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 FINAL SUMMARY JUDGMENT ON ALL VICARIOUS LIABILITY CLAIMS, THE NEGLIGENT HIRING, SUPERVISION, AND RETENTION COUNT,
AND THE VULNERABLE ADULT COUNT UNDER F.S.A. § 415.1111

THIS CAUSE having come before the Court for hearing on June 2, 2025, on Defendant's Motion for Final Summary Judgment on All Vicarious Liability Claims, the Negligent Hiring, Supervision and Retention Count and the Vulnerable Adult Count under F.S.A. § 415.1111 (DE 422) , and the Court, having reviewed Plaintiff's Response (DE 467), Defendant's Reply (DE 586) 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:

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]

Defendant's instant Motion seeks summary judgment as to all of Plaintiff's claims of vicarious liability (Count IV and Count VII), negligent hiring, supervision and retention (Count XI) and the vulnerable adult count under section 415.1111, Florida Statutes (Count X).

[1] In addition to the instant Motion, Defendant Caron of Florida, Inc., contemporaneously and separately moved for partial summary judgment as to Defendant's affirmative defense on Florida's Alcohol or Drug Defense Statute section 768.38 Florida Statutes and summary judgment on causation and foreseeability for Plaintiffs' negligence claim. *See* D.E. 398 and 407.

LEGAL STANDARD

Summary judgment is governed by Florida Rule of Civil Procedure 1.510, which adopted the federal summary judgment standard. *See* Fla. R. Civ. P. 1.510(a). "Under the amended rule, summary judgment is appropriate where 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131, 1134 (Fla. 4th DCA 2022) (quoting Fla. R. Civ. P. 1.510(a)). "In applying the amended rule, 'the correct test for the existence of a genuine factual dispute is whether 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.''" *Id*. (quoting *In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 75 (Fla. 2021), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Whether a fact is material is governed by the substantive law at issue. *Anderson*, 477 U.S. at 248. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id*.

"'Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, [when] ruling on a motion for summary judgment. . . .'" *Serrano v. Dickinson*, 363 So. 3d 162, 165 (Fla. 4th DCA 2023) (quoting *Anderson*, 477 U.S. at 255). And, "'the inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion.'" *McKee v. Crestline Hotels & Resorts, LLC*, 376 So. 3d 758, 763 (Fla. 4th DCA 2024) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "Summary 'judgment is highly unusual in a negligence action where the assessment of reasonableness generally is a factual question to be addressed by the jury.'" *Serrano*, 363 So. 3d at 165 (quoting *King v. Crossland Sav. Bank*, 111 F.3d 251, 259 (2d Cir. 1997)).

AS TO ALL VICARIOUS LIABILITY

"An employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment even if the employer is without fault." *McKee v. Crestline Hotels & Resorts, LLC*, 376 So. 3d 758, 763 (Fla. 4th DCA 2024) (quoting *Mercury Motors Express, Inc. v. Smith*, 393 So. 2d 545, 549 (Fla. 1981)). General principles of vicarious liability require a determination that the employee "committed the alleged negligent act: (1) within the scope of employment, or (2) during the course of employment and to further a purpose or interest of the employer." *Valeo v. E. Coast Furniture Co.*, 95 So. 3d 921, 925 (Fla. 4th DCA 2012). The issue of whether an employee's act was committed within the scope of employment or in furtherance of the employer's interest generally presents a question for the jury. *K. Company Realty LLC v. Pierre*, 376 So. 3d 730, 734 (Fla. 4th DCA 2023).

Here, Caron does not dispute that the actions of its employees were conducted within the course and scope of their employment. Rather, it argues only that Plaintiffs have failed to present evidence sufficient to create a genuine issue of material fact that Caron's employees (medical and non-medical) engaged in negligence that was a probable cause of Nathan's death.

The Court finds Plaintiffs have presented such evidence. Plaintiffs presented expert testimony that Caron's medical employees—Dr. Lourdes Chahin, Dr. Anthony Campo, and Nurse Jacqueline Simon—deviated from the applicable standard of care, and that such deviation was the cause of Nathan's death. Dr. Clark testified that Caron's medical treatment, rendered through its medical employees, fell below the standard of care and resulted in Nathan's death. **(**Clark Dep. at 9:17-13:24). Further, Plaintiffs presented expert testimony that Caron's non-medical staff, Stuart Warren and Teresa Bairos, were negligent in caring for Nathan, and that such negligence was a cause of Nathan's death. (**Ex. 1**, Clark Dep. at 10:18-14:10, 107:20-112:15). The Court finds

Plaintiffs have presented sufficient evidence to create a genuine issue of material fact as to causation with regard to both medical and non-medical negligence,

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO NEGLIGENT HIRING, RETENTION, AND SUPERVISION

Caron moves for final summary judgment as to Count XI of Plaintiffs' Second Amended Complaint, which alleges negligent hiring, retention, and supervision, arguing (1) Caron is entitled to a statutory presumption against negligent hiring pursuant to Fla. Stat. § 768.096; and (2) Plaintiffs put forth no evidence of negligent hiring.

A. Caron is not entitled to a statutory presumption under Fla. Stat. § 768.096.

Plaintiffs have presented record evidence that Caron failed to comply with Fla. Stat. § 768.096(c), which requires an employer to inquire whether each prospective employee has ever been a defendant in a civil action for an intentional tort in order to obtain the statutory presumption. This evidence shows that Caron failed to make this inquiry when hiring Anthony Campo, Jacqueline Simon, Lourdes Chahin, Teresa Bairos, and Stuart Warren. (**Ex. 13**, Applications for hire of Campo, Simon, Chahin, Bairos, and Warren). Caron is not, therefore, entitled to summary judgment on this issue.

B. Genuine issues of material fact preclude summary judgment on Count XI – Negligent Hiring, Retention, and Supervision

Plaintiffs allege a concurrent theory of liability against Caron—that Caron was negligent in its hiring, retention, and supervision of its employees charged with Nathan's care. (Second Am. Compl. ¶¶ 116-122). Unlike vicarious liability, a theory of liability under negligent hiring or retention allows for recovery against an employer for acts of an employee that fall outside the course and scope of their employment. *Garcia v. Duffy*, 492 So. 2d 435, 438 (Fla. 2d DCA 1986).

Negligent hiring occurs if, before an employer hired an employee, the employer knew or should have known that the employee could create a danger to others. *Abbott v. Payne*, 457 So. 2d

1156, 1157 (Fla. 4th DCA 1984); *Williams v. Feather Sound, Inc.*, 386 So. 2d 1238, 1240 (Fla. 2d DCA 1980), petition denied, 392 So. 2d 1374 (Fla. 1981).

Negligent retention and supervision occurs when, "during the course of employment, an employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge, or reassignment." *ACTS Ret.-Life Cmtys. Inc. v. Est. of Zimmer*, 206 So. 3d 112, 114 (Fla. 4th DCA 2016) (quoting *Garcia v. Duffy*, 492 So. 2d 435, 438–439 (Fla. 2d DCA 1986)).

Claims for negligent hiring and negligent retention may only be brought if the employer is responsible for bringing the employee in contact with a third party to whom the employer owes a duty. *Tallahassee Furniture v. Harrison*, 583 So. 2d 744, 750–751 (Fla. 1st DCA 1991), *review denied*, 595 So. 2d 558 (Fla. 1992); *Abbott v. Payne*, 457 So. 2d 1156, 1157 (Fla. 4th DCA 1984).

Caron argues that it is entitled to summary judgment because Plaintiffs' experts offered no testimony to demonstrate that any of Caron's employees were unfit for their jobs. In opposition, Plaintiffs cite to record evidence in support of their claims of negligent hiring and retention. (Warren Dep. at 10:7-22; Bairos Dep. at 11:14-20; Mutter Dep. at 11:9-12; Ordeix Dep. at 16:9-17; Pena Dep. at 16:12-16; Rearick Dep. at 12:5-11, Tavarez Dep. at 17:9-25; Little Dep. at 18:10-21; Hadley Dep. at 15:18-20; and Hanson Dep. at 40:10-22).

In particular, Plaintiffs point to Caron's employment of uncredentialed staff (referred to as Counselor Assistants) at its residence facilities. Counselor Assistants testified they had access to patient charts (Rearick Dep. at 21:19-21), performed check-ins with patients (Pena Dep. at 28:6-15), sometimes ran therapeutic groups (Pena Dep. at 27:6), enforced patient directives as determined by clinical staff (Rearick Dep. at 45:10-46:10), and were generally responsible for the safety of Caron patients, which required Counselor Assistants to make judgment calls on whether

or not to involve medical and clinical staff. (Pena Dep. at 31:9-22; Ordeix Dep. at 29:4-20; Hadley Dep. at 26:9-27:16).

There was also testimony that Counselor Assistants were responsible for the creation and dissemination of internal incident reporting, including the reporting of patient elopement. (Hadley Dep. at 62:23-63:15, 67:5-8; i-Sight Incident Report). This evidence supports Plaintiffs' claim that Caron's Counselor Assistants were not fit for the scope of duties they were hired to perform at Caron. (Mutter Dep. at 11:8-17:20; Ordeix Dep. at 9:5-20:16; Pena Dep. at 15:8-16:16; Rearick Dep. at 12:5-19:17).

Additionally, Plaintiffs presented record evidence supporting their claim that Caron was negligent in its retention and supervision of Stuart Warren and Teresa Bairos. Plaintiffs' clinical expert, Tommy McGee, testified that Mr. Warren, an intern assigned by Caron to be Nathan's primary therapist, deviated from the applicable standard of care by placing Nathan on House Arrest and failing to implement treatment protocols to treat Nathan's diagnoses. (McGee Dep. at 96:8-23, 98:20-24; *see also* Clark Dep. at 10:18-11:2). Plaintiffs also cite to record evidence that Caron's Executive Director, Ryan Hanson, was aware of these alleged deviations and did nothing to investigate, discharge, or reassign Mr. Warren. (Hanson Dep. at 115:4-116:20; Team A Meeting Minutes). Additionally, Plaintiffs' clinical expert testified that Ms. Bairos, the licensed marriage and family therapist assigned as Nathan's family therapist, deviated from the applicable standard of care by trying to impose or influence the relationships within his family unit, failing to collaborate with her clinical peers (such as Stuart Warren), assist the family after Nathan's elopement, or directly communicate with law enforcement following Nathan's elopement. (McGee Dep. at 100:11-24). Plaintiffs presented evidence that Director Hanson, along with other executive-level Caron employees, were aware of Ms. Bairos's refusal to cooperate with local law

enforcement who were investigating Nathan's elopement as a missing endangered adult. (Bairos Email 09/14/2020).

Accordingly, the Court finds Plaintiffs' have presented sufficient evidence to demonstrate that a reasonable jury could find Caron negligent in its hiring, retention, and supervision of its employees, precluding entry of final summary judgment as to Count XI.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFFS' FLA. STAT. § 415.1111 COUNT

Caron argues that Plaintiffs have failed to prove that Nathan Mann was a "vulnerable adult" within the meaning of Chapter 415. Plaintiffs' claim is premised on the plain language of the statute, found at section 415.1111, which provides:

> A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation.

Id. The parties dispute whether Nathan met the definition of "vulnerable adult" during the time he was a patient at Caron. The Florida Legislature has defined "vulnerable adult" as:

> a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

§ 415.102(28), Fla. Stat. It is undisputed that Nathan was 18 years of age or older while he was a patient at Caron. However, the parties dispute whether Nathan meets the remaining criteria. Caron contends that Nathan had the ability to "perform the normal activities of daily living" such as bathing, dressing, consuming sustenance, and grooming—and therefore does not meet the definition of a vulnerable adult under the statute.

While the record may show that Nathan had the ability to perform the normal activities of daily living such as feeding, dressing, and toileting, Plaintiffs have presented record evidence supporting their contention that Nathan's ability to provide for his own care and protection was

impaired due to mental disability. (Caron Records at 000235, 000357, 000601, 000711-728; Clark Dep. at 288:13-19). Caron's argument that Nathan did not meet the plain meaning of "vulnerable adult" under the statute is, therefore, rejected.

Caron also argues that Plaintiffs failed to adduce any specific testimony that Nathan was neglected, abused, or exploited by Caron. "Abuse" is defined as:

> any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

Fla. Stat. § 415.102(1). and "Neglect" is:

> the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver[2] or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

Fla. Stat. § 415.102(16).

Plaintiffs have presented record evidence and expert testimony that Caron's treatment, including its use of "House Arrest," caused significant impairment to Nathan's mental or emotional health and allege this evidence satisfies the statutory definition of "abuse." (Ordeix Dep. 48:23-25; Clark Dep. at 10:23-11:2, 12:23-13:6; 14:2-5; 19:9-20:24). Plaintiffs also put forth record evidence and expert testimony that Caron's conduct amounted to "neglect" as demonstrated by its failure to coordinate Nathan's psychiatric care, medically address his ADHD, provide him with therapeutic interventions (*i.e.*, cognitive behavioral therapy) as recommended by Nurse

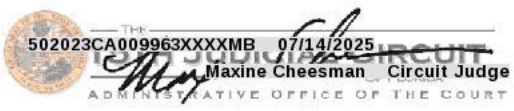
[2] There is no dispute that Caron met the statutory definition of "caregiver" during Nathan's admission at its residential facility.

Simon and Dr. Alexikas (Clark Dep. 20:25-28:13; 73:18-85:25), or maintain records tracking how many days Nathan spent in forced isolation *i.e.*, "House Arrest." (Clark Dep. 88:1-89:11). Additionally, Plaintiffs presented expert testimony in support their allegation that these acts and omissions by Caron caused a deterioration in Nathan's psychological health that was never addressed by Caron, (McGee Dep. 86:19-87:3), and that Caron's conduct caused Nathan's death. (Clark Dep. 169:1-12). This evidence demonstrates that there exists a genuine dispute of material fact regarding whether Caron's treatment of Nathan constitutes "abuse" or "neglect" of a "vulnerable adult" within the meaning of the statute, precluding entry of summary judgment.

It is, therefore,

ORDERED AND ADJUDGED that Defendant Caron of Florida, Inc.'s "Motion for Final Summary Judgment on All Vicarious Liability Claims, the Negligent Hiring, Supervision and Retention Count and the Vulnerable Adult Count under F.S.A. § 415.1111" filed January 31, 2025, is **DENIED**.

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



502023CA009963XXXXMB 07/14/2025
Maxine Cheesman
Circuit Judge

COPIES TO:

Name	Address	Email
DIRAN V. SEROPIAN, ESQ.	301 YAMATO RD STE 4150 BOCA RATON, FL 33431	DSeropian@insurancedefense.net; NGuzman@insurancedefense.net; LUKSBOCA-Pleadings@LS-Law.com; Khawkins@insurancedefense.net; ccollazos@insurancedefense.net; JFrost@insurancedefense.net; JSoto@insurancedefense.net

Name	Address	Email
RACHAEL FLANAGAN ESQ	11780 US HWY ONE STE 500 PALM BEACH GARDENS, FL 33408	rflanagan@cohenmilstein.com; lcuomo@cohenmilstein.com; mcolla@cohenmilstein.com; lkroeger@cohenmilstein.com; jkendal@cohenmilstein.com
SUSAN B. RAMSEY ESQ	525 OKEECHOBEE BLVD STE 1700 WEST PALM BEACH, FL 33401	sramsey@mclaughlinstern.com; dsirois@mclaughlinstern.com; mgarcia@mclaughlinstern.com; ringraham@mclaughlinstern.com
ADAM C KRAUS ESQ	222 LAKEVIEW AVE STE 120 WEST PALM BEACH, FL 33401	stephen.harber@csklegal.com; adam.kraus@csklegal.com; karen.martincavage@csklegal.com

ALL COPIES TO:

Name	Address	Email
DIRAN V. SEROPIAN, ESQ.	301 YAMATO RD STE 4150 BOCA RATON, FL 33431	DSeropian@insurancedefense.net; NGuzman@insurancedefense.net; LUKSBOCA-Pleadings@LS-Law.com; Khawkins@insurancedefense.net; ccollazos@insurancedefense.net; JFrost@insurancedefense.net; JSoto@insurancedefense.net
RACHAEL FLANAGAN ESQ	11780 US HWY ONE STE 500 PALM BEACH GARDENS, FL 33408	rflanagan@cohenmilstein.com; lcuomo@cohenmilstein.com; mcolla@cohenmilstein.com; lkroeger@cohenmilstein.com; jkendal@cohenmilstein.com

Name	Address	Email
SUSAN B. RAMSEY ESQ	525 OKEECHOBEE BLVD STE 1700 WEST PALM BEACH, FL 33401	sramsey@mclaughlinstern.com; dsirois@mclaughlinstern.com; mgarcia@mclaughlinstern.com; ringraham@mclaughlinstern.com
ADAM C KRAUS ESQ	222 LAKEVIEW AVE STE 120 WEST PALM BEACH, FL 33401	stephen.harber@csklegal.com; adam.kraus@csklegal.com; karen.martincavage@csklegal.com