2024 IL App (1st) 221940-U

FIFTH DIVISION
April 12, 2024

No. 1-22-1940

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELLIOT NOTT, Plaintiff-Appellant, v. SWEDISH COVENANT HOSPITAL and ANNE NEWBOLD, D.O., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 19L10484 Honorable Mary Minella, Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Mitchell and Justice Lyle concurred in the judgment.

O R D E R

¶ 1 *Held*: Dismissal of plaintiff's third amended complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2020)) is affirmed. Settling with the alleged agent released the alleged principal from liability based on her conduct. To the extent any claims remain, the Abused and Neglected Child Reporting Act (325 ILCS 5/1 *et seq.* (West 2016)) and the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq.* (West 2016)) immunize defendants' conduct. Additional evidence presented by plaintiff does not support a claim that defendants disclosed plaintiff's confidential information.

¶ 2 In September 2016, plaintiff Elliot Nott presented to defendant Swedish Covenant Hospital (Hospital) for emergency mental health treatment. He was seen by defendant Dr. Anne Newbold,

D.O., and former defendant Stacey Kiran, Licensed Clinical Social Worker (LCSW). After learning that Mr. Nott had placed a camera in the employee restroom of the elementary school where he worked, Ms. Kiran contacted both the Department of Children and Family Services (DCFS) and the 911 emergency assistance call center.

¶ 3 Mr. Nott sued the Hospital, Dr. Newbold, and Ms. Kiran, alleging that defendants willfully and wantonly disclosed confidential information. Mr. Nott alleged that, as a proximate result of defendants' disclosures, he suffered financial losses, including loss of his employment. Ms. Kiran settled the claims made against her and is no longer a part of this case.

¶ 4 The circuit court dismissed Mr. Nott's complaint, finding that defendants had statutory immunity from liability. For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 The facts below are taken from the pleadings, the evidence the parties submitted in support of their dispositive motions, and Mr. Nott's motion to reconsider.

¶ 7 A. Factual History

¶ 8 Mr. Nott went to the Hospital on September 9, 2016. He met with Ms. Kiran, who, at the time, worked with Project Impact, a crisis intervention program run out of the Hospital's emergency department. Ms. Kiran recorded her encounter with Mr. Nott and his wife on a form titled "Crisis/Intake Assessment." In that document, Ms. Kiran reported,

> "The patient told this writer 'I put a video camera in the employee bathroom at my work,' shortly later, pt told this writer 'I work in an elementary school.' This patient went on to tell his wife and this writer that he had been a voyeur for 'a long time, since I was 10 or 12. *** I do things, then don't for a few years. Then I do something else. I sometimes feel like I won't get in trouble, then sometimes I feel the potential huge consequences.' This patient

said that he was interviewed at the school for this video camera, that he denied it, and that he still felt like maybe he would not be caught."

¶ 9 Later in the form, Ms. Kiran wrote:

"The pt's wife said 'but children could have potentially been in there?' This patient said 'no minors were involved.' This writer reminded him that this writer is a mandated reporter.

This writer consulted with RN Christine [Gruber] and decided to report this incident with DCFS. This writer left a voicemail with DCFS. RN Christine then informed this writer that the charge nurse said to call 9-1-1. This writer called 9-1-1. This writer [then] informed Dr. Newbold that police were on their way."

¶ 10 In Ms. Kiran's affidavit, she stated that she had "disclosed the communications of Mr. Nott, in [her] sole discretion, in order to protect him and/or other person(s), including but not limited to children, from what [she] considered to be a clear imminent risk of serious physical and mental injury/harm." She testified in her deposition that, based on her professional training and experience, it was her "duty to think about the children involved in the school and to think about potential that children [could] use [the bathroom]." Ms. Kiran further testified that she believed that it was her responsibility "to think about [making a report] as if the child [was her] client."

¶ 11 Ms. Kiran was unclear in her deposition as to whether Mr. Nott had told her, when he came to the Hospital, that the camera had already been taken down. At one point she appeared to say that he had, but then later she seemed to say that she only learned that later from her lawyer.

¶ 12 According to Ms. Kiran's deposition testimony and the Hospital's records, DCFS called Ms. Kiran back the same day and informed her that there was nothing in what she reported that would cause it to initiate an investigation.

¶ 13 Dr. Newbold's "Emergency Physician Evaluation" note says that Dr. Newbold also saw Mr. Nott in the emergency room that day. Dr. Newbold testified in her deposition that she had no independent recollection of seeing Mr. Nott. She also testified that it would have been Project Impact, rather than herself, that would have contacted either DCFS or the police regarding suspected child abuse. Dr. Newbold acknowledged in her deposition that she was not familiar with the "mandated reporter statute" or the Mental Health and Developmental Disabilities Confidentiality Act (Mental Health Act) (740 ILCS 110/1 *et seq.* (West 2016)). She did not know if she had ever signed a form acknowledging her mandated reporter status. Dr. Newbold's note states, "Police were notified by charge RN and per PI [Project Impact], police state that [the patient was] ok to be discharged."

¶ 14 Charlie Travers testified that he was a charge nurse, responsible for managing the emergency department and that he had "a number of different roles and responsibilities," including training new nurses. He testified that he understood that the Abused and Neglected Child Reporting Act (Reporting Act) (also referred to as "ANCRA" in the parties' briefs) (325 ILCS 5/1 *et seq.* (West 2016)) allowed the hospital to call both DCFS and the police in these circumstances. He also stated that he was not familiar with the Mental Health Act.

¶ 15 Nurse Christine Gruber was also deposed. She confirmed that the charge nurse told her to tell Ms. Kiran to call 911 and that she sat with Ms. Kiran while that call was made. She said that she received yearly training on being a mandated reporter, and that she was not very familiar with the Mental Health Act. Her understanding was that, as a mandated reporter, she was sometimes mandated to call the police, as well as DCFS. She acknowledged that she had never executed an acknowledgment of her mandated reporter status.

¶ 16 A document titled "General Progress Report" from "Detective Division/Chicago Police"

dated September 20, 2016, indicates that Ms. Kiran went to a Chicago police station on that date and described to the police the events that occurred on September 9, 2016. That report says that "Kiran now states [that] she feels uncertain if she is over-stepping her responsibilities. [She was] left alone in the A/C Conference Room to call her Supervisor." According to the report, her supervisor then told her to not participate further, and she left.

¶ 17 Detective Daniel McNally of the Chicago Police Department testified that, on September 7, 2016, the principal of Ogden Elementary School called 911 to report that a staff member had found an audio-visual recording device in an employee restroom. The police took possession of the device that day and obtained a warrant to view its contents. On September 9, 2016, the same day that Mr. Nott later went to the Hospital, Detective McNally confronted Mr. Nott with an accusation that he had placed the camera in the restroom, but Mr. Nott denied it.

¶ 18 Mr. Nott was arrested on September 21, 2016, and charged with 28 felony counts, including child pornography, unlawful videotaping, unlawful videotaping in a public place, and unauthorized videotaping. On September 6, 2019, Mr. Nott pled guilty to 26 of the 28 counts and was sentenced to probation as a sex offender.

¶ 19 B. Procedural History

¶ 20 Mr. Nott initiated this litigation against the Hospital, Dr. Newbold, and Ms. Kiran on September 7, 2018. The claims against Ms. Kiran were settled, and she was voluntarily dismissed from the case on October 22, 2021.

¶ 21 After that settlement, Mr. Nott filed his operative Third Amended Complaint. The complaint alleged that (1) the Hospital directly breached its duty of confidentiality because "Charlie Travers, R.N. along with other [Hospital] agents, employees, assigns and/or apparent agents, including its nurses, Christine J. Gruber, Kellie Fitzpatrick, R.N., and employee Defendant,

ANNE NEWBOLD, D.O. advised, ordered and instructed Stacey Kiran, LCSW to improperly contact DCFS and 911 which she did"; (2) Dr. Newbold breached her duty of confidentiality by allowing "the unauthorized disclosure of personal, privileged, and private privileged communications and mental health communications and information"; (3) the Hospital committed willful and wanton negligence by consciously disregarding Mr. Nott's wellbeing, violating "various statutes," and calling the police when the Hospital knew, or should have known, that the police would arrest him; (4) Dr. Newbold committed willful and wanton negligence when she consciously disregarded "the wellbeing of [Mr. Nott] by failing to provide him the mental health counseling and help he so desperately needed" and instead contacted the Chicago Police Department; and (5) Dr. Newbold and Ms. Kiran were "employees, assigns, agents, and/or apparent agents of [the Hospital]" and the Hospital was therefore vicariously liable for their conduct.

¶ 22 Defendants filed four dispositive motions, all of which were ruled on by the circuit court on May 19, 2022.

¶ 23 In a motion under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2020)), defendants argued that Mr. Nott failed to allege sufficient facts to meet the pleading requirements for willful and wanton negligence. They also argued that he failed to satisfy Illinois's fact pleading requirement. The court denied this motion but noted in its oral ruling that "the current Third Amended Complaint is inadequate in part as it alleges conclusions of law rather than facts thereby making it subject to dismissal under defendants' motion." In the court's view, "the more dispositive resolution [was] pursuant to defendants' motion [to] dismiss pursuant to 735 ILCS 5/2-619(a)(9)."

¶ 24 In a motion brought under section 2-622 of the Code (735 ILCS 5/2-622 (West 2020)),

defendants argued that Mr. Nott failed, as required by that section, to attach to his complaint an attorney affidavit and a report by a qualified physician averring to the existence of a meritorious cause of action for the failure to provide counseling services. The court found that because Ms. Kiran's report to DCFS and the Chicago Police Department "did not relate to restoration to normal physical or mental health," the complaint could not properly be characterized as sounding in medical healing arts malpractice. Mr. Nott was thus not required to include an affidavit from a medical expert and this motion was denied.

¶ 25 In a motion for summary judgment pursuant to sections 2-1005 and 13-212(a) of the Code (735 ILCS 5/2-1005, 13-212(a) (West 2020)), defendants made three arguments: (1) there was no evidence suggesting any staff disclosed Mr. Nott's protected health information besides Ms. Kiran; (2) because Mr. Nott had settled all claims against Ms. Kiran, any vicarious liability for her conduct was extinguished under the rule articulated in *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511 (1993); and (3) defendants' conduct was not the proximate cause of Mr. Nott's injuries because he would have been arrested regardless of the information the police gained from Ms. Kiran's call. This motion was denied because it was untimely under local rule 2.1(f), which requires such motions be noticed for hearing not later than 45 days before the trial date. Cook County Cir. Ct. R. 2.1(f) (Aug. 21, 2000).

¶ 26 In a motion brought under section 2-619 of the Code (735 ILCS 5/2-619(a)(9) (West 2020)), defendants argued that, to the extent that Dr. Newbold or any other staff "were indirectly involved" with Ms. Kiran's allegedly negligent disclosures, they were immune from liability for that conduct. In support of this motion, defendants cited immunity provisions in the Mental Health Act (740 ILCS 110/1 *et seq.* (West 2016)), the Clinical Social Work and Social Work Practice Act (Social Work Act) (225 ILCS 20/1 *et seq.* (West 2016)), the Professional Counselor and Clinical

Professional Counselor Licensing and Practice Act (Counselors Act) (225 ILCS 107/1 *et seq.* (West 2016)), and the Reporting Act (325 ILCS 5/1 *et seq.* (West 2016)).

¶ 27 The circuit court granted this motion. The court found that there was "no evidence whatsoever from the police that anyone else [besides Ms. Kiran] *** on September 9, 2016, or after had reported that Elliott Nott had placed a camera in a bathroom at the elementary school where he worked." The court found that "even if the allegations [were] taken as true, all [defendants] were mandated reporters, immune from liability for contacting DCFS [and] the Chicago Police Department, [by] the Counselors Act and Social Work Act, the Mental Health Act, and the Reporting Act under the circumstances of this case."

¶ 28 The court also noted in its oral ruling that it was not convinced Mr. Nott suffered damages from Ms. Kiran's disclosure. The court stated that the only reason the police did not arrest Mr. Nott immediately after Ms. Kiran's call was because they "were simply continuing their investigation and developing the information to the level of probable cause." In the court's view, the results of that investigation would have been the same even without Ms. Kiran's disclosure.

¶ 29 Mr. Nott moved to reconsider and the circuit court denied the motion. Mr. Nott now appeals.

¶ 30 II. JURISDICTION

¶ 31 The circuit court denied Mr. Nott's timely motion to reconsider on November 28, 2022, and he filed a notice of appeal on December 27, 2022. This court has jurisdiction over the appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 32 III. ANALYSIS

¶ 33 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts

an affirmative defense or other matter that avoids or defeats the claim. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "An affirmative matter encompasses any defense other than a negation of the essential elements of the plaintiff's cause of action." *Dewan v. Ford Motor Co.*, 363 Ill. App. 3d 365, 368 (2005). "A grant or denial of a motion to dismiss is a question of law that we review *de novo*." *Simmons v. Homatas*, 236 Ill. 2d 459, 477 (2010).

¶ 34 Although he does not always differentiate between these, Mr. Nott's allegations, evidence, and arguments address three categories of claims: (1) claims against the remaining defendants based on vicarious liability for Ms. Kiran's conduct, (2) claims based on the direct liability of the remaining defendants for affirmatively directing or encouraging Ms. Kiran's disclosures, and (3) direct liability for reports Mr. Nott claims were made by Dr. Newbold or the charge nurse. We address each of these categories in turn.

¶ 35 A. Vicarious Liability for Ms. Kiran's Conduct

¶ 36 Although Mr. Nott filed a third amended complaint to omit allegations based on Ms. Kiran's actions once she had settled, it appears to us that much of what he continues to see as part of his case is foreclosed by that settlement.

¶ 37 In *Gilbert*, 156 Ill. 2d at 528, our supreme court made clear that, "any settlement between the agent and the plaintiff must also extinguish the principal's vicarious liability." (Internal quotation marks omitted.) This principle of Illinois law still stands. See *Ahle v. D. Chandler, Inc.*, 2012 IL App (5th) 100346, ¶ 18 (citing *Gilbert*, 156 Ill. 2d at 527-29). Ms. Kiran has settled the claims against her. Therefore, while the Hospital may be vicariously liable based on the direct actions of its other employees or agents, Mr. Nott's settlement with Ms. Kiran extinguishes any vicarious liability based on her conduct.

¶ 38 Mr. Nott's claims and arguments fail to recognize this important limitation on his case.

Throughout his statement of facts in his appellate brief, he alleges generally that "defendants" contacted DCFS and the Chicago Police Department without making clear who did what or explaining why his claims rest on direct, rather than vicarious, liability. While Mr. Nott argues that Ms. Kiran consulted with various defendants, he fails to specify how they participated in her disclosures.

¶ 39 Defendants argue in their response brief that the circuit court's dismissal should be affirmed on the basis of *Gilbert.* Mr. Nott fails to respond to that argument in his reply brief. When Mr. Nott's counsel was asked about this specifically at oral argument, he pointed to evidence that the charge nurse directed Ms. Kiran to call 911. Our own review of the record suggests that there was also some evidence that Ms. Kiran consulted with Nurse Gruber during the time that Mr. Nott was at the Hospital. These allegations could support a claim that these Hospital agents are liable for their own participation in Ms. Kiran's disclosures. We will therefore examine defendants' affirmative defense that all defendants are immune from any liability for participation in such disclosures.

¶ 40 B. Liability for Participation in Ms. Kiran's Disclosures

¶ 41 Defendants assert that they have immunity under four statutes: the Reporting Act, the Mental Health Act, the Social Work Act, and the Counselors Act. Because the parties' briefs focus primarily on the Reporting Act and the Mental Health Act, and we agree that those statutes together provide immunity for any disclosures that occurred, we have no need to consider the other statutes.

¶ 42 1. *The Reporting Act*

¶ 43 The Reporting Act requires specific professions and institutions to act as mandated reporters. 325 ILCS 5/4 (West 2016). In 2016, the professions and institutions listed included physicians, hospitals, hospital administrators, "personnel engaged in examination, care and

treatment of persons," social workers, registered nurses, licensed practical nurses, licensed professional counselors, and licensed clinical professional counselors. *Id.*

¶ 44 Both in 2016 and today, mandated reporters are required to "immediately report or cause a report to be made to the Department [of Children and Family Services]" once they have "reasonable cause to believe *a child known to them* in their professional or official capacity may be an abused child or a neglected child." (Emphasis added.) *Id.*

¶ 45 The circuit court found, and defendants contend on appeal, that they and Ms. Kiran were mandated reporters. However, we do not agree that they were mandated to make any report in these circumstances, and we also agree with Mr. Nott that the Reporting Act pertains only to reports made to DCFS, not to the Chicago Police Department. Indeed, like Mr. Nott, we find it surprising and somewhat alarming that Ms. Kiran and the employees of the Hospital appeared to have very little understanding of what the Reporting Act requires.

¶ 46 Here, the only children who could potentially have been harmed by Mr. Nott's conduct were students at the school, none of whom were "known to" defendants. Defendants were not mandated to make a report based on the fact that some unknown and unidentified child could have been harmed by Mr. Nott's conduct. There simply was no "child known to them" as required to invoke the statute's mandatory reporting requirement. In 2020, after the events in this case, the Reporting Act was amended to add a definition of child known in "professional or official capacities." Pub. Act 101-564 (eff. Jan. 1, 2020) (amending 325 ILCS 5/4). The new definition makes it even clearer that the abused or neglected child must be specifically known to the reporter. See 325 ILCS 5/4(c)(1) (West 2020) (providing three definitions of a child known through "professional or official capacities," including (A) children known through the reporter's employment, (B) children under the care or supervision of the reporter, or (C) a child that is

identifiable and the disclosure happens in the course of the reporter's employment).

¶ 47 The Reporting Act does have some relevance here, however, because it provides for permissive, as well as mandated, reporting. In the tenth paragraph, the statute provides:

> "In addition to the *** persons required to report suspected cases of abused or neglected children [under this Section], any other person may make a report if such person has reasonable cause to believe a child may be an abused child or a neglected child." 325 ILCS 5/4 (West 2016).

Critically, this portion refers to "a child" and not "a child known to [the reporter]." Thus, this section could apply to reports made in these circumstances.

¶ 48 The immunity provision of the Reporting Act, on which defendants rely, extends to permissive, as well as mandated, reports and to persons who participate in a report made by someone else. The act provides as follows:

> "Any person, institution or agency, under this Act, *participating in* good faith in the making of a report or referral, *** except in cases of wilful or wanton misconduct, shall have immunity from any liability, civil, criminal or that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any persons required to report or refer, *or permitted* to report, cases of suspected child abuse or neglect *** shall be presumed." (Emphases added.) *Id.* § 9.

¶ 49 However, while the Reporting Act immunizes permissive reports made to DCFS, it does not have any relevance to calls made to 911. The Reporting Act provides that "[DCFS] shall be the sole agency responsible for receiving and investigating reports of child abuse or neglect made under this Act." *Id.* § 7.3(a); see *id.* § 4 (referencing throughout that reports are "to be made to the Department," referring to DCFS). Therefore, to the extent that the Reporting Act immunizes

defendants, it does so only in relation to their alleged participation in Ms. Kiran's disclosure to DCFS—not to the police.

¶ 50 As the statute makes clear, the immunity provided by the Reporting Act excludes "wilful and wanton" misconduct and requires that the reporters and the participants act in good faith. *Id.* § 9. The statute also makes clear that good faith is presumed. *Id.* This is similar to the limitation on immunity under the Mental Health Act, which we address in subsection two. The bulk of the parties' briefs concern whether the presumption of good faith has been overcome. That is addressed in subsection three.

¶ 51 2. *The Mental Health Act*

¶ 52 The Mental Health Act generally protects the confidentiality of communications made in pursuit of mental health treatment. The act provides that "records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship." 740 ILCS 110/3(a) (West 2016).

¶ 53 The disclosure provision in the Mental Health Act provides that mental health records and communications may be disclosed:

> "(ii) when, and to the extent, a therapist, *in his or her sole discretion*, determines that disclosure is necessary to initiate or continue civil commitment or involuntary treatment proceedings under the laws of this State or to otherwise protect the recipient or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another[.]" (Emphasis added.) *Id.* § 11(ii).

¶ 54 The immunity provision of the Mental Health Act provides:

> "Any person, institution, or agency, under this Act, *participating in good faith* in the making of a report under the Abused and Neglected Child Reporting Act or in the disclosure of records and communications under this Section, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure under this Section, the good faith of any person, institution, or agency so reporting or disclosing *shall be presumed.*" (Emphases added.) *Id.* § 11 (last full paragraph).

¶ 55 The statute thus empowers a therapist to report communications when, and to the extent that, the therapist in his or her sole discretion believes disclosure is necessary to protect another person against a clear and imminent risk of serious mental injury. Unlike the Reporting Act, the Mental Health Act does not limit disclosures to those made to DCFS or any other specific recipient. Nor does the Mental Health Act limit disclosures to those based on a known child. The immunity extends to "institutions" and "persons" "participating in good faith in the making of a report." *Id.*

¶ 56 We turn therefore to whether these immunity provisions are overcome or potentially overcome (such that there is a question of fact) by Mr. Nott's evidence that defendants acted in bad faith, or willfully or wantonly, in participating in the disclosures that Ms. Kiran made to DCFS and the police.

¶ 57 3. *Good Faith Requirements*

¶ 58 In construing the scope of defendants' claimed immunities, our primary goal is to ascertain and give effect to the legislature's intent in enacting the statute. *Doe v. Winny*, 327 Ill. App. 3d 668, 676 (2002). "The best indication of the legislature's intent is the plain language of the statute and we may not depart from the plain language of the Act by reading into it exceptions, limitations,

or conditions that conflict with the express legislative intent ***." *Id.*

¶ 59 As both immunity statutes require, we begin with the presumption that defendants acted in good faith. 325 ILCS 5/9 (West 2016); 740 ILCS 110/11 (West 2016) (final full paragraph). That presumption is not absolute. To rebut the presumption, a "plaintiff must come forward with evidence to support a finding of the nonexistence of the presumed fact." *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 908 (1996). Illinois therefore "recognizes the so-called bursting bubble theory" by which evidence introduced contrary to the presumption may defeat the presumption. (Internal quotation marks omitted.) *Lehman v. Stephens*, 148 Ill. App. 3d 538, 551 (1986).

¶ 60 In *Winny*, 327 Ill. App. 3d 668, we clarified what was required to overcome the presumption of good faith under the Reporting Act. We answered a certified question: "Does the good faith immunity provided by 325 ILCS 5/9 shield a physician from liability for his failure to meet accepted medical standards in providing care and treatment to his patient?" (Internal quotation marks omitted.) *Id.* at 671. We held that a physician who was negligent in both diagnosing and reporting child abuse was not, without more, liable under the Reporting Act. *Id.* at 683. Instead, to raise a question of fact about the good faith of a reporting party, a plaintiff must produce evidence that the defendant acted "maliciously, dishonestly, or for some improper purpose." *Id.*; see also *Pryweller*, 282 Ill. App. 3d at 910 (sexual abuse assessments from professionals that contradicted the ones made by the defendant were not sufficient to rebut the statutory presumption that the defendant acted in good faith); *Simmons v. Campion*, 2013 IL App (3d) 120562, ¶¶ 6, 26 (Mental Health Act provided immunity for a defendant psychologist who told the police-department employer that the plaintiff's mental health posed a clear and imminent risk to others despite the fact that the plaintiff obtained evaluations from three independent psychologists who disagreed).

¶ 61 *Poulos v. Lutheran Social Services of Illinois, Inc.*, 312 Ill. App. 3d 731, 744 (2000), represents the kind of extreme case in which we have found that "the evidence introduced at trial was sufficient for the jury to find that [the defendant] acted with actual malice or bad faith such that the presumption of good faith within section 11 of the [Mental Health] Act was overcome." In that case, the defendant social worker called the school, a parent of the school, and the chairman of the school's board of trustees to inform them that a child belonging to the plaintiff teacher had tested positive for a sexually transmitted disease, even though she knew that the test result had later been shown to be a false-positive. *Id.* at 736-37. Because "[g]ood faith and actual malice cannot coexist," we upheld the jury's verdict. *Id.* at 744.

¶ 62 Mr. Nott also cites *Lipscomb v. Sisters of St. Francis Health Services, Inc.*, 343 Ill. App. 3d 1036, 1047-48 (2003), where we reversed an order granting a motion to dismiss on the basis of immunity under the Reporting Act. There, the defendant hospital misidentified an eight-year-old minor's urinalysis and found "trace amounts of spermatozoa." (Internal quotation marks omitted.) *Id.* at 1038. After conducting a vaginal examination and confirming that it had mixed up the urinalyses, the hospital apologized to the child's mother for its error and transferred the child to another location to treat her fever. *Id.* at 1039. At the new location, the defendant's agents proceeded to perform multiple vaginal examinations, questioned the child's mother about potential child abuse, and contacted DCFS. *Id.* at 1043-44. We ruled primarily on the basis that the defendants had acted as investigators, rather than reporters, but also said that the allegations of the complaint, "[i]f taken as true, *** also suggest[ed] that the report/investigation was made for a malicious purpose." *Id.* at 1047-48. At the pleading stage, those allegations were sufficient to rebut the presumption that the defendant acted in good faith under the Reporting Act.

¶ 63 Mr. Nott relies on a number of pieces of evidence that he contends overcome the

presumption that defendants acted in good faith. He points out that (1) Ms. Kiran went to the police station to re-disclose information on September 20, 2016, despite harboring concerns that she might have been "over-stepping her responsibilities"; (2) Mr. Nott's family physician, whom he also talked to about this incident, did not report it and contacted legal counsel who informed the doctor that a report was unnecessary; (3) there was no clear or imminent danger since the camera had already been taken down; (4) Ms. Kiran wrongly believed that the children and employees at Ogden Elementary School were her clients and ignored the fact that Mr. Nott was actually her client; (5) there is no evidence that any defendants or any of the Hospital employees executed an acknowledgement of mandated reporter status as required by the Reporting Act (325 ILCS 5/4 (West 2016) (eleventh paragraph.)); (6) Dr. Newbold, Nurse Travers, and Nurse Gruber testified that they were not familiar with the relevant statutes; (7) Ms. Kiran testified that she was a mandated reporter in this circumstance, even though, as described above, the requirements of mandated reporting did not apply; (8) defendants violated the Reporting Act by calling 911 instead of DCFS; and (9) when DCFS was contacted, it concluded that there was nothing that required investigation.

¶ 64 The evidence of Ms. Kiran's decision to go to the police station on September 20, 2016, simply has no relevance since she has settled. Mr. Nott does not allege, and no evidence suggests, that there is any connection between the remaining defendants' actions and Ms. Kiran's actions on September 20, 2016. Ms. Kiran's decision to reraise her concerns with the police more than 10 days after Mr. Nott's visit to the hospital cannot be a basis for imposing liability on any other defendant.

¶ 65 Some of the other evidence that Mr. Nott points to may suggest a failure on the part of the Hospital to properly train its employees or to exercise due care. For example, there was evidence

to suggest that defendants failed to fully explore the risks involved by determining whether the camera was still up or the extent of Mr. Nott's confessed history of voyeurism. Furthermore, defendants, and Ms. Kiran, seemed woefully uninformed as to what the Reporting Act required and whether they were mandated to make a report in this situation. Also, the employees of the hospital failed to distinguish between the role of DCFS and that of the police under the Reporting Act.

¶ 66 While defendants could have acted more carefully and the hospital could have provided more training, there is no evidence that their failure to do so was malicious. As we have made clear, "a plaintiff must show more than mere negligence to create a question of fact as to a reporter's good faith." *Winny*, 327 Ill. App. 3d at 683. Defendants' actions do not suggest malice, an improper motive, or that they reported information they knew to be false, as in *Poulos* or *Lipscomb*. This record simply does not include the requisite evidence of dishonesty or malice to overcome the immunity provisions of the Mental Health Act or, to the extent that it applies here, the Reporting Act. Thus, we agree with the circuit court that, to the extent Hospital employees participated in Ms. Kiran's disclosures, they had immunity.

¶ 67 C. Direct Liability for Actions Taken by Defendants Themselves

¶ 68 Mr. Nott also contends here, as he did in his motion to reconsider in the circuit court, that there was evidence of reports from people other than Ms. Kiran. He appears to contend, although he never argues this directly, that the immunity analysis would be different for these reports. However, we have no need, just as the circuit court had no need, to consider whether there would be immunity for such reports since there is simply no evidence that they were made.

¶ 69 In the context of a section 2-619 motion, "[a] court will take as true those facts in a defendant's affidavit supporting [the] motion to dismiss if the plaintiff fails to refute those facts in

a counteraffidavit, notwithstanding contrary unsupported allegations in the plaintiff's pleadings." *Pryweller*, 282 Ill. App. 3d at 907. Here, Mr. Nott alleges, without evidence, that Dr. Newbold disclosed Mr. Nott's confidential information. Dr. Newbold, however, in her deposition, expressly denied having done so. Without any evidence or a counteraffidavit, we do not need to take as true Mr. Nott's generalized and unsupported allegation that Dr. Nott made her own report.

¶ 70 Mr. Nott also argues that the record contains evidence that the charge nurse spoke directly with the police. The evidence Mr. Nott cites comes from the treatment note Dr. Newbold authored. That note states in full:

> "41 y/o M w/ stress and anxiety after he states he feels 'guilty' for placing a camera in a bathroom at a workplace. States that he wanted to tell his wife in the presence of therapist. Pt tried to call therapist but couldn't get appt until Monday. Welcoming center was booked full. Pt states he did tell wife in ER what he did and PI did evaluate. No SI/HI. Pt states he feels better and states wants to go home. Pt given resources. *Police were notified by charge RN* and per PI, police state that Pt ok to be discharged." (Emphasis added.)

¶ 71 Mr. Nott appears to rely on the italicized words. But it is not at all clear from this note what the charge nurse was supposed to have told the police. There is no suggestion in this note that the charge nurse disclosed any confidential information or anything other than the fact that Mr. Nott was being discharged. This note, on its own, is simply no basis for Mr. Nott to claim that there was evidence that the charge nurse made any disclosure of Mr. Nott's confidential information.

¶ 72 D. Motion to Reconsider and Denial of Request to Replead

¶ 73 Mr. Nott argues that the circuit court erred in denying his motion to reconsider because the court's ruling had numerous legal and factual errors. This court has reviewed *de novo* all rulings by the circuit court and has disagreed with some of them, such as the conclusion that Ms. Kiran's

status as a mandated reporter applied to this situation. Any errors that Mr. Nott believes that the circuit court made have been addressed on appeal, and our consideration of those errors also addresses Mr. Nott's arguments regarding the motion to reconsider.

¶ 74 Mr. Nott also argues on appeal that the circuit court erred in denying his request to replead. Mr. Nott made the request to replead in his response to defendants' section 2-619 motion where he asked to amend his complaint "if necessary." Mr. Nott never sought to amend his complaint by providing a proposed amended complaint to the court, which "is generally required for a party to demonstrate that it should have been granted leave to amend." *Butler v. BRG Sports, LLC*, 2019 IL App (1st) 180362, ¶ 72. Moreover, even on appeal, Mr. Nott has failed to explain what he would have added in an amended complaint or how that could have changed the outcome here.

¶ 75 IV. CONCLUSION

¶ 76 For the foregoing reasons, we affirm.

¶ 77 Affirmed.