

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

SUZANNE C. CONNELL and H. TODD
CONNELL, as parents and legal guardians
of R.T.C., a minor,

CASE NO.: 2010-CA-19146-O
DIVISION: 37

Plaintiffs,

vs.

SEAWORLD PARKS & ENTERTAINMENT,
INC., a foreign corporation; SEAWORLD
PARKS & ENTERTAINMENT, LLC, a
foreign corporation; and SEA WORLD OF
FLORIDA, LLC, a Florida corporation,

Defendants.

ORDER DISMISSING CASE WITH PREJUDICE

THIS MATTER came on for hearing on the Motion to Dismiss filed by Defendants, SeaWorld Parks & Entertainment, Inc., SeaWorld Parks & Entertainment, LLC, and SeaWorld of Florida, LLC (hereafter "SeaWorld"), and the Court having reviewed the pleadings, having heard argument of counsel, and being duly advised in the premises, determines as follows:

This case raises the question of whether a theme park spectator can bring a claim for emotional distress against the theme park when the spectator witnesses an unfortunate incident while visiting the theme park. Plaintiffs, Suzanne and Todd Connell, bring this action on behalf of their minor son, RTC, as a result of emotional distress he suffered while watching the unfortunate drowning of Mrs. Dawn Brancheau, a SeaWorld Trainer, during the Dine with Shamu show on February 24, 2010.

For purposes of ruling on SeaWorld's Motion to Dismiss, this Court must accept as true all of the well-pled allegations contained in the Connells' complaint. *Sanderson v. Eckerd Corp.*,

780 So.2d 930 (Fla. 5th DCA 2001). SeaWorld argues that the complaint fails to state a cause of action for negligent and intentional infliction of emotional distress. The Court will separately address each cause of action below.

Negligent Infliction of Emotional Distress

Florida law recognizes the tort of negligent infliction of emotional distress as an exception to the impact rule. *Champion v. Gray*, 478 So.2d 17 (Fla. 1985). To state a cause of action for negligent infliction of emotional distress, a complaint must allege the following elements: (1) the plaintiff must suffer a physical injury; (2) the plaintiff's physical injury must be caused by the psychological trauma; (3) the plaintiff must be involved in some way in the event causing the negligent injury to another; and (4) the plaintiff must have a close personal relationship to the directly injured person. *Champion v. Gray*, 478 So.2d 17, 20 (Fla. 1985); *Zell v. Meek*, 665 So.2d 1048, 1054 (Fla. 1995).

The question presented in this case is whether RTC had a "close personal relationship" with Mrs. Brancheau that would allow the complaint to proceed forward. Florida courts have held that mother/daughter, father/daughter and stepfather/stepchild relationships qualify as close personal relationships. *Champion v. Gray*, *Zell v. Meek*, *Watters v. Walgreen Company*, 967 So.2d 930 (Fla. 1st DCA 2007). Other courts have held that a fiancé, "live in" ladyfriend, and girlfriend do not have the type of close personal relationship with the injured party that would support a claim for negligent infliction of emotional distress. *Reynolds v. State Farm*, 611 So.2d 1294 (Fla. 4th DCA 1992); *Ferretti v. Weber*, 513 So.2d 1333 (Fla. 3rd DCA 1987); *Geidel v. City of Bradenton Beach*, 56 F.Supp. 2d 1359 (M.D. Fla. 1999). The court has not found, and the parties have not submitted, any case where a complete stranger to the injured party was allowed to proceed forward with a claim of negligent infliction of emotional distress.

The central allegations establishing the contact between RTC and Mrs. Brancheau are found in paragraphs 11 and 50 of the complaint. In paragraph 50, the Connells allege that the Dine with Shamu show is an "intimate experience." The complaint further alleges that the "intimacy of the situation is intended to create a feeling of a close bond or personal relationship between RTC and the trainer." In paragraph 11, the Connells allege "Dawn was delightful and personable and as intended, bonded with minor Plaintiff RTC, making a very deep, positive impression during the performance."

The Connells concede that neither they nor their son are related to Mrs. Brancheau or that they ever met Mrs. Brancheau. The question then becomes whether the allegations in paragraphs 11 and 50 are sufficient to establish the "close personal relationship" needed to allow the Connells claim to proceed forward with their claim.

As noted above, various courts have recognized that family members, including step-parents, have the type of close personal relationship that can support the cause of action. Here, the Connells are not in any way related to Mrs. Brancheau. Moreover, their complaint is devoid of any allegations that would even suggest that they met her and developed a close personal relationship with her prior to her unfortunate death. Indeed, other than the allegations in paragraphs 11 and 50, the complaint contains no allegations that would establish any personal relationship at all between RTC and Mrs. Brancheau, other than one of spectator/performer. As such, the Connells have failed to state a cause of action for negligent infliction of emotional distress against SeaWorld.

Intentional Infliction of Emotional Distress

Florida law recognizes the tort of intentional infliction of emotional distress. *Metropolitan Life Ins. Co., v. McCarson*, 467 So.2d 277 (Fla. 1985). To state a cause of action

for intentional infliction of emotional distress, a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused emotional distress; and (4) the distress was severe. In order to satisfy the requirement for outrageous conduct, a plaintiff must allege that the defendant's conduct was so "outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency" and further that it would be regarded as "atrocious, and utterly intolerable in a civilized society." *Metropolitan Life Ins. Co.*, 467 So.2d at 278-79. Whether the conduct alleged is sufficiently outrageous and extreme to withstand a motion to dismiss is purely a question of law for the court to decide. *Johnson v. Thigpen*, 788 So.2d 410, 413 (Fla. 1st DCA 2001).

In analyzing whether SeaWorld's conduct was outrageous and extreme, the court has reviewed and considered all of the allegations of the complaint, including the allegations that SeaWorld knew of the aggressive and violent tendencies of the killer whale before it allowed the whale to be near Mrs. Brancheau. *See*, paragraphs 53 – 57 of the Complaint. Given their length, the court will not recite all the allegations here. At best, these allegations support a claim of negligence on SeaWorld's part. Negligence, however, does not satisfy the requirement that the conduct in question be outrageous and extreme in order to support a cause of action for intentional infliction of emotional distress. *See, Eastern Airlines v. King*, 557 So.2d 574, 576 (Fla. 1990) (passenger who was on flight when all three engines failed failed to state a claim against airline for reckless or intentional infliction of emotional distress; allegations that airline failed to properly inspect, maintain and operate its aircraft rose no higher than negligence, and fact that there may have been at least one dozen prior incidents of missing O-rings causing engine failures did not reflect extreme and outrageous conduct intentionally or recklessly causing emotional distress).

Even if the conduct alleged in the complaint was outrageous and extreme, the Connells' claim fails because the alleged acts or omissions were not directed at them. Florida courts require the plaintiff to be the recipient of the insult or abuse in order to recover for intentional infliction of emotional distress. In *Habelow v. Travelers Insurance Company*, 389 So.2d 218 (Fla. 5th DCA 1980), the wife's claim for intentional infliction of emotional distress was dismissed because the abuse was directed at her husband. The Court stated that "[i]n all cases we have found in Florida recognizing the tort of intentional infliction of emotional distress, the plaintiff was the recipient of the insult or abuse." *Id.* at 220. See also, *M.M. v. M.P.S.*, 556 So.2d 1140, 1141 (Fla. 3rd DCA 1989) (parents may not claim emotional distress for injuries or offensive treatment directed toward their daughter); *Harrington v. Pages*, 440 So.2d 521 (Fla. 4th DCA 1983) (father and children may not recover when alleged extreme and outrageous conduct was directed only at spouse/mother); *Baker v. Fitzgerald*, 573 So.2d 873 (Fla. 3rd DCA 1990) (appellant's claim for emotional distress fails because there was no showing of outrageous conduct directed at appellant herself).

Here, the Connells do not allege outrageous conduct directed toward RTC. Rather, they allege a serious of acts and omissions committed by SeaWorld in breach of its duty to its employees, including Mrs. Brancheau. See, paragraph 63(a) – (t) of the Complaint. Absent any allegations that outrageous or extreme conduct was directed toward RTC, the Connells cannot state a cause of action for intentional infliction of emotional distress against SeaWorld.

Conclusion

As noted above, the Connells and their son were guests at SeaWorld when Mrs. Brancheau's life was unfortunately taken. The Court has no doubt that RTC was traumatized by witnessing this event. However, given the status of the parties to this litigation and the pleading

deficiencies noted above, the Connells have failed to state a cause of action against SeaWorld for negligent or intentional infliction of emotional distress. The Court concludes that these deficiencies cannot be corrected and thus, any further amendment of the complaint would be futile. Accordingly, it is hereby ORDERED AND ADJUDGED that Defendants' Motion to Dismiss Plaintiffs' Complaint is granted. This action is dismissed with prejudice. The Court retains jurisdiction to award attorneys' fees and costs if applicable.

DONE AND ORDERED in Chambers, Orlando, Orange County, Florida, this 30th day of August, 2011.



JULIE H. O'KANE
Circuit Judge

Copies furnished via the Clerk of
Court's ECF System to:

John Overchuck, Esq.
G. Mark Thompson, Esq.