IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

AISHA BILAL, Plaintiff, v. MOUNT SINAI HOSPITAL MEDICAL CENTER OF CHICAGO; and KARRIE ANNE RUNTZ, Defendants.	)	No. 2016 L 7503

MEMORANDUM ORDER AND OPINION

This matter comes for ruling on Defendants Mount Sinai Hospital Medical Center of Chicago and Karrie Anne Runtz's separate motions to dismiss Plaintiff's Amended Complaint pursuant to 735 ILCS 5/2-615.

BACKGROUND

This case arises from a series of tweets posted by Mount Sinai nurse Karrie Anne Runtz, regarding the treatment of a gunshot victim brought into the hospital's emergency room on April 8, 2015. Mikal Johnson arrived at Defendant Mount Sinai Hospital around 3:00 a.m. with a gunshot wound in his chest. Defendant Runtz was an emergency room nurse employed by Mount Sinai, and was working in the trauma center when Johnson was brought in. Johnson underwent treatment at Mount Sinai before dying the same day.

Plaintiff Aisha Bilal was Johnson's mother. Her complaint alleges that on April 8, 2015, either during or shortly after Johnson's treatment, Runtz tweeted

details, commentary, and photos regarding what she witnessed while Johnson was in the emergency room. While the record does not show or quote verbatim any of the tweets at issue, Plaintiff pleads that Runtz—under the name @traumanatrix—regularly tweeted about patients and patient care while on call at Mount Sinai. She had approximately 1,300 followers as of April 8, 2015, the date of the incident. On that day, she allegedly tweeted the following in reference to Johnson:

- Referring to Johnson as "DOA"
- Accusing Johnson's family of attacking Mount Sinai staff
- Writing, "if anyone could come kidnap me from the #westsideshitshow right now for cocktails that would be fantastic #saveme"
- Posting a photo of one of the trauma center's treatment rooms, covered in what Plaintiff alleges is a pool of Johnson's blood and blood-soaked bandages, with the hashtags #westsideshitshow and #traumaproblems.

Plaintiff additionally claims that Runtz tweeted information gained through the nurse-patient relationship, in violation of the social media guidelines propounded by the American Nurses Association and the National Council of State Boards of Nursing.

It is undisputed that Runtz's tweets did not contain Johnson's name or photos of any part of his person. They also did not mention Plaintiff, and were not sent to her specifically. Plaintiff did not follow Runtz on Twitter. However, the tweets were publicly visible and accessible to anyone. Plaintiff claims that she

came across the tweets by searching online for information about her son's condition. She does not claim to have seen or known about Runtz making these tweets until after they were posted.

Plaintiff filed her initial complaint on July 28, 2016, alleging one count of reckless infliction of emotional distress against Runtz and Mount Sinai, and one count of institutional negligence against Mount Sinai. Defendants moved to dismiss the complaint pursuant to 735 ILCS 5/2-615, and in lieu of a response, Plaintiff filed an amended complaint. The amended complaint added allegations that Plaintiff was in Mount Sinai's trauma department while Runtz was tweeting about her son. It also adds Count III, against Mount Sinai, titled "Recklessness," which restates Count II for institutional negligence, but alleges that Mount Sinai acted with a conscious disregard for the likelihood of emotional harm to Plaintiff. The only injury Plaintiff claims in her complaint is severe emotional distress. Defendant Mount Sinai now moves to dismiss all counts under Section 2-615, and Defendant Runtz similarly moves to dismiss Count I, the only count against this defendant.

REVIEW UNDER 735 ILCS 5/2-615

A Section 2-615 motion attacks the legal sufficiency of a complaint and questions whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (Ill. 2003). The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. *Id.* Illinois is a fact-pleading jurisdiction, and a plaintiff must allege

facts sufficient to bring his or her claim within the scope of the cause of action asserted. *Id.*

To resolve a motion on the pleadings, this court must consider as admitted all well-pleaded facts set forth in the pleadings of the nonmoving party, and the fair inferences drawn therefrom. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). A Section 2-615 motion to dismiss should be granted where the plaintiff can prove no set of facts that would entitle her to recover. *Heastie v. Roberts*, 226 Ill.2d 515, 531 (2007); *Bowers v. State Farm Mut. Auto. Ins. Co.*, 403 Ill.App.3d 173, 176 (1st Dist. 2010).

COURT'S ANALYSIS

A. Count I – Reckless Infliction of Emotional Distress

Plaintiff's first count alleges reckless infliction of emotional distress against both Defendants. In order to state a claim for reckless infliction of emotional distress, the plaintiff must plead facts showing that: (1) the defendant's conduct was extreme and outrageous; (2) the defendant knew that there was a high likelihood that her conduct would cause severe emotional distress; and (3) that the conduct did in fact cause severe emotional distress. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 20 (1992). Defendants do not presently challenge Plaintiff's contention that Runtz's conduct of tweeting insensitive comments and gory photos relating to patient care was extreme and outrageous. For the purposes of this motion, this court accepts that Plaintiff has properly pled facts indicating that Runtz's conduct went "beyond all possible bounds of decency," so as to be "regarded as intolerable in

a civilized community." *Id* at 21. Defendants also do not argue that Plaintiff has failed to plead that she suffered emotional distress. The only remaining element is whether Plaintiff sufficiently pled that Defendants knew of a high probability that the conduct would cause severe emotional distress.

Defendants take the position that Plaintiff cannot plead this second element of her cause of action because Runtz's conduct was not directed at Plaintiff, and Plaintiff was not in Runtz's presence while the latter was tweeting. Illinois has adopted Restatement (Second) of Torts § 46(2), which reads:

> Where [outrageous] conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress
> (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
> (b) to any other person who is present at the time, if such distress results in bodily harm. Restatement (Second) of Torts § 46(2).

See Green v. Chicago Tribune Co., 286 Ill. App. 3d 1, 13-14 (1st Dist. 1996). Relying on *Green* and Restatement § 46(2), Defendants argue that Plaintiff cannot recover under a theory of intentional or reckless infliction of emotional distress because the only circumstance under which Illinois law allows a plaintiff to recover for emotional damages from conduct not directed at her requires her to have been present at the time of the conduct.

In *Green*, the mother of a gunshot victim sued the Chicago Tribune for, among other claims, intentional infliction of emotional distress for: (1) photographing her son without her consent as he lay dying; (2) publishing a story on Chicago's homicide rates that included photos of him and statements the plaintiff made to her son at the hospital; and (3) barring the plaintiff from entering her son's

hospital room while reporters photographed him. *Green*, 286 Ill. App. 3d at 3-4. The court first held that a jury could find that the Tribune's actions were extreme and outrageous, and that it knew a high probability existed that its actions would cause the plaintiff to suffer severe emotional distress. *Id* at 12. However, the court distinguished between those actions which were directed at the plaintiff, and those which were directed at third parties. It held that the plaintiff properly stated a cause of action for intentional infliction of emotional distress relating to the Tribune reporters' barring her from seeing her dead son while they photographed him, and to publishing an article featuring a photo of his dead body and comments the plaintiff made to him after telling the Tribune that she did not wish to make a public statement. *Id* at 13.

The plaintiff's remaining allegations stemmed from an earlier instance of Tribune reporters photographing her son while he was being treated, and publishing another article featuring one of these photos, but without any mention of the plaintiff. *Id* at 13-14. The circumstances under which Tribune staff photographed the plaintiff's son in this instance did not involve reporters barring her from his room. The plaintiff did not allege that she was present while these acts occurred. The second article, unlike the first, did not make any reference to the plaintiff, and was therefore found not to be directed at her. The court addressed both of these factual allegations pursuant to Restatement (Second) of Torts § 46(2), under which a plaintiff can being a cause of action for intentional infliction of emotional distress based on conduct directed at a third person. *Id.* The court went

on to state that the Tribune article which did not mention the plaintiff did not fall under parts (a) or (b) of the Restatement section, as the plaintiff was not present at the time. *Id* at 14. The same went for the Tribune's photographing the plaintiff's son while he underwent treatment, unbeknownst to her. *Id.*

Here, Plaintiff appears to agree with Defendants that Illinois' adoption of Section 46(2) requires her to plead that the conduct was either directed at her, or, if the conduct was not directed at her, she was present at the time. In response to Defendants' first motion to dismiss, raising the same points, she amended her complaint to add that she had been present in the hospital's trauma department while Runtz was tweeting. However, Plaintiff misses the purpose of the presence requirement. If a defendant engages in extreme and outrageous conduct, knowing that the plaintiff is present in order to be affected by it, then she can be reasonably be found to have known of the high likelihood that her acts would cause severe emotional distress. The party who suffers that emotional distress is foreseeably in the line of fire of that extreme and outrageous conduct. Here, Plaintiff may have physically been in the same department as Runtz, but she was not aware of the conduct Runtz was engaging in at the time. She did not suffer the effects of that conduct until later, when she was searching online for information about her son. By that point, the tweets had already been published.

Regarding the conduct in *Green* that took place at the hospital, the court found that one set of actions could provide a basis for the plaintiff's claims, and one could not. The plaintiff was present for the defendants barring her from entering

her son's room so that they could photograph him, and the court determined that she properly pled her cause of action as to this allegation. She was *not* present for the earlier photos, which the defendants took during her son's treatment. Taking those photos was not conduct directed at the plaintiff either, and therefore was not actionable under a theory of intentional infliction of emotional distress. Regarding the two publications, the court turned to Section 46(2) of the Restatement, as the plaintiff was not present for the conduct alleged. The court noted that the article that quoted the plaintiff despite her voiced intent to keep her statements private was directed at her. She was quoted in the article, and the statements were published over her objections to making a public comment. The other article, which used only a photo of her son in the hospital, did not mention her or use her words in a manner she objected to, precluding the plaintiff's recovery. *Id* at 14-15.

Of the four types of conduct the court considered in *Green*, the conduct in the present case most closely aligns with the article that did not mention the plaintiff. Plaintiff here does not claim to have had any interaction with Runtz at the hospital that forms the basis of her claims. She was not barred from seeing her son so that Runtz could take the pictures she posted. She was not aware of Runtz's actions at all until well after they occurred, a fact which she does not dispute. Just as the second article in *Green*, Runtz's tweets do not mention or reference Plaintiff, and thus they are directed at a third party. This court need not decide if Runtz's intended audience is properly defined as her Twitter followers or the public at large, but Plaintiff could just as easily access Runtz's Twitter as the *Green* plaintiff could

access the Chicago Tribune. The *Green* case demonstrates that simply being a member of the general public does not make one a direct target of any broadly-accessible published statements. If that were the case, Restatement (Second) of Torts § 46(2)(b) would open up the category of potential plaintiffs to an unreasonable extent. The Restatement could not have intended for anyone who reads or hears something unpleasant in the media to potentially have a claim for intentional infliction of emotional distress. This applies to Plaintiff's argument that, because Runtz knew she was tweeting about Johnson, she could reasonably foresee that his family might suffer emotional distress upon seeing her comments and photos. While that statement may be true, the relevant question as to foreseeability would be whether Runtz could foresee that Plaintiff would ever see the tweets, in order to suffer emotional distress as a result. Runtz's conduct would foreseeably cause harm to Plaintiff if it were directed at her, or, as the Restatement provides, if she was present during it. There are no facts pled that could show that Plaintiff fell into either category.

Moving from the issue of who the conduct was directed at to the question of presence, this court does not find support in either *Green* or the plain language of the Restatement for Plaintiff's reading of "present at the time." Firstly, the time of the conduct could not stretch so far as to include any moment in which a party reads or hears an extreme and outrageous statement. If the conduct is the statement, the time in which it occurs is the time at which that individual speaks or publishes the offending words. The *Green* court did not allow the plaintiff's claim

based on an article published in the Tribune to go forward because she was present at the time that she read the article—the particular conduct at issue was directed at her because she was mentioned in the article, and because the specific conduct under those facts also occurred at the hospital, where reporters listened to her private statements that they later quoted in the article. The plaintiff was present for the Tribune staff's conduct of listening to and noting her statements for future publication, despite her refusal to give a public statement. Conversely, the article that did not make reference to her did *not* involve conduct directed at the plaintiff, and the plaintiff could not argue that she was present at the time in order to maintain her claim on the basis of this second news story. While it is true that Plaintiff here alleges she was somewhere nearby while Runtz was tweeting, and the *Green* plaintiff did not allege that the offending story was written or published in her vicinity, the distinction is irrelevant. Plaintiff cannot allege that Runtz's conduct caused her emotional distress as it was occurring in the presence of Plaintiff. She does not claim to have been aware of Runtz photographing her son and tweeting about him while Plaintiff was at the hospital. The Restatement does not require presence merely for its own sake, but to establish that the defendant acted intentionally or recklessly because she was aware of the plaintiff's presence even though her conduct was directed elsewhere. Therefore, Plaintiff cannot show that she was either the direct target of the conduct, or that she was present at the time it was occurring.

The other significant case Defendants compare is *Kolegas*, in which a family who suffered from the disfiguring disease neurofibromatosis, commonly known as Elephant Man disease, sued a radio station and two announcers who mocked the plaintiffs and their condition on air. 154 Ill. 2d at 6-7. Plaintiff Anthony Kolegas had paid for an advertisement to run on the defendant radio station to promote a cartoon festival he was producing, and the ad mentioned that part of the festival's proceeds would go to the National Neurofibromatosis Foundation. *Id* at 6. After the ad aired, Kolegas called in to the radio station to discuss the festival and the charity it promoted, and mentioned that he and his wife and son suffered from this disease. *Id* at 6-7. After Kolegas hung up, the defendant radio hosts claimed his festival was a scam, and made several derisive comments about his appearance, his marriage, and his family. *Id* at 7.

On the plaintiffs' count of reckless infliction of emotional distress, the court held that a jury could reasonably find that the defendants knew of the high probability that their conduct would cause severe emotional distress, because they knew that the plaintiffs had neurofibromatosis, but nevertheless made the offending statements regarding the disease's effects on their physical appearances. *Id* at 24. The court did not discuss the presence requirement in Section 46(2) of the Restatement, as the actions here were clearly directed at the plaintiffs. The question that would be relevant to the present case—whether the presence requirement is necessary for extreme and outrageous acts that involve publishing statements to be heard or read by the general public—is not answered here,

presumably because the plaintiffs were the direct subjects of the defendants' conversation.

While this court understands that Defendants here may have intended to draw a comparison between remarks made on the radio to Runtz's tweets, the key distinction is that the content of the tweets cannot be connected to Plaintiff in any way. This court does not know whether the First District implies in its reasoning in *Kolegas* that someone who hears a comment on the radio, broadcast live to an audience of the general public, is "present" for the making of those comments. Certainly, the question of what constitutes "presence" in a digital medium is an interesting one for courts to develop, but for this court to extend *Kolgeas* in a way that would allow Plaintiff to go forward with her claim would be to engage in heavy speculation and creative improvisation. Again, Plaintiff recognizes that she was not "present" in the current conception of the term when she read Runtz's tweets. However, as previously discussed, she also cannot plead that her physical presence in the same department where Runtz was composing and posting her tweets would give rise to severe emotional distress, or that the fact that she was in the trauma department at the time would have impacted Runtz's awareness that her conduct would cause severe emotional distress.

Lastly, Comment (l) to Section 46 of the Restatement provides some valuable insight on the present issue. It states that the cases in which outrageous conduct was directed at a third person, the plaintiffs have been limited to those who were present at the time, "as distinguished from those who discover later what has

occurred." Restatement (Second) of Torts § 46, Comment (l). It goes on to state that because any number of people could be emotionally harmed by something said on the news, and because one's emotional distress may last for years after the outrageous conduct has occurred, this limitation provides the practical necessity of drawing a line somewhere. Id. However, it provides a caveat that leaves open the "possibility of situations in which presence at the time may not be required." Id. This court would posit that perhaps the growth of social media and new tools of mass communication might provide such an opportunity to expand the scope of actionable conduct to allow plaintiffs like Bilal to seek relief, but this court is not empowered to do so here.

Therefore, Count I fails to state a cause of action for reckless infliction of emotional distress.

B. Count II – Institutional Negligence

Plaintiff next alleges a count of institutional negligence against Mount Sinai for failing to discover and prevent Runtz's inappropriate use of social media to comment on patient care, and failure to properly train staff and enforce policies regarding social media use. Mount Sinai argues that because Plaintiff's damages are limited solely to emotional harm, the claim for institutional negligence must be viewed as a freestanding claim for negligent infliction of emotional distress, for which she must meet the zone-of-danger and physical injury requirements. Next, assuming that Plaintiff did manage to plead these elements, Defendant contends

that she still cannot plead her negligence claim because the hospital did not owe a duty of care to Plaintiff as a non-patient.

In support of its first contention, Mount Sinai relies on the decision of our supreme court in *Corgan v. Muehling*, in which the Court considered the plaintiff's counts titled "psychological malpractice" and "willful and wanton misconduct" as counts of negligent infliction of emotional distress. 143 Ill. 2d 296 (1991). The plaintiff in this case alleged that she was sexually abused by the defendant psychologist under the guise of therapy. *Id* at 299-300. Her damages were "fear, shame, humiliation, and guilt," as well as needing to undergo further psychological counseling. *Id* at 300. The appellate court had determined that both of the counts at issue sounded in negligence (as willful and wanton misconduct was simply an aggravated form of negligence) and held that since the plaintiff was a direct victim of the conduct at issue, she did not need to meet the zone-of-danger rule for liability to bystanders established in *Rickey v. Chicago Transit Authority*. *Id* at 302; 98 Ill. 2d 546, 555 (1983).[1] Defendant also points to the requirement that a plaintiff pleading negligent infliction of emotional distress must "include an allegation of a contemporaneous physical injury or impact" in addition to the elements of negligence. *Schweihs v. Chase Home Fin., LLC*, 2016 IL 120041, *P44.

[1] "[A] bystander who is in a zone of physical danger and who, because of the defendant's negligence, has reasonable fear for his own safety is given a right of action for physical injury or illness resulting from emotional distress. This rule does not require that the by-stander suffer a physical impact or injury at the time of the negligent act, but it does require that he must have been in such proximity to the accident in which the direct victim was physically injured that there was a high risk to him of physical impact."

However, our supreme court has also held that where the plaintiff alleges a separate tort committed against that plaintiff, as opposed to a freestanding emotional distress claim, she can assert emotional distress as an element of damages without having to show a physical manifestation of an injury or that she was in the zone of danger. *Clark v. Children's Memorial Hosp.*, 2011 IL 108656, *P105-07. In *Clark*, the plaintiffs pled a wrongful birth cause of action against a hospital that they alleged failed to inform them of their risk of conceiving a child that had the same genetic disorder as their first son. *Id* at *P5. They also included a count of negligent infliction of emotional distress. *Id* at *P17. The Court held that the plaintiffs properly "stated a claim for emotional distress as the direct victims of the tort of wrongful birth." *Id* at *P101. It also noted that recovery for emotional damages is available for other personal torts as well, including defamation, conversion, and misappropriation of identity. *Id* at *P111 (citing *Slovinski v. Elliot*, 237 Ill. 2d 51 (2010); *Cruthis v. Firstar Bank, N.A.*, 354 Ill. App. 3d 1122 (5th Dist. 2004); *Petty v. Chrysler Corp.*, 343 Ill. App. 3d 815 (1st Dist. 2003)).

Despite the *Clark* holding, Defendant is correct that the Court in *Schweihs* dismissed the plaintiffs' claim for negligent infliction of emotional distress because they were required to plead an allegation of contemporaneous physical injury or impact, even as direct victims of the tort. 2016 IL 120041, *P38. *Schweihs* does not address *Clark*, and does not involve the issue in the present case, in which the plaintiff does not plead that she was the victim of negligent infliction of emotional

distress, but a separate tort for which she suffered emotional injury. The concurrence in *Schweihs* does discuss *Clark*, and notes that while the impact rule continues to apply to claims of negligent infliction of emotional distress, *Clark* made a "clear distinction between a claim of NIED and a claim of liability for negligence or other personal tort in which the act or omission of the defendant caused emotional distress for which damages may be recovered." 2016 IL 120041, *P67 (Garman, J., specially concurring). The Court overruled its prior decision in *Siemieniec v. Lutheran Gen. Hosp.*[2] in holding that the zone-of-danger rule only applied where the plaintiff pursued a claim under a negligent infliction of emotional distress theory of liability, not where "a tort has already been committed against the plaintiffs and they assert emotional distress as an element of damages for that tort." *Id* at *P78 (quoting *Clark*, 2011 IL 108656 at *P113.)

Here, Plaintiff alleges that she was the direct victim of Defendant Mount Sinai's negligent failure to have in place and/or enforce policies regarding social media use and the sharing of patient information by its employees. She has pled a separate wrongful act or omission committed against her, and not a freestanding emotional distress claim. *See Clark*, 2011 IL 108656 at *P P105-07. It is not necessary for Plaintiff to plead facts satisfying the zone-of-danger test or impact rule. However, she must still meet the pleading requirements of negligence, and state sufficient facts alleging duty, breach, causation, and damages. *Schweihs*, 2016 IL 120041 at *P31. Defendant argues that, even if Plaintiff's Count II need not set

[2] 117 Ill. 2d 230 (1987).

forth the specific requirements of a negligent infliction of emotional distress theory of liability, she cannot plead that Mount Sinai owed her a duty of care.

Defendant acknowledges that a hospital owes a duty to a patient to properly train its staff, enforce its policies, and otherwise provide adequate patient care. *See Johnson v. St. Bernard Hosp.*, 79, Ill. App. 3d 709. 718 (1st Dist. 1979). However, it contends that this duty only extends to patients—it may have owed the duty Plaintiff alleges to her son, but not to her. *See Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 528 (1987); *O'Hara v. Holy Cross Hosp.*, 137 Ill. 2d 332, 340 (1990). The *Kirk* and *O'Hara* decisions recognized that the earlier *Renslow* case had established a narrow exception in which a hospital's duty of care to a patient may transfer to a non-patient third party due to that party's special relationship with the patient. *Id*; *Renslow v. Mennonite Hospital,* 67 Ill. 2d 348 (1977). In *Renslow*, the relationship was between the patient and her then-unborn child (the eventual plaintiff in that case), who was injured by the hospital's negligent acts committed against her mother. 67 Ill. 2d at 357. However, our supreme court has declined to extend the limited exception from the intimate, unique relationship between a mother and a fetus to the relationship between a parent plaintiff and an adult child patient. *See Doe v. McKay*, 183 Ill. 2d 272, 280-81 (1998). The Court in *Doe* noted that the interests of a mother and her unborn child are so closely tied that negligent treatment to the mother was directly traceable to the child's injury. *Id* at 281. That was not the case in *Doe*, where a father sued his daughter's therapist for allegedly convincing her that she had

repressed memories of her father sexually abusing her, and it is similarly not the case here. *Id* at 274-75.

Likewise, in *O'Hara*, the Court held that the hospital did not owe the plaintiff a duty based on any special relationship between herself and her son, the patient. 137 Ill. 2d at 339. There, the plaintiff alleged that she was injured when she fainted in the hospital's emergency room after being allowed to assist in her son's treatment. *Id* at 335. The Court held that while the hospital did not owe her a duty as a bystander during a patient's treatment, it may have owed her a duty of care if she was invited to participate in the treatment, because of the increased likelihood that someone could faint from active participation in a procedure rather than passive observance. *Id* at 342. Furthermore, the burden of preventing this injury would be minimal—the hospital could more easily prevent third parties from assisting in procedures than it could prevent any third parties from witnessing procedures. *Id.*

Here, Mount Sinai may well have acted negligently in failing to prevent Nurse Runtz from using her position to tweet about patients in violation of the hospital's policies and American Nurses Association guidelines—however, in doing so, it would have breached a duty of care owed to Johnson, not to Plaintiff. Mount Sinai did nothing to place Plaintiff in a position to be harmed by its allegedly negligent conduct. Her injuries did not "naturally flow as a reasonably foreseeable consequence" of Mount Sinai's failure to have or enforce policies on social media use or sharing patient information, or failure to supervise or train Runtz. *See id* at 342.

Plaintiff stresses that Mount Sinai knew of Runtz's actions, and therefore the injury that befell Plaintiff was highly foreseeable. Accepting Plaintiff's allegations of Mount Sinai's knowledge as true, the foreseeable harm would be to the direct victim of Runtz's actions—Johnson, the patient. In accordance with Illinois Supreme Court precedent, Plaintiff cannot plead a negligence claim against Mount Sinai under the present facts. Mount Sinai's conduct could not have given rise to a duty to Plaintiff, a non-patient who was at best a bystander to the alleged negligent acts.

C. Count III – Recklessness

The final count is brought against Mount Sinai and is titled "Recklessness." Plaintiff restates Count II, but here alleges that Mount Sinai acted with a conscious disregard for the likelihood of injury to Plaintiff. Plaintiff again only alleges emotional damages. Defendant rightly notes that recklessness is not a separate tort recognized under Illinois law. *See Ziarko v. Soo Line R.R.*, 161 Ill. 2d 267, 274 (1994) (stating that there is no independent tort of willful and wanton misconduct). As with Count II, Defendant argues that Plaintiff's claim for purely emotional damage requires treating this count as pleading a reckless infliction of emotional distress cause of action. Plaintiff responds that this Count is actually an attempt to plead willful and wanton misconduct on the part of Mount Sinai for recklessly failing to stop Runtz's conduct, of which Mount Sinai had knowledge. In light of this court's discussion of what exactly Plaintiff needed to plead under Count II for institutional negligence, it will treat Count III as an allegation of willful and

wanton misconduct against Mount Sinai for recklessly failing to prevent or stop Runtz's actions.

Willful and wanton misconduct is a heightened standard of negligence and may be pled as a separate cause of action. *See O'Brien v. Township High School Dist.*, 83 Ill. 2d 462, 468-69 (1980). To plead willful and wanton misconduct, the plaintiff need not allege that the defendant acted intentionally, and may instead plead that there occurred "'a failure, after knowledge of impending danger, to exercise ordinary care to prevent' the danger, or a 'failure to discover the danger through carelessness when it could have been discovered by the exercise of ordinary care.'" *Id* (quoting *Schneiderman v. Interstate Transit Lines, Inc.*, 394 Ill. 569, 583 (1946)). Taking Plaintiff's well-pled facts as true, she does plead that Mount Sinai knew of Runtz's habit of tweeting about her patients. She pleads that Mount Sinai demonstrated a failure to exercise of ordinary care to prevent Runtz's actions by failing to have in place or enforce policies about social media use or sharing patient information, and failed to properly train or supervise Runtz. However, as willful and wanton misconduct arises out of a heightened standard of regular negligence, Plaintiff must still plead the elements of negligence. For the same reasons as those discussed in Count II, this court finds that Plaintiff has failed to plead facts establishing that Defendant owed her a duty of care. Therefore, this count similarly fails to state a cause of action and must be dismissed.

CONCLUSION

This case presents a unique set of facts, and this decision is limited to that particular factual scenario. This court does not dispute the emotional pain that Plaintiff claims to have undergone upon seeing the circumstances of her son's tragic death presented to the public as gory spectacle. The idea that extreme and outrageous conduct giving rise to a claim of emotional distress can be conveyed through mass media, such as newspapers or radio broadcasts, has been clearly established by our courts. However, the fulcrum of Plaintiff's entire complaint is Runtz's act of tweeting highly offensive commentary and photos allegedly referencing Mikal Johnson, and Plaintiff's relationship to this conduct as pled places her outside the boundaries of the reckless infliction of emotional distress cause of action which she claims. She cannot show that Runtz's tweets were directed at her—they do not include her name or her son's name, and even if this court were to take the position that Runtz directed her tweets at each of her followers, Plaintiff was not among them. She also cannot establish her presence at the time of the conduct under the current understanding and application of Section 46(2) of the Restatement. She was not harmed by being in the same trauma department as Runtz while the latter was tweeting. The argument she puts forth for having pled the presence element is not what the Restatement provides for as a way to plead intentional infliction of emotional distress as a foreseeable third party victim of the conduct at issue. Comment (l) to the Restatement section provides some narrow hope for a future interpretation of Section 46(2) that does not require

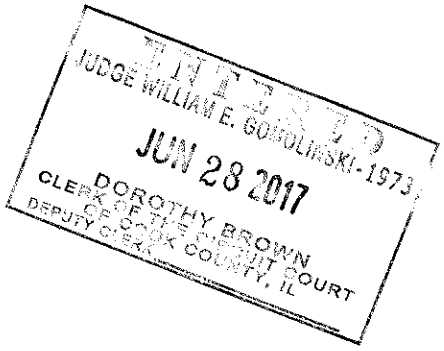
the presence-in-time element for a third-party victim of this tort. However, this court is bound by the law as it currently stands, and therefore must dismiss Plaintiff's claim of reckless infliction of emotional distress.

Regarding Plaintiff's counts of negligence and willful and wanton misconduct against Mount Sinai, this court similarly does not dispute Plaintiff's allegations that the hospital should have had in place or enforced existing policies that would have prevented one of its nurses from being able to tweet about patient information as Runtz did. However, the nature of Mount Sinai's acts or omissions does not give rise to a duty owed to Plaintiff as a non-patient. Furthermore, Mount Sinai did nothing to create any such duty based on its actions towards her. Therefore, Counts II and III must be dismissed as well.

Dismissal under Section 2-615 is a drastic remedy, which the Illinois Supreme Court states should not be done unless it is clear that there exists no set of facts upon which relief can be granted. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 488 (1994). Based on the facts in this case, when viewed in the light most favorable to Plaintiff, it is clear that Plaintiff cannot plead a proper cause of action for reckless or negligent infliction of emotional distress under the present facts. Therefore, this court must dismiss the complaint.

COURT'S RULING

Therefore, based upon the pleadings, briefs, arguments, and case law cited above, Defendants Mount Sinai Hospital Medical Center of Chicago and Karrie Anne Runtz's motions to dismiss Plaintiff's Amended Complaint pursuant to 735 ILCS 5/2-615 are GRANTED.



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Judge William E. Gomolinski #1973