Filed 8/2/17 Joseph S. v. Coastal Developmental Services Foundation CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOSEPH S., et al., Plaintiffs and Appellants, v. COASTAL DEVELOPMENTAL SERVICES FOUNDATION, INC., Defendant and Respondent.	B276195 (Los Angeles County Super. Ct. No. BC523355)

APPEAL from a judgment of the Superior Court of Los Angeles County. Joseph R. Kalin and Howard L. Halm, Judges. Affirmed.

Maier Shoch, Eric R. Maier and Louis E. Shoch for Plaintiffs and Appellants.

Taylor Blessey, N. Denise Taylor and Dean J. Smith for Defendant and Respondent.

Jack S. and Joseph S. (collectively appellants), twin brothers, appeal from a final judgment entered after the trial court granted summary judgment in favor of Coastal Developmental Services Foundation, Inc. doing business as Westside Regional Center (respondent) on appellants' claim against respondent for negligence. The trial court granted summary judgment in favor of respondent on the ground that respondent had no duty to protect appellants from the criminal conduct of a third party, Marco Sandoval (Sandoval), who repeatedly molested appellants over a period of two years. Finding no error in the trial court's decision, we affirm the judgment.

FACTUAL BACKGROUND

Appellants' services

Appellants are teenage boys (born Mar. 2000) with autism.[1] Respondent is a non-profit agency that contracts with the State of California to provide assessment and case management for people with developmental disabilities in western Los Angeles County. Regional centers such as respondent secure the services and support for the disabled individual or client by purchasing those services from direct service providers, referred to as "vendors." (Welf. & Inst. Code, § 4648, subd. (a)(3).)[2]

Appellants were determined to have developmental disabilities that qualified them to receive services. Respondent secured behavior therapy services for appellants from Beautiful

---

[1] A third individual, Daniel S., was a plaintiff in this matter below. The demurrer of respondent to the First Amended Complaint (FAC) of Daniel was sustained in its entirety without leave to amend, and Daniel is not a party to this appeal.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Minds Center for Autism (Beautiful Minds), and specialized supervision (essentially day care) and in-home respite (essentially babysitting) through Maxim Healthcare Services (Maxim).

Sandoval's employment

Sandoval began working for Beautiful Minds in September 2008. As part of the application process he underwent a Live Scan criminal background check. Sandoval was also informed, via the Beautiful Minds employee handbook, that anyone who "has a conviction or an arrest pending final adjudication, for any sex offense, crime of violence, or violent felony," would be disqualified from employment.

Sandoval began working for Maxim in 2010. Before Sandoval was employed by Maxim, he again underwent a criminal background check, the results of which, as of June 9, 2010, were negative.

Sandoval attended approximately a dozen training sessions during his employment at Beautiful Minds. During these sessions, Sandoval was informed that therapists were not to be in a closed room alone with a child. It was Beautiful Minds's policy, acknowledged by Sandoval in writing, that a parent or guardian was to be present at all therapy sessions.

At no time was Sandoval an agent or employee of respondent. At no time prior to September 20, 2011, did respondent receive any complaints from any clients or their families regarding Sandoval, or have any information to suspect that Sandoval was endangering any of respondent's clients.

Anonymous complaint about Beautiful Minds

In April 2009, respondent received information from an anonymous source regarding the failure of Beautiful Minds to adhere to its policies regarding training and supervision of staff, background checks, and health and safety precautions. The

information did not relate to criminal background checks, but rather the failure of Beautiful Minds to ensure that its staff possessed adequate educational qualifications and training. Sandoval possessed the requisite qualifications.

One of the issues raised by the anonymous complaint was the possibility that therapists may have been conducting sessions in the absence of a parent. Respondent had no documentation of any such incidents. Respondent strongly recommended that no child be left alone with a service provider and encouraged its vendors to have the same policy. Beautiful Minds had such a policy.

A regional center "may" terminate a contract with a provider if it determines that the provider has not complied with applicable laws or regulations. (§ 4648.1, subd. (d).) However, California Code of Regulations, title 17, section 54370, subdivision (b), provides that, termination "shall not occur" if the vendor notifies the vendoring regional center, in writing, of the vendor's intent to correct the violation and provide documentation of the correction within 30 days from receipt of notice. (§ 54370, subd. (e).) However, Regional Centers may place a moratorium on new referrals until violations have been corrected. (§ 54370, subd. (h).)

Respondent met with Beautiful Minds on April 27, 2009, to discuss the issues raised in the anonymous complaint. Respondent reminded Beautiful Minds about the need always for children to be accompanied by an adult designated by the parents. Beautiful Minds presented a corrective action plan. Pursuant to California Code of Regulations, title 17, section 54370, subdivision (h), respondent placed Beautiful Minds on "do not refer" status for 60 days, pending an investigation or until the corrective action plan presented by Beautiful Minds could be

implemented. The "do not refer" status was lifted in July 2009, as Beautiful Minds had complied with the corrective action plan.

June 2009 report of abuse

In June 2009, while respondent had Beautiful Minds on "do not refer" status, respondent received a report of abuse of a minor by a Beautiful Minds therapist. The report did not involve either appellants or Sandoval. The incident was investigated, and the allegations could not be substantiated. Nevertheless, Beautiful Minds informed respondent that it had immediately terminated the accused therapist. Respondent reassigned the involved child to a different behavioral therapy vendor, and referred the matter to law enforcement and the Department of Children and Family Services (DCFS). Respondent does not typically inform families of events such as this, particularly where there are no other complaints. Respondent was later informed that the accused therapist was not guilty of the alleged act.

Respondent received a second complaint in May 2010 regarding abuse by a Beautiful Minds therapist. The referral involved a therapist that had allegedly inappropriately restrained a child during a temper tantrum, in public and in the presence of the child's mother. The allegations of abuse could not be substantiated, but again Beautiful Minds immediately terminated the accused therapist.

The allegations regarding Sandoval

On September 20, 2011, respondent's coordinator for appellants, Kymberly Weidenkeller, was informed by appellants' older sister, Sara, that Jack reported that Sandoval had been touching him inappropriately for the past couple of years. Sara stated that Jack and Joseph's mother, Elizabeth, did not believe Jack's allegations. Weidenkeller advised Sara that the matter would be reported to authorities and Sandoval would not be permitted to work with Jack until the matter was investigated.

Weidenkeller immediately made contact with both respondent and Jack's psychiatrist. The same day, after hearing from Jack's psychiatrist that he believed Jack and the matter needed to be thoroughly investigated, Weidenkeller made a report to DCFS.

On September 21, 2011, respondent was advised that Jack and Joseph had relocated and were staying with Elizabeth's mother in Northern California. On the same date, both Beautiful Minds and Maxim were advised that Sandoval was not to provide any services to any of respondent's clients until further notice.

Following an investigation, Sandoval was arrested and criminally charged in connection with Jack's allegations. Sandoval was ultimately charged with molesting both Jack and Joseph, as well as Daniel. Sandoval pled guilty to two counts of violation of Penal Code section 288a and was sentenced to six years in prison.

PROCEDURAL HISTORY

Joseph, Jack, and Daniel sued Beautiful Minds, Sandoval, and respondent on October 3, 2013. The FAC was filed on December 13, 2013. Appellants alleged that they were molested by their tutor/ behaviorist, Sandoval, an employee of Beautiful Minds, at their school, residence and other locations. In their second cause of action for negligence against respondent, appellants alleged that respondent had a duty to adequately and properly investigate, hire, train, and supervise its tutors and behaviorists so as to protect appellants from harm. Appellants alleged that respondent failed to abide by this duty. Appellants further alleged that respondent should have known Sandoval was unfit to be a tutor/behaviorist; failed to exercise reasonable care in supervising Sandoval; and failed to implement policies aimed at preventing abuse.

On November 7, 2014, the trial court sustained respondent's demurrer to the first cause of action for sexual abuse of a minor and the second cause of action for negligence as to Daniel. The trial court overruled the demurrer as to the second cause of action for negligence as to appellants.

Respondent then moved for summary judgment on appellants' negligence claim. Respondent argued that appellants could not establish a necessary element of their negligence claim: the existence of a duty. Respondent cited law that a defendant generally does not have the duty to control the criminal conduct of another in the absence of a special relationship. Further, even where such a special relationship exists, the defendant must have actual knowledge of the dangerous propensity of the third person.

Appellants opposed the motion. They argued that respondent breached its duties by failing to take required action when it received information that Beautiful Minds failed to properly train and supervise its staff. Appellants further argued that respondent failed in its duty to ensure that Beautiful Minds was maintaining sufficient insurance coverage for sexual abuse and molestation liability.

On April 11, 2016, the trial court granted respondent's motion for summary judgment. The court held:

> "To find that [respondent] owed a duty to protect [appellants] from the criminal conduct of Sandoval, it is not sufficient that there exists a special relationship between [appellants] and [respondent]; rather, it must be shown that the defendant had actual knowledge of the propensity of Sandoval to engage in the conduct alleged. Absent such knowledge, no duty exists. [Citations.]"

The trial court further found: "At no time was Sandoval an agent or employee of [respondent]. At no time did [respondent] have any knowledge that Sandoval created any risk of harm to

[appellants]." In sum, "[respondent] had no duty of care to [appellants] to protect them [from] Sandoval's misconduct and may not be held liable for the injuries of which they complain."

Judgment was entered in favor of respondent on June 29, 2016.

Appellants appealed from the judgment on July 14, 2016.

DISCUSSION

I. Standard of review

An appellate court reviews a trial court's decision granting a motion for summary judgment de novo. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) We consider all the evidence set forth in the moving and opposing papers, except that to which objections have been made and sustained. (*Ibid.*) With respect to each cause of action, we determine "whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law. [Citations.]" (*Ibid.*)

II. Respondent's role and legal obligations

Respondent's role and legal obligations are governed by statute. Pursuant to section 4620, the State of California is authorized to contract with regional centers, such as respondent, "to provide fixed points of contact in the community for persons with developmental disabilities and their families." Regional centers are responsible for determining whether an individual has a developmental disability. (§§ 4642, 4643.) Once the determination is made, the regional center becomes part of a process to draw up an individual plan for the disabled person. (§§ 4512, subd. (j), 4646, subd. (c), (d).) Regional centers then secure the services and support for the disabled person by

purchasing those services from direct services providers known as "vendors." (§ 4648, subd. (a)(3).)

A regional center is required to approve vendors that possess adequate qualifications and meet the regulatory requirements. (Cal. Code Regs., tit. 17, §§ 54314, 54322, subd. (a).) As part of the vendor approval process, a review is conducted of the criminal records of the applicant; adults responsible for direct supervision of staff; staff members; employees, consultants, and volunteers who have frequent and routine contact with the consumer; the executive director of the entity applying for vendorization; and the officers of the governing body of the applicant. (§§ 54322, subd. (a) & (c), 56085 subd. (a) & (b).) A vendor is not required to disclose to a regional center the identity of each employee of the vendor. However, a vendor must identify any person with an ownership interest, agent, director, board member, officer, or managing employee who has, within the previous 10 years, been convicted of certain misdemeanors or felonies, including those related to neglect or abuse of an elder or dependent adult or child. (§ 54311, subd. (a)(1) & (a)(6).)

Beautiful Minds completed the vendorization process on July 29, 2003. Maxim completed the vendorization process on August 18, 2004.

A regional center is required to monitor the provision of care to its clients to ensure that such care is in accordance with the disabled person's individual plan. (§ 4648.) A regional center is responsible for ensuring that a vendor complies with the vendorization requirements, and shall terminate a vendor if any of the following conditions exist:

> "(1) The vendor is serving consumers without a current license, credential, registration, accreditation, certificate, degree or permit that is required for operation of the service;

"(2) Vendorization has been transferred to another person or entity;

"(3) The vendor has refused to make available any books or records pertaining to the vendored service . . . ;

"(4) The service currently provided is not the same service that was approved for vendorization;

"(5) The vendor is using planned behavior modification interventions that cause pain or trauma . . . .

"(6) The vendor is transporting consumers using a driver who does not possess a valid driver's license appropriate for the vehicle being driven.

"(7) The regional center has determined that continued utilization of the vendor threatens the health and safety of the consumer(s).

"(8) The vendor knowingly and willfully makes or causes to be made a false statement or representation, including omissions, of any vendor application information . . . .

"(9) The vendor or any person with an ownership or control interest in the vendor, or person who is a director, officer, or managing employee of a vendor, has been determined to be an excluded individual or entity as defined in Section 54302(b)(1)."

(Cal. Code Regs., tit. 17, § 54370, subd. (b).)

If a regional center determines that a vendor has not complied with applicable laws and regulations, it may terminate its contract with the provider. (§ 4648.1, subd. (d).) The

procedure for terminating a vendor is set forth in California Code of Regulations, title 17, section 54370, which provides: "[v]endorization shall be terminated at the end of the first working day after written notification is received from the vendoring regional center" if any of the conditions listed above exist. (§ 54370, subd. (b).) However, "[t]ermination pursuant to (b) above shall not occur if the vendor notifies the vendoring regional center, in writing, prior to expiration of the period specified in the notice, of the vendor's intent to take either of the following actions: [¶] (1) Correct the violation(s) and provided documentation of the correction . . . within 30 days . . . ; or [¶] (2) File an appeal within 30 days from receipt of the notice . . . ." (§ 54370, subd. (e)(1) & (2).)

Any action taken by the vendor pursuant to California Code of Regulations, title 17, section 54370, subdivisions (e) or (f) does not "preclude the vendoring regional center nor any user regional center from withdrawing purchase of service authorizations if necessary to protect the health, safety and welfare of the consumers." (§ 54370, subd. (g).) Regional centers may "place a moratorium on new referrals during the appeal process or until such violations have been corrected." (§ 54370, subd. (h).)

III. No duty to protect appellants from Sandoval's criminal behavior absent actual knowledge of his criminal propensity

Appellants' claim against respondent is for negligence in failing to adequately and properly investigate, hire, train, and supervise its tutors and behaviorists so as to protect appellants from harm. Sandoval was not an employee of respondent.

Thus, the question before us is whether regional centers such as respondent have a duty to protect consumers from sexual abuse by employees of their vendors. As set forth below, we

conclude that regional centers have no such duty in the absence of prior knowledge of the propensity of an individual to engage in such criminal behavior.

A. The existence of a duty is a question of law

The question of whether a duty exists is a question of law for the court. (*Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141, 150 (*Margaret W.*).) "The existence and scope of any duty, in turn, depends on the forseeability of the harm, which in that context, is also a legal issue for the court. [Citation]." (*Ibid.*)

B. Even where there is a special relationship, a duty exists only where the harm is reasonably foreseeable

"Generally, one has 'no duty to protect others from the conduct of third parties.' [Citation.]" (*Margaret W., supra*, 139 Cal.App.4th at p. 150.) This is true "'no matter how great the danger in which the other is placed, or how easily he or she could be rescued, unless there is some relationship between them that gives rise to a duty to act.' [Citation.]" (*Ibid.*)

Assuming the existence of a special relationship between respondent and appellants, "[t]he existence of a special relationship . . . is only the beginning of the analysis. [Citations.]" (*Margaret W., supra,* 139 Cal.App.4th at p. 152.) "Thus, even when a defendant has formed a special relationship with a plaintiff, courts uniformly hold that the defendant has no duty to protect the plaintiff from unforeseeable third party criminal conduct. [Citations.]" (*J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 396 (*J.L.*).)

This principle has been applied in the context of sexual assaults on minors. For example, in *Margaret W.*, the court considered the defendant's potential tort liability for the rape of a 15-year-old the defendant had invited to her home. The teenager became intoxicated, left the defendant's home, and was thereafter raped by several males. The Court of Appeal affirmed summary

judgment for the defendant, relying on the principle that "[i]n order for there to be a duty to prevent third party criminal conduct, that conduct must be foreseeable. [Citations.]" (*Margaret W., supra*, 139 Cal.App.4th at p. 152.) The *Margaret W.* court further reasoned that "no matter whether a heightened or lesser degree of foreseeability was required and no matter whether the actual crime was committed or only similar conduct needed to be foreseen -- foreseeability must be measured by what the defendant actually knew." (*Id.* at p. 156.) Because there was no evidence that the defendant knew the boys who raped the plaintiff, knew their propensity for sexual assault, or was aware of any fear of sexual assault on the part of the plaintiff, the plaintiff's sexual assault was not foreseeable. (*Id.* at p. 160.)

Similarly, in *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068 (*Romero*), the defendants hosted several teens in their home. When the defendants went out to get a pizza, a 16-year-old boy sexually assaulted the 13-year-old plaintiff. While the defendants had assumed a special relationship by inviting the minors into their home, the special relationship was not dispositive of the issue of duty. Rather, the court considered the issue of foreseeability: "where one invitee minor sexually assaults another in the defendant's home, the question of whether the defendant owed a duty of reasonable care to the injured minor depends on whether the assailant minor's conduct was *reasonably foreseeable*." (*Id.* at p. 1081.) Such conduct may be deemed reasonably foreseeable "only if the defendant had *actual knowledge* of the assaultive propensities of the teenage assailant." (*Ibid.*)

A public agency is not responsible for the sexual assault of a minor by its employee absent prior knowledge of the employee's propensity to commit such an assault. (*Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889 (*Z.V.*).) In *Z.V.,* a minor

was in the custody of the Riverside County Department of Social Services, having been removed from the custody of his parents. While in foster care, the minor was picked up by a social worker, who took the minor to his apartment and sexually assaulted him. (*Id.* at pp. 892-893.) The minor sued both the individual social worker and the County of Riverside. Summary judgment in favor of the County on the issue of negligent supervision was affirmed because there were "no facts that might have shown propensity or disposition on [the social worker's] part to sexually assault a foster child." (*Id.* at p. 903.) The *Z.V.* court reaffirmed that "[t]o establish negligent supervision, a plaintiff must show that a person in a supervisorial position over the actor had prior knowledge of the actor's propensity to do the bad act. [Citations.]" (*Id.* at p. 902.)

Organizations which provide referrals for services are also generally entitled to summary judgment on claims of liability for sexual assault in the absence of actual knowledge of an individual's propensity to commit sexual assault. (*J.L., supra*, 177 Cal.App.4th at p. 396.) In *J.L.*, a child who was sexually assaulted by his daycare provider's teenage grandson sued both the daycare provider and the child care referral service that had referred the child to the daycare. The Court of Appeal affirmed summary judgment in favor of the referral service because there was no evidence suggesting the teenage grandson had a history of sexual misconduct or that the referral service was aware of any such history. In sum, "[b]ecause there was no evidence showing [the referral service] had actual knowledge of [the teenager's] assaultive tendencies or that he posed any risk of harm, his conduct was not foreseeable and [the referral service] owed no duty to protect against the attack." (*Id.* at p. 398.)

C. Because respondent had no actual knowledge of Sandoval's propensity to criminal behavior, respondent cannot be held liable to appellants as a matter of law

The uncontested evidence shows that at no time did respondent have knowledge that Sandoval had a propensity to engage in abuse of others, or that appellants were at risk of harm from Sandoval. Because respondent had no knowledge of Sandoval's assaultive tendencies or that he posed any risk of harm to appellants or anyone else, Sandoval's conduct was unforeseeable. Under the circumstances, respondent had no duty to protect appellants from Sandoval's criminal acts. (*J.L., supra*, 177 Cal.App.4th at p. 398.)

IV. Appellants have failed to establish a relevant duty of care under any alternate theory of liability

Appellants attempt to avoid the law set forth above by claiming that the cases discussed apply only when the defendant otherwise owes no duty of care to the plaintiff. Appellants claim that their negligence claim arises out of a duty of care that exists separate from the general duty to aid. As set forth below, we find that appellants have not alleged or presented a triable issue regarding the breach of any such duty.

A. The premises liability cases cited by appellant are inapplicable

Appellants argue that they are not required to prove that respondent had actual knowledge of Sandoval's propensity to commit sexual assault. In support of this argument, appellants cite two cases involving premises liability: *Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017 (*Raven H.*), and *Janice H. v. 696 North Robertson, LLC* (2016) 1 Cal.App.5th 586 (*Janice H.*). Neither case provides support for imposition of a duty in this case.

Raven H., in which a tenant sued her landlord for negligence in the maintenance of residential property after she was attacked in her apartment, involved a summary judgment motion on the issue of causation, not duty. (*Raven H., supra*, 157 Cal.App.4th at p. 1021.) Thus, it is irrelevant.

Janice H. involved an action against a bar and dance club brought by a patron who was raped in a unisex bathroom stall. The sole cause of action decided by the jury was premises liability. (*Janice H., supra*, 1 Cal.App.5th 586, 592.) Following a verdict in favor of the plaintiff, the club appealed in part on the ground that it had no legal duty to use reasonable care to secure the restrooms for its patrons because the act was not foreseeable. (*Id.* at p. 593.) In affirming the jury verdict, the Court of Appeal used principles applicable to landowners: "[a] possessor of land 'owes a duty to an invitee to make the property reasonably safe for the intended use by the intended user.' [Citation.]" (*Id.* at p. 594.) The court also determined that the club had knowledge of problems with sexual activity in the unisex restrooms. The club "promoted a sexually charged atmosphere" and "knew that sexual activity in the restrooms and elsewhere in the club was an ongoing issue." (*Ibid.*) Further, there was testimony "that sexual activity in the club increased towards the end of the night and tended to occur in the ADA bathroom stalls, like the stall where Plaintiff was raped, because the full length doors shielded the occupants from view." (*Id.* at p. 595.) "Moreover, having elected to employ multiple security guards and station them in the restroom area, [the club] assumed a duty of reasonable care." (*Ibid.*) Under those circumstances, the Court of Appeal affirmed that the club owed a duty of reasonable care to its patrons to secure the restrooms. (*Id.* at p. 597.)

The matter before us does not involve premises liability. Nor is there evidence that respondent was aware of any

particular unsafe location, such as the bathroom stalls in *Janice H.* Thus, the case is unhelpful to appellants.

B. Appellants have not stated a claim for misfeasance

Appellants argue that this is not a case of nonfeasance, but a case of misfeasance, where respondent has created a foreseeable risk of harm. (*Romero, supra*, 89 Cal.App.4th at pp. 1078-1079.)

In *Romero*, the Supreme Court explained the difference between misfeasance and nonfeasance: "'[m]isfeasance is the improper performance of an act that is otherwise proper and nonfeasance is the nonperformance of an act that should be performed.' [Citation.]" (*Romero, supra*, 89 Cal.App.4th at p. 1079.) The *Romero* court concluded that the defendants were entitled to summary judgment under both a nonfeasance and a misfeasance theory.

As to the nonfeasance theory, the *Romero* court found that the defendants had no duty to prevent the sexual assault that took place in their home. (*Romero, supra*, 89 Cal.App.4th at p. 1081.) The conduct could only be deemed to be reasonably foreseeable if the defendants had actual knowledge of the assaultive propensities of the teenage assailant, and because they had no such knowledge, the defendants could not be held liable. (*Id.* at pp. 1081-1084.)

The court explained that misfeasance exists when the defendant "'is responsible for making the plaintiff's position worse, i.e., defendant has created a risk.' [Citation.]" (*Romero, supra*, 89 Cal.App.4th at p. 1091.) In *Romero*, the plaintiff's allegations of misfeasance related to premises liability: "[s]pecifically, she alleged . . . that on the date in question, the Romeros invited her into their home after they 'represented to plaintiffs that their home was safe . . . .'" (*Id.* at pp. 1090-1091.)

She also alleged that the defendants knew at the time that the older teenage male in the home was "'engaging in abnormal sexual behavior with minors.'" (*Id.* at p. 1091.) According to the Supreme Court, "These allegations indicate[d] that [the plaintiff] was claiming [the defendants] did not merely fail to prevent [the teenage boy] from harming her, but that by their own acts they increased the risk that such harm would occur." (*Ibid.*)

Appellants' complaint contains no similar allegations. There are no allegations that the safety of any particular location was at issue. Further, there are no allegations that respondent had any knowledge of Sandoval's propensity to engage in sexual behavior with minors. Appellants' FAC is devoid of any specific allegations as to how respondent's actions in this matter increased the risk of Sandoval's criminal acts. Instead, the record shows that Beautiful Minds met the vendorization requirements, and when complaints were raised, they were handled promptly and according to law.[3]

---

[3] Even if appellants had adequately set forth a claim for misfeasance -- which they have not -- such a claim would not survive under *Romero.* In considering the plaintiff's claim for misfeasance, the *Romero* court considered the "multifactor weighing process for determining whether in a particular case a defendant owed a tort duty to a given plaintiff. [Citation.]" (*Romero, supra*, 89 Cal.App.4th at p. 1091.) The non-exclusive factors generally include: "(1) foreseeability of harm to the plaintiff; (2) the degree of certainty that the plaintiff suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; (7) the consequences to the community of imposing a duty to exercise care with resulting potential liability for breach of that duty; and (8) the availability, cost, and prevalence of insurance for the risk involved. [Citations.]" (*Id.* at p. 1091, fn. omitted.) Appellants

C. Appellants have not stated a claim for breach of any statutory duty of care

A duty of care may arise by statute. (*J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799, 803.) Appellants argue that the duty of care supporting their negligence claim in this case arises by statute. Appellants generally point to the legal duties set forth in the Lanterman Developmental Disabilities Services Act (§§ 4500 et seq.) and in title 17, division 2 of the California Code of Regulations. Appellants argue that the court disregarded these legal duties when ruling that appellants' negligence claim could not survive. However, appellants do not articulate which specific statute gives rise to a duty to protect a client from a third party criminal assault of which it had no prior warning. Appellants cite no law suggesting that any statutory or regulatory duty has been held to support a regional center's liability where a minor is sexually molested by the employee of a vendor.

Appellants suggest that liability for Sandoval's sexual misconduct should arise because respondent had previously received information regarding inadequate training and qualifications of Beautiful Minds employees as well as a prior incident of reported sexual abuse at Beautiful Minds by a different employee. However, nothing in the record suggests that respondent breached any statutory duties in its handling of these issues. Respondent's act of placing Beautiful Minds on "do not refer" status was authorized under title 17 of California Code of

---

have made no effort to establish a duty under the factors set forth in *Romero*. However, we note that there is no evidence that the act was foreseeable, that there was a close connection between respondent's actions and the injury suffered, or that there was moral blame attached to respondent's conduct in this matter.

Regulations section 54370, subdivision (h), and there was no evidence that the health, safety, or welfare of respondent's clients was threatened at that time. Appellants emphasize respondent's failure to inform its clients' families about the complaints, but fail to cite a statute or regulation requiring such disclosure. Appellants' suggestions that there was a breach of a statutory duty regarding the vendorization requirements are inadequate to establish a duty to protect appellants from the sexual assault of a vendor's employee in the absence of prior knowledge of the assaultive propensity of that employee.

Appellants refer to *J.L, supra*, 177 Cal.App.4th 388 for support, arguing that the *J.L.* court recognized that if the defendant child care referral service owed the plaintiff a non-delegable duty under the Education Code, the service could still be liable to the plaintiff for breaching those statutory duties in the event of a sexual assault. However, in *J.L.*, the court analyzed the relevant provisions of the Education Code and concluded that no such duty existed. Appellants provide no argument as to how respondent's statutory obligations differ. Because appellants have not supported their position with reasoned arguments or specific citations to statutory obligations supporting their claim, they have forfeited this point. (*Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1539.)[4]

---

[4] Further, respondent points out that appellants' pleadings framed the issue as a breach of duty to properly hire, train, and supervise Sandoval. Respondent's summary judgment motion sought to negate liability as alleged in the complaint. Appellants' present theory, based on the allegation that respondent negligently performed statutory or regulatory duties, was not pled in the complaint and should not provide a basis for reversal of the summary judgment motion.

Appellants have failed to establish that the trial court erred in determining, as a matter of law, that respondent had no duty to protect appellants from Sandoval's sexual assault.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT