# STATE OF MICHIGAN

# COURT OF APPEALS

DALE GRYZEN and CHARLENE GRYZEN,

Plaintiffs-Appellants,

v

TOWNSHIP OF WEBBER, WEBBER TOWNSHIP BOARD OF REVIEW, and PATRICIA MERRILL,

Defendants-Appellees.

UNPUBLISHED
November 9, 2004

No. 247979
Lake Circuit Court
LC No. 01-005616-CZ

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition in favor of defendants. We affirm.

Plaintiffs' first amended complaint contained two counts. In the first count, plaintiffs alleged that defendants violated the Open Meetings Act (OMA), MCL 15.261 *et seq.* Plaintiffs alleged, among numerous other allegations, that plaintiffs were not permitted to address defendant board of review at its July 17, 2001, meeting in violation of the OMA, that the notice of the meeting did not comply with the OMA, and that the minutes from the meeting did not comply with the OMA. In the second count, plaintiffs alleged that defendant Merrill, the township's tax assessor, intentionally inflicted emotional distress upon them in response to plaintiffs' involvement in a petition "encouraging the recall or severance of Defendant Merrill from her employment." Specifically, plaintiffs alleged that defendant Merrill made obscene gestures towards plaintiffs near their residence and told plaintiffs that their actions would "cost" them.

Defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendants argued that plaintiffs' intentional infliction of emotional distress (IIED) claim was barred by governmental immunity. Regarding plaintiffs' OMA claim, defendants argued that defendant board of review's July 17, 2001, meeting complied with the requirements of the OMA. The trial court granted defendants' motion.

Plaintiffs argue on appeal that defendant board of review's meeting of July 17, 2001, violated the OMA in numerous respects. This Court reviews "for an abuse of discretion a trial

court's decision whether to invalidate a decision made in violation of the OMA." *Herald Co, Inc v Tax Tribunal,* 258 Mich App 78, 83; 669 NW2d 862 (2003).

"[T]he purpose of the OMA is to promote governmental accountability by facilitating public access to official decision making and to provide a means through which the general public may better understand issues and decisions of public concern." *Kitchen v Ferndale City Council,* 253 Mich App 115, 125; 654 NW2d 918 (2002), citing *Booth Newspapers, Inc v Univ of Michigan Bd of Regents,* 444 Mich 211, 231; 507 NW2d 422 (1993). "The threshold issue under the OMA is whether an entity is a 'public body.'" *Herald Co v Bay City*, 463 Mich 111, 129; 614 NW2d 873 (2000). The parties agree that defendant township and defendant board of review are public bodies as defined by MCL 15.262(a). Therefore, defendant township and defendant board of review must comply with the OMA.

Plaintiffs contend that defendant township violated MCL 15.263(5) of the OMA because plaintiffs were not permitted to address defendant board of review at its July 17, 2001, meeting. According to plaintiffs, defendant Merrill "prohibited" them from addressing defendant board of review at the meeting by taking individual citizens into her office and making "secret determinations of assessed valuations while within an enclosed office, to the exclusion of Plaintiffs and other citizens." Defendant board of review thereafter adopted or "rubber stamped" defendant Merrill's determinations without public discussion.

MCL 15.263(5) provides that "[a] person shall be permitted to address a meeting of a public body under rules established and recorded by the public body." Even accepting as true plaintiffs' claim that defendant Merrill somehow "prohibited" plaintiffs from addressing defendant board of review, such action would not constitute a violation of the OMA because Merrill is an individual and an "individual . . . is not a public body for the purposes of the OMA."[1] *Herald Co, supra* at 131. Furthermore, plaintiff Dale Gryzen made statements in his deposition that reveal that plaintiffs did, in fact, address defendant board of review. In his deposition, Dale Gryzen acknowledged that plaintiffs "did talk to the Review Board a little." Finally, plaintiffs' complaint failed to allege specific facts regarding how they attempted to address defendant board of review and which board members refused to afford them a fair opportunity to address the board of review. Summary disposition of an OMA claim is proper if the "plaintiffs' complaint failed to allege facts regarding the precise nature of the alleged OMA violations, the nature of the public impairment, or the date or time on which the alleged violation occurred." *Knauff v Oscoda Co Drain Comm'r,* 240 Mich App 485, 495; 618 NW2d 1 (2000).

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[1] We note that it appears from the lower court record that defendant Merrill was not a member of defendant board of review. While plaintiffs claim that defendant Merrill was an "adjunct member" of defendant board of review in ¶ 15 of their first amended complaint, plaintiffs' counsel acknowledged on the record at the summary disposition hearing "that maybe she wasn't an official member of the board of review." Moreover, in defendants' answer to plaintiffs' first amended complaint, defendants denied the allegation, stating that defendant Merrill was defendant township's "appointed assessor" and "not a member of the Board of Review." Furthermore, defendant Merrill is not listed in the minutes from defendant board of review's July 17, 2001, meeting as a board member.

Plaintiffs alleged in their first amended complaint that they "desired and attempted to address the Webber Township Board of Review at the meeting held on July 17, 2001," but that they "were not afforded a fair opportunity to address the Board of review." "Plaintiffs' mere conclusions, unsupported by factual allegations, will not suffice to state a cause of action." *Id.* Absent such factual details, it is impossible to determine whether defendant board of review committed a violation of MCL 15.263(5).

Plaintiffs next argue that defendant board of review's minutes from the July 17, 2001, meeting do not comply with MCL 15.269. Even accepting as true plaintiffs' alleged deficiencies in the minutes of defendant board of review's July 17, 2001, meeting, "deficiencies in the maintenance of meeting minutes do not provide grounds for invalidating action taken by a public body." *Willis v Deerfield Twp*, 257 Mich App 541, 553; 669 NW2d 279 (2003). Moreover, as the trial court observed, plaintiffs were present at the July 17, 2001, meeting, and they received a favorable outcome at the meeting regarding their homestead exemption. Therefore, none of the alleged deficiencies in the minutes complained of by plaintiffs impaired plaintiffs' rights. "MCL 15.263 does not provide for invalidation of a decision premised on a procedural error in the keeping of the meeting minutes." *Id.*

Plaintiffs' next argument regarding the minutes is that defendant board of review's notice of the July 17, 2001, meeting did not comply with MCL 15.264 because the name of the governmental unit was not clearly stated and the address and telephone number were omitted. MCL 15.264(a) provides that "public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address." The notice as published in the *Lake County Star* did not comply with the OMA because it did not contain defendant board of review's telephone number or address. MCL 15.264(a). Despite that fact, plaintiffs, as well as numerous other members of the public, were present at the July 17, 2001, meeting. The failure of a public body to provide proper notice of a meeting will not invalidate the public body's decision if "there was substantial compliance with the OMA notice requirements" and "the purpose of the OMA was essentially and realistically fulfilled." *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525, 532; 609 NW2d 574 (2000). In this case, the notice substantially complied with the notice requirements of the OMA because it contained the name of the public body as well as the date, time, and place of the meeting. MCL 15.264(a); MCL 15.265(2). Moreover, the OMA's purpose of facilitating public access to official decision making was satisfied because members of the public, including plaintiffs, were present at and had access to the July 17, 2001, meeting and were afforded the means to better understand the issues and decisions made at the meeting. Thus, the trial court did not abuse its discretion in refusing to invalidate the decisions made by defendant board of review at its July 17, 2001, meeting.

Plaintiffs next argue that the trial court erred in dismissing plaintiffs' IIED claim against defendant Merrill. The trial court's statements on the record at the summary disposition hearing indicate that the trial court granted summary disposition of plaintiffs' IIED claim under MCR 2.116(C)(8). This Court reviews de novo the trial court's decision to grant summary disposition under MCR 2.116(C)(8). *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). "A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone." *Id.*; see also MCR 2.116(G)(5). "All well-

pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

To establish a claim of intentional infliction of emotional distress, the plaintiff must show (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Bernhardt v Ingham Regional Medical Center*, 249 Mich App 274, 278; 641 NW2d 868 (2002). To constitute extreme and outrageous conduct sufficient to support a claim for intentional infliction of emotional distress, the conduct must have been "'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.'" *Id*., quoting *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602-603; 374 NW2d 905 (1985), quoting 1 Restatement Torts, 2d, § 46, comment d, pp 72-73. "A defendant is not liable for 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003), quoting *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). The test to determine whether a person's conduct was extreme and outrageous is whether "'the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"'" *Graham v Ford*, 237 Mich App 670, 674-675; 604 NW2d 713 (1999), quoting *Roberts*, *supra* at 603. It is initially a matter for the trial court to determine whether the defendant's conduct reasonably may be regarded as so extreme and outrageous as to permit recovery. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). However, if reasonable persons could differ on whether the defendant's conduct was sufficiently extreme and outrageous, it is for the jury to determine whether the conduct has been sufficiently extreme and outrageous to result in liability. *Id.*

In plaintiffs' first amended complaint, plaintiffs alleged: "On more than one occasion, in close proximity to Plaintiffs' residence and at other locations about the township, Defendant Merrill intentionally made obscene gestures toward Plaintiffs." In addition, plaintiffs alleged that defendant Merrill, in response to plaintiffs' involvement in the recall petition, stated to plaintiffs, "this is gonna cost you."

Plaintiffs, citing *Warren v June's Mobile Home Village & Sales, Inc*, 66 Mich App 386, 391; 239 NW2d 380 (1976), suggest that defendant Merrill's conduct was extreme and outrageous because defendant Merrill, as tax assessor, had power to affect plaintiffs' interests. However, notwithstanding defendant Merrill's power to affect plaintiffs' interests, we find that defendant Merrill's conduct constituted nothing more than insults, indignities, threats, annoyances, or petty oppressions. Such conduct is insufficient as a matter of law to be considered extreme and outrageous. *Lewis*, *supra* at 196. Even accepting the allegations in plaintiffs' first amended complaint as true, defendant Merrill's conduct of making obscene gestures to plaintiffs and threatening that plaintiffs' involvement with the recall petition would "cost" them, while crude and unprofessional, does not rise to the level of extreme and outrageous conduct. We conclude that defendant Merrill's conduct was not so atrocious and intolerable that it would arouse the resentment of an average member of the community and lead him to exclaim, "Outrageous!" *Graham*, *supra at* 674-675. Accordingly, because reasonable minds could not differ regarding whether defendant Merrill's conduct was extreme and outrageous, the trial court did not err in granting defendants' motion for summary disposition of plaintiffs' IIED claim under MCR 2.116(C)(8).

Plaintiffs also argue on appeal that defendant Merrill's conduct somehow invaded their privacy rights. Specifically, plaintiffs contend that defendant Merrill's conduct infringed upon plaintiffs' right to be "left alone" and to be protected from wrongful intrusion into their lives. Plaintiffs failed to properly present this issue in their "Statement of Questions Involved" and have therefore waived appellate review of this issue. *Campbell v Sullins*, 257 Mich App 179, 192; 667 NW2d 887 (2003). Consequently, we decline to review this issue.

In light of our conclusion that the trial court did not err in dismissing plaintiffs' IIED claims because defendant Merrill's conduct was not extreme and outrageous, we need not address plaintiffs' governmental immunity arguments.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra