IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Denise E. **Mann** and **Francis P**. **Mann**,
as Co-Personal Representatives of the Estate
of Nathan Francis Mann, deceased,

Plaintiffs,

v.

Caron of Florida, d/b/a Caron Renaissance,
a Florida corporation,

Defendant.
_____/

Civil Division: AJ
Case No.: 50-2023-CA-009963-XXXX-MB

ORDER ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT'S AFFIRMATIVE DEFENSE ON FLORIDA'S ALCOHOL OR DRUG DEFENSE STATUTE F.S.A. § 768.38

THIS CAUSE having come before the Court for hearing on June 2, 2025, Defendant's Motion for Partial Summary Judgment as to Defendant's Affirmative Defense On Florida's Alcohol Or Drug Defense Statute F.S.A. § 768.38 ("Motion") (DE 398), and the Court, having reviewed Plaintiff's Response (DE 463), Defendant's Reply (DE 587) thereto, the evidence submitted by the parties, and having heard oral arguments from both parties' counsel, and otherwise being fully advised in the premises, finds as follows:

INTRODUCTION

The facts of this case involve the untimely death of eighteen year old Nathan Francis Mann ("Nathan"). Plaintiffs are the parents of Nathan and serve as the co-personal representatives of Nathan's estate. Of salience is Nathan's medical history, which included mental health diagnoses, as well as certain substance misuse. Defendant Caron of Florida, Inc. ("Caron") is a healthcare and substance abuse provider with a facility in Delray Beach, Florida ("Caron's Facility" or the "Facility"). During the relevant period of time, Caron's employees included Anthony Campos,

M.D., Caron's medical director; Lourdes Chahin, M.D., a medical doctor and psychiatrist; Jacqueline Simon, a nurse; Teresa Bairos, a family therapist; and Stuart Warren, a counselor.

On June 15, 2020, Nathan was admitted to Caron's Facility for continued treatment, having completed an earlier course of treatment at a separate facility in Pennsylvania, the state of residence for Nathan and his parents. On September 12, 2020, Nathan left or "eloped" from the Facility, leaving behind his cellphone and financial resources. Plaintiffs were notified of Nathan's elopement, but Caron did not notify law enforcement. The precise whereabouts and actions of Nathan following his elopement are unclear, but it is undisputed that Nathan was struck and killed by a train on September 14, 2020, in Oakland Park, Florida. An autopsy indicates the presence of alcohol, cocaine and Dextromethorphan in Nathan's system, but the parties dispute the accuracy of this post-mortem examination.

Plaintiffs initiated this wrongful death action by the filing of their Second Amended Complaint on August 23, 2023, in which they raise the following claims against Caron: Vicarious Liability (Count IV); Vicarious Liability (Count VII); Negligence (Count VIII); Breach of Fiduciary Duty (Count IX); Violation of §415.1111, Fla. Stat. (Count X); and Negligent Hiring, Supervision and Retention (Count XI). On September 22, 2023, Caron filed its Answer, which raises thirty-seven affirmative defenses. A series of motions for summary judgment ensued, including the instant Motion.[1]

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(a). The gravamen of Plaintiffs' case is that Caron deviated from multiple standards of care in treating

[1] In addition to the instant Motion, Defendant Caron of Florida, Inc., contemporaneously and separately moved for summary judgment on causation and foreseeability for Plaintiffs' negligence claim, as well as Plaintiffs' claims for vicarious liability, violation of §415.1111, Fla. Stat., and negligent hiring, supervision and retention. *See* D.E. 407 and 422.

Nathan, who fled Caron's Facility in a vulnerable state without resources and died. Defendant argues that Plaintiffs are precluded from recovery, alleging that Nathan was drunk or impaired at the time of his death. Fla. Stat. §§ 768.36(2)-(2)(b) (2025).

Section 768.36(2), Florida Statutes (2025), reads as follows:

> In any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:
>
> (a) The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and
>
> (b) As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.

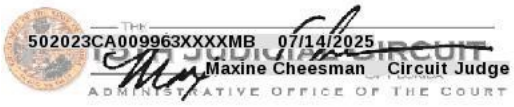
The statute plainly states that it is the trier of fact who must determine whether the plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher, and whether plaintiff was more than 50 percent at fault for his injuries. *See Stewart v. Draleaus*, 226 So. 3d 990, 997 (Fla. 4th DCA 2017) ("According to the plain language of the statute, it is up to the 'trier of fact' to determine whether the plaintiffs' normal faculties were impaired and whether they were more than fifty percent at fault for their injuries."); *See Pearce v. Deschesne*, 932 So. 2d 640, 641 (Fla. 4th DCA 2006). A judge considering a motion for summary judgment is not a "trier of fact.". *Deschesne,* 932 So. 2d at 641. Indeed, in this circumstance, the judge is confined to searching the record for conflicting evidence to be submitted to a jury, and only in the absence of such evidence may the judge make a ruling of law that summary judgment is proper. *See Richmond v. Florida Power & Light Co*., 58 So.2d 687, 688 (Fla.1952).

Accordingly, based on the statutory language of Fla. Stat. § 768.36(2) the Court finds it improper to act as the trier of fact and declines the invitation to make a factual finding as to Nathan's blood alcohol level or level of impairment.

It is, therefore,

ORDERED AND ADJUDGED that Defendant Caron of Florida, Inc.'s "Partial Summary Judgment as to Defendant's Affirmative Defense on Florida's Alcohol or Drug Defense Statute F.S.A. § 768.38," filed January 31, 2025, is **DENIED** for the reasons set forth above.

DONE AND ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida.



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Maxine Cheesman
Circuit Judge

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