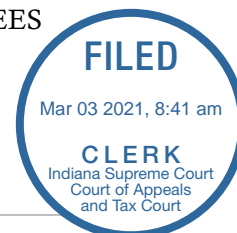

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IN THE
COURT OF APPEALS OF INDIANA

K.G., by her Parent and Next
Friend, Melody Ruch, and
Melody Ruch, Individually,
Appellants-Plaintiffs,

v.

Morgan Smith, New Augusta
North Public Academy, and
Metropolitan School District of
Pike Township,
Appellees-Defendants

March 3, 2021

Court of Appeals Case No.
20A-CT-1802

Appeal from Marion Superior
Court

The Honorable Timothy Oakes,
Judge

Trial Court Cause No.
49D02-1908-CT-34744

May, Judge.

- [1] Melody Ruch argues the trial court erred in granting summary judgment to the New Augusta North Public Academy and the Metropolitan School District of Pike Township (“School Defendants”) as to all claims Ruch brought in her individual capacity. We affirm in part, reverse in part, and remand.

Facts and Procedural History

[2] Ruch gave birth to K.G. in 2004. K.G. was born with cerebral palsy, microcephaly, congenital quadriplegia, optic nerve hypoplasia, and epilepsy. She can communicate only nonverbally, and her communication, vision, physical movement, and comprehension skills are limited. From October 2015 to January 2016, K.G. attended the New Augusta North Public Academy in the Indianapolis Metropolitan School District of Pike Township. Instructional assistants and other school employees provided special assistance to K.G. because of her disabilities. This assistance included changing K.G.'s diapers. Morgan Smith, an instructional assistant at New Augusta North Public Academy, sexually abused K.G. while changing her diaper. Ruch did not learn about the abuse until February 2018.

[3] On August 23, 2019, K.G. by her parent and next friend, Ruch, and Ruch, individually, filed a complaint against Morgan Smith and the School Defendants. In her individual capacity, Ruch alleged that:

As a direct proximate result of the negligence of the Defendants, Melody Ruch, the natural mother of [K.G.], has suffered emotional distress as a result of the sexual abuse of her daughter, and lost the ability to care for her daughter in her home. She has incurred expenses for the placement of [K.G.] in a chronic care facility.

(App. Vol. II at 17.) The School Defendants took Ruch's deposition on June 10, 2020. Ruch testified in her deposition that she was not present when Smith sexually abused K.G.

[4] On June 29, 2020, the School Defendants filed a motion seeking summary judgment on the claims Ruch brought in her individual capacity. The School Defendants argued Ruch could not recover for the emotional trauma she suffered because of Smith’s abuse of K.G. Ruch filed her response, and the School Defendants filed a reply. Without holding a hearing, the trial court granted the School Defendants’ motion with regard to all claims Ruch brought individually. Ruch now appeals.

Discussion and Decision

[5] Our standard of review of a trial court’s order on summary judgment is well-settled.

When reviewing the grant or denial of a motion for summary judgment, we apply the same standard as the trial court: whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. We grant summary judgment only if the evidence sanctioned by Indiana Trial Rule 56(C) [meets that standard]. Further, we construe all evidence in favor of the nonmoving party and resolve all doubts as to the existence of a material issue of fact against the moving party.

Anonymous Doctor A v. Foreman, 127 N.E.3d 1273, 1276-77 (Ind. Ct. App. 2019)
(internal citations and quotation marks omitted).

I. Direct Impact, Modified Impact, and Bystander Rules

[6] Historically, Indiana recognized the “long-standing and well-established rule that damages for mental distress or emotional trauma may be recovered only

when the distress is accompanied by *and* results from a physical injury caused by an impact to the person seeking recovery.” *Shuamber v. Henderson*, 579 N.E.2d 452, 454 (Ind. 1991) (emphasis in original). This rule was known as the “impact rule,” and it required the plaintiff to prove “three elements: (1) an impact on the plaintiff; (2) which causes physical injury to the plaintiff; (3) which physical injury, in turn, causes the emotional distress.” *Id.*

[7] However, in *Shuamber*, our Indiana Supreme Court chose to re-examine the impact rule. *Id.* at 455. The Court held:

When, as here, a plaintiff sustains a direct impact by the negligence of another and, by virtue of that direct involvement sustains an emotional trauma which is serious in nature and of a kind and extent normally expected to occur in a reasonable person, we hold that such a plaintiff is entitled to maintain an action to recover for that emotional trauma without regard to whether the emotional trauma arises out of or accompanies any physical injury to the plaintiff.

Id. at 456. Under *Shuamber*’s modified impact rule plaintiffs could recover damages for emotional trauma caused by a tortious act even if the tortious act had not caused physical injury to the plaintiff.

[8] More recently, our Indiana Supreme Court further expanded a plaintiff’s ability to collect for the negligent infliction of emotional distress. *Groves v. Taylor*, 729 N.E.2d 569, 573 (Ind. 2000). There, the Court held that a bystander who was not directly impacted by the tortfeasor may still recover for emotional distress if the bystander “actually witnessed or came on the scene soon after the death or

severe injury of a loved one with a relationship to the plaintiff analogous to a spouse, parent, child, grandparent, grandchild, or sibling caused by the defendant's negligent or otherwise tortious conduct." *Id.* The rule announced in *Groves* is known as the "bystander rule." *Atlantic Coast Airlines v. Cook*, 857 N.E.2d 989, 997 (Ind. 2006).

[9] Ruch acknowledges that she is not entitled to relief under the traditional impact rule, the modified impact rule, or the bystander rule. Ruch does not allege that Smith ever touched her or that she witnessed the abuse. Rather, Ruch asks us to adopt a bright-line rule in cases "where the tort will never happen if there is a witness, and emotional distress is a veritable certainty even though the wrong was not witnessed[.]" (Appellant's Br. at 15.) She argues a plaintiff should be allowed to recover for emotional distress if: "(1) the genuineness of a claim is beyond question; (2) the facts present a unique and rare occurrence; and (3) the tort would never happen with a witness present," like sexual abuse which predominately occurs in secret. (*Id.* at 16.)

[10] However, we rejected a similar claim in *Perkins v. Stesiak*, 968 N.E.2d 319 (Ind. Ct. App. 2012), *trans. denied*, where a grandmother sued her attorney for legal malpractice because he did not file suit alleging negligent infliction of emotional distress against the school district after her grandson was abused by a teacher's assistant. *Id.* at 320. We held the attorney did not commit malpractice because, as a matter of law, the grandmother could not recover for her emotional distress under the modified impact rule or the bystander rule. *Id.* at 322. In accordance with *Perkins*, we decline to expand a tortfeasor's liability for

the intentional infliction of emotional distress beyond the traditional impact rule, the modified impact rule, and the bystander rule. *See Lachenman v. Stice*, 838 N.E.2d 451, 461 (Ind. Ct. App. 2005) (“We are not willing to expand the bystander rule to include pets, however beloved by their owners. Such an expansion, if warranted, would be the prerogative of our Supreme Court.”), *reh’g denied, trans. denied*.

II. Indiana Constitution

[11] Ruch also argues that she should be able to recover for emotional distress because she suffered an injury and Article 1, Section 12 of the Indiana Constitution provides that “every person, for injury done to him in his person, property, or reputation shall have a remedy by due course of law.” However, “[i]f the law provides no remedy, [Article 1,] Section 12 does not require that there be one.” *McIntosh v. Melroe Co., a Div. of Clark Equip. Co., Inc.*, 729 N.E.2d 972, 979 (Ind. 2000). Therefore, the Indiana Constitution does not mandate that Ruch be able to recover for the emotional damages she sustained. *See KS&E Sports v. Runnels*, 72 N.E.3d 892, 906 (Ind. 2017) (holding plaintiff was not denied access to the courts even though statute barred him from recovering damages against a firearm seller for the negligent sale of a firearm).

III. Economic Damages

[12] Ruch contends the trial court erred in granting summary judgment in favor of the School Defendants on all claims she brought in her individual capacity when the School Defendants’ summary judgment motion concerned only the

claims she brought for emotional damages. Ruch alleged in her complaint that she suffered emotional damages upon learning of her daughter's abuse and that she "incurred expenses for the placement of [K.G.] in a chronic care facility." (App. Vol. II at 17.) The School Defendants characterize Ruch's claim for economic damages related to K.G.'s care as a derivative claim. *See Elkhart Cmty. Schs. v. Yoder*, 696 N.E.2d 409, 416 (Ind. Ct. App. 1998) ("A wrongful act by which a minor child is injured gives rise to two causes of action: one in favor of the injured child for personal injuries, and the other in favor of a parent for loss of services."). They argue that Ruch may not pursue such a claim because Ruch's complaint did not specifically indicate she sought to make a derivative claim. School Defendants cite *Howard County Bd. of Comm'rs v. Lukowiak* for the proposition that derivative claims must be separately spelled out and sufficient to put the defendant on notice of the plaintiff's intention to pursue such a claim. 813 N.E.2d 391, 393 (Ind. Ct. App. 2004) (holding plaintiff could recover only for damages specified in her tort claim notice). However, our Indiana Supreme Court later disapproved of *Lukowiak* and held that a plaintiff could pursue a claim for personal injuries even though those injuries were not listed in her notice of tort claim. *City of Indianapolis v. Buschman*, 988 N.E.2d 791, 795 (Ind. 2013).

[13] Nonetheless, the issue here involves the adequacy of Ruch's complaint, not a notice of tort claim. Indiana Trial Rule 8 requires that a complaint contain only "a short and plain statement of the claim showing that the pleader is entitled to

relief,” whereas a notice of tort claim must not only include “a short and plain statement [of] the facts on which the claim is based,” but also

the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

Ind. Code § 34-13-3-10. Ruch’s allegation that she “incurred expenses for the placement of [K.G.] in a chronic care facility,” (App. Vol. II at 17), was sufficient to plead a claim for economic damages. *See KS&E Sports*, 72 N.E.3d at 901 (holding plaintiff adequately pled and could pursue public nuisance claim for equitable relief).

[14] The School Defendants’ motion for summary judgment argued that they were entitled to summary judgment on Ruch’s claims for emotional distress, but the motion did not address Ruch’s claim for economic damages related to K.G.’s care. Yet, the trial court’s order, adopted from a proposed order submitted by the School Defendants, stated:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Plaintiff Melody Ruch’s individual claim against New Augusta North Public Academy and Metropolitan School District of Pike Township is hereby dismissed, and judgment is entered in favor of Defendants, New Augusta North Public Academy and Metropolitan School District of Pike Township, as to all claims by Melody Ruch, individually. There being no just reason for delay, judgment is hereby entered in favor of New Augusta North Public Academy and Metropolitan

School District of Pike Township and against the Plaintiff,
Melody Ruch, individually, Judgment is final and appealable.

(App. Vol. II at 8.) The School Defendants were entitled to summary judgment on Ruch's claims for emotional damages, but the School Defendants did not seek summary judgment on Ruch's claims for economic damages. Therefore, we reverse that portion of the trial court's order and remand the case for further proceedings. *See Crossno v. State*, 726 N.E.2d 375, 381 (Ind. Ct. App. 2000) (holding summary judgment in favor of State on claims for failure to warn and negligent design, construction, and maintenance of overpass was improper because State sought summary judgment on only permit-related claims).

Conclusion

[15] Ruch cannot recover for emotional distress that results from a teacher sexually abusing Ruch's daughter because the facts here do not satisfy the requirements of either the modified impact rule or the bystander rule. Additionally, we decline Ruch's request to fashion a new rule to fit her circumstances, and Article 1, Section 12 of the Indiana Constitution does not require that we carve out a remedy where none exists. However, the trial court erred in granting summary judgment in the School Defendants' favor on all claims Ruch brought individually because the School Defendants did not seek summary judgment on Ruch's claim for economic damages. Therefore, we affirm the trial court in part, reverse in part, and remand for further proceedings.

[16] Affirmed in part, reversed in part, and remanded.

Kirsch, J., and Bradford, C.J., concur.