2011 IL App (1st) 103188-U

SECOND DIVISION
DECEMBER 27, 2011

No. 1-10-3188

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANE DOE and JOHN DOE, by his mother and next friend, JANE DOE, Plaintiffs-Appellants, v. JEWISH CHILD AND FAMILY SERVICES, a nonprofit Illinois Corporation, formerly doing business as JEWISH CHILDREN'S BUREAU OF CHICAGO, a nonprofit Illinois Corporation, and GLENN JOHNSON, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 07 L 898 Honorable Eileen Brewer, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted the defendant's motion for summary judgment against the plaintiffs because the plaintiffs failed to present a genuine issue of material fact in their second amended complaint concerning the duty owed to the plaintiffs by the defendant.

¶ 2 This appeal arises from an August 12, 2010 order entered by the circuit court of Cook County which granted defendant-appellee Jewish Child and Family Services' (JCFS) motion for summary

judgment against plaintiffs-appellants Joyce and Jacob Coughenour (the Coughenours), formerly referred to as Jane and John Doe. On appeal, the Coughenours argue that: (1) the trial court erred in granting summary judgment as to the negligent hiring count in the second amended complaint because JCFS breached its own standards in hiring defendant Glenn Johnson (Glenn); (2) summary judgment was improper because there were material facts in dispute regarding the negligent misrepresentation, negligent infliction of emotional distress and negligence *per se* counts in the second amended complaint; and (3) JCFS owed the Coughenours a heightened duty of care under the private carrier standard as applied through *Green v. Carlinville Community Unit School District*, 381 Ill. App. 3d 207, 887 N.E.2d 451 (2008). For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 In December 1998, JCFS, formerly doing business as Jewish Children's Bureau of Chicago, established a respite program to provide relief to families who have children with physical, developmental, emotional or behavioral disabilities and complex medical needs. The respite program works with special needs children in order to give the parents of the children a break from full-time child care responsibilities. Respite workers work with family members in a community or in-home setting. Approximately 15% of a respite worker's time is spent providing services in the home. The remaining time is spent providing services while transporting the client to and from various outside activities, and participating in the activities themselves. They provide care to clients with special needs and assist with the activities of daily living, mastering life skills, helping with socialization, and behavior counseling and modification. Respite workers also assist parents with

specific parenting tasks.

¶ 5 On October 14, 2002, JCFS hired Glenn as a respite worker. However, prior to his employment with JCFS, Glenn had been a victim of sexual abuse. When Glenn was 15 years old, he was sexually abused by a 25-year-old school teacher. Glenn was able to go on to obtain two Master's degrees and became ordained as a Deacon. In 1998, Glenn began work as a full-time high school teacher at Gordon Tech High School in Chicago, Illinois. Glenn taught at Gordon Tech High School until March 2002 when he voluntarily resigned from his position during the third semester of the school year. Glenn testified that he was forced to leave the school because students found out that he was homosexual and began harassing him by shouting slurs at him and refusing to obey him. Glenn also testified that a parent of one his students approached him in the hallway one morning and began shouting at him, accusing him of basing her son's grade on the race of the student. Glenn stated that he feared for his safety to the point where he had to make alternative arrangements to park his car so he could avoid confrontations with students. In addition to these incidents, a male student of Glenn's accused Glenn of looking at the student in a way that made the student feel uncomfortable. The school investigated the allegation, and although the student was removed from Glenn's classroom, the school exonerated Glenn of any wrongdoing. The combination of all these experiences caused Glenn to leave his teaching position at Gordon Tech High School. Glenn then applied for a job with JCFS.

¶ 6 On September 9, 2002, Glenn met with former JCFS Respite Coordinator Robin Goldstein Sowl (Robin) for his first interview. Robin testified that she did not recall asking Glenn why he left Gordon Tech High School. Robin also failed to contact any of Glenn's prior employers or references

that Glenn had submitted. The JCFS hiring standards require: a first interview; letters sent to the applicant's references; a second interview; and completion of a fingerprint background check, Child Care Facility Driver Application, and Illinois State Police Conviction Information Request, among other paperwork. On September 30, 2002, Robin conducted a second interview and offered Glenn a position. In an affidavit, Genene Taylor (Genene), the Administrator of the Illinois Department of Children and Family Services (DCFS) Background Check Unit, stated that JCFS completed an authorization for background checks for Glenn. She also stated that Glenn cleared all DCFS background checks and that his fingerprints revealed no history that would have disqualified him from employment as a respite worker with JCFS. Glenn was hired on October 14, 2002.

¶ 7 Jacob Coughenour (Jacob) was born on February 6, 1990 and suffers from mental disabilities and mental, vision, speech and language impairments. Based on his disabilities, Jacob's mother Joyce Coughenour (Joyce) sought respite care for Jacob with JCFS beginning in January 2001. On November 11, 2002, Glenn was introduced to the Coughenours in their home. Joyce was told over the telephone that Glenn had been a teacher and that he was familiar with the community close to her home. Joyce did not ask for any references. Glenn was assigned to Jacob and provided care eight different times between November 2002 and February 2003. In March 2003, Glenn resigned from JCFS. In April 2003, Andrew Mullin (Andrew) was assigned to be Jacob's next respite worker. On September 3, 2003, Andrew was providing respite service for Jacob when Jacob became irritated. Andrew asked Jacob what was wrong and Jacob stated that he wanted Andrew to treat him like Glenn had treated him. When Andrew questioned Jacob further, Jacob revealed that Glenn sexually abused him. Andrew then took Jacob home and reported the incident to Joyce, who then contacted

the police.

¶ 8 The police investigation revealed that all the incidents of sexual abuse occurred at various locations outside the Coughenours' home and away from JCFS premises. On October 15, 2003, Glenn was charged with two counts of predatory criminal sexual assault of a child and three counts of aggravated criminal sexual abuse. On September 10, 2004, following a bench trial, Glenn was found guilty of two counts of aggravated criminal sexual abuse. He was found not guilty of the other charges. On November 24, 2004, Glenn was sentenced to four years' imprisonment.

¶ 9 On January 24, 2007, the Coughenours filed a complaint in the circuit court of Cook County against JCFS and Glenn. The six-count complaint alleged: (1) negligent hiring and supervision against JCFS (count 1); (2) negligent infliction of emotional distress against JCFS on behalf of Jacob (count 2); (3) negligent infliction of emotional distress against JCFS on behalf of Joyce (count 3); (4) breach of contract against JCFS (count 4); (5) breach of fiduciary duty against JCFS (count 5); and (6) negligence against Glenn (count 6). On April 27, 2007, JCFS filed a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2007)) as to counts 1 through 5. On July 26, 2007, the trial court dismissed count 3 with prejudice because it was brought on behalf of Joyce and did not allege that she was in a zone of physical danger. The trial court also dismissed counts 4 and 5 because they were based on the same facts used in support of count 1; the Coughenours did not specify consequential damages; and the Coughenours did not establish that a fiduciary duty existed by clear and convincing evidence. The trial court denied the motion to dismiss as to the remaining counts. On August 16, 2007, the Coughenours filed a motion for leave to file an amended complaint.

¶ 10 On July 8, 2008, the Coughenours filed their first amended complaint. The ten-count first amended complaint alleged: (1) negligent hiring and supervision against JCFS (count 1); (2) negligent infliction of emotional distress against JCFS on behalf of Jacob (count 2); (3) negligence against JCFS as a private carrier (count 3); (4) negligence *per se* against JCFS (count 4); (5) assault and battery against JCFS and Glenn (count 5); (6) negligent infliction of emotional distress on behalf of Joyce (count 6); (7) negligent misrepresentation against JCFS (count 7); (8) breach of fiduciary duty against JCFS (count 8); (9) breach of contract against JCFS (count 9); and (10) negligence against Glenn (count 10). On August 25, 2008, JCFS filed a motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2008)) as to counts 3, 4, 5, 6, 7, 8 and 9 in the Coughenours' first amended complaint. On October 3, 2008, the trial court denied JCFS' motion to dismiss as to counts 3 and 5 pursuant to *Green v. Carlinville Community Unit School District*, 381 Ill. App. 3d 207, 887 N.E.2d 451 (2008); the trial court granted JCFS' motion to dismiss as to counts 4 and 7 with leave to replead; the trial court granted JCFS' motion to dismiss on counts 6, 8, and 9 without leave to replead; and the trial court granted the Coughenours leave to file a second amended complaint within 21 days.

¶ 11 On October 14, 2008, the Coughenours filed their second amended complaint. The seven-count second amended complaint alleged: (1) negligent hiring and supervision against JCFS (count 1); (2) negligent infliction of emotional distress against JCFS on behalf of Jacob (count 2); (3) negligence against JCFS as a private carrier (count 3); (4) negligence *per se* against JCFS (count 4); (5) assault and battery against JCFS and Glenn (count 5); (6) negligent misrepresentation against JCFS (count 6); and (7) negligence against Glenn (count 7). On November 21, 2008, JCFS filed a

motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615) (West 2008)) as to counts 3, 4, 5, and 6 in the Coughenours' second amended complaint, and for leave for an immediate appeal pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 1, 1994). On March 12, 2009, the trial court denied JCFS' motion to dismiss counts 3, 4, 5, and 6, and denied JCFS' rule 308 motion. The trial court held that counts 4 and 6 contained sufficient information to reasonably inform JCFS of the nature of the Coughenours' claims and that the Coughenours' allegations concerning proximate cause sufficiently link JCFS' actions to the Coughenours' injuries. On April 9, 2009, JCFS filed a motion to reconsider the trial court's denial of its motion to dismiss as to counts 3 and 5 of the Coughenours' second amended complaint. On May 20, 2009, the trial court denied JCFS' motion to reconsider.

¶ 12 On April 19, 2010, JCFS filed a motion for summary judgment pursuant to section 2-1005(b) of the Code (735 ILCS 5/2-1005(b) (West 2010)) as to the "private carrier" and "common carrier" allegations in counts 3 and 5 of the Coughenours' second amended complaint. On May 7, 2010, JCFS filed a motion for summary judgment pursuant to section 2-1005(b) of the Code (735 ILCS 5/2-1005(b) (West 2010)) as to counts 1 through 4 and 6 of the Coughenours' second amended complaint. On August 12, 2010, the motions were argued in front of the trial court. On that same day, the trial court granted JCFS' motion for summary judgment as to counts 1 through 6 in the Coughenours' second amended complaint. The case continued as to Glenn only.

¶ 13 On August 31, 2010, counsel for Glenn filed a motion to withdraw as counsel. On September 10, 2010, the motion to withdraw was denied. On September 28, 2010, the civil trial against Glenn commenced in the circuit court of Cook County. On that same day, Glenn admitted

liability in open court. On October 4, 2010, a judgment on the verdict was entered against Glenn in the amount of $20,033,810. On October 22, 2010, the Coughenours filed a notice of appeal.

¶ 14 ANALYSIS

¶ 15 On April 19, 2010, JCFS filed its first motion for summary judgment and on May 7, 2010, JCFS filed its second motion for summary judgment. On August 12, 2010, the motions were heard and the trial court granted summary judgment on all counts in favor of JCFS. The case continued as to Glenn only and on October 4, 2010, a verdict was entered in favor of the Coughenours and against Glenn in the amount of $20,033,810. On October 22, 2010, the Coughenours timely filed the notice of appeal pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008). Therefore, we have jurisdiction to consider the Coughenours' arguments on appeal.

¶ 16 "A motion for summary judgment is properly granted when the pleadings, depositions, admissions and affidavits establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546, 841 N.E.2d 1241, 1243 (2006) (citing *Subway Restaurants of Bloomington-Normal, Inc. v. Topinka*, 322 Ill. App. 3d 376, 381, 751 N.E.2d 203 (2001)). In reviewing a motion for summary judgment, the court must construe the record in the light most favorable to the nonmoving party. *McNamee v. Sandore*, 373 Ill. App. 3d 636, 648, 869 N.E.2d 1102, 1112 (2007). A defendant who moves for summary judgment may meet its burden by establishing that the nonmoving party lacks sufficient evidence to prove an essential element of the cause of action. *Helfers-Beitz v. Degelman*, 406 Ill. App. 3d 264, 267, 939 N.E.2d 1087, 1090 (2010). Orders granting summary judgment are reviewed using the *de novo* standard of review. *Mendez v. Atlantic Painting Co., Inc.*, 404 Ill. App.

3d 648, 650, 936 N.E.2d 1135, 1137 (2010).

¶ 17 We first examine the Coughenours' argument that the trial court erred in granting summary judgment in favor of JCFS on the negligent hiring count in the second amended complaint because JCFS failed to comply with its own standards when hiring Glenn. A claim for negligent hiring requires the plaintiff to establish: (1) that the employer knew or should have known that the employee had a particular unfitness so as to create a danger of harm to third persons; (2) that the employer knew or should have known of the unfitness at the time the employee was hired; and (3) that the particular unfitness proximately caused the injury to the plaintiff. *Degelman*, 406 Ill. App. 3d at 268, 939 N.E.2d at 1091. A cause of action for negligent hiring is recognized even though the defendant committed intentional and criminal acts outside the scope of his employment. *Gregor by Gregor v. Kleiser*, 111 Ill. App. 333, 338, 443 N.E.2d 1162, 1166 (1982).

¶ 18 The Coughenours argue that JCFS would have been aware of Glenn's unfitness for the respite worker position if JCFS had followed its own hiring standards and investigated Glenn's past more thoroughly. At the time of Glenn's hiring, JCFS was a social service agency licensed by DCFS. As a condition of employment, the Child Care Act of 1969 prescribes that DCFS requires each child care facility license applicant and each employee of a child care facility to authorize an investigation to determine if the applicant or employee has ever been charged with a crime. 225 ILCS 10/4.1 (West 2002). The criminal charge investigation authorizes information and assistance from any federal, state or local governmental agency. 225 ILCS 10/4.1 (West 2002). The Child Care Act of 1969 also requires child care facility applicants and current and prospective employees of child care facilities who have possible contact with children to authorize an investigation of the Central

Register. 225 ILCS 10/4.3 (West 2002). The Central Register is a compilation of all cases of suspected child abuse or neglect reported and maintained by DCFS. 325 ILCS 5/7.7 (West 2002). The purpose of this requirement is to discover if the applicant or employee has been determined to be a perpetrator in an indicated report of child abuse or neglect. 225 ILCS 10/4.3 (West 2002).

¶ 19 The Illinois Administrative Code requires that any facility subject to licensing by DCFS must require operators of child care facilities or other persons subject to background checks to be screened for a prior history of child abuse or neglect, prior criminal convictions, or pending criminal charges. 89 Ill. Adm. Code 385.10 (2002). A background check under this section of the Illinois Administrative Code means: (1) a criminal history check using fingerprints submitted to the Illinois State Police and Federal Bureau of Investigation; (2) a check of the Child Abuse and Neglect Tracking System (CANTS) and other child protection systems to determine whether an individual has been indicated as a perpetrator of child abuse or neglect; and (3) a check of the Statewide Child Sex Offender Registry. 89 Ill. Adm. Code 385.20 (2002).

¶ 20 The JCFS hiring standards require: a first interview; letters sent to the applicant's references; a second interview; and completion of a fingerprint background check, Child Care Facility Driver Application, and Illinois State Police Conviction Information Request, among other paperwork. Dr. Robert Bloom, Executive Director of JCFS, testified that JCFS hiring procedures also include contacting prospective employees' previous employers. In evaluating Glenn for the respite worker position, Robin conducted two interviews with Glenn but did not recall inquiring about why Glenn left his position at Gordon Tech High School. Robin also failed to contact any of Glenn's former employers or any of the references that Glenn had submitted, despite the mandated JCFS hiring

procedures. Therefore, Robin's actions in hiring Glenn fell below the JCFS hiring standards.

¶ 21 Genene, the Administrator of the DCFS Background Check Unit, verified that JCFS completed Glenn's signed authorization for background checks. She also verified that around October 2002, DCFS checked Illinois State Police criminal history records, CANTS records, and the Illinois Sex Offender Registry to investigate Glenn. Genene stated that Glenn cleared the background checks and that DCFS found no history of any criminal conviction, child abuse, or neglect. Glenn's fingerprints revealed no history that would have disqualified him from employment as a respite worker with JCFS. Therefore, JCFS complied with all legal requirements in its investigation of Glenn.

¶ 22 In this case, the Coughenours argue that JCFS was negligent in hiring Glenn because it failed to comply with its own hiring standards, ignored professional standards, and failed to inquire about Glenn's history of suffering sexual abuse as a child. In response, JCFS points out that "[w]here the law does not impose a duty, one will not be generally created by a defendant's rules or guidelines. Rather, it is the law which, in the end, must say what is legally required." *Rhodes v. Illinois Central Gulf Railroad*, 172 Ill. 2d 213, 238, 655 N.E.2d 1260, 1272 (1996). Thus, JCFS' failure to comply with its own hiring standards does not establish that it breached a duty owed to the Coughenours. JCFS only had the duty to investigate Glenn's background to the extent required by law and it clearly met this standard.

¶ 23 The Coughenours further argue that JCFS ignored professional standards when considering Glenn for employment based on testimony from its expert witness Carl LaMell (Carl). In professional negligence cases, the plaintiff bears the burden of establishing the standard of care

through expert witness testimony. *Advincula v. United Blood Services*, 176 Ill. 2d 1, 24, 678 N.E.2d 1009, 1021 (1996). A plaintiff does not satisfy this burden by merely presenting expert testimony that offers an opinion, without more, that the witness would have acted differently than the defendant. *Id*. "The expert must base his opinion upon recognized standards of competency in his profession. A difference in opinion between acceptable but alternative courses of conduct is not inconsistent with the exercise of due care." *Id*. Although Carl oversees a respite program at an agency that provides respite services, he does not work with DCFS in any way. He has minimal involvement in hiring respite workers and no involvement in training them. Additionally, the trial court utterly disregarded some of Carl's opinions regarding issues that should be considered during the hiring process, and found them to be in violation of law and public policy. We agree with this ruling. Therefore, we hold that Carl's opinions do not establish the standard of care for hiring respite workers, and JCFS did not ignore professional standards.

¶ 24 JCFS argues that because it complied with the legal requirements in investigating Glenn's background, there is no way it could have known about any history that would suggest Glenn's unfitness for the respite worker position. We agree with this reasoning. The Coughenours claim that if JCFS had contacted Gordon Tech High School to ask about the term of Glenn's employment, it would have learned of multiple incidents that suggested that Glenn was unfit to be a respite worker. While working as a teacher at Gordon Tech High School, Glenn was harassed by students because of his sexual orientation. Also, one male student alleged that Glenn looked at the student in a way that made him feel uncomfortable. The school investigated the allegation and although the student was removed from Glenn's class, the school exonerated Glenn of any wrongdoing. In response,

JCFS refers to the affidavit of Kelly Jones (Principal Jones), Principal of Gordon Tech High School, to show that the JCFS would not have learned of Glenn's troubles as a teacher. Principal Jones stated that when anyone inquires about a former employee, the school's policy is only to confirm that the person was employed, the person's position, and the dates of employment. No other information is given. The policy applies to all staff at the school who may be asked to give a reference or information about a former employee. To the best of Principal Jones' knowledge, the policy has always been in effect and was in effect at the time Glenn was hired at JCFS. The Coughenours do not present any evidence to contradict the policy. Therefore, even if JCFS had contacted Gordon Tech High School in an effort to learn more about Glenn's history, the school policy dictates that JCFS would not have received any additional information about Glenn. Thus, we cannot say that JCFS knew or should have known that Glenn was unfit to be a respite worker at the time he was hired. We hold that the trial court did not err in granting summary judgment in favor of JCFS on the negligent hiring count in the Coughenours' second amended complaint.

¶ 25 Next, the Coughenours argue that JCFS is liable for Jacob's injuries under the voluntary undertaking theory of negligence. The voluntary undertaking theory prescribes that if a person voluntarily agrees to perform a service necessary for the protection of another, a duty may be imposed on the person undertaking the service. *Buerkett v. Illinois Power Co.*, 384 Ill. App. 3d 418, 427, 893 N.E.2d 702, 713 (2008). The person performing the service must do so in a manner so as not to increase the risk of harm to the other person who relies on the service. *Id.* "While a voluntary undertaking may establish a duty between parties, a plaintiff must also establish breach of duty and proximate cause to recover." *Id.* at 428, 893 N.E.2d at 714 (citing *Rice v. White*, 374 Ill. App. 3d

870, 887-91, 874 N.E.2d 132, 146-50 (2007)). The duty of care imposed on the person performing the service is limited to the extent of the undertaking. *Chelkova v. Southland Corp.*, 331 Ill App. 3d 716, 727-28, 771 N.E.2d 1100, 1110 (2002). Even if a plaintiff is able to establish that the defendant had a duty of care under the voluntary undertaking theory, if they are unable to show that the undertaking is the proximate cause of their injury then summary judgment is proper. See *id*. at 729, 771 N.E.2d at 1111.

¶ 26 In this case, the Coughenours claim that JCFS voluntarily undertook to screen prospective respite workers through the policy of contacting their former employers and references in addition to the background checks required by law. However, as previously mentioned, JCFS has shown that even if it had contacted Gordon Tech High School as the Coughenours suggest, it would have received no new information regarding Glenn's employment at the school. Thus, it would have no reason to know of Glenn's unfitness to be a respite worker. The Coughenours do not present any facts that suggest that JCFS would have been able to obtain information about Glenn's incidents at Gordon Tech High School. Thus, JCFS' failure to comply with its own standards could not have been the proximate cause of Jacob's abuse. Therefore, we are unpersuaded by the Coughenours' argument as to the voluntary undertaking theory of negligence.

¶ 27 We next examine the Coughenours' arguments that the trial court erred in granting summary judgment in favor of JCFS on the negligent misrepresentation and negligent infliction of emotional distress counts in the second amended complaint. Because the same analysis applies to both arguments, we will discuss them together. A claim for negligent misrepresentation requires: (1) a false statement of material fact; (2) carelessness or negligence in ascertaining the truth of the

statement by the party making it; (3) an intention to induce the other party to act; (4) action by the other party in reliance of the truth of the statement; and (5) damage to the other party resulting from such reliance; (6) when the party making the statement is under a duty to communicate accurate information. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 120, 790 N.E.2d 882, 893 (2003). Also, a plaintiff that claims to be a direct victim of negligently inflicted emotional distress must establish the traditional elements of negligence: duty, breach, cause and injury. *Cooney v. Chicago Public Schools*, 407 Ill. App. 3d 358, 363, 943 N.E.2d. 23, 29 (2010). If a plaintiff cannot establish a duty on the part of the defendant, their negligent infliction of emotional distress claim must fail. *Id*.

¶ 28 The Coughenours argue that JCFS had a duty to tell Joyce that it did not screen Glenn to the degree that the Coughenours argue was necessary, and that the hiring of Glenn negligently inflicted emotional distress on Jacob. The Coughenours' arguments are attempts to impose a greater duty on JCFS than is required by law. As previously mentioned, JCFS had the duty to perform background checks to the extent required by Illinois law. It clearly met this standard as DCFS performed checks in the Illinois State Police criminal history records, CANTS records, and the Illinois Sex Offender Registry to investigate Glenn. Glenn cleared the background checks and DCFS found no history of any criminal conviction, child abuse, or neglect. Further, Glenn's fingerprints revealed no history that would have disqualified him from employment as a respite worker with JCFS. Regarding the negligent misrepresentation claim, there was no false statement of material fact as JCFS did not communicate anything other than that it had complied with the law in hiring Glenn. Accordingly, it did not breach any duty to communicate accurate information. Similarly, as to a negligent

infliction of emotional distress claim, JCFS only had the duty to check Glenn's background to the extent required by law. Therefore, the Coughenours are unable to establish that JCFS had the duty to screen Glenn any further, or that the lack of further screening inflicted emotional distress on Jacob. Therefore, we hold that the trial court did not err in granting summary judgment in favor of JCFS on the negligent misrepresentation and negligent infliction of emotional distress counts in the Coughenours' second amended complaint.

¶ 29 The Coughenours also argue that the trial court erred in granting summary judgment in favor of JCFS on the negligence *per se* count in their second amended complaint. In Illinois, a violation of a statute designed to protect human life is *prima facie* evidence of negligence and does not constitute negligence *per se*. *Magna Trust Co. v. Illinois Central Railroad Co.*, 313 Ill. App. 3d 375 383, 728 N.E.2d 797, 722-23 (2000). Violation of a safety statute only constitutes negligence *per se* if the legislature clearly intends to impose strict liability. *Id*. at 383, 728 N.E.2d at 723.

¶ 30 In this case, the Coughenours claim that JCFS violated section 385.10 of the Illinois Administrative Code (89 Ill. Adm. Code 385.10 (2002)) by not investigating Glenn's history of suffering sexual abuse as a child. We note that the Coughenours do not claim that this provision imposes strict liability. Thus, at most they are able to argue that a violation of section 385.10 would constitute *prima facie* evidence of negligence. We are unpersuaded by both theories. Section 385.10 requires that "operators of child care facilities and other persons subject to background checks, as defined in section 385.20, be screened for a history of child abuse or child neglect, prior criminal convictions or pending criminal charges." 89 Ill. Adm. Code 385.10 (2002). The Coughenours read this provision as requiring prospective DCFS employees to be screened for a history of *suffering*

child abuse or neglect. JCFS argues, and we agree, that a plain reading of this provision suggests that it requires prospective employees to be screened for a history of *committing* child abuse or neglect. Further, the trial court reasoned that the Coughenours' interpretation of section 385.10 was "outrageous" and "utterly unreasonable." We agree with this reasoning. Therefore, the Coughenours' negligence *per se* argument is without merit and we hold that the trial court did not err in granting summary judgment in favor of JCFS on the negligence *per se* count in the second amended complaint.

¶ 31 Finally, the Coughenours argue that JCFS is vicariously liable for Glenn's actions and that JCFS owed the Coughenours a heightened duty of care under the private carrier standard as applied through *Green v. Carlinville Community Unit School District*, 381 Ill. App. 3d 207, 887 N.E.2d 451 (2008). The Coughenours claim that JCFS should be liable for Glenn's actions under the theory of *respondeat superior*. Under the *respondeat superior* theory, an employer may be held liable for the tortious acts of its employee only if the employee's acts were committed within the scope of his employment. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007). Conduct is within the scope of employment only if: (1) it is of the kind the person is employed to perform; (2) it occurs substantially within the authorized time and space limits; and (3) it is motivated, at least in part, by a purpose to serve the master. *Id.* at 164, 862 N.E.2d 992. In this case, Glenn sexually abused Jacob multiple times away from Jacob's home and JCFS premises. Although Glenn was providing respite care for Jacob before the abuse began, the abuse itself is clearly not of the kind of conduct Glenn was employed to perform. Furthermore, Glenn's actions in abusing Jacob were in no way motivated by a purpose to serve his employer. Therefore, we hold that JCFS cannot

be vicariously liable for Glenn abusing Jacob under the theory of *respondeat superior*.

¶ 32 The Coughenours also claim that JCFS owed them a heightened duty of care because JCFS qualified as a private carrier through the holding in *Green v. Carlinville Community Unit School District*, 381 Ill. App. 3d 207, 887 N.E.2d 451 (2008). In *Green,* the appellate court held that "school districts that operate school buses owe their students the highest degree of care to the same extent common carriers owe their passengers the highest degree of care," because they perform the same basic function of transporting individuals that cannot ensure their own personal safety. *Id.* at 213. However, the court in *Green* specifically held that its ruling applies only to the common law duty school districts owe student passengers while the students are being transported on a school bus. *Id*. at 214. We refuse to extend the narrow exception in *Green* to apply to the facts in the instant case. Thus, we hold that JCFS is not a private carrier as applied through *Green*. Therefore, the trial court did not err in granting JCFS' motion for summary judgment on the negligence as a private carrier count in the second amended complaint.

¶ 33 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 34 Affirmed.