IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SAMANTHA JOLLEY,

Plaintiff,

v.

RIVERWOODS BEHAVIORAL HEALTH, LLC

Defendant.

CIVIL ACTION NO.
1:21-cv-00561-WMR

ORDER

Before the Court is Defendant Riverwoods Behavioral Health LLC's Second Partial Motion for Summary Judgment.[1] [Doc. 84]. Upon consideration of the parties' arguments, the applicable law, and all appropriate matters of the record, the Court hereby **DENIES** the motion for the reasons set forth below.

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[1] Defendant filed several earlier motions for summary Judgment [Docs. 68, 75, 77, 78, and 79] which this Court dismissed without prejudice because the motions failed to comply with this Court's rules. [Doc. 83]. In the motion now before this Court, Defendant moves for partial summary judgment as to Counts I, III, VIII, and IX of Plaintiff's Second Amended Complaint. [Doc. 84; Doc. 25].

I. PROCEDURAL BACKGROUND

In her Second Amended Complaint [Doc. 25], Plaintiff asserts nine claims against Defendant. Primarily, Plaintiff asserts that Defendant discriminated against her on the basis of sex (transgender status) in violation of the non-discrimination provision of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116(a) ("ACA"). [Doc. 25 at Count I]. Plaintiff also asserts state tort claims for negligence, negligent training and supervision, invasion of privacy, assault, battery, and intentional infliction of emotional distress [*id*. at Counts II–VII], for which she seeks to recover punitive damages as well as attorneys' fees [*id.* at Counts VIII–IX].

Defendant moves for partial summary judgment on Plaintiff's ACA sex discrimination claim (Count I), negligent training and supervision claim (Count III), punitive damages claim (VIII), and attorneys' fees claim (Count IX).

II. LEGAL STANDARD

Under Rule 56 of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Teagan v. City of McDonough*, 949 F.3d 670, 675 (11th Cir. 2020). The moving party bears the burden of showing the absence of a genuine issue of material fact. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Celotex Corp. v.*

Catrett, 477 U.S. 317, 323 (1986). After a motion for summary judgment has been properly supported, the nonmovant must present affirmative evidence that demonstrates the presence of "a genuine issue of fact that requires a trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

In reviewing a motion for summary judgment, a court should view the facts and all reasonable inferences from those facts in the light most favorable to the nonmovant. *Lee v. Ferraro*, 284 F.3d 1188, 1190 (11th Cir. 2002). In addition, the court must "avoid weighing conflicting evidence or making credibility determinations." *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 848 (11th Cir. 2000). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B&B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1991) (citing *Mercantile Bank & Trust v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11th Cir. 1985)).

III. FACTS

This is a case in which Plaintiff alleges that she was discriminated against by Defendant because of her status as a transgender woman. Plaintiff also asserts various state law tort claims against Defendant in connection with the treatment she received when she was admitted into Defendant's behavioral health facility. The

material facts, construed in the light most favorable to Plaintiff as the non-movant on summary judgment, are as follows.

Plaintiff is a transgender woman who has suffered from Chronic Daily Headache ("CDH") since the age of thirteen. [Doc. 84-1 at ¶2; Doc. 90-1 at ¶2]. Plaintiff's condition causes her to experience constant migraines which, in turn, causes her to suffer bouts of depression and suicidal ideation. [*Id.*]

On February 13, 2019, Plaintiff disclosed to her psychiatrist that she was experiencing acute suicidal ideation. A Form 1013 requiring involuntary psychiatric treatment was signed, and Plaintiff was admitted to Lakeview Behavioral Health Hospital—which is owned and operated by Defendant—in the early morning hours of February 14, 2019. [Doc. 84-1 at ¶3; Doc. 90-1 at ¶3].

At the time of her admission into Defendant's facility, Plaintiff's medical records indicated that Plaintiff was a male. [Doc. 90-1 at ¶4; Doc. 85-1 at 1]. Therefore, according to Defendant's admission policy, Plaintiff was escorted into a room by two male nurses to undergo a "contraband search and skin assessment" or "strip search." Defendant's policy requires that this search be performed by nurses of the same sex as the patient. [Doc. 84-1 at ¶¶5, 10; Doc. 90-1 at ¶¶ 5, 10]. [Doc. 84-1 at ¶5; Doc. 90-1 at ¶5]. Prior to this search, however, Plaintiff informed the two male nurses that she was a transgender woman and expressed her discomfort with

them performing the search because they were males. As she identified as a transgender woman, Plaintiff requested that she be searched by a female instead. [Doc. 90-2 at ¶8; Doc. 87 at 83:18–84:6]. According to Plaintiff, the male nurses laughed and mockingly asked, "you have a penis, right?" [Doc. 87 at 83:12–86:9 and at 186:2–11]. Plaintiff was ultimately told that her request to have a female nurse perform the search was "not an option," and the two male nurses proceeded with the search despite her request. [*Id*. at 85:4–5 and at 87:7–8]. During the search, the male nurses patted her down on the sides of her breasts, down the length of her sides, and on the insides of her upper thighs near the genital area. The nurses also required Plaintiff to expose her breasts and lower her underwear for a visual inspection. Plaintiff was crying throughout this process. [*Id*. at 88:17–91:6].

After the search was completed, the two male nurses informed Plaintiff that she was being assigned a male roommate, and they escorted Plaintiff to her assigned room. [Doc. 87 at 93:19–94:7]. Defendant's policy is to assign roommates of the same sex. [Doc. 90-4 at ¶7]. Plaintiff objected to this room assignment, again explaining that she was a transgender woman and did not feel comfortable sleeping next to a man. [Doc. 87 at 94:1-13]. According to Plaintiff, her objection was ignored. [*Id*.]

Following her admission into Defendant's facility, Plaintiff made numerous requests for her prescription medication to relieve a severe migraine headache she was experiencing. According to Plaintiff, Defendant's staff told her that they could not administer any prescription medication until Defendant's own doctor prescribed it and that their doctor had 24 hours following her admission to see her. [Doc. 87 at 100:15–101:17 and at 125:1-16; *see also* Doc. 89 at 18 (Depo. transcript p. 68:10-23); Doc. 88 at 42 (Depo. transcript p. 164:2-5)]. Plaintiff initially received Tylenol, which did not alleviate her pain, but she eventually received three other medications—including her prescribed CDH medication, Fioricet—later that day. [*See* Doc. 87 at 113–117]. Plaintiff's request for her prescription hormonal medication was also delayed. [*Id*. at 187:4-11]. Notably, there is evidence to show that the patient advocate, who Plaintiff had sought help from, had the ability to contact Defendant's doctor directly if a patient was in distress (and had done so in the past with non-transgender patients) and that the doctor could have assisted in providing Plaintiff the appropriate medication sooner had he been notified. [Doc. 90-4 at ¶5].

There is also evidence to show that Defendant's staff frequently made derogatory and discriminatory comments about Plaintiff based on her gender identification. For example, Plaintiff heard one of Defendant's staff members

talking to another staff member, referring to Plaintiff as a "pill popping tranny" and "the one that thinks he's a girl." [Doc. 87 at 154:11–155:2].

That afternoon, Plaintiff met with the patient advocate again to complain about her mistreatment, roommate assignment, and the prior search performed by the male nurses. [Doc. 84-1 at 190:14–195:4]. In regard to the search, the patient advocate responded by saying, "well, you've got a penis, so somebody with a penis [had] to do it." [*Id*. at 192:16-17]. Plaintiff also made numerous requests to see a copy of her patient rights, and her requests were denied even though Defendant's policy required every new patient to receive a copy of their patient rights. [Doc. 184:12–185:1; Doc. 89 at 19 (Depo. transcript p. 70:13-22)].

Defendant's resident physician, Dr. Corey S. Greenwald, later instructed Defendant's staff (on two separate occasions) to move Plaintiff to a private room because of her transgender status. [Doc. 90-4 at ¶ 8]. However, Plaintiff was never moved, and she continued to be housed with a male roommate. [Doc. 87 at 95:22–96:19].

Ultimately, on February 15th, Dr. Greenwald advocated for and authorized Plaintiff's release based upon the treatment she had received at Defendant's facility because he felt that she would be better suited elsewhere. [Doc. 90-4 at ¶10; *see also*

Doc. 87 at 161:6–162:15]. Accordingly, Plaintiff was discharged from Defendant's facility on February 16, 2019. [Doc. 90-1 at ¶25].

IV. DISCUSSION

Defendant makes four separate arguments as to why summary judgment should be granted on Counts I, III, VIII, and IX of the Second Amended Complaint. The Court shall address each argument in turn.

A. Sex Discrimination under the ACA (Count I)

The anti-discrimination provision of the ACA provides that no individual shall, on the grounds prohibited under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq*.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq*.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq*.), or section 794 of Title 29, "be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance[.]" 42 U.S.C. § 18116(a). It further states that "[t]he enforcement mechanisms provided for and available under such title VI, title IX, section 794, or such Age Discrimination Act shall apply for purposes of violations of this subsection." *Id.* Therefore, Section 1557 of the ACA expressly incorporates four federal civil rights statutes: Title VI, Title IX, the Rehabilitation Act, and the ADA.

In asserting her ACA claim, Plaintiff relies on Title IX, which prohibits discrimination on the basis of sex. [*See* Doc. 25 at ¶¶51–52]. Defendant argues that it is entitled to summary judgment on Plaintiff's ACA discrimination claim because Plaintiff has failed to show that Defendant exhibited a "deliberate indifference of a federally protected right" which, it contends, is necessary to prove intentional discrimination under Title IX. [Doc. 84-2 at 11]. The Court disagrees.

As an initial matter, the Court notes that Section 18116(a) only incorporates "the grounds" of the prohibited discrimination and the "enforcement mechanisms" available for those grounds.[2] Because a prohibited "ground" is "not typically understood to encompass the legal elements necessary to establish a discrimination claim," *see Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 953 (9th Cir. 2020),[3] district courts have not required a showing of deliberate indifference to establish a violation in an ACA discrimination case—only a denial of benefits because of protected class status. *See, e.g.*, *C. P. by & through Pritchard v. Blue*

[2] Section 18116(b) provides that "nothing in this title … shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under title VI …, title VII …, title IX …, section 794 of Title 29, or the Age Discrimination Act of 1975, or to supersede State laws that provide additional protections against discrimination on any basis described in subsection (a)."

[3] A finding of discrimination under the ACA does not require Plaintiff to demonstrate the standard of the specific statute upon which she relies, Title IX, as opposed to the standard applicable to Title VII, one of the other statutes incorporated into the ACA. Due to their "nearly identical terms," the statutes are interpreted similarly. *Schmitt*, 965 F.3d at 953–54.

Cross Blue Shield of Illinois, No. 3:20-CV-06145-RJB, 2022 WL 17788148, *5–6 (W.D. Wash. Dec. 19, 2022); *Griffin v. Verizon Commc'ns Inc.*, No. 1:16-CV-00080-AT, 2017 WL 6350596, *3 (N.D. Ga. Sept. 26, 2017), *aff'd*, 746 Fed. App'x. 873 (11th Cir. 2018); *Rumble v. Fairview Health Srvs.,* No. 14-CV-2037 SRN/FLN, 2015 WL 1197415, *9-18 (D. Minn. Mar. 16, 2015).

Furthermore, deliberate indifference is only one way to prove the intentional discrimination that the incorporated statutes may require. *See McCullumv. Orlando Reg'l Healthcare Sys., Inc.,* 768 F.3d 1135, 1147 (11th Cir. 2014) (a plaintiff "*may* prove discriminatory intent" by showing deliberate indifference) (emphasis added); *Ezell v. Fayetteville Pub. Sch.*, 2015 WL 8784431, *5 (W.D. Ark. Dec. 15, 2015) ("It follows that if deliberate indifference is but one way to prove intentional discrimination, then there are some cases to which it is not necessary"). Even Title IX, the statute prohibiting sex discrimination upon which Plaintiff relies for her ACA claim, does not require deliberate indifference for all claims. *See, e.g.*, *Rollins v. Bd. of Trustees of Univ. of Alabama*, 647 Fed. App'x. 924, 938–39 (11th Cir. 2016) (applying intentional discrimination test from Title VII cases to plaintiff's Title IX sex discrimination/disparate treatment claims and not deliberate indifference); *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 882 (5th Cir. 2000) (holding that deliberate indifference standard from Title IX sexual harassment cases was not

applicable to a denial-of-opportunity/disparate treatment claim); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (holding that retaliation is another form of intentional sex discrimination under Title IX); *Bowers v. Bd. of Regents of the Univ. Sys. of Ga.*, No. 1:11-CV-228-ODE, 2012 WL 12893538, at *5 (N.D. Ga. Mar. 20, 2012) (applying, on a motion to dismiss, the *McDonnell Douglas* test of Title VII to a sex discrimination claim under Title IX, *aff'd sub nom.*, 509 Fed. App'x. 906 (11th Cir. 2013)).

Based on the foregoing, the Court finds that Plaintiff may establish her ACA discrimination claim by evidence showing that Defendant was deliberately indifferent to her federal rights by subjecting her to sexual harassment or by evidence showing that she was intentionally discriminated against through disparate treatment and denial of medical care because of her transgender status. As will be discussed below, the Court finds that Plaintiff has provided sufficient evidence to satisfy both standards.

This Court has previously explained that a discrimination claim under the ACA requires Plaintiff "to prove not only that she was denied healthcare benefits or excluded from participation in a healthcare program, but that the exclusion or denial was the result of intentional discrimination." *See Jolley v. RiverWoods Behav. Health, LLC*, No. 1:21-cv-00561, 2021 WL 6752161, at *5 (N.D. Ga. Aug. 30, 2021)

(citing *Nix v. Advanced Urology Inst. of Georgia*, No. 1:18-CV-04656, 2020 WL 7352559, at *5 (N.D. Ga. Dec. 14, 2020)). Here, Defendant does not dispute that it operates a health program or activity covered under the ACA. However, there is a genuine dispute between the parties as to whether Plaintiff was denied or excluded from Defendant's health care benefits or program and whether that denial or exclusion was the result of intentional discrimination.

This Court finds that a genuine issue of material fact exists as to whether Plaintiff was denied or excluded from receiving health care benefits on the basis of her transgender status. Plaintiff has provided evidence that, despite multiple requests, she was denied immediate access to her prescribed CDH medication to alleviate her severe headache pain. [Doc. 84-4 at 114:5–15]. Defendant argues, however, that there was no deliberate indifference or intentional discrimination because the evidence shows that Defendant must complete a pharmacy reconciliation process by contacting the patient's pharmacy before staff members are allowed to provide patients with outside medication. Further, the Defendant's resident physician must order (prescribe) the medication before the staff may administer it to the patient, and the resident physician is only required to meet with the patient within twenty-four hours after the patient's admission. [Doc. 84-1 at ¶¶12–13]. However, Plaintiff counters by providing evidence that Defendant's staff

could have called their resident physician directly to provide Plaintiff with appropriate medication sooner. [Doc. 90-4 at ¶5]. Plaintiff further provides evidence that Defendant had regularly done so in the past for non-transgender patients. [*Id.*] Therefore, there is at least some evidence to suggest that Plaintiff was denied healthcare benefits (medication) on the basis of her transgender status.

Plaintiff also asserts that she was denied her alleged right as a transgender woman to be searched by female nurses instead of male nurses. Defendant argues that there was no deliberate indifference or intentional discrimination because Plaintiff's medical records indicate that she was a biological male and that its policy requires the contraband and skin assessment search to be performed by nurses of the same biological sex as the patient. Defendant further argues that the search policy applies equally to all patients regardless of sex. However, there is evidence to show that the Defendant's staff was informed that Plaintiff identified as a transgender woman and had undergone hormonal therapy to develop female breasts. Moreover, the Supreme Court has held that discrimination based on a person's transgender status necessarily entails discrimination based on sex and, thus, that such discrimination is prohibited under Title VII. *See Bostock v. Clayton County*, 590 U.S. 644 (2020). Therefore, there is legal authority, as well as evidence, to suggest that Plaintiff was subject to intentional sex discrimination when she was denied

healthcare benefits (an appropriate search) by Defendant based on her transgender status.

It is well settled that intentional sex discrimination can be shown through either direct or circumstantial evidence. *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016). Here, Plaintiff has provided circumstantial evidence that suggests, but does not prove, that Defendant's acts were motivated by discriminatory animus. For example, although Defendant maintained a neutral policy that all patients undergo a search with nurses of the same sex, as well as a policy that its nurses are "not expected to touch a patient during the contraband search or skin assessment unless they are providing wound treatment" [*see* Doc. 84-1 at ¶¶ 5–6], Plaintiff has provided evidence to show that Defendant's male nurses deviated from both policies when they proceeded with the search after being advised of her transgender status and then touched Plaintiff's breasts and inner thigh areas during the search.[4] Further, Plaintiff provides evidence that Defendant's employees "tended to be insensitive to transgender patients." [Doc. 90-4 at 6]. In sum, the evidence that Defendant was aware that she was a transgender woman being admitted for suicidal ideation, and that Defendant's employees frequently made

[4] The Court recognizes the Defendant's argument here that its policy is not discriminatory. Ultimately, this issue will be determined by the Eleventh Circuit Court of Appeals, not the District Court.

derogatory and discriminatory comments about Plaintiff based on her gender identification, subjected her to an unnecessarily invasive search, unnecessarily delayed providing her with required medication, and ignored her reasonable requests for accommodation, creates a genuine issue of material fact as to whether Defendant treated Plaintiff in the manner described because of discriminatory animus. Therefore, this Court denies Defendant's motion for summary judgment on Count I.

B. Negligent Training and Supervision (Count III)

Defendant argues that it is entitled to summary judgment on Plaintiff's negligent training and supervision claim because Defendant provided its employee with training and because Plaintiff failed to show evidence of prior similar incidents sufficient to put Defendant on notice that any of its employees had a tendency to engage in the discriminatory behavior causing the type of harm allegedly sustained by the Plaintiff. [Doc. 84-2 at 22]. This Court is not persuaded.

"To establish a negligent training claim, a plaintiff must demonstrate that inadequate training caused a reasonably foreseeable injury." *Advanced Disposal Servs. Atlanta, LLC v. Marczak*, 359 Ga. App. 316, 319 (2021). Although Defendant has provided evidence to show that all employees received training that generally addressed the rights of biological males and females to be free from discrimination, that same evidence fails to show that such training also included a policy addressing

the rights of transgender patients. [Doc. 89 at 8–12, 29–31 (Depo. transcript pp. 29–43, 112–119); Doc. 88 at 40–41 (Depo. transcript pp. 156–160)]. Plaintiff provides evidence, however, that nurses did not receive training on how to perform body searches on transgender patients, including the appropriate sex of the nurse who should perform the search. [Doc. 90-7 at ¶3]. Therefore, questions of fact exist as to whether the training actually received by Defendant employees was adequate and whether Defendant could reasonably foresee that its employees would mistreat transgender patients due to the inadequacy of the training provided.

Additionally, to establish a negligent supervision claim, "a plaintiff must produce some evidence of incidents similar to the behavior that was the cause of the injury at issue." *ABM Aviation v. Prince*, 366 Ga. App. 592, 598 (2023). And, an employer may be held liable "only where there is sufficient evidence to establish that the employer reasonably knew or should have known of an employee's tendencies to engage in certain behavior relevant to the injuries allegedly incurred by the plaintiff." *Id.* Defendant argues that Plaintiff failed to provide any evidence of prior incidents similar to those Plaintiff alleges. [Doc. 84-2]. However, Plaintiff has provided evidence to suggest that Defendant had notice that its employees engaged in similar discriminatory conduct, citing the deposition testimony Defendant's patient advocate regarding a prior patient's complaint of discrimination

on the basis of sexual preference. [Doc. 88 at 67–68 (Depo. transcript pp. 264–269)]. Further, Plaintiff cites the resident physician's declaration that he often witnessed Defendant employees misgendering and being insensitive to transgender patients. [Doc. 90-4 at ¶6]. Therefore, the Court finds that there is sufficient evidence to create a genuine issue of material fact as to whether Defendant knew or reasonably should have known that its employees had a tendency to engage in sex discrimination. Therefore, this Court denies Defendant's motion for summary judgment on Count III.

C. Punitive Damages (Count III)

"Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of a conscious indifference to consequences." O.C.G.A. § 51-12-5.1. "Under Georgia law, wanton conduct is that which is so reckless or so charged with indifference to the consequences as to be the equivalent in spirit to actual intent. Conscious indifference to consequences involves an intentional disregard of the rights of another, knowingly or willfully disregarding such rights." *Wardlaw v. Ivey*, 297 Ga. App. 240, 242 (2009) (internal punctuation marks omitted). "Negligence, even gross negligence, is inadequate to support a punitive

damages award." *Colonial Pipeline Co. v. Brown*, 258 Ga. 115, 118 (1988). "Something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage." *Poverty Destroyed Forever v. Visio Fin. Servs.*, 360 Ga. App. 691, 693 (2021) (punctuation omitted). "Clear and convincing is a more stringent standard than [preponderance of the evidence] and requires a greater quantum and a high quality of proof in plaintiff's favor." *Johnson v. Omondi*, 294 Ga. 74, 76 (2013) (internal quotation marks omitted). "[T]he clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions . . . ." *Id.* at 77.

Defendant argues that Plaintiff cannot establish a claim for punitive damages in this case. However, Plaintiff has provided evidence that Defendant's male employees touched her unnecessarily during an invasive search, delayed her opportunity to receive required medication, and failed to adhere to policies meant to prevent the foregoing conduct. The Court finds that this evidence is sufficient to create a genuine issue of material fact as to whether Defendant knew that this conduct posed a risk to its patients and acted with a conscious indifference to the potential consequences.

D. Attorneys' Fees (Count IX)

In her Second Amended Complaint, Plaintiff seeks attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11, which allows litigation expenses to be recovered "where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense . . . ." Defendant argues that it is entitled to summary judgment on Plaintiff's attorneys' fees claim because Plaintiff has failed to allege how Defendant was stubbornly litigious. [Doc. 84-2 at 24–25]. However, that is not the sole ground for an award of attorneys' fees under the statute.

Here, in addition to asserting that Defendant has been stubbornly litigious, Plaintiff also claims that Defendant acted in bad faith in the underlying acts giving rise to her intentional tort claims.[5] [Doc. 25 at ¶ 96]. "[W]here a plaintiff has set forth a valid claim for an intentional tort … he may be entitled to recover the expenses of litigation, including attorney fees." *Napier v. Kearney*, 359 Ga. App. 196, 200 (2021). The Court notes that Defendant has not moved for summary judgment on Plaintiff's claims for negligence, invasion of privacy, assault, battery, and intentional infliction of emotional distress. Because Defendant has failed to

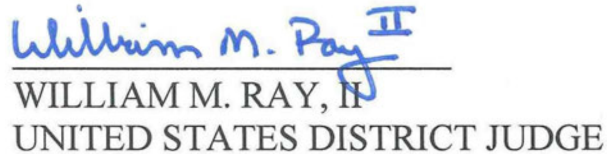
[5] *See City of Lawrenceville v. Alford*, 366 Ga. App. 226, 229 (2022) ("Bad faith warranting an award of attorney fees must have arisen out of the transaction on which the cause of action is predicated").

address the issue of whether there is sufficient evidence of bad faith arising out of these alleged underlying torts, Defendant is not entitled to summary judgment on Plaintiff's claim for attorneys' fees.

V. CONCLUSION

For the foregoing reasons, it is hereby ORDERED that Defendant Riverwoods Behavioral Health LLC's Second Partial Motion for Summary Judgment [Doc. 84] is **DENIED**.

SO ORDERED, this 27th day of March, 2024.



WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE