

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

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ALISON MURRELL,

Plaintiff,

v.

MOUNT ST. CLARE COLLEGE, CLINTON,  
IOWA

Defendants.

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3:00-cv-90204

MEMORANDUM OPINION AND  
ORDER

Plaintiff, Alison Murrell, brings this action in diversity against Defendant, Mount St. Clare College, asserting breach of implied warranty of habitability, negligence, and negligent misrepresentation. Defendant moves for summary judgment, and for the reasons set forth below, the Court grants the Defendant's motion.

**I. Facts**

In the fall of 1997, Alison Murrell ("the Plaintiff") enrolled at Mount St. Clare College ("Mount St. Clare" or "the College") in Clinton, Iowa. At that time, Mount St. Clare College published erroneous crime statistics pursuant to the federal Student Right-To-Know and Campus Security Act, 20 U.S.C. § 1092(f), which stated that no "rape" had been reported on campus in the school years between 1995 and 1998. The College was later forced to publish an amended version of those statistics which revealed one rape reported in the 1994-95 school year and one rape in the 1995-96 school year.<sup>1</sup>

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<sup>1</sup>No representations were made about the 1994-95 school year in the erroneous statistics cited by the Plaintiff. The Plaintiff also claims a "[f]orcible sexual assault" took place in September of 1997, but the only evidence of that in the record is the claims of students that they

The Plaintiff has testified that when she chose to attend Mount St. Clare she did not personally review the crime statistics of Mount St. Clare College or any other institution of higher learning. She also asserted that she made the decision to attend Mount St. Clare when she was 18 years old. In deposition, the Plaintiff also could not recall any other college that had admitted her. The Plaintiff testified that her parents' contribution to her decision was to pressure her to attend college and that they looked favorably on Mount St. Clare because of the size of the community and the school.

After the Defendant's motion for summary judgment, the Plaintiff's parents filed an affidavit with the Court along with the Plaintiff's resistance to summary judgment, asserting that "the safety and security of the college which she would attend was one, among many, factors which our family considered at the time Alison left for college." Despite the fact that the Plaintiff's father has worked in the field of college security, he did not assert that he or his wife ever noted Mount St. Clare's crime statistics or relied upon them in encouraging Alison to attend Mount St. Clare.

In September, 1998, the Plaintiff was a second-year student at Mount St. Clare and resided in Durham Hall, a dormitory owned and operated by the College. Residents of the College's dormitories are issued secure keys which are necessary to gain entrance into the dormitories. Guests must show identification and be escorted by a resident when visiting a residence hall. The guest is required to remain in the presence of that resident during the time of his/her visit. Male access to the female side of the dormitory and vice versa is prohibited on Fridays and Saturdays between 2:00 AM and 8:00 AM and midnight through 8:00 A.M. the rest

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read about a certain rape allegation in the newspaper.

of the week. The College holds mandatory security meetings for the dormitory residents. Residents are required to follow the security guidelines outlined in their student handbooks which include locking their doors at all times and never propping open doors. Any student caught propping open doors to the outside is subject to a \$300 fine; however, students have testified that certain doors separating the male and female sides of Durham Hall were frequently propped open at the time of the Plaintiff's residency in Durham Hall.

In the very early morning hours of September 13th, 1998, the Plaintiff agreed to allow the guests of a fellow student, J.D. Wilson, to stay the evening in her room while she stayed with Mr. Wilson. In the early afternoon of that same day, the Plaintiff claims that she repelled several advances from one of the guests, Seneca Arrington, and that she asked the guests to leave her room so that she could shower and get dressed. When Mr. Arrington and his fellow guest left, the Plaintiff began to prepare for a shower without locking her door. The Plaintiff claims that Mr. Arrington re-entered her room at that time and raped her.

## **II. Summary Judgment Standard**

The purpose of summary judgment is to “pierce the boilerplate of the pleadings and assay the parties’ proof in order to determine whether trial is actually required.” *Wynne v. Tufts Univ. Sch. of Med.*, 976 F.2d 791, 794 (1st Cir. 1992), *cert. denied*, 507 U.S. 1030 (1993). Summary judgment “allows courts and litigants to avoid full-blown trials in unwinnable cases, thus conserving the parties’ time and money and permitting courts to [conserve] scarce judicial resources.” *Id.*

The precise standard for granting summary judgment is well-established and oft-repeated: summary judgment is properly granted when the record, viewed in the light most favorable to the

nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994). The Court does not weigh the evidence nor make credibility determinations, rather the court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *cited in Handeen v. Lemaire*, 112 F.3d 1339, 1345 (8th Cir. 1997); *Anderson*, 477 U.S. at 248. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and, by affidavits or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is genuine issue for trial. Fed.R.Civ.P. 56(c), (e); *Celotex*, 477 U.S. at 322-23; *Anderson*, 477 U.S. at 257. “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat a motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson*, 477 U.S. at 247-48 (emphasis added). An issue is “genuine” if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. “As to materiality, the substantive law will identify which facts are material . . . . Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

### III. Discussion

#### A. Implied Warranty of Habitability

“An implied warranty of habitability exists in all oral or written leases of a dwelling, which includes houses, condominiums, and apartments.” *Estate of Vasquez v. Hepner*, 564 N.W.2d 426, 429 (Iowa 1997).

Under this warranty, “the landlord impliedly warrants at the outset of the lease that there are no latent defects in *facilities and utilities* vital to the use of the premises for residential purposes and that these essential features shall remain during the entire term in such condition to maintain the habitability of the dwelling. Further, the implied warranty . . . in the lease situation is a representation there neither is nor shall be during the term a violation of applicable housing law, ordinance or regulation which shall render the premises unsafe, or unsanitary and unfit for living therein.”

*Id.* (quoting *Mease v. Fox*, 200 N.W.2d 791, 796 (Iowa 1972)) (emphasis added). In order to find a violation of the implied warranty of habitability, the plaintiff must demonstrate the existence of a latent defect or a material violation of the housing code. *Id.*

The analysis with respect to the Plaintiff’s claim against Mount St. Clare stops here. The Plaintiff has alleged no latent defect in her housing accommodations. The Plaintiff has admitted that her lock worked. Nor has the Plaintiff alleged any violation of any applicable housing codes. Instead, the gravamen of the Plaintiff’s claim is that Mount St. Clare provided inadequate security services to protect her. While there is Iowa case law to support this type of claim in negligence (see *infra* Section B), there is no duty to provide security services beyond a working lock under the implied warranty of habitability.

In *Brichaceck v. Hiskey*, 401 N.W.2d 44 (Iowa 1987), the Iowa Supreme Court upheld a district court’s rejection of a claim under the implied warranty of habitability against a landlord

who provided no security services and a lock to the plaintiff's apartment door that failed to bar burglary. "The landlord is not an insurer against every conceivable act of a third party and his responsibility is limited to providing reasonable security." *Id.* at 47.

In this case, the Plaintiff does not allege any physical defects whatsoever. The Plaintiff alleges that security services were lax and that other students propped open doors; however, the Plaintiff always retained the ability to lock the door to her quarters. Moreover, the Plaintiff has not cited any instance of a person, who was not a known guest of a resident, entering Durham Hall and menacing her or any other residents in any way. "[A] landlord is only liable for injuries resulting from a hidden or latent defect if the landlord knew or should have known of the defect." *Estate of Vasquez*, at 430 (citing *Knapp v. Simmons*, 345 N.W.2d 118 (Iowa 1984)). In this case, the College had taken measures to discourage residents from propping open doors and had no reason to foresee that the disregard of this regulation was creating a condition so dangerous it rendered Durham Hall inhabitable.

## **B. Negligence**

The Plaintiff's negligence claims stem from four discernable alleged duties owed by Mount St. Clare College. The Plaintiff claims that 1) Mount St. Clare had a duty to protect her arising out of their special relationship with her, 2) Mount St. Clare had a duty to control third parties who posed a foreseeable threat, 3) Mount St. Clare had a duty to warn her of any defects in their security, and 4) Mount St. Clare had a duty not to misrepresent its crime statistics to her, inducing her to enroll in the school.

### **1. Duties Arising Out of a Special Relationship**

The Iowa Supreme Court has held that a landlord does owe a special duty of care to its

tenants that includes “taking protective measures guarding the entire premises and the areas peculiarly within the landlord’s control against the perpetuation of criminal acts.” *Tenney v. Atlantic Assoc.*, 594 N.W.2d 11, 21 (Iowa 1999) (quoting *Kline v. 1500 Mass. Ave. Apartment Corp.*, 439 F.2d 477, 482 (D.C. Cir. 1970)). This duty arises though, from a landlord’s duty “to protect its tenants from reasonably foreseeable harm.” *Id.* at 17. Indeed, in *Tenney*, the landlord-defendant had failed to change the locks to a new tenant’s apartment, keep track of who had keys to the tenant’s locks, or secure the master keys that would open those locks. *Id.* at 12. These lapses resulted in an unknown intruder entering the tenant’s apartment and raping her. *Id.*

The *Tenney* decision also cites to the broader holding of *Kline*, which held that the landlord’s duty to protect tenants arises out of the realities of “modern day apartment living.” *Kline* at 481. In *Kline*, a duty was imposed on the landlord where “the landlord [had] notice of repeated criminal assaults and robberies, [had] notice that these crimes occurred in the portion of the premises exclusively within his control, [had] every reason to expect like crimes to happen again, and [had] the exclusive power to take preventive action.” *Id.*

The facts of this case do not indicate that such a duty arose for Mount St. Clare College. While there is evidence of some past crimes on campus, including sexual assaults, there is no evidence that these crimes occurred in the portion of the premises exclusively within the College’s control. A college, or any other kind of landlord, is incapable of foreseeing an acquaintance rape that takes place in the private quarters of a student or tenant, unless a specific student or tenant has a past history of such crimes.

In *Freeman v. Busch, et al.*, 150 F.Supp.2d 995 (S.D.Iowa 2001), a plaintiff, a non-student, sued Simpson College for damages arising out of her being date raped by her former

boyfriend, a student, while the plaintiff was unconscious from alcohol consumption at a party in the college's dormitory. She claimed the dormitory's resident assistant failed to seek medical assistance on her behalf and instead left her with the offending ex-boyfriend, thus breaching the college's special duty to protect her. The Court held that no such special duty existed.

A college is an educational institution, not a custodian of the lives of each adult, both student and non-student, who happens to enter the boundaries of its campus. A contrary result 'would directly contravene the competing social policy of fostering an educational environment of student autonomy and independence.'

*Id.* at 1002 (quoting *Univ. of Denver v. Whitlock*, 744 P.2d 54, 62 (Colo. 1987)). The facts of this case are slightly different, in that the plaintiff/victim in this case, Ms. Murrell, was a student and the alleged perpetrator, Mr. Arrington, was a guest. Nonetheless, the same fundamental principle applies: a college cannot foresee the intentional torts of all students and non-students on campus, and cannot insure that they will not occur. *See Tenney* at 17 ("A duty of care arising out of a landlord-tenant relationship . . . does not make the landlord an insurer."). Hence, the College did not breach its special duty to protect the Plaintiff.

## **2. Duty to Control Third-Parties**

The Plaintiff also argues that the College had a duty to control the conduct of a third person so as to prevent them from intentionally harming others. The Plaintiff cites to Section 318 of the Restatement (Second) of Torts, which imposes a duty upon a possessor of land to prevent licensees from causing harm. The Plaintiff fails to note that there are two necessary elements to this claim: (a) the owner knows or has reason to know that he/she has the ability to control the third person, and (b) knows or should know of the necessity and opportunity for exercising such control. Restatement (Second) of Torts § 318.

In this case, Mount St. Clare had no way of knowing of the necessity to control Seneca Arrington. “One may assume that others will obey the law.” *Freeman* at 1003 (citing *Roadway Express, Inc. v. Piekenbrock*, 306 N.W.2d 784, 786 (Iowa 1981)). In order for Mount St. Clare to insure that students bring guests into the dorms that are unlikely to pose a threat, the College would have to prohibit guests altogether, or screen them intensively. This would result in exactly the type of contravention of student autonomy and independence that the Court insisted on avoiding in *Freeman*. *Id.* at 1002. Thus, the Plaintiff’s negligence claim alleging the College’s duty to control Mr. Arrington fails, and it is unnecessary to explore whether Mr. Arrington was even technically a licensee of the College, or the student who invited him into Durham Hall, J.D. Wilson.

### **3. Duty to Warn**

The Plaintiff also pleads in her complaint that the College failed in its duty to warn her of “the risk to physical safety inherent at its educational institution and, further, failed to warn Plaintiff of the risks to personal safety inherent in the dormitory in which the Plaintiff was living.” Under Iowa law, the duty to warn “is predicated upon *superior knowledge*, and arises when one may reasonably foresee danger of injury or damage to another less knowledgeable unless warned of the danger.” *Lovick v. Wil-Rich*, 588 N.W.2d 688, 693 (Iowa 1999) (emphasis added).

In this case, the College could not possibly have superior knowledge of the danger Seneca Arrington posed to the Plaintiff, who chose to house Mr. Arrington in her room the previous evening in direct violation of the College’s regulations. Once again, to expect a college or university to obtain even a significant level of knowledge about its students’ guests would

impose a custodial role that is usually inconsistent with a college or university's mission of educating students who are adults. Mount St. Clare already took measures above and beyond other colleges to separate male and female students after hours and track guests in its dormitories. It is not for the Court to determine whether institutions of higher learning should take stricter measures to control the college-age students they house, or more lax measures. It is a decision for these institutions, their students, and parents. Therefore, the Court must reject the Plaintiff's claim that the College breached a duty to warn her about the harm that she encountered.

#### **4. Negligent Misrepresentation**

"Courts have never found a need to treat negligent misrepresentation as a separate basis for liability when the interference consists of personal or property damage." *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 123 (Iowa 2001) (citing W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 105, at 725-26 (5th ed. 1984)). In *Freese v. Lemmon*, 210 N.W.2d 576, 580 (Iowa 1973), the plurality of the Iowa Supreme Court adopted the rule in the Restatement (Second) of Torts § 311(1) on negligent misrepresentation that leads to physical injury: "[o]ne who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results . . . ." *Id.*

At least one court has held on behalf of an injured college student on this basis. In *Duarte v. State of California*, 88 Cal.App.3d 473 (Cal.Ct.App. 1979), the mother of a student raped and murdered in a state university dormitory was allowed to bring a claim for negligent misrepresentation, where the mother alleged that she relied on the university's assertion that their

dormitories were safe when she chose to house her daughter there instead of a private residence. The mother also alleged that the university “was aware there was a chronic pattern of violent assaults, rapes and attacks on female members of the university community, and that this pattern was escalating.” *Id.*

Mount St. Clare College admits that it misreported its crime statistics at the time that the Plaintiff decided to enroll there. The reportage of accurate crime statistics is a clear duty imposed on the College by the federal Student Right to Know and Campus Security Act and it was breached. Mount St. Clare College’s misrepresentation was, to some extent, more serious than that of the defendant/university in *Duarte*, because the misrepresentation was an explicit false report of crime statistics in violation of federal law.

In two other important ways though, the Plaintiff’s case falls short of the claim alleged in *Duarte*. The Plaintiff was unable to show that she relied in any way on the misrepresentation, testifying that she did not look at crime statistics in making her decision to attend Mount St. Clare. Furthermore, the Plaintiff’s father, himself a former college security officer, failed to state that he relied on the misreported crime statistics in sending his daughter to Mount St. Clare, even in an affidavit filed after Mount St. Clare argued in their motion for summary judgment that the Plaintiff did not rely on the misrepresentation. Without any showing or claim of reliance, the misrepresentation claim must fail.

The Plaintiff’s negligent misrepresentation claim also fails because it does not demonstrate that the College’s misrepresentation proximately caused the sexual assault on the Plaintiff. Even if the Plaintiff or someone in her family did peruse the falsely reported crime statistics, they would have only been misled about the existence of one sexual assault in the

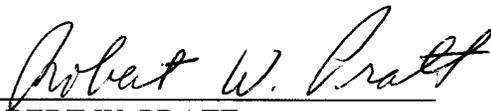
1995-1996 school year, two years before the Plaintiff enrolled. Thus, the Plaintiff has not offered any evidence that her enrollment at Mount St. Clare made her in any way more likely to have an acquaintance sexually assault her than if she had attended any other institution or none at all. Consequently, the Plaintiff's misrepresentation claim fails on this ground as well.

#### **IV. Order**

The Court hereby grants the Defendant's motion for summary judgment.

IT IS SO ORDERED.

Dated this \_\_\_10th\_\_\_ day of September, 2001.

  
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ROBERT W. PRATT  
U.S. DISTRICT JUDGE