IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

LORETTA E. JACKSON,	)	
	)	CIVIL ACTION NUMBER
Appellant,	)	
	)	12A-10-012-JOH
v.	)	
	)	
WALGREENS CORPORATION,	)	
	)	
Appellee.	)	

Submitted: February 13, 2013
Decided: May 15, 2013

MEMORANDUM OPINION

*Upon Appeal from the Court of Common Pleas - **AFFIRMED***

Appearances:

Loretta E. Jackson, P.O. Box 524, Claymont, Delaware. Appellant proceeding *pro se*.

Gregory B. Williams, Esquire, Carl D. Neff, Esquire, Fox Rothschild, LLP, Wilmington, Delaware; Of Counsel: Richard R. Harris, Esquire, Littler Mendelson, P.C., Attorneys for Appellee, Walgreens Corporation.

HERLIHY, Judge

Appellant Loretta E. Jackson ("Jackson") appeals the Court of Common Pleas' dismissal of her claims against defendant, Walgreens Corporation ("Walgreens") on summary judgment. The Court of Common Pleas properly dismissed her allegations of intentional infliction of emotional distress, invasion of privacy and negligence, as there were no genuine issues of material fact and defendant is entitled to judgment as a matter of law. Accordingly, the decision of the Court of Common Pleas is AFFIRMED.

Factual Background

Jackson worked as a pharmacy technician at Walgreens from December 2004 until she was discharged on September 17, 2009. She filed for unemployment benefits as a result of her termination. The claims deputy determined that Walgreens did not establish, by a preponderance of the evidence, that Jackson was discharged for just cause in connection with her work. Thus, the deputy determined that Jackson was eligible to receive unemployment benefits. Walgreens appealed the claims deputy's decision and after a hearing, the appeals referee affirmed the deputy's decision regarding unemployment benefits.

Then, in January 2010, Jackson allegedly began receiving calls she felt to be harassing and associated these calls with Walgreens based on her award of unemployment benefits. Before she filed her lawsuit, she believed calls from 800 and 877 numbers were efforts on behalf of Walgreens to settle. Jackson hired the Colorado Investigative Agency to trace the calls, but the investigation did not reveal any Walgreens numbers in her phone records. Additionally, Jackson testified that she did not speak to

anyone from an 877 or 800 numbers and heard silence on the other end of the phone whenever she picked it up. Furthermore, Jackson testified she has no physical symptoms and does not take any medications as a result of the phone calls.[1]

On June 9, 2011, Jackson filed a complaint against Walgreens alleging harassment in connection with the phone calls allegedly received after the unemployment compensation hearing. Walgreens filed a motion to dismiss the Complaint for failure to state a recognizable cause of action under Delaware law (Court of Common Pleas Rule 12(b)). On August 29, 2011, the Court of Common Pleas granted Walgreens' motion to dismiss, but granted Jackson leave to amend the complaint within 30 days; on September 15, 2011, Jackson amended her Complaint to include additional exhibits.

Later, on January 6, 2012, Jackson filed a second amended complaint in which she alleged counts of Intentional Infliction of Emotional Distress, privacy, and negligence. Her Complaint contained allegations that her "mother" and "family" suffered from the alleged unwanted calls made to her home and cell phone. Walgreens again moved to dismiss, which was granted in part and denied in part by the court below. Specifically, the court held that Jackson was not permitted to pursue claims regarding her "mother" or her "family," as they were not parties to the amended complaint and she does not have standing to pursue claims on their behalf.

Walgreens moved for summary judgment alleging that there were no genuine issues of material fact and it was entitled to judgment as a matter of law on all three

[1] Jackson Dep. at pp. 156-57.

claims Jackson asserted. The Court of Common Pleas heard argument on Walgreens' motion for summary judgment on October 23, 2012. During oral argument, it argued that, while Jackson alleged she received unwarranted phone calls from Walgreens, she did not produce any evidence linking Walgreens to these calls. In opposition, Jackson claimed that her investigator's report linked Walgreens to the unwarranted calls; the report showed two calls made from a pharmacy technician at Walgreens, but Jackson established no linkage to Walgreens. When asked by the Court of Common Pleas about her injuries, Jackson claimed that she was upset from the unwarranted phone calls. The Court of Common Pleas ruled that, even in accepting the facts the light most favorable to her, there were no genuine issues of material fact and Jackson did not present evidence to withstand a motion for summary judgment.

Parties' Contentions

Jackson appealed the Court of Common Pleas' ruling granting Walgreens' motion for summary judgment. Jackson filed her notice of appeal claiming that the Court of Common Pleas: (1) overlooked the decision; (2) told Jackson that she was "right" and the trial judge believed her for Walgreens' "wrongdoing"; (3) the decision was misleading; and (4) dishonest. Jackson went on to file an opening brief in which she indicates that she disagrees with decision granting summary judgment for Walgreens. She first alleges that she provided phone records to show that Walgreens made several unwarranted phone calls to her home and cell phone numbers. Second, she points to a Walgreens employee and alleges that this employee worked with her in the pharmacy department. Third,

Jackson "will not and cannot accept and understand" why summary judgment was granted. She further argues that, at the summary judgment hearing, the Court of Common Pleas told her that Walgreens "did cause all of this emotional distress by putting these culprits up to making all the several unwarranted phone calls."[2]

In opposition, Walgreens first argues that because Jackson merely complained about the decision below and did not cite to any authority in support of her legal argument, she has waived the four issues raised in her Notice of Appeal. Additionally, Walgreens asserts that she failed to develop any arguments regarding the four issues in her brief, which also constitutes a waiver of the appeal.[3] If, however, the Court conducts a *de novo* review of the decision to grant summary judgment, Walgreens should prevail on its motion regarding all claims set forth in Jackson's amended Complaint.

Standard of Review

"When considering an appeal from the Court of Common Pleas, this Court sits as an intermediate appellate court."[4] In doing so, it is this Court's rule to "correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical

[2] Jackson Opening Brief, ¶ 17.

[3] Walgreens' brief in this Court was not overly helpful with the factual and procedural background of this case.

[4] *Acute Nursing, Inc. v. Westminister Village*, 2007 WL 1653509 (Del. Super. Mar. 26, 2007) (citing *State v. Richards*, 1998 WL 732960 (Del. Super. May 28, 1998)).

deductive process."[5] The Court of Common Pleas decision regarding summary judgment presents a question of law that is entitled to a *de novo* review by this Court.[6] A decision granting summary judgment will be affirmed "if it appears that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law."[7]

Discussion

To survive a motion for summary judgment, Jackson must sufficiently establish all of the elements of her case that she would have the burden of proving at trial.[8] A *de novo* review of this case reveals that there are no genuine issues of material fact and Walgreens is entitled to judgment as a matter of law. Thus, the Court of Common pleas properly ruled that summary judgment was warranted in Walgreens' favor on Jackson's Intentional Infliction of Emotional Distress, Invasion of Privacy and Negligence claims.

Intentional Infliction of Emotional Distress

It is well settled that the tort of intentional infliction of emotional distress is recognized in Delaware.[9] While this Court is to determine whether a defendant's conduct permits recovery, where reasonable minds differ, the jury must determine

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[5] *State v. Huss*, 1993 WL 603365 (Del. Super. July 14, 1993)).

[6] *Newtowne Vill. Serv. Corp. v. Newtowne Rd. Dev. Co.*, 772 A.2d 172, 174-75 (Del. 2001).

[7] *Id.*

[8] *Roache v. Charney*, 38 A.3d 281, 287 (Del. 2012).

[9] *Cummings v. Pinder*, 574 A.2d 845 (Del. 1990).

whether conduct results in liability.[10] In defining intentional infliction of emotional distress, Delaware courts apply the Restatement (Second) of Torts which states:

> (1) One 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.
>
> (2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress
>
> (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
>
> (b) to any other person who is present at the time, if such distress results in bodily harm.[11]

Where there is no bodily harm, such as this case, plaintiff may recover if it sets forth specific conduct that is "extreme and outrageous." Plaintiff may recover only where "the conduct has 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."[12] Additionally, liability is generally found where a "recitation of the facts to an average member of the community would arouse his resentment against the actor, and leave him to exclaim, 'Outrageous!'"[13] However, the

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[10] *Mattern v. Hudson*, 532 A.2d 85, 86 (Del. Super. 1987).

[11] Restatement (Second) of Torts § 46.

[12] *Mattern*, 532 A.2d at 86 (quoting Restatement (Second) of Torts § 46 comment d).

[13] *Id.*

law is clear that liability "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities . . . ."[14]

Here, there are no genuine issues of material fact in dispute regarding Jackson's intentional infliction of emotional distress claim. In viewing the facts in the light most favorable to Jackson, she has not met her burden of proving the elements of intentional infliction of emotional distress. Jackson's investigator identified two numbers, neither of which were linked to Walgreens. Instead, the investigator's report identified a number of a pharmacy employee and another call with a 215 area code, not linked to anyone or any entity. Even if Jackson sufficiently linked Walgreens to the "several unwanted phone calls" the conduct does not rise to the level necessary to sustain an intentional infliction of emotional distress claim. Thus, the Court of Common Pleas did not commit legal error in granting Walgreens' motion as to intentional infliction of emotional distress.

Invasion of Privacy

The Court of Common Pleas properly dismissed Jackson's invasion of privacy claim based on the "several unwanted phone calls,"[15] as there are no genuine issues of material fact and Walgreens is entitled to judgment as a matter of law.

The tort of invasion of privacy was adopted by the Supreme Court of Delaware in *Barbieri v. News-Journal Co.*[16] In that case, the Court established the following varieties

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[14] *Id.*

[15] Second Am. Comp. at p. 2.

[16] 189 A.2d 773, 774 (Del. 1963).

of the tort: (1) intrusion on plaintiff's physical solitude; (2) publication of private matters involving the ordinary senses; (3) putting plaintiff in a false position in the public eye; and (4) appropriation of some element of plaintiff's personality for commercial use.[17]

The first variety of invasion of privacy is set forth in the Restatement as intrusion upon seclusion and is applicable in this situation. Restatement (Second) of Torts § 652B states:

> One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Furthermore, comment c to § 652B states, "The defendant is subject to liability . . . only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs."

Here, viewing the facts in the light most favorable to Jackson, there were two numbers listed on the phone records – one was from a Walgreens employee, and the other was from a number with a 215 area code. Thus, based on the record, Jackson did not sufficiently link Walgreens to the "several unwanted calls." Assuming *arguendo* that Jackson did sufficiently correlate the "several unwanted calls" to Walgreens, making phone calls where the recipient on the other end of the phone did not even pick up, is simply not enough to maintain an Invasion of Privacy cause of action.

[17] *Id.* at 774.

Negligence

The Court of Common Pleas did not commit legal error in granting Walgreens' motion as to negligence. To maintain a negligence cause of action, plaintiff must establish the following elements: (1) duty; (2) breach of that duty; (3) causation; and (4) damages.[18]

The record in this case reveals that there are no genuine issues of material fact and Walgreens is entitled to judgment as a matter of law. Jackson has not established any elements of her negligence claim. Specifically, she has not established that Walgreens had a duty, breached that duty and thus, proximately caused damages. Therefore, as there are no genuine issues of material fact in this case and Walgreens is entitled to judgment as a matter of law, the Court of Common Pleas properly granted summary judgment in Walgreens' favor.[19]

Conclusion

For the reasons stated herein, the Court of Common Pleas' decision granting Walgreens' motion for summary judgment is AFFIRMED.

IT IS SO ORDERED.

/s/ Jerome O. Herlihy

J.

[18] *Roache*, 38 A.3d at 287 (quoting *Russell v. K-Mart Corp.*, 761 A.2d 1, 5 (Del. 2000)).

[19] The Court is fully aware Jackson is proceeding *pro se* and has viewed this matter with that in mind.