

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2025-011525-CA-01

SECTION: CA31

JUDGE: Migna Sanchez-Llorens

Katherine Wilson

Plaintiff(s)

vs.

Jared Zemantauski et al

Defendant(s)

_____/

**AGREED ORDER DISMISSING DEFENDANT, UNIVERSITY OF MIAMI, FROM THIS
LAWSUIT WITH PREJUDICE**

THIS CAUSE came before the Court upon the “Joint Stipulation of Dismissal with Prejudice as to Defendant, University of Miami, Only” (“Joint Stipulation”) filed by Plaintiff, Katherine Wilson (“Wilson”), and Defendant, University of Miami (“University”). The Court has reviewed the Joint Stipulation and is otherwise duly-advised in the premises. Accordingly, it is hereby,

ORDERED AND ADJUDGED as follows:

1. All claims against the University are hereby **DISMISSED WITH PREJUDICE**.
2. Wilson and the University shall each bear her/its own attorneys’ fees and costs.
3. This dismissal does not affect Wilson’s claims against Defendant, Jared Zemantauski.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 11th day of May, 2026.



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Hon. Migna Sanchez-Llorens

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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JUDGE: Migna Sanchez-Llorens

Katherine Wilson

Plaintiff(s)

vs.

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Defendant(s)

_____ /

**ORDER ON DEFENDANT UNIVERSITY OF MIAMI'S MOTION TO DISMISS
AMENDED COMPLAINT WITH PREJUDICE**

THIS CAUSE came before the Court for a specially-set hearing upon the Motion to Dismiss Amended Complaint with Prejudice (“Motion”) [D.I.N. 62] filed by Defendant, University of Miami (“University”). The Court has reviewed the Motion and the Response filed by Plaintiff, Katherine Wilson; has heard arguments of counsel; and is otherwise duly-advised in the premises. For the reasons set forth below, the University’s Motion is **GRANTED**.

1. On June 17, 2025, Plaintiff filed her original Complaint [D.I.N. 2] against the University and Co-Defendant, Jared Zemantauski (“Zemantauski”). Therein, Plaintiff attempted to state claims of negligence (including negligence, negligent hiring, negligent retention/supervision and negligent training) and vicarious liability against the University. Plaintiff also attempted to state three claims against Zemantauski: (1) assault and battery; (2) gross negligence/intentional misconduct; and (3) negligence.
2. On July 25, 2025, the University filed a Motion for More Definite Statement and/or Motion to Dismiss. On August 11, 2025, the Court held a special-set hearing on the University’s Motion. At the hearing, and in a written Order entered on August 13, 2025 [D.I.N. 41], the Court granted the University’s Motion and dismissed the Complaint. At the hearing and in the Court’s Order, the Court identified the deficiencies in the Complaint and ordered Plaintiff to file an Amended Complaint “in accordance with the Court’s rulings” by September 2, 2025.[\[1\]](#)
3. On September 18, 2025, Plaintiff filed her operative Amended Complaint [D.I.N. 54]. The Amended Complaint contains two overarching categories of allegations. First, Plaintiff

alleges that, on October 25, 2024, she was physically assaulted by Zemantauski. (*See Am. Compl.*) Second, Plaintiff alleges that Zemantauski “sexually harassed” Plaintiff through a series of inappropriate, unprofessional and sexually-charged comments over several months. (*See id.*)

4. Plaintiff’s Amended Complaint attempts to state three claims against Zemantauski: assault and battery (Count I), intentional misconduct (Count II) and negligence (Count III). Plaintiff’s Amended Complaint attempts to state five claims against the University: negligence (Count IV), negligent hiring (Count V), negligent supervision (Count VI), negligent training (Count VIII) and vicarious liability (Count VIII).[\[2\]](#)
5. Florida state and federal courts uniformly hold that negligence claims, which are premised on the alleged failure to prevent sexual harassment, do not exist under Florida law. *See, e.g., City of Miami Beach v. Guerra*, 746 So. 2d 1159, 1159 (Fla. 3d DCA 1999) (“we hold that Florida does not recognize a cause of action for sexual harassment under a common law negligence theory”); *Castleberry v. Edward M. Chadbourne, Inc.*, 810 So. 2d 1028, 1030 (Fla. 1st DCA 2002) (affirming summary judgment in favor of defendant on negligent retention, supervision and training claim because “Florida does not recognize a common law cause of action for negligent failure to maintain a workplace free of sexual harassment”); *Latson v. Hartford Ins.*, No. 605CV1435ORL19KRS, 2005 WL 3372861, at *2 (M.D. Fla. Dec. 12, 2005) (“Florida law does not recognize a common law cause of action based on the negligent failure to maintain a workplace free of sexual harassment.”); *Merrick v. Radisson Hotels Int’l, Inc.*, No. 8:06-cv-01591—24TGW, 2007 WL 1576361, at *5 (M.D. Fla. May 30, 2007) (dismissing negligent retention and/or supervision claim based on alleged sexual harassment); *Freese v. Wucsthoff Health Sys., Inc.*, No. 6:06-cv-175-M-31JGG, 2006 WL 1382111, at *8-9 (M.D. Fla. May 19, 2006) (dismissing negligent supervision and retention claims based on employer’s alleged failure to prevent supervisors and employees from harassing and discriminating against plaintiff in violation of the FCRA); *Perry v. Walmart Inc.*, No. 218CV606FTM29NPM, 2020 WL 1158719, at *15 (M.D. Fla. Mar. 10, 2020) (collecting cases and holding that plaintiff “cannot maintain an action for negligent supervision, training and retention” premised on sexual harassment).
6. In its Motion and at the hearing, the University cited the above authority. In her Response and at the hearing, Plaintiff failed to provide any contrary authority, and the Court’s independent research has not revealed any such authority.
7. Plaintiff’s remaining allegations - - that she was physically assaulted by Zemantauski on October 25, 2024 - - also fail to state any claim against the University. Essentially, Plaintiff seeks to hold the University liable for the alleged intentional tort of an employee. However, neither the factual allegations nor applicable law support Plaintiff’s claims.
8. “Bare bones” allegations that are too general, vague or conclusory are inadequate. *Beckler v. Hoffman*, 550 So. 2d 68, 70 (Fla. 5th DCA 1999). The Court “need not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party.” *Gallego v. Wells Fargo Bank, N.A.*, 276 So. 3d 989, 990 (Fla. 3d DCA 2019) (quoting *W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999)).
9. In sum, as the Third District Court of Appeal has held in affirming the dismissal of a claim, a complaint must contain “ultimate facts” - - not conclusory allegations or a mere recitation of

a claim's elements:

We affirm the trial court's order, as appellant's amended complaint failed to set forth "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." *See* Fla. R. Civ. P. 1.110(b). Appellant's amended complaint contained a mechanical recitation of the elements of the cause of action, and, in particular, only conclusory allegations that appellee substantially assisted or encouraged the wrongdoing. This is insufficient to withstand a motion to dismiss.

Turnberry Vill. N. Tower Condo. Ass'n, Inc. v. Turnberry Vill. S. Tower Condo. Ass'n, Inc., 224 So. 3d 266, 267 (Fla. 3d DCA 2017) (collecting cases). *See also* *Miami-Dade Cnty. v. Deerwood Homeowners' Ass'n*, 979 So. 2d 1103, 1104 (Fla. 3d DCA 2008) ("Legal conclusions unsupported by ultimate facts are not enough to state a cause of action."). Against this backdrop, Plaintiff still fails to state any claim against the University.

10. In *Count IV (negligence)*, Plaintiff generally alleges that the University owed Plaintiff a duty to "ensure her safety and freedom from sexual assault and/or harassment" and breached that duty by failing to prevent the alleged sexual assault/harassment. (Am. Compl. ¶¶ 135-149.)
11. "[T]he tort of negligence requires the establishment of duty, breach, proximate cause, and damages." *Sewell v. Racetrac Petroleum, Inc.*, 245 So. 3d 822, 824 (Fla. 3d DCA 2017). In *Sewell*, the Third District Court of Appeal affirmed dismissal of a negligence claim on the ground that the defendant owed no legal duty as alleged. Duty is the threshold issue in a negligence case, and "it is for the court to determine the existence of a duty." *Id.* Duty "exists as a matter of law and is not a factual question for the jury to decide." *Id.* (quoting *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 503 (Fla. 1992)).
12. "The touchstone for determining whether a duty exists is 'foreseeability.'" *Sewell*, 245 So. 3d at 825. Thus, the law is settled that a "landowner has a duty to protect an invitee on his premises from a criminal attack that is *reasonably foreseeable*." *Ameijeiras v. Metro. Dade Cnty.*, 534 So. 2d 812, 813 (Fla. 3d DCA 1988) (emphasis added). Further, "the factual inquiry into the existence of a duty is limited to whether the 'defendant's conduct foreseeably created a broader 'zone of risk' that poses a general threat of harm to others.'" *Limones v. Sch. Dist. of Lee Cnty.*, 161 So. 3d 384, 389 n.4 (Fla. 2015). (quoting *McCain*, 593 So. 2d at 502).
13. As a general rule, a landowner does not act as the insurer of the safety of its invitees. *See, e.g., Emmons v. Baptist Hosp.*, 478 So. 2d 440, 442 (Fla. 1st DCA 1985) ("There is no duty on the part of a landowner to exercise control over the business invitee or the premises so as to be an insurer of his safety."); *Bradshaw v. Rawlings*, 612 F. 2d 135, 138-140 (3d Cir. 1979) ("Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students."); *K-Mart Corp. v. Dwyer*, 656 So. 2d 1340, 1342 (Fla. 5th DCA 1995) ("[A] landowner is not an insurer of the safety of its invitees.").

14. Where the landowner-defendant had no knowledge or reason to believe that the perpetrators of a crime would engage in criminal conduct, there is no duty imposed on the landowner-defendant to protect against same. *Wometco Theatres Corp. v. Rath*, 123 So. 2d 472, 473 (Fla. 3d DCA 1960). Indeed, “[u]nless the defendant . . . should reasonably have anticipated violence on the part of the [assailant], then clearly it had no duty to take the extraordinary safety measures alleged by plaintiff to have been negligently omitted.” *Graham v. Great Atl. & Pac. Tea Co.*, 240 So. 2d 157, 159 (Fla. 4th DCA 1970) (citing *Rath*, 123 So. 3d at 473)). It follows that criminal conduct may be reasonably foreseeable when the landowner-defendant has reason to believe that the perpetrator (in this case, Zemantauski) may act in such a way. The Amended Complaint is devoid of any factual allegations to suggest that the University knew that Zemantauski had propensity to commit the alleged assault.
15. The fact that this case involves a university and a student does not change the analysis and does not create a heightened duty on the part of the University. Florida courts previously have considered the reasonable foreseeability of criminal conduct in the context of universities and their students. In *Cutler v. Board of Regents of the State of Florida*, 459 So. 2d 413 (Fla. 1st DCA 1984), a female freshman student at Florida Agricultural and Mechanical University (“FAMU”), who was assaulted and raped in her on-campus dormitory room, brought an action alleging, *inter alia*, (1) that FAMU had represented that the dormitory was reasonably safe and secure for the safety of female students, (2) that university officials were aware or should have been aware of the existence of numerous other assaults, attacks and rapes involving female members of the university community and (3) that assailants gained access to her room through the common areas of the dormitory and assaulted her. The appellate court agreed that the allegations of the complaint were insufficient to state a cause of action, explaining that, “Florida recognizes no duty on the landlord’s part to protect his tenants against criminal conduct of third parties merely by reason of the landlord-tenant relationship.” *Id.* at 414-15. Further, the appellate court found that the plaintiff student had failed sufficiently to allege the requisite element of duty on the part of the university:

Although appellant attempts to allege foreseeability, the bare allegations of her complaint are conclusory in nature, without supporting facts. She alleges that university officials were aware, or should have been aware, of the existence of other assaults and rapes on female members of the university community; but she has failed to allege where or when these assaults and rapes occurred, or any other circumstances indicating the basis upon which to presume such knowledge on the part of [Board of Regents].

459 So. 2d at 415 (emphasis added). *See also Relyea v. State*, 385 So.2d 1378 (Fla. 4th DCA 1980) (finding that university owed no duty to protect two students from being abducted on campus and murdered because that harm was not foreseeable to the university). Tellingly, in her Response or at the hearing, Plaintiff failed to identify any contrary case law in the university context leading to a different result.

16. Instead, Plaintiff has argued that her allegations of “prior crimes” on the University’s campus are sufficient to establish a duty on the part of the University. However, Plaintiff’s allegations are purely conclusory in this regard. Further, even if Plaintiff had alleged actual facts of crime statistics, that still would be insufficient to state a claim. Based on the allegations of the Amended Complaint, the alleged assault was not a random crime (where data of prior similar crimes potentially could be relevant to the question of foreseeability); this was an alleged targeted assault by a known assailant. Thus, such statistics are not relevant to the question of foreseeability. *See Byndom v. Waffle House, Inc.*, No. 6:23-CV-1971-JA-LHP, 2025 WL 959648, at *4 (M.D. Fla. Mar. 31, 2025) (“But evidence that the police have previously been called to a store in unrelated incidents is not sufficient to create a genuine dispute of fact as to the reasonable foreseeability of a ‘targeted, personal assault’ that occurs on the property.”) (quoting *Banosmoreno v. Walgreen Co.*, 299 Fed. Appx. 912, 914 (11th Cir. 2008)). *See also Sapp v. United States*, No. 1:18-CV-176-AW-GRJ, 2021 WL 2893930, at *4-5 (N.D. Fla. June 9, 2021) (“Some [premises liability] cases, like this one, concern the foreseeability of a criminal attack by a particular person.” Such claims require the plaintiff to show that the landowner “knew or should have known of [employee’s] dangerous propensities.”), *aff’d*, No. 21-12282, 2022 WL 110227 (11th Cir. Jan. 12, 2022).
17. In sum, the University was not bound to prevent this alleged assault because it was neither reasonable nor foreseeable to believe that Zemantauski would assault Plaintiff. *See Graham*, 240 So. 2d at 159; *Wometco*, 123 So. 2d at 473. *See also Reynolds v. Deep S. Sports, Inc.*, 211 So. 2d 37, 39 (Fla. 2d DCA 1968) (upholding dismissal of negligence count because “[t]o foresee that plaintiff . . . would be assaulted at the hour of 11:00 p.m. at the particular spot on the particular ramp on the way to the particular rest room . . . would require imaginative foresight and such is not the type of foreseeability required under our law.”). Because Plaintiff has not alleged a legal duty that was breached by the University, her negligence claim must be dismissed.
18. In *Count VI (negligent supervision)*, Plaintiff generally alleges that the University negligently supervised Zemantauski because Zemantauski was able to assault Plaintiff. (Am. Compl. ¶¶ 158-166.) The Court finds that Plaintiff’s circular logic is not supported by her allegations or applicable law.
19. “Liability for negligent supervision . . . occurs after employment begins, where the employer knows or should know of an employee’s unfitness and fails to take further action such as investigating, discharge or reassignment.” *Int’l Sec. Mgmt. Grp., Inc. v. Rolland*, 271 So. 3d 33, 49 (Fla. 3d DCA 2018) (quoting *G4S Secure Sols. USA, Inc.*, 208 So. 3d at 208 n.4). In other words, under Florida law, “prior offenses, giving rise to the foreseeability of future ones, may be deemed indispensable to recovery.” *Assicurazioni Generali S.p.A. v. GAP Forwarding, Inc.*, No. 10-20736-CIV, 2012 WL 12865255, at *3 (S.D. Fla. Oct. 22, 2012) (quoting *Vazquez v. Lago Grande Homeowners Ass’n*, 900 So. 2d 587, 592 (Fla. 3d DCA 2004)).
20. To establish that an employer breached the duty to exercise reasonable care in retaining/supervising an employee, “the plaintiff must allege facts sufficient to show that once an employer received active or constructive notice of problems with an employee’s fitness, it was unreasonable for the employer not to investigate or take corrective action such as discharge or reassignment.” *Garcia*, 492 So. 2d at 441. *See also Iglesia Cristiana La Casa Del Senior, Inc. v. L.M.*, 783 So. 2d 353, 358 (Fla. 3d DCA 2001) (church not liable for

sexual assault on minor by pastor because “it [did not have] constructive or actual notice that [he] was unfit to work as a pastor at the [c]hurch”); *Stephenson v. Sch. Bd. of Polk Cnty.*, 467 So.2d 1112 (Fla. 2d DCA 1985) (school board not liable for negligent supervision because “no indication from the record that [it] was put on notice of the harmful propensities of [its] employees”).

21. Thus, there must be a foreseeable connection between the employee’s employment history and the tort at issue committed by the employee. *Dickinson v. Gonzalez*, 839 So. 2d 709, 713-14 (Fla. 3d DCA 2003) (citing *Island City Flying Serv. v. Gen. Elec. Credit Corp.*, 585 So.2d 274, 277 (Fla. 1991)). “Only when an employer has somehow been responsible for bringing a third person into contact with an employee, whom the employer knows or should have known is predisposed to committing a wrong under the circumstances that create an opportunity or enticement to commit such a wrong, should the law impose liability on the employer.” *Total Rehab. & Med. Centers, Inc. v. E.B.O.*, 915 So. 2d 694, 697 (Fla. 3d DCA 2005) (quoting *Garcia*, 492 So. 2d at 441) (internal citations omitted) (affirming dismissal where complaint failed to state cause of action under doctrine of respondeat superior or negligent hiring because employer did not breach any duty to exercise reasonable care in retaining employee).
22. Like the original Complaint, the Amended Complaint does not contain any factual allegations that (1) Zemantauski committed prior instances of assault and battery; or (2) that the University knew of these prior torts but failed to take corrective action. Thus, Plaintiff stills fails to state a claim for negligent supervision.
23. In *Count VII (negligent training)*, Plaintiff generally alleges that the University negligently trained Zemantauski because he assaulted Plaintiff. (Am. Compl. ¶¶ 167-181.) Again, that circular “logic” is insufficient to state a claim.
24. “Negligent training occurs when an employer was negligent in the implementation of or operation of the training program and this negligence caused a plaintiff’s injury.” *Doe v. Carnival Corp.*, 472 F. Supp. 3d 1187, 1193 (S.D. Fla. 2020) (quoting *Doe v. NCL (Bahamas) Ltd.*, No. 1:16-cv-23733-UU, 2016 WL 6330587, at *4 (S.D. Fla. Oct. 27, 2016)). *See Doe v. NCL (Bahamas) Ltd.*, No. 18-20060-CIV, 2018 WL 3848421, at *3 (S.D. Fla. Aug. 13, 2018) (allegations of “fail[ing] to train . . . crewmembers [to] stay away from female and minor children passengers,” which “allows and/or promotes improper conduct by its crewmembers including sexual assault, sexual battery, and sexual abuse,” are insufficient to state a claim).
25. Negligent training claims require allegations about (1) which employees were negligently trained, (2) the training that is alleged to be deficient, (3) a nexus between the negligent training and the injury and (4) an identification of the proper training which would have avoided the injury. *See McFarland & Sons, Inc. v. Basel*, 727 So. 2d 266, 269 (Fla. 5th DCA 1999). “Implicit” in stating this claim is that “the plaintiff must first identify the defendant’s training program before then challenging the way in which the program was *implemented*.” *Lirette v. Carnival Corp.*, No. 24-24035-CIV, 2025 WL 385572, at *2 (S.D. Fla. Feb. 4, 2025) (internal quotations and citations omitted). However, “it is not enough for a plaintiff to plead that a particular training program exists and then offer a bare legal conclusion that the defendant negligently implemented or operated such program.” *Id.* Instead, the “plaintiff must explain *how* the defendant was negligent in implementing or operating its training program, alleging enough facts.” *Id.*

26. In the Amended Complaint, Plaintiff's claim for negligent training still relies solely on conclusory allegations that the University breached its duties by, in essence, negligently failing to prevent sexual assaults on campus. Plaintiff still does not allege what defects existed in the University's training process or how the University failed to properly operate a training program for its employees, thereby resulting in injury to Plaintiff. Therefore, Plaintiff still fails to state a claim for negligent training. *See Banosmoreno v. Walgreen Co.*, 299 Fed. Appx. 912, 914 (11th Cir. 2008) ("This was a personal dispute occurring inside the store in plain view of witnesses. It did not occur in a rowdy bar or darkened parking lot. . . . [W]e fail to see why Walgreen's should have foreseen that continuously monitoring security cameras and providing security training to all employees would have prevented this targeted, personal assault in the middle of a drug store filled with people").
27. In *Count VIII (vicarious liability)*, Plaintiff attempts to hold the University vicariously liable under the doctrine of *respondeat superior* for Zemantauski's alleged assault. (Am. Compl. ¶¶ 182-202.) This claim still fails for many of the same reasons noted by the Court in its earlier Dismissal Order dated August 13, 2025.
28. Under Florida law, "an employer cannot be held liable for the tortious or criminal acts of an employee, unless the acts were committed during the course of the employment and to further a purpose or interest, however excessive or misguided, of the employer." *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353, 356 (Fla. 3d DCA 2001) (quoting *Nazareth v. Herndon Ambulance Serv., Inc.*, 467 So. 2d 1076, 1078 (Fla. 5th DCA 1985)). The Third District Court of Appeal has adopted a three-factor test to determine when an employee's actions can be imputed to his employer:
- An employee's conduct is within the scope of his or her employment where: (1) the conduct is of the kind he or she was employed to perform; (2) the conduct occurs substantially within the time and space limits authorized or required by the work to be performed; and (3) the conduct is activated at least in part by a purpose to serve the master.
- Sussman v. Fla. E. Coast Props., Inc.*, 557 So. 2d 74, 76 (Fla. 3d DCA 1990). The purpose of the employee's act is the most important consideration in determining whether conduct is within the scope of employment. *McKee v. Crestline Hotels & Resorts, LLC*, 376 So. 3d 758, 764 (Fla. 4th DCA 2024) (citing *Hennagan v. Dep't of Highway Safety & Motor Vehicles*, 467 So. 2d 748, 751 (Fla. 1st DCA 1985)).
29. Sexual assaults and batteries committed by employees are generally "held to be outside the scope of an employee's employment and, therefore, insufficient to impose vicarious liability on the employer." *Goss v. Human Servs. Assocs., Inc.*, 79 So. 3d 127, 132 (Fla. 5th DCA 2012) (quoting *Nazareth*, 467 So. 2d at 1078). Thus, courts regularly refuse to hold employers liable for the criminal acts of their employees. *See, e.g., Elders v. United Methodist Church*, 793 So. 2d 1038, 1042 (Fla. 3d DCA 2001) (affirming dismissal of *respondeat superior* claims because the "conduct alleged by plaintiffs was for the personal

motives of the [employee], and not designed to further the interests of the [employer]”); *Iglesia Cristiana*, 783 So. 2d at 357-58 (finding, as a matter of law, that a church/employer could not be vicariously liable for its pastor/employee’s criminal conduct because such behavior was neither “the kind of conduct he was employed to perform” nor “motivated by his desire to serve the Church”); *Garcia v. Duffy*, 492 So. 2d 435, 439 (Fla. 2d DCA 1986) (finding that an employee’s physical attack of plaintiff was outside the scope of his employment even though employee was on duty, and the incident occurred on the employer’s property).

30. At the prior hearing on the University’s first Motion to Dismiss, and in her Amended Complaint, Plaintiff contends that the well-established precedent cited above is not applicable because, “but for” Zemantauski’s employment with the University, he would not have had access to Plaintiff. (Am. Compl. ¶¶ 196, 198.) The Court already rejected this argument in its Order dismissing the original Complaint, and there is no basis to disturb that ruling now. *See also Scelta v. Delicatessen Support Servs., Inc.*, 57 F. Supp. 2d 1327, 1340 (M.D. Fla. 1999) (“more than the fact that the agency relationship put the employee in close proximity and regular contact with the victim is required”) (applying Florida law). *See also Goss*, 79 So. 3d at 132 (rejecting argument that criminal/employee was aided by the agency relationship simply because the criminal act occurred at the place of employment, where the criminal conduct was outside the course and scope of employment).
31. In her Response, and at the hearing, Plaintiff argued that this claim could survive because of the “special errand” rule. That rule has no application here. As the Third District Court of Appeal has recognized, “employers are not generally liable for the negligence of employees on their way to work” however, “under the special errand exception to the coming and going rule,” an employer may be held liable when the employer asks the employee to perform a “special errand” on his way to or from work. *Sussman v. Fla. E. Coast Props., Inc.*, 557 So. 2d 74, 75 (Fla. 3d DCA 1990). However, the exception is very narrow: In *Sussman*, for example, the Court held that the “special errand” exception did not apply: “When the employee detoured on her way to work to stop at a supermarket, where she purchased a cake for a fellow employee’s birthday celebration, although she was enroute to her place of employment when she struck and injured a pedestrian with her personal vehicle, she was outside the scope of the employer’s business as a matter of law.” *Id.* *See also Robelo v. United Consumers Club, Inc.*, 555 So. 2d 395, 396 (Fla. 3d DCA 1989) (“The law is well-settled that an employer is not liable for torts of its employees committed while the employee is either going to work or returning home, unless the employee is on a special errand for the employer.”). Here, there are no allegations in the Amended Complaint to support the application of the “special errand” exception. To the contrary, the alleged incident does not involve Zemantauski traveling to or from work and is not alleged to have occurred during such travel.
32. In sum, Florida law does not permit liability to be imposed on the University for unforeseeable, intentional criminal acts allegedly committed by an employee outside the course and scope of his employment. This lawsuit has been pending for more than eight months, and the same factual and legal defects in Plaintiff’s claims against the University remain. Plaintiff will be given one last opportunity to amend the Complaint.

34. For the reasons set forth above, it is hereby,

ORDERED AND ADJUDGED as follows:

The University's Motion is **GRANTED IN PART**. Plaintiff's Amended Complaint against the University is **DISMISSED WITHOUT PREJUDICE**. Plaintiff shall have 10 days to file a second amended complaint.

[1] Zemantauski also filed a Motion to Dismiss, seeking dismissal of Counts II and III of the Complaint. By Order dated September 17, 2025, the Court granted Zemantauski's Motion to Dismiss and dismissed Counts II and III for failure to state a claim.

[2] On October 31, 2025, Plaintiff filed a Notice of Voluntary Dismissal without Prejudice of her claim for Negligent Hiring (Count V). Therefore, the Court does not address that claim further.

[3] At the hearing, the Court also heard the Motion to Dismiss Counts II and III of Plaintiff's Amended Complaint filed by Zemantauski. The Court dismissed Counts II (Intentional Misconduct) and III (Negligence) of the Amended Complaint, leaving Count I (Assault and Battery) pending against Zemantauski..

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 4th day of May, 2026.



2025-011525-CA-01 05-04-2026 2:29 PM

Hon. Migna Sanchez-Llorens

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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