a special relationship such as that special relationship with the children participating in the Program creates an elevated duty to protect those children, rather than the public at large.

28. Devine, as the head of the Program breached this duty to Ms. Birchmore by failing to protect her from the conduct of the Farwells, despite his knowledge as to the misconduct occurring at the time.

29. By failing to protect the Decedent, Devine breached such special duty causing her damage and ultimately contributing to her death.

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant Devine, for negligence, in an amount that will fairly and adequately compensate for the loss, pain and suffering and all other damages recoverable hereunder together with interest, costs and such other relief as this Honorable Court deems appropriate.

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COUNT IV

(Negligent Hiring v. Stoughton, PD)

30. The Plaintiff restates and incorporates by reference paragraphs 1 through 29 as if fully set forth herein.

31. Under Massachusetts law, employers whose employees are brought into contact with members of the public have a duty to exercise reasonable care in the selection and retention of their employees.

32. An employer's knowledge of past acts of impropriety, violence or disorder on the part of the employee applicant is generally sufficient to forewarn the employer who selects or retains the employee, that that employee may commit such an assault during their employment.

33. Stoughton and the PD had knowledge of the propensities and history of both M. Farwell and W. Farwell due to the requisite rigorous nature of the background checks prior to becoming a police officer.

34. Stoughton, the PD and Devine, who served on the hiring committee for M. Farwell and as the supervisor of the Program, knew or should have known of the instances of misconduct on the part of the Farwells both before and during their employment. Such conduct included both M. Farwell and W. Farwell allegedly impersonating police officers and pulling over cars as teenagers, exercising an abuse of the trust of authority that accompanies the role of police officers, although Devine has previously denied any such knowledge of that behavior as per the PD investigation report. However, such a lack of knowledge, as described by the same report would be impossible as Devine was the head of the Program, was familiar with both M. Farwell and W. Farwell, and sat on the hiring

board for M. Farwell. Additionally, as the investigative report states, the prior acts including the impersonation of Police Officers by both M. Farwell and W. Farwell were widely known throughout the Department.

35. As a result, both the PD and Stoughton had a duty to determine the extent of the prior misconduct by M. Farwell and W. Farwell and either failed to do so or ignored such prior misconduct.

36. Upon learning of the misconduct by M. Farwell, W. Farwell, Devine both prior to and over the duration of the Program, and by continuing to not only operate the Program, but retaining both M. Farwell and W. Farwell and Devine, the Town and the P.D. were negligent.

37. This negligence on the part of Stoughton and the PD led to the harm and ultimately contributed to the death of Ms. Birchmore.

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants Stoughton and the PD, for negligence, in an amount that will fairly and adequately compensate for the loss of Ms. Birchmore's life, and all other damages recoverable together with interest, costs and such other relief as this Honorable Court deems appropriate.

COUNT V

(Negligent Supervision v. Stoughton, PD)

38. The Plaintiff restates and realleges paragraphs 1 through 37 as if fully set forth herein.

39. Stoughton and the PD owed the Decedent a duty of care, to protect her from the abuse and inappropriate conduct suffered at the hands of both M. Farwell, W. Farwell and Devine.

40. It was by virtue of their employment as Officers with the PD that the inappropriate contact with Birchmore was facilitated.

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41. Through the Program, Stoughton and the PD provided M. Farwell, W. Farwell, and Devine access to the highly vulnerable population of minors including Ms. Birchmore.

42. As a result, Stoughton and the PD had a duty of care to protect those children from foreseeable harms which could be inflicted by its employees.

43. Stoughton and the PD breached this duty by failing to protect the Decedent from the harms suffered over the duration of the Program and thereafter.

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants Stoughton and the PD, for negligence, in an amount that will fairly and adequately compensate for the loss of Ms. Birchmore's life, and all other damages recoverable together with interest, costs and such other relief as this Honorable Court deems appropriate.

COUNT VI

(Assault and Battery v. Defendants M. Farwell, W. Farwell and Devine)

44. The Plaintiff restates and incorporates by reference paragraphs 1 through 43 as if fully set forth herein.

45. The Defendants M. Farwell, W. Farwell, and Devine, intentionally caused harmful and offensive contacts with Ms. Birchmore, a minor at the time, and that contact with the Plaintiff, which continued after her participation in the Program, directly resulted in the death of Ms. Birchmore.

46. The Officers knew of the offensive nature of their contact with the Decedent who, when such contact was originally initiated was a minor, and, all three Officers acted willfully and wantonly with the intent to conduct such sexual contact.

47. As a result of that contact, the Decedent suffered significant damages due to continuous mental and emotional abuse and trauma that ultimately led to her alleged suicide.

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WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants Devine, M. Farwell, and W. Farwell for sexual assault and battery, in an amount that will fairly and adequately compensate for the Plaintiff's loss, pain and suffering and all other damages recoverable together with interest, costs and such other relief as this Honorable Court deems appropriate.

COUNT VII

(Negligent Infliction of Emotional Distress v. Defendants M. Farwell, W. Farwell and Devine, Stoughton and PD)

48. The Plaintiff restates and incorporates by reference paragraphs 1 through 47 as if fully set forth herein.

49. All Defendants were negligent and contributed to the death of Ms. Birchmore.

50. As a result, Ms. Birchmore suffered significant emotional distress, caused by the negligence of the Defendants.

51. Due to the significant emotional distress suffered by the family of Ms. Birchmore, the family of Ms. Birchmore has suffered significant harm and loss.

WHEREFORE, the Plaintiff demands judgment and damages against the Defendants, M. Farwell, W. Farwell, Devine, Stoughton and the PD, in a sum to be determined at trial, plus interest, costs and attorneys' fees.

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COUNT VIII

(Negligent Infliction of Emotional Distress, Sandra Birchmore v. Defendants M. Farwell, W. Farwell, and Devine, Stoughton and PD)

52. The Plaintiff restates and realleges paragraphs 1 through 51 as if fully set forth herein.

53. The Defendants each failed to protect the Decedent from the misconduct as alleged herein.

54. As a result of the above misconduct, Ms. Birchmore suffered significant trauma and emotional distress, as caused by the negligence of the Defendants during her lifetime.

55. Such significant emotional distress caused her to seek additional mental and emotional psychological help, as it exacerbated her underlying mental and emotional issues.

56. This emotional distress rose to such a level that it ultimately overcame Ms. Birchmore's ability to cope with life and will to live and led to her allegedly taking her own life.

57. Under the above circumstances, any minor would have suffered similar emotional distress after a ten-year period of sexual abuse and mistreatment exacerbating Ms. Birchmore's underlying psychological issues.

WHEREFORE, the Plaintiff demands judgment and damages against the Defendants, M. Farwell, W. Farwell, Devine, Stoughton and the PD, in a sum to be determined at trial, plus interest, costs and attorneys' fees.

COUNT IX

(42 USC § 1983 Violation v. M. Farwell, W. Farwell, R. Devine, Stoughton, PD)

58. The Plaintiff restates and realleges paragraphs 1 through 57 as if fully set forth herein.

59. At all times relevant hereto, the Officers were police officers employed by the Town of Stoughton.

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60. Throughout the relevant period of time in which the abuse took place, the Officers were operating "under the color of law".

61. The abuse, grooming and sexual assault all took place and was facilitated by virtue of the Officers' position as police officers and educators within the Program.

62. Throughout the duration, the Officers acted under the authorization by the government within the Program, abusing their authority within both the Program and as police officers.

63. The Court has held previously in *Almand v. Dekalb County (*citing Parker v. Williams 862 F.2d 1471 (11th Cir. 1989)) that rape and sexual assault by state actors and officials can violate the constitution and serve as the basis for a § 1983 claim.

64. The Officers' sexual assault of Ms. Birchmore as a minor all occurred while the Officers operated "under the color of the law" and in abuse of the positions given to them.

65. There exists a clear nexus between the Officers' official duties as police officers and educators within the Program and their inappropriate sexual conduct with Ms. Birchmore over the duration of the Program and continuing thereafter.

WHEREFORE, the Plaintiff demands judgment and damages against the Defendants, M. Farwell, W. Farwell, Devine, for their violation of Ms. Birchmore's civil rights pursuant to §1983 in a sum to be determined at trial, plus interest, costs and attorneys' fees.

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THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL COUNTS SO TRIABLE.

Date: January 9th, 2023

Respectfully Submitted,

DARLENE SMITH, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SANDRA BIRCHMORE,

By her Counsel,

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