

STATE OF MICHIGAN  
COURT OF APPEALS

---

LORRAINE HAYES,

Plaintiff-Appellant,

v

KIMBERLY LANGFORD,

Defendant-Appellee.

---

UNPUBLISHED  
December 9, 2008

No. 280049  
Wayne Circuit Court  
LC No. 06-610484-NO

Before: Jansen, P.J., and O’Connell and Owens, JJ.

O’CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the resolution of the issues contained in parts I, II, and III of the majority opinion. I respectively dissent as to part IV. I would affirm the trial court’s excellent decision in its entirety.

Assuming, without deciding, that Michigan recognizes the tort of intentional infliction of emotional distress, see *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004), I concur with the trial court that plaintiff has failed to establish this offense.

In Michigan, it is clear that “mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities” are insufficient to create liability for intentional infliction of emotional distress. *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). It is also equally true that the plaintiff must suffer bodily harm from the defendant’s actions, and the proximate cause of the bodily harm must be the defendant’s actions.<sup>1</sup>

---

<sup>1</sup> “[T]his Court has adopted the definition of intentional infliction of emotional distress found in 1 Restatement Torts, 2d, § 46, p 71, which provides that ‘[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.’” *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 625; 403 NW2d 830 (1986).

First, I do not believe that defendant's conduct was extreme or outrageous under the circumstances presented in this case. Defendant noted that when she worked as a 911 operator, she was expected not only to dispatch emergency personnel, but also to screen calls for pranksters and identify individuals who did not need immediate assistance in order to ensure that emergency personnel were dispatched first to areas of greatest and most immediate need. The audio recording of the 911 tape indicates that when plaintiff first called 911, she spoke to defendant in low, measured tones and did not convey panic or urgency in her voice, although the content of her statement, namely, that she had been shot in the head and was dying, might anticipate a more panicked and frenzied presentation of this information. Considering the nature of the information that plaintiff conveyed to defendant and the measured way in which she conveyed it, defendant did not act in an extreme or outrageous manner when she questioned plaintiff in a manner designed to determine whether plaintiff was actually injured, was lying, or was presenting information that she thought was true but that was factually inaccurate.

Further, plaintiff later admitted that she lied to defendant during the first 911 call. She acknowledged that after King shot her, and immediately before she called 911, she begged King to call for help or to give her a cellular telephone so she could do so, and she promised King that she would not reveal that he had shot her. She then lied to defendant during the call, claiming that her husband, not King, shot her in the head, and she did not provide detailed or consistent information regarding where she was hurt or the nature of the recent shooting. Considering that defendant was attempting to elicit information from an admittedly evasive caller and to determine the veracity of plaintiff's statements, neither the words defendant said nor the tone with which she said them raise her conduct during this call to a level that is extreme and outrageous.

If defendant had failed to dispatch emergency personnel to assist plaintiff, plaintiff might be able to claim that defendant's conduct was extreme and outrageous. However, the uncontroverted evidence indicates that defendant promptly dispatched emergency personnel to the address provided by plaintiff and that the call was given highest priority. Defendant performed the job she was hired to do—she promptly dispatched emergency personnel to assist plaintiff, and she continued to screen plaintiff's call to determine the nature of the situation. Plaintiff fails to present any evidence to indicate that defendant's conduct was extreme and outrageous.

Next, plaintiff fails to present evidence indicating that defendant's conduct caused plaintiff's subsequent emotional distress. Hayes never directly stated that defendant caused her emotional distress by berating her; instead, the evidence presented indicates that her feelings of emotional distress arose from the helplessness that she felt when she waited for emergency assistance. Further, although plaintiff submitted two affidavits and accompanying reports by Dr. Gerald A. Shiener, a clinical psychiatrist, to support her claim, his reports indicate that the delay in treatment was the primary cause of plaintiff's emotional distress. In fact, Shiener stated in his November 9, 2006, report,

[Plaintiff's] productions and concerns are focused on her efforts to get help rather on [sic] the circumstances of the shooting. For this reason I would consider that the cause of her psychiatric illness is the frustration that she had in obtaining help, and the prolonged period of powerlessness and impotence and terror that she experienced while attempting to obtain help.

In his June 22, 2007, report, written after plaintiff's gross negligence claim was dismissed, Shiener stated,

Her Posttraumatic Stress Disorder arises out of the experience of lying helpless on the floor, attempting to get help from Emergency Medical Services and being unable to do so . . . .

Although these statements could conceivably be used to establish that the police's failure to locate defendant's home was a proximate cause of her emotional distress because their alleged inaction caused plaintiff to wait for help for a significant period of time, defendant did not do anything to contribute to this failure to find plaintiff's home. Defendant's actions did not cause plaintiff to wait for emergency assistance and, therefore, are not a cause of the emotional trauma that plaintiff allegedly suffered as a result. Shiener's affidavits are self-serving and do not accurately reflect the information gathered in his reports, the statements by Hayes included in the record, or the factual circumstances surrounding the call.<sup>2</sup> Under these circumstances, I conclude that plaintiff failed to establish that defendant's conduct was a proximate cause of her emotional distress.

I would affirm the decision of the trial court.

/s/ Peter D. O'Connell

---

<sup>2</sup> In particular, it is surprising that Shiener fails to address another likely source of plaintiff's emotional distress, namely, that she was shot by her boyfriend and is now paralyzed. It would be surprising if this were not the proximate cause of plaintiff's present emotional distress.