

NO. TTD-CV-23-6026288-S : SUPERIOR COURT
KYLESS GREEN : JUDICIAL DISTRICT
VS. : OF TOLLAND
DAVID GALEOTA : MAY 14, 2024

MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT (ENTRY NO. 117)

Before the court is the defendant's motion for summary judgment on the first count of the plaintiff's second revised complaint. In the first count, the plaintiff states a claim for bystander emotional distress as a result of witnessing the defendant's dog bite her five year old son on the face and neck. In the motion for summary judgment, the defendant argues that the plaintiff's claim fails as a matter of law because neither her son's physical injuries nor her own emotional injuries were serious enough to support a claim for bystander emotional distress.

LEGAL STANDARD

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried." *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012). "A motion for summary judgment shall be supported by appropriate documents, including but not limited to affidavits, certified transcripts of testimony under oath,

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disclosures, written admissions and other supporting documents.” Practice Book § 17-45.

“In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle[s] him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue.” (Internal quotation marks omitted.)

Fiano v. Old Saybrook Fire Co. No. 1, Inc., 332 Conn. 93, 101, 209 A.3d 629 (2019).

FACTS

The parties filed briefs in support and in opposition to the motion for summary judgment along with supporting documentation. Argument was held on

April 22, 2024. Viewing the facts in the light most favorable to the plaintiff, the court finds the following:

On September 18, 2022, the plaintiff was visiting the defendant's property with her then five year old son Jameson and her boyfriend. The defendant's dog, a fifty pound boxer/heeler mix, was out and roaming freely. Initially, the dog wagged its tail and appeared friendly. While the parties were standing in the driveway area, the dog suddenly growled and jumped at Jameson biting him on the face and neck. Jameson began screaming and crying. The defendant grabbed the dog, while the plaintiff ran to Jameson and sat him down to comfort and examine him.

Jameson was bleeding from two puncture wounds on his face and a laceration to his neck. The neck wound was bleeding the most, and plaintiff applied a towel to it to try to stop the bleeding. The plaintiff and her boyfriend promptly put Jameson in their car and took him to the emergency room at the Connecticut Children's Medical Center. Jameson's wounds were cleaned and the laceration to the neck was closed with six stitches. He was prescribed a course of antibiotics to avoid infection.

Jameson was seen a week later for follow up at his pediatrician's office. His wounds were healing appropriately. He later had a consult with a plastic surgeon to discuss the scar on his neck. Recent photos show two reds marks still apparent on Jameson's cheek from the puncture wounds and a scar on his neck where he got the stitches. At his deposition, the defendant acknowledged that the bite resulted in a serious injury that was likely quite painful for Jameson.

The bite occurred on a Sunday. The plaintiff kept Jameson home from school on Monday, he arrived late on Tuesday and stayed home again on Thursday due to reported fatigue and sleep problems. The plaintiff testified at her deposition that she stayed home most of the week herself because she felt traumatized and did not want to go out. She works from home and returned to work on Friday.

The plaintiff did not seek medical attention for her emotional upset until December 29, 2022. At that time, the plaintiff had a psychiatric intake evaluation with Dr. Gengyun Wen, a licensed psychiatrist. She reported suffering from flashbacks of the dog bite, nightmares, disturbed sleep, depression and anxiety. She reported physical symptoms associated with her anxiety including heart palpitations, perspiration, numbness and feelings of doom. She acknowledged avoiding social interaction and drinking alcohol more than usual.

Dr. Wen diagnosed the plaintiff with post traumatic stress disorder (PTSD) and identified witnessing the dog attack as a risk factor. He prescribed three medications to address her depression and anxiety, sleep disturbance and nightmares, and to reduce alcohol cravings. The plaintiff returned for a therapy session on January 5, 2023. She reported ongoing PTSD symptoms, including flashbacks, recurrent dreams of the event and irritability with outbursts of anger. She reported that her mood swings were having a negative impact on her relationship with her boyfriend. The therapist's report notes serious relationship and work problems and that the plaintiff "continues to exhibit symptoms of an emotional disorder that

interfere with day to day functioning and is unable to alleviate these symptoms without intervention.”

The plaintiff returned to therapy on January 19, 2023. Her symptoms of flashbacks, sleep disturbance and diminished interest continued but were improving. She again reported serious relationship problems related to the dog bite incident. The plaintiff returned for another therapy session on February 2, 2023 and then had a follow up psychiatric assessment with Dr. Wen on February 11, 2023. The plaintiff reported that although the medication was helping, she continued to experience anxiety, flashbacks, nightmares, irritability and intrusive thoughts. Dr. Wen noted that she appeared downcast, anxious and tense. Dr. Wen continued to prescribe medication for depression, anxiety and sleep.

The plaintiff returned to Dr. Wen on April 13, 2023. At that time, she reported improvements in her mood and anxiety but still described her depression as moderate with ongoing symptoms of anxiety and PTSD. Dr. Wen described her appearance as tense and anxious. Dr. Wen diagnosed her with PTSD, depression and anxiety disorder. He increased the strength of her antidepressant/antianxiety medication. There is no record of any further treatment after this. However, pharmacy records show that she continued to fill her antidepressant/antianxiety medication prescription through at least July 2023, when she was issued a 90 day supply.

DISCUSSION

Our Connecticut Supreme Court recognized bystander emotional distress claims in *Clohessy v. Bachelor*, 237 Conn. 31, 675 A.2d 852 (1996), and articulated a four prong test:

“[W]e conclude that a bystander may recover damages for emotional distress If the bystander satisfies the following conditions: (1) he or she is closely related to the injury victim, such as the parent or the sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim’s condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander’s emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response.” *Id.*, 56.

The court made clear that each of the four elements is intended to provide a meaningful limit on an otherwise potentially open ended liability. “[S]pecific limitations must be imposed upon the reasonable foreseeability rule. We recognize that those limitations, albeit somewhat arbitrary, are necessary in order not to leave the liability of a negligent defendant open to undue extension by the verdict of sympathetic juries” (Internal quotation marks omitted.) *Id.*, 51. While each prong must be satisfied independently, they also interrelate. “All of these elements, of course, shade into each other; the fixing of obligation, intimately tied into the

facts, depends upon each case.” *Id.*, 36, quoting *Dillon v. Legg*, 68 Cal.2d 728, 741, 441 P.2d 912, 69 Cal.Rptr. 72 (1968).

In applying the *Clohessy* test to the specific facts of a case, the court remains cognizant of the public policy purpose behind bystander emotional distress claims: “We further conclude that public policy requires that we recognize this duty owed by a tortfeasor to a bystander. . . . The emotional harm following the perception of the death or serious injury to a loved one is just as foreseeable as the injury itself, for few persons travel through life alone.” (Citation omitted.) *Clohessy v. Bachelor*, *supra*, 237 Conn. 46–47. The Court also recognized the unique emotional bond and emotional responses between a parent and child. In rejecting the “zone of danger” test, the court stated “[t]he restrictiveness of the zone of danger test is glaringly apparent where it is allowed to deny recovery to a parent who has suffered emotional harm from witnessing a tortious assault upon the person of his or her minor child.” (Internal quotation marks omitted.) *Id.*, 49.

However, not all injuries to a child that are observed by a parent create a cause of action. With regard to the requirement that the victim’s injury be “substantial, resulting in either death or serious physical injury” the court noted “[a]ny injury to one who is closely related to the bystander has an emotional impact. To a sensitive parent, witnessing a minor injury to his or her child could produce an emotional response Nevertheless, under those circumstances, a cause of action for bystander emotional distress will not lie.” *Id.*, 54. However, our Supreme Court did not further define “serious physical injury” in *Clohessy*. Indeed, the issue did not

present itself in that case as the minor victim died as a result of the accident. Trial courts therefore must decide on a case by case basis whether there is sufficient evidence of serious injury to create a genuine issue of material fact for the jury.¹

In some cases, the injuries are so obviously serious, that defendants do not challenge this element. See *Thomas v. Trudeau*, Superior Court, judicial district of Windham, Docket No. CV-07-5001330-S (May 15, 2009, *Riley, J.*) (explosion engulfed minor victim in flames causing his body to bubble, blister and smoke and resulted in serious burns over his body); *Carendi v. Silver Horseshoe Stables, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-94-366855-S (August 14, 1998, *Hartmere, J.*) (father kicked in the face by a horse resulting in

¹ The plaintiff cites to *Hibner v. Bruening*, Superior Court, judicial district of New Haven, Docket No. CV-01-0456730-S (July 30, 2009, *Zoarski, JTR*) for the proposition that evidence of any physical injury is sufficient to satisfy the third prong of *Clohessy* on a motion for summary judgment. In that case, the trial court stated “[c]ourts are seemingly willing to entertain such an action if the plaintiff pleads, as a minimum threshold requirement, an actual physical injury to the victim.” It is important to note that *Hibner* was decided on a motion to strike, as were the cases cited therein. To the extent *Hibner* was subsequently relied upon in the context of a motion for summary judgment for the broad proposition that evidence of any physical injury satisfies the third prong of *Clohessy*, this court disagrees. See *Wilson v. Miss Porter’s School, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-20-6123888-S (May 24, 2022, *Peck, JTR*). Such a broad interpretation directly conflicts with the *Clohessy* court’s clear holding that minor injuries, even if they are actual physical injuries, can not support a cause of action. The injury must be both physical and serious. To hold that any actual physical injury can support a claim of bystander emotion distress would be to rewrite the third prong in a manner that would result in the kind of open ended liability the *Clohessy* court sought to avoid. If our Supreme Court intended the third prong to state “any injury that results in death or actual physical injury” it could have done so. It did not. Instead, it required evidence of a “substantial [injury], resulting in death or serious physical injury.” In applying the test, trial courts must give meaning to the words “substantial” and “serious.”

serious injury to his face and eye area); *Ortiz v Ford*, Superior Court, judicial district of Fairfield, Docket No. CV-96-334511-S (April 3, 1998, *Melville, J.*) (plaintiffs' daughter thrown from her vehicle suffering serious permanent injury, including paralysis).

The cases that have addressed the “serious physical injury” requirement of *Clohessy* demonstrate the very fact specific nature of the inquiry and the range of outcomes. Where the injuries do not immediately appear serious at the time of the injury, such as the case with soft tissue or musculoskeletal injuries or bruises, courts have generally granted summary judgment on the grounds that such injuries are not serious enough to support a bystander emotional distress claim. See *Regan v. Educational Play Care, Ltd.*, Superior Court, judicial district of Bridgeport, Docket No. CV-23-6121748-S (March 14, 2024, *Clark, J.*) (musculoskeletal injuries suffered by child who was tackled by another child at day care not substantial or serious, where they did not require immediate medical attention); *Overend v. Torres*, Superior Court, judicial district of New Haven, Docket No. CV-18-6072076-S (May 22, 2018, *Wilson, J.*) (back pain, contusions, abrasions and other minor injuries sustained by children sitting in the back seat during a car accident, which did not result in immediate medical attention, not serious enough to support bystander emotional distress claim); *Bush v. Natural Learning Community*, Superior Court, judicial district of Hartford, Docket No. CV-16-6067147-S (January 5, 2017, *Elgo, J.*) (bruising and swelling on son’s head after fall at day care, which did not result in

immediate medical treatment, not serious enough to support claim of bystander emotional distress).

An example of an injury that was found to be serious enough to survive summary judgement is found in *Pulido v. Mead School for Human Development, Inc.*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-22-6055377-S (April 5, 2023, *Golger, J.*). In that case, the child victim suffered injuries to her hand and fingers that resulted in the need for prompt medical attention and the partial amputation of one of her fingers. Compare *Pulido v. Mead School for Human Development, Inc.*, supra, Superior Court, Docket No. CV-09-6000986-S, with *Conger v. Old Navy*, Superior Court, judicial district of New London, Docket No. CV-09-6000986-S (November 23, 2010, *Cosgrove, J.*) (single laceration to the finger caused by the edge of a display table not serious enough to support a bystander emotional distress claim).

This case lies somewhere between the horrible injuries in *Ortiz v. Ford* and *Thomas v. Trudeau* and the minor soft tissue or musculoskeletal injuries of *Regan v. Educational Play Care*, et al. Under the totality of the circumstances, the court finds that there is sufficient evidence of a serious physical injury to survive a motion for summary judgment. Jameson's injuries were immediately obvious. He was bleeding from his face and neck, screaming and crying. His injuries required immediate medical attention including wound cleaning, stiches to his neck and a course of antibiotics to avoid infection. The injuries resulted in permanent scarring. The

evidence viewed in the light most favorable to the plaintiff is sufficient to present a genuine issue of material fact for the jury.

In the alternative, the defendant moves for summary judgment on the grounds that the plaintiff cannot satisfy the fourth prong of *Clohessy* because her emotional distress was not sufficiently serious. *Clohessy* requires that the bystander's emotional injury "be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response." *Clohessy v. Bachelor*, supra, 237 Conn. 57. The *Clohessy* court cited with approval several out of state cases for the proposition that "[s]erious emotional distress . . . goes well beyond simple mental pain and anguish" and is the type of emotional injury that would render one unable to cope or with a diagnosis of a mental disorder. *Id.* at 55–56.

Furthermore, our Supreme Court had the occasion to revisit the fourth prong in *Squeo v. Norwalk Hospital Assn.*, 316 Conn. 558, 113 A.3d 932 (2015). The court cited examples of diagnosable mental disorders, such as neuroses, psychoses, chronic depression, phobia and shock and, cited to the American Psychiatric Association, Diagnostic and Statistical Manual (DSM). "(DSM-5) defines 'mental disorder' in relevant part as 'a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological or developmental processes underlying mental functioning'" *Id.*, 587. While not requiring a psychiatric diagnosis, the court ruled that bystander emotional distress claims should be restricted "to psychological injuries that are on a par with diagnosable mental disorders." *Id.*, 586–87. "We now

clarify that, to satisfy the fourth prong of the *Clohessy* test ... a bystander must suffer emotional distress that is severe enough to either warrant a psychiatric diagnosis or to otherwise substantially impair his or her ability to cope with life's daily routines and demands." *Id.*, 591–92.

Trial courts have applied the fourth prong's severe emotional distress test and granted summary judgment for the defendant when self-serving claims of emotional harm are simply not supported by credible evidence. See *Nicasia v. Mickens*, Superior Court, judicial district of New London, Docket No. CV-14-6022088 (July 8, 2016, *Vacchelli, J.*) (no evidence of medical treatment, diagnosis or medication); *Mazariegos v. Stamford*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-11-6010359 (October 11, 2013, *Jennings, JTR*) (no evidence of medical treatment or impairment of daily activities); *Fitch v. Milford Power Co.*, Superior Court, judicial district of Tolland, Complex Litigation Docket, Docket No. XO7-CV-01-0077449-S (March 8, 2004, *Sferrazza, J.*) (no medical diagnosis or evidence of emotional impairment that interfered with daily living); *Carendi v. Silver Horseshoe Stables, Inc.*, *supra*, Superior Court, Docket No. CV-94-366855-S (no evidence of medical treatment or negative impact on daily living); *Ortiz v. Ford*, *supra*, Superior Court, Docket No. CV-96-334511-S (no evidence of any medical diagnosis or treatment and plaintiffs continued to work and participate in daily activities).

Conversely, in *Pulido v. Mead School for Human Development, Inc.*, the trial court denied a motion for summary judgment where the plaintiff mother arrived

shortly after the injury to see her daughter's bleeding hand and fingers and was subsequently diagnosed with PTSD.

In the present case, the plaintiff sought mental health treatment approximately three months after the dog bite incident. She underwent a psychiatric evaluation by Dr. Wen, a licensed psychiatrist. She reported to him that she had been experiencing flashbacks, nightmares and disturbed sleep since the incident. She felt depressed and anxious, and her anxiety was accompanied by shortness of breath, heart palpitations, perspiration and numbness. She had low energy and was avoiding certain activities. She also acknowledged drinking alcohol more since the incident as a form of self medication. Dr. Wen noted that she appeared depressed and tense. Dr. Wen diagnosed her with PTSD. Under "History of Risk Factors", he identified witnessing her son being attacked by a dog. He identified as "Current Risk Factors: Experiencing Severe Anxiety or Panic." Dr. Wen prescribed three medications including an antidepressant/antianxiety medication and sleep medication.

The plaintiff began biweekly therapy sessions. She continued to present with PTSD symptoms and reported that the dog attack, and her response to it, was having a negative impact on her relationship with her boyfriend. On April 13, 2023, she had a follow up psychiatric evaluation with Dr. Wen who diagnosed her with PTSD, depression and anxiety disorder. He increased the strength of her antidepressant and antianxiety medication. Although there were no further treatment records presented to the court, the plaintiff continued to fill her prescription. The last records from her pharmacy show a 90 day supply filled on July 12, 2023. Thus, she remained on an

antidepressant/anti-anxiety medication from the end of December 2022 through approximately October 2023.

The court finds that the plaintiff has presented sufficient facts to create a genuine issue of material fact with regard to the fourth prong of the *Clohesy* test. She has presented evidence that her emotional distress was serious enough to result in mental health treatment and a mental health disorder diagnosis. PTSD is a recognized diagnosable mental disorder per DSM-5, as is depression and anxiety disorder. Her symptoms manifested physically in the form of flashbacks, disturbed sleep, mood swings, and anxiety accompanied by shortness of breath and heart palpitations. Her symptoms impacted her daily life in that she avoided certain activities, lost interest in the things she previously enjoyed, had trouble sleeping and experienced problems in her relationship. She was prescribed mental health medications to address her symptoms.

Viewing the facts in the light most favorable to the plaintiff, the court finds she has presented sufficient evidence to create a genuine issue of material fact for the jury with regard to the third and fourth prongs of the *Clohesy* test. The motion for summary judgment is therefore denied.

SO ORDERED

BY THE COURT


Macierowski, J.