

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES M. SMILLIE III,

Plaintiff/Counter Defendant-Appellee,

v

STEVEN SCOTT SMILLIE,

Defendant/Counter Plaintiff-Appellant,

and

GREGORY SMILLIE, BRADFORD
SMILLIE, BETTY JEAN SMILLIE,
CM SMILLIE CO. and FREMONT
FINANCIAL CORPORATION,

Defendants.

UNPUBLISHED

August 8, 2000

No. 214312

Oakland Circuit Court

LC No. 94-486725-CK

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Counter-plaintiff Steven Scott Smillie appeals by leave granted from the trial court's order that granted summary disposition of his counterclaim alleging intentional infliction of emotional distress. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Counter-plaintiff argues on appeal that the trial court erred in dismissing his claim of intentional infliction of emotional distress. This Court reviews a trial court's decision regarding a motion for summary disposition de novo. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 581-582; 603 NW2d 816 (1999).

The tort of intentional infliction of emotional distress requires the plaintiff to establish (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Haverbush v Powelson*, 217 Mich App 228; 551 NW2d 206 (1996). Liability for the intentional infliction of emotional distress has been found only where the challenged conduct was so outrageous in

character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602-603; 374 NW2d 905 (1985); *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Id.*

After reviewing the record, we conclude that counter-plaintiff has not made out a prima facie case of intentional infliction of emotional distress. The vague factual allegations in counter-plaintiff's complaint are more in the nature of a harmless threat arising from the parties' longstanding family dispute, rather than the type of conduct for which the law provides a remedy.

Moreover, even assuming that counter-plaintiff had sufficiently established liability for the tort, he must also establish *severe* emotional distress as a result of counter-defendant's conduct. "The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity." 1 Restatement Torts, 2d, §46, Comment j, p 77. Where the challenged conduct is so outrageous and extreme that severe emotional distress is expected, bodily harm will not need to be proven. *Id.*, Comment k, p 78. See also *Roberts, supra* at 608-609; *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483; 421 NW2d 213 (1988).

Here, we note that, in his counterclaim, counter-plaintiff expressly ascribed his mental distress to counter-defendant's mental state and the existing tension and animosity between the parties. Counter-plaintiff's alleged mental distress at discovering the materials for an explosive device, without further elaboration, does not rise to the level of severe emotional distress necessary to support his tort claim. *Bonelli, supra* at 517-518; *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 617; 396 NW2d 809 (1986). Notably, counter-plaintiff does not attribute any severe psychological trauma or even minor physical injury to counter-defendant's specific act of leaving these materials in his home. Accordingly, counter-plaintiff's tort claim fails as a matter of law to demonstrate the requisite emotional distress.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot