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COURT OF APPEAL, FOURH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NICHOLAS SANDFORD,

Plaintiff and Appellant,

v.

CHUCK LONG,

Defendant and Respondent.

D059395

(Super. Ct. No. 37-2010-00086317-
CU-PO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Judith Hayes, Judge. Affirmed.

I.

INTRODUCTION

Nicholas Sanford, a former member of the San Diego State University football team, filed a second amended complaint (complaint) against another former member of the team, Lance Louis, and the head coach of the team, Chuck Long. In his complaint, Sanford alleged that Louis physically attacked Sanford while Sanford was watching football films in a meeting room at San Diego State University. Sanford brought three causes of action against Long: ratification of a battery, negligent supervision, and

intentional infliction of emotional distress. Long filed a demurrer to the complaint, which the trial court sustained without leave to amend. The trial court subsequently entered a judgment of dismissal in favor of Long.¹

On appeal, Sandford claims that the trial court erred in sustaining Long's demurrer without leave to amend. Sandford contends that the complaint properly stated claims for ratification of a battery, negligent supervision, and intentional infliction of emotional distress. We affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The operative complaint*

In October 2010, Sandford filed a complaint against Louis, Long, and two other former members of the San Diego State University football team. The complaint alleged that Louis had committed a battery upon Sandford, and that two other members of the team had aided and abetted the battery. Sandford also brought three causes of action against Long: ratification of a battery,² negligent supervision, and intentional infliction of emotional distress.

¹ It appears from the record that Sandford entered into a settlement with Louis after the trial court sustained Long's demurrer without leave to amend. Louis is not a party to this appeal.

² Sandford's complaint contains a single cause of action entitled "battery" against Louis and Long. On appeal, Sandford refers to this claim, insofar as it is directed against Long, as a claim for ratification of a battery.

In his cause of action for ratification of a battery, Sandford alleged that on November 5, 2008, Louis entered a meeting room where Sandford was watching football films and surreptitiously attacked him. Specifically, Sandford alleged, "Louis snuck up on [Sandford] from the rear and, without provocation, attacked [Sandford] from the rear, striking [Sandford] on the side of his head, knocking [Sandford] to the floor, and then proceeded to punch and kick [Sandford] while [Sandford] was on the floor causing [Sandford] severe injury including, without limitation, a concussion, a ruptured eardrum and facial injuries."

Sandford further alleged that Louis had engaged in similar "unlawful, unpermitted, violent behavior" prior to the November 5 attack, and that Louis "had developed a reputation as a violent individual." Sandford alleged that Long was aware of Louis's violent propensities, as follows:

"[Sandford] is informed and believes and thereon alleges that particular acts of inappropriate, confrontational, abusive, threatening, and violent behavior had been brought to the attention of defendant Long with the recommendation that, as the head football coach for San Diego State University, defendant Long should mete out some form of discipline to defendant Louis in order for defendant Louis to understand that such behavior was unacceptable and would not be tolerated by the football team coaching staff. Plaintiff is informed and believes and thereon alleges that defendant Long had been informed that defendant Louis was a ticking time bomb and that sooner or later defendant Louis would cause harm to someone unless defendant Long undertook to discipline defendant Louis to impress upon Louis that such behavior would not be tolerated."

Sandford alleged that Long had ignored Louis's "violent propensities and inappropriate behavior" because Louis was one of Long's best players. In addition, Sandford alleged that Long had elected not to report Louis's attack to law enforcement authorities out of concern that doing so might prevent Louis from playing in the remaining football games of the 2008 season. Sandford also claimed that Long directed university medical personnel who treated Sandford's injuries not to report the attack to law enforcement authorities or university representatives for fear of jeopardizing Louis's participation in the football team's remaining games.

Sandford alleged that Long had attempted to "cover up" the attack and specifically, that Long had "lied to members of the media" by stating that Sandford had suffered an injury in practice and would be unable to participate in the team's remaining games. Sandford alleged that Long engaged in these actions in order to protect Louis from any potential discipline that might prevent him from playing in the team's remaining games. Sandford further alleged that Long had "refused to repudiate [Louis's] misconduct in any regard," noting that Louis had been permitted to play in the final three games of the 2008 season. Sandford alleged that through these actions, Long "ratified and approved the unlawful and tortious conduct of defendant Louis."

In his claim for negligent supervision, Sandford incorporated the above allegations and stated, "Long . . . knew, or in the exercise of reasonable diligence should have known, that defendant Louis had a propensity for violent, aggressive, confrontational, and abusive behavior, and knew or, in the exercise of reasonable diligence should have

known that if Louis's behavior was not confronted, appropriate discipline meted out, and other reasonable steps taken by these defendants to address and attempt to prevent such behavior, an undue risk to persons such as [Sandford] would exist because of the negligent failure of these defendants to take appropriate preventative measures." Sandford further contended that Long had failed to take any "action whatsoever" to address Louis's violent behavior.

In his claim for intentional infliction of emotional distress, in addition to reincorporating the above allegations, Sandford alleged that Long had "trivialized the magnitude of [the] misconduct and [Sandford's] injuries" and had made public statements that implied that Sandford may have provoked the attack. Sandford alleged that he suffered "humiliation, mental anguish, and emotional and physical distress" as a result of Long's conduct.

B. *Long's demurrer*

Long filed a demurrer to Sandford's complaint. In a supporting brief, Long contended that Sandford's battery claim failed because case law established that university officials may not be found vicariously liable for torts committed by student athletes. Long maintained that Sandford's negligent supervision claim failed because case law established that university officials do not owe a duty of supervision over their students. Finally, Long argued that Sandford had failed to state a claim for intentional infliction of emotional distress because Sandford's complaint failed to allege that Long had engaged in conduct that was sufficiently outrageous to state such a claim, and failed

to sufficiently allege that Sandford had suffered severe emotional distress as a result of Long's conduct.

C. *The opposition*

Sandford contended that he adequately alleged claims for ratification of a battery, negligent supervision, and intentional infliction of emotional distress against Long. Sandford clarified that his first cause of action for battery against Long was premised on the doctrine of ratification rather than the doctrine of vicarious liability. Sandford claimed that the complaint adequately alleged that Long had ratified Louis's conduct by failing to discipline Louis and by taking steps to cover up the attack. With respect to his claim for negligent supervision, Sandford contended that Long's status as the head coach of the football team gave rise to a special relationship between Long and Louis that imposed a duty on Long to control Louis's behavior. In addition, Sandford contended that a special relationship existed between Long and Sandford that gave rise to a duty on Long's part to take reasonable steps to protect Sandford from harm. Finally, Sandford claimed that he had alleged that Long had committed conduct that was sufficiently outrageous to support a claim for intentional infliction of emotional distress.³

D. *The reply*

Long filed a reply in which he contended that Sandford had failed to adequately allege that Long had ratified Louis's attack on Sandford because Sandford had not

³ Sandford did not address Long's contention that the complaint failed to adequately allege that Sandford had suffered severe emotional distress sufficient to state a cause of action for intentional infliction of emotional distress.

"alleged, that Long voluntarily adopted Louis'[s] attack on [Sandford] as his own, or that Louis intended to act on Long's behalf, or that Long had treated the attack as his own," as is required to state such a cause of action. Long also reiterated his contentions that Sandford had failed to adequately allege either a claim for negligent supervision or intentional infliction of emotional distress.

E. *The trial court's order sustaining Long's demurrer without leave to amend*

The trial court sustained Long's demurrer without leave to amend. It concluded that Sandford had failed to adequately allege that Long had ratified Louis's conduct. In addition, citing case law noting that university officials do not have a duty to exercise control of student conduct, the court concluded that Sandford's claim for negligent supervision failed. Finally, the court concluded that Sandford had failed to state a claim for intentional infliction of emotional distress. The court reasoned that Sandford had failed to adequately allege either that Long had engaged in outrageous conduct and or that Sandford had suffered severe emotional distress as a result of Long's conduct.

III.

DISCUSSION

The trial court properly sustained Long's demurrer without leave to amend

Sandford contends that the complaint properly states claims for ratification of a battery, negligent supervision, and intentional infliction of emotional distress. We disagree.

A. *Standards of review*

We review de novo an order sustaining a demurrer to determine whether the complaint alleges facts sufficient to state a cause of action. (*CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1042.)⁴ We exercise our independent judgment as to whether the complaint states a cause of action. (*Palestini v. General Dynamics Corp.* (2002) 99 Cal.App.4th 80, 86.) When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

⁴ In his respondent's brief, Long cites Government Code section 951 and contends that "when suing a *public employee* . . . facts must be pled with particularity." (Italics added.) Section 951 applies to *publicly elected or appointed state and local officers* and provides:

"Notwithstanding Section 425.10 of the Code of Civil Procedure, any complaint for damages in any civil action brought against a *publicly elected or appointed state or local officer*, in his or her individual capacity, where the alleged injury is proximately caused by the officer acting under color of law, shall allege with particularity sufficient material facts to establish the individual liability of the publicly elected or appointed state or local officer and the plaintiff's right to recover therefrom." (Italics added.)

Long failed to raise this argument in the trial court, and has not presented any argument or authority on appeal that establishes that he is a "publicly elected or appointed state or local officer." Accordingly, we reject Long's contention that Government Code section 951 applies in this case.

B. *The complaint does not state a cause of action for battery based on a ratification theory*⁵

Sandford claims that the complaint properly states a cause of action against Long for his ratification of Louis's battery.

In *Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67 (*Rakestraw*), the Supreme Court outlined the manner by which an agency relationship may be created by a party's ratification of the prior acts of another. The effect of the ratification is to create an agency that relates back in time and makes the ratifying party liable as a principal for the acts of the other who is deemed to be the principal's agent. The *Rakestraw* court described the doctrine as follows:

" 'An agency may be created, and an authority may be conferred, by a precedent authorization *or a subsequent ratification.*' (Italics added.) *Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him.* [Citations.] [¶] A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is 'inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it.' [Citations.] It is essential, however, that the act of adoption be truly voluntary in character. Moreover, there can be no adoption if the act, although voluntary, is done only because the purported principal is obligated to minimize his losses caused by the agent's wrongful act, or because of duress or

⁵ Sandford makes clear in his brief that he "does not allege, as the basis for claimed liability as against Long, an employer/employee relationship and resulting liability based upon responde[nt] superior." Accordingly, we restrict our analysis to Sandford's contention that he properly stated a cause of action for battery against Long based on a ratification theory.

misrepresentation by the agent. [Citations.] [¶] Generally, the effect of a ratification is that the authority which is given to the purported agent relates back to the time when he performed the act. [Citations.] Since he is considered to be an agent with authority at the time he performed the act, he does not incur liability for acts done within the scope of that authority. [Citation.]" (*Id.* at p. 73, italics added.)

Long's actions in purportedly failing to discipline Louis for the attack on Sandford and in engaging in a cover up do not demonstrate that Long voluntarily elected to adopt Louis's battery of Sandford as *Long's* battery on Sandford. Nor does Sandford sufficiently allege that Louis was purportedly acting on behalf of Long in attacking Sandford. Sandford has thus failed to adequately allege that Long may be deemed to have authorized Louis's attack pursuant to the doctrine of ratification. (See *Rakestraw*, *supra*, 8 Cal.3d at p. 73.)

We reject Sandford's contention that he properly stated a cause of action for ratification against Long based on case law pertaining to an *employer's* ratification of the torts of his *employee* or a *principal's* ratification of the unauthorized acts of his *agent*. (See, e.g., *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219.) Sandford has failed to allege facts demonstrating that Long was Louis's employer or that Louis was Long's agent.⁶

Accordingly, we conclude that the complaint does not state a cause of action for ratification of a battery against Long.

⁶ In addition, as noted in the previous paragraph, the complaint fails to state facts sufficient under *Rakestraw* to allege that Long's actions *after* the attack had the effect of creating an agency relationship between Louis and Long.

C. *The complaint does not state a cause of action for negligent supervision*

Sandford claims that the trial court erred in concluding that he failed to state a claim for negligent supervision against Long.

1. *Governing law*

"The elements of a cause of action for negligence are ' (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach [was] the proximate or legal cause of the resulting injury.' [Citation].'" (*Walker v. Sonora Regional Medical Center* (2012) 202 Cal.App.4th 948, 958, italics omitted.) "Whether a defendant owed a duty of care to an injured plaintiff is a question of law, and the existence of a duty depends on the foreseeability of the risk and a weighing of policy considerations for and against imposition of liability. [Citation.]" (*Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1080 (*Romero*).)

"As a general rule one has no duty to control the conduct of another, and no duty to warn those who may be endangered by such conduct. [Citations.] A duty may arise, however, where '(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection.' (Rest.2d Torts, § 315; [citations.]) Among the commonly recognized special relationships are that between a common carrier and its passengers, that between an innkeeper and his or her guests, and that between a possessor of land and members of the public who enter in response to the landowner's invitation. (Rest.2d Torts, § 314A.)'"

(*Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 806-807, fn. omitted; see also, e.g., *Romero, supra*, 89 Cal.App.4th at pp. 1078-1079 ["[a] person is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a *special relationship* of custody or control".])

Several California appellate courts have held, in various contexts, that colleges and their agents "have no duty to their adult students to protect them against the criminal acts of third persons." (*Ochoa v. California State University* (1999) 72 Cal.App.4th 1300, 1306 (*Ochoa*) disapproved on another ground by *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 160, fn.5; see also *Tanja H. v. Regents of University of California* (1991) 228 Cal.App.3d 434, 439 ["courts can establish the criminal and civil liability of the perpetrators of crimes; but the courts with good reason have been unwilling to shift moral and legal responsibility away from student perpetrators and onto the heads of college administrators"].) In *Ochoa*, a college student punched another college student during an intramural soccer game. (*Ochoa, supra*, at pp. 1302-1303.) The victim sued his university alleging that the university was liable for failing to supervise the game.⁷ (*Id.* at p. 1303.) The *Ochoa* court rejected the plaintiff's claim that the university owed him "a duty to protect him against the injury he suffered at the hands of an opposing player." (*Id.* at p. 1302.) In reaching this conclusion, the court reviewed California case law in which courts have noted that while colleges and their officials were

⁷ The *Ochoa* court made clear that the plaintiff's suit was premised on the referee's failure to supervise the game and the university's alleged vicarious liability. (*Ochoa, supra*, 72 Cal.App.4th at p. 1303, fn. 2.)

previously held to owe their students a duty of care to supervise student's activities, this was no longer the case:

"In *Crow v. State of California* [(1990)] 222 Cal.App.3d 192, this court rejected the claim of an adult college student, who was beaten by an intoxicated fellow student in a dormitory, that the defendant university was liable to the plaintiff in tort for negligently operating, maintaining, and supervising the dormitory. (*Id.* at pp. 196–197.) We held that the usual rule of nonliability for the criminal conduct of a third party, absent a special relationship between the plaintiff and the defendant which imposed a duty on the defendant to protect the plaintiff from the type of harm that occurred, applied on these facts. (*Id.* at pp. [sic] 208.)

"We specifically found that the plaintiff's affiliation with CSUS as a student did not create a special relationship imposing a duty of care on CSUS. Unlike high school students, whose attendance is compelled and over whom school officials have direct responsibility while the students are at school, adult college students attend school and participate in school activities voluntarily. (*Crow v. State of California, supra*, 222 Cal.App.3d at pp. 208–209.) Furthermore, since college administrators have abandoned in loco parentis supervision of adult students and have recognized the students' rights to control and regulate their own lives, colleges and universities may no longer be charged with a general duty of care to supervise student activities. (*Id.* at p. 209; see also *Baldwin v. Zoradi* (1981) 123 Cal.App.3d 275, 287–291.)" (*Ochoa, supra*, 72 Cal.App.4th at p. 1305.)

In *Baldwin v. Zoradi, supra*, 123 Cal.App.3d 275, the court described the demise of the in loco parentis doctrine as follows:

" There was a time when college administrators and faculties assumed a role *in loco parentis*. . . . A special relationship was created between college and student that imposed a duty on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college. . . . A dramatic reapportionment of responsibilities and social interests of general security [has taken] place. . . . College administrators no longer control the broad arena of general morals. At one time,

exercising their rights and duties *in loco parentis*, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives.' " (*Id.* at p. 287, quoting *Bradshaw v. Rawlings* (3d Cir. 1979) 612 F.2d 135, 139-140; accord *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1035 [university instructor and university did not owe duty to supervise off-campus assignment and stating "plaintiff's reliance on cases involving children in elementary and secondary schools is misplaced, because the duty owed to college students such as plaintiff is different from the duty owed to elementary and high school students"].)

2. *Application*

The California authorities cited above make clear that universities and their officials generally do not owe their students a duty to supervise the actions of other students. Notwithstanding this authority, Sandford asserts that a special relationship existed between Long, as head coach and Louis, as player, giving rise to a duty on Long's part to take reasonable steps to control Louis's conduct. Sandford also asserts that a special relationship existed between Long, as head coach, and Sandford, as player, such that Long had a duty to take reasonable steps to protect Sandford from foreseeable harm. However, we are aware of no authority, and Sandford cites none, that holds that coaches of intercollegiate athletic teams owe such duties *vis-à-vis* their players, notwithstanding that university officials do not owe their students such duties generally.

Sandford provided no legal analysis in support of his contention that this court should recognize a new category of special relationship—that between a college coach and his players—that would create a duty on the part of the coach to control the actions of his players, and/or protect his players from intentional torts committed by other

players. Sandford fails to present any argument that "the familiar factors of *Rowland v. Christian* (1968) 69 Cal.2d 108, 113" for determining the existence of a duty of care support his contention that college coaches have a duty to supervise and/or protect their players, notwithstanding the demise of the in loco parentis doctrine generally. (*Stockinger v. Feather River Community College, supra*, 111 Cal.App.4th at p. 1035.)

Accordingly, we conclude that Sandford has failed to establish that Long had a duty to supervise Louis and/or a duty to protect Sandford from Louis's violent acts. The trial court therefore did not err in determining that Sandford failed to state a cause of action for negligent supervision.

D. *Sandford failed to allege facts demonstrating that he suffered severe emotional distress, as is required to state a claim for intentional infliction of emotional distress*

In order to state a claim for intentional infliction of emotional distress, a plaintiff must allege that he suffered "severe or extreme emotional distress" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 (*Hughes*)), among other elements. "With respect to the requirement that the plaintiff show severe emotional distress, [the Supreme] court has set a high bar. 'Severe emotional distress means " 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.' " ' [Citation.]" (*Id.* at p. 1051.) A plaintiff's assertions that he has "suffered discomfort, worry, anxiety, upset stomach, concern, and agitation," are insufficient. (*Ibid.*)

Sandford alleges only that he suffered "humiliation, mental anguish, and emotional and physical distress" as a result of Long's conduct. Such allegations are indistinguishable from the types of emotional distress that the Supreme Court in *Hughes* found insufficient to establish a claim for intentional infliction of emotional distress. (*Hughes, supra*, 46 Cal.4th at p. 1051.) Accordingly, we conclude that Sandford failed to adequately allege that he suffered "severe emotional distress," as is necessary to state a claim for intentional infliction of emotional distress. (*Ibid.*)

E. *Conclusion*

Sandford's complaint fails to forth facts sufficient to state any cause of action against Long. Accordingly, the trial court properly sustained Long's demurrer without leave to amend. Because Sandford has not demonstrated that he could cure the defects by amendment, we affirm the judgment. (See *Blank v. Kirwan, supra*, 39 Cal.3d at p. 318 [appellant has burden of demonstrating how a complaint could be amended to state a cause of action].)

IV.

DISPOSITION

The judgment is affirmed. Long is entitled to recover costs on appeal.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.