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IN THE
COURT OF APPEALS OF INDIANA

PHILIP D. ANDERSON,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 53A05-0604-CV-197
	)	
LISA SPECTOR, REBECCA RIALL, JEFF MELTON, and BEVERLY CARSON,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable E. Michael Hoff, Judge
Cause No. 53C01-0404-CT-632

December 12, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Philip Anderson, challenges the trial court's grant of summary judgment in favor of Appellees, Rebecca Riall, Jeff Melton, and Beverly Carson (collectively "the Defendants"), on his claim that the Defendants were liable to him for intentional infliction of emotional distress. Upon appeal, Anderson claims that summary judgment was improperly granted because there are genuine issues of material fact as to whether the Defendants' conduct was extreme and outrageous.

We affirm.

The record reveals that from October 1997 to September 13, 2001, Anderson had a romantic relationship with Lisa Spector, which Anderson terminated on the latter date. In the weeks that followed their break-up, Anderson sent a series of letters and e-mail messages to Spector which caused her to become concerned that Anderson posed a threat to her. On or about November 27, 2001, Spector filed a petition for a protective order against Anderson in the Monroe Circuit Court based upon her fear of Anderson and his past conduct which Spector considered to be harassing.[1] Over the course of the next two years, Spector sought to have the protective order enforced against Anderson. Anderson maintains that Spector used the legal system to intimidate him by attempting to make him violate the protective order and have him arrested for such alleged violations.

[1] On January 23, 2002, Anderson and Spector submitted an Agreed Entry wherein they agreed that a restraining order would be issued against Anderson and in favor of Spector.

On the night of October 2, 2003, Spector was a scheduled speaker at the "Take Back the Night"[2] rally to be held on the Indiana University campus in Bloomington. In preparation for the rally, the Defendants, who were friends of Spector, organized and prepared a flyer which they intended to distribute at the rally.[3] The flyer was patterned upon the traditional wild-west "Wanted" posters, but bore the title "UNWANTED!" and a subtitle which stated "This Guy Does Lawn Burnings." Appendix at 21. The flyer contained a photograph of Anderson,[4] a physical description of Anderson, Anderson's home address, several general statements, and three quotations, two of which were taken from a police incident report and one which was taken from an affidavit of Anderson filed by Anderson in the protective order action involving Spector.[5] In the last paragraph of the flyer, readers were encouraged to contact local government officials "to insist they ENFORCE protective orders" and, in a separate sentence, "to demand action on behalf of safety for victims of domestic violence." Appendix at 21. The flyer indicated that it was

[2] "Take Back the Night" is an international march and rally intended as a protest and direct action against rape and other forms of violence against women. See takebackthenight.org (last visited Nov. 8, 2006).

[3] Each of the Defendants testified in their depositions that Spector was not involved with preparation or distribution of the flyer.

[4] Anderson's picture was obtained from Spector at a time wholly unrelated to the creation of the flyer.

[5] The statements and quotations contained in the flyer reference an incident occurring on February 14, 2003, when Anderson went to Spector's residence and, while standing outside, sang lyrics from an Elton John song while burning the protective order which Spector had against Anderson and which was to expire at midnight that night. Police officers responding to Spector's call found flowers and burned paper in Spector's yard. According to the police report, Spector admitted to leaving the flowers in Spector's yard and to burning the protective order. The officer writing the report indicated that he would be requesting an arrest warrant for Anderson.

prepared by "OUT THEM AND OUST THEM! COMMITTEE AGAINST DOMESTIC VIOLENCE."[6]

Two of the Defendants stated in their depositions that the purpose of the flyers was two-fold. First, because Spector feared for her safety, the Defendants wanted persons in attendance at the rally to be able to identify Anderson if he showed up. The Defendants also indicated that they felt that depiction of a real-life example in the flyer would have a greater impact in helping to raise awareness of the issue of violence against women. Although initially the flyers were intended only to be handed out at the rally, Jeff Melton, one of the named Defendants, also posted a few flyers around Indiana University's Bloomington campus.[7]

On April 1, 2004, Anderson filed a complaint against Spector for abuse of process and intentional infliction of emotional distress. On February 10, 2005, Anderson amended his complaint to add Riall, Carson, and Melton as defendants to his intentional infliction of emotional distress claim. The Defendants filed an answer to the complaint, asserting that Spector was not involved in producing or distributing the flyer. Shortly thereafter, Spector filed a motion for summary judgment, which the trial court granted.[8] Thereafter, on August 9, 2005, the Defendants moved for summary judgment.

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[6] The "Out Them and Oust Them!" committee name was made up by the Defendants during the creation of the flyer. It does not refer to an official group.

[7] There are varying estimates as to the number of flyers which were distributed at the rally and posted around campus, the highest estimate being "[l]ess than two hundred." Appendix at 63.

[8] Following the grant of summary judgment in favor of Spector, Anderson initiated an appeal under Cause No. 53A01-0510-CV-468, which he opted not to pursue after he deposed the Defendants and each of them reiterated Spector's non-involvement with production and distribution of the flyer. Anderson's appeal was dismissed on March 3, 2006. Spector is not an active party in the instant appeal.

Following a hearing, the trial court granted the Defendants' motion for summary judgment on February 6, 2006. Anderson filed a motion to correct error which was denied by the trial court on March 14, 2006. Anderson now appeals the trial court's grant of summary judgment in favor of the Defendants.

Upon appeal from the grant of summary judgment, this court faces the same issues that were before the trial court and analyzes them in the same manner. Lachenman v. Stice, 838 N.E.2d 451, 456 (Ind. Ct. App. 2005), trans. denied. Summary judgment is appropriate only where the designated evidentiary materials demonstrate that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law. Id.; Ind. Trial Rule 56(C). Once the moving party demonstrates, prima facie, that there are no genuine issues of material fact as to any determinative issue, the burden falls upon the non-moving party to come forward with contrary evidence. Lachenman, 838 N.E.2d at 456. Upon appeal, we do not weigh the evidence but rather consider the facts in the light most favorable to the non-moving party. Id.

Here, we are asked to review whether the trial court properly granted summary judgment in favor of the Defendants on Anderson's claim of intentional infliction of emotional distress. We begin by noting that the tort of intentional infliction of emotional distress was first recognized as a separate cause of action without the need for an accompanying tort in Cullison v. Medley, 570 N.E.2d 27 (Ind. 1991). See City of Anderson v. Weatherford, 714 N.E.2d 181, 185 (Ind. Ct. App. 1999), trans. denied. Intentional infliction of emotional distress is committed by "'one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another

. . . .'" 570 N.E.2d at 31 (quoting Restatement (Second) of Torts § 46 (1965)). The elements of the tort are that the defendant: (1) engages in extreme and outrageous conduct (2) which intentionally or recklessly[9] (3) causes (4) severe emotional distress to another. Branham v. Celadon Trucking Servs., Inc., 744 N.E.2d 514, 523 (Ind. Ct. App. 2001), trans. denied; Bradley v. Hall, 720 N.E.2d 747, 752 (Ind. Ct. App. 1999). The requirements to prove this tort are rigorous. Branham, 744 N.E.2d at 523.

In arguing that summary judgment was improper, Anderson asserts that there are genuine issues of material fact as to whether the Defendants' conduct, consisting of production and distribution of the subject flyer, was extreme and outrageous. Anderson maintains that the threat to himself and the public embarrassment resulting from the production and distribution of the flyer is apparent if one considers the fact that, in Anderson's opinion, the impact of the flyer was to portray him as a domestic abuser. Anderson also maintains that the flyer was outrageous because it contained an "implied call for vigilante action." Appellant's Brief at 9.

The hallmark of the tort of intentional infliction of emotional distress is the extreme and outrageous conduct which is required to sustain the tort. In describing what constitutes extreme and outrageous conduct, our cases have cited with approval the following comment:

> "'The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even

[9] We would note that a demonstrated intent to harm seems inconsistent with mere reckless conduct. See Lachenman, 838 N.E.2d at 456 n.5. Indeed, we have found no Indiana case where reckless conduct has supported a finding of intentional infliction of emotional distress.

> criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found 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. Generally, the case is one in which 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!'" Bradley, 720 N.E.2d at 752-53 (quoting Restatement (Second) of Torts § 46).

In other words, intentional infliction of emotional distress is found where conduct exceeds all bounds usually tolerated by a decent society and causes mental distress of a very serious kind. Branham, 744 N.E.2d at 523. What constitutes extreme and outrageous behavior depends, in part, upon prevailing cultural norms and values. Id. In the appropriate case, the question may be decided as a matter of law. Id. See Conwell v. Beatty, 667 N.E.2d 768, 777 (Ind. Ct. App. 1996) (concluding that sheriff's conduct in calling a press conference and relaying detailed information about an incident leading to the arrest of a deputy sheriff was not outrageous as a matter of law).

While perhaps "over the top," we cannot say that the production and dissemination of the subject flyer was extreme and outrageous conduct. We agree with Anderson that the flyer contained somewhat of an "implied call for vigilante action" to the extent it suggested that readers take action against Anderson, i.e. call the police. The direct and explicit call for action contained in the flyer, however, was for readers to contact local officials to insist that they enforce protective orders and to demand action to promote safety on behalf of victims of domestic violence.

We next address Anderson's claim that the impact of the flyer was to portray him as a domestic abuser. While the flyer suggests that Anderson violated a protective order, it made no statement or suggestion that he "domestically abused" the victim.[10] Even considering the content of the flyer in conjunction with the nature of the rally at which it was distributed or the content of Spector's speech,[11] it cannot be said that the flyer portrayed Anderson as a "domestic abuser."

Further, while we agree that the subject flyer paints Anderson in an unfavorable light, it remains that, other than a few trivial statements, the information contained in the flyer is true and was taken from public records. Indeed, two of the quotations contained in the flyer were taken from a police incident report, and one was taken from Anderson's own affidavit. All of the statements and quotations were in reference to the incident which occurred on February 14, 2003, in which Anderson readily admitted participating to police and elaborated upon in his affidavit. Anderson does not dispute the accuracy of the statements or quotations contained in the flyer. Any embarrassment or emotional distress suffered by Anderson originated from the events themselves and not from the Defendants' dissemination of public records describing a public event.

Because we have determined as a matter of law that the Defendants' conduct was not extreme and outrageous, the trial court's grant of summary judgment may be

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[10] In its summary judgment order, the trial court noted, "The flyer ostensibly seeks public disapprobation against [Anderson] for allegedly violating a protective order, for fighting a protective order, and for delaying a court hearing twice." Appendix at 12.

[11] The full content of Spector's speech at the rally is not in the record. In his deposition, Anderson states that during Spector's speech she "embellished upon details of her relationship with [him]" and that she made references to him as "a vampire man." Appendix at 54.

sustained. We would also note, however, that Anderson has not shown that the Defendants' purpose in producing and disseminating the flyer was to cause him emotional pain. To the contrary, from the designated evidence before the trial court, it is apparent that the Defendants' purpose was to protect Spector by making sure those in attendance at the rally could identify him. Although the effect may have been that Anderson suffered emotional distress, the evidence does not reflect that the Defendants intended to cause such.

As this court has before observed, "The law does not provide a remedy for every annoyance that occurs in everyday life. Many things which are distressing or may be lacking in propriety or good taste are not actionable." Branham, 744 N.E.2d at 518 (internal quotations omitted). This is such the case here. The record simply does not support the atrocious conduct that the tort calls for or demonstrate that the Defendants had the requisite intent. The trial court did not err in granting the Defendants' motion for summary judgment on Anderson's claim for intentional infliction of emotional distress.

The judgment of the trial court is affirmed.

BARNES, J., concurs.

ROBB, J., concurs in result.