

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LISA C. BERNHARDT,

Plaintiff-Appellant,

v

INGHAM REGIONAL MEDICAL CENTER,  
f/k/a and d/b/a MICHIGAN CAPITAL MEDICAL  
CENTER and GUARDSMARK, INC.,

Defendants-Appellees.

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FOR PUBLICATION  
January 18, 2002  
9:05 a.m.

No. 226124  
Ingham Circuit Court  
LC No. 99-090500-CZ

Updated Copy  
March 29, 2002

Before: Bandstra, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) for lack of subject-matter jurisdiction. We affirm.

According to plaintiff's first amended complaint, she visited defendant Ingham Regional Medical Center (the hospital) on August 7, 1997, to bring home her adopted newborn son. Before visiting the baby, she removed her jewelry while scrubbing her hands and arms. Plaintiff left the jewelry at the washbasin and forgot to retrieve it before returning home. The jewelry consisted of an 1897 diamond ring and a 1980 Seiko watch. Plaintiff alleged that the jewelry was of great sentimental value because (1) the ring was her grandmother's wedding ring that plaintiff also used as her own wedding ring and was therefore an heirloom and (2) the watch was purchased around the time of her brother's murder.

Plaintiff alleged that she contacted the hospital after realizing that she had left the jewelry. The hospital indicated that the jewelry was in its possession. Plaintiff attached as an appendix to her complaint a copy of a September 7, 1997, letter she received from the hospital indicating that the ring and watch were forwarded to the hospital's security department and that she should contact that department to claim the items. According to plaintiff, when she tried to make arrangements for return of the jewelry she was advised that the jewelry could not be located.

On August 6, 1999, plaintiff filed a complaint against the hospital and Guardsmark, Security, Inc., alleging counts of conversion, breach of bailment, and intentional infliction of emotional distress. In the alternative, plaintiff also alleged counts of negligence and replevin. Plaintiff alleged that her damages exceeded \$25,000 exclusive of interest and costs.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(4), arguing that the proper measure of damages for the lost property is fair market value. Defendants argued that the law does not provide compensation for the sentimental value of property and, therefore, because plaintiff's counsel acknowledged that the appraised value of each item did not exceed \$300, plaintiff failed to allege sufficient facts or to present documentary evidence to establish that her claim exceeded the \$25,000 statutory jurisdictional minimum of the circuit court. Plaintiff disagreed, arguing that the two items of jewelry have great sentimental value beyond the normal market value of the items.

Following a hearing on defendants' motion, the trial court concluded that plaintiff's damages were insufficient to invoke the jurisdiction of the circuit court.

### I. Emotional Distress

Plaintiff first argues that her claim of intentional infliction of emotional distress, standing alone, brought the instant case within the jurisdictional scope of the circuit court and raised a question of fact to be decided by the jury. 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. *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). In *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602-603; 374 NW2d 905 (1985), the Court quoted with approval "an oft-quoted Restatement comment," 1 Restatement Torts, 2d, § 46, comment d, pp 72-73, that summarizes the prevailing view of what constitutes "extreme and outrageous" conduct:

"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 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.'"

Here, the hospital's conduct can not be characterized by any reasonable person as extreme and outrageous. The hospital found and retrieved plaintiff's jewelry. Upon being informed that

the jewelry belonged to plaintiff, the hospital declined plaintiff's invitation to place the items in the mail and instead scheduled an appointment for plaintiff to pick up the jewelry. When plaintiff failed to show up for the appointment, the hospital turned the jewelry over to the security department and advised plaintiff that she could contact the security department to retrieve her items. The inability of the security department to locate the items does not demonstrate that defendants acted in an "extreme and outrageous" manner. Because plaintiff failed to present sufficient facts to support this claim, no damages can be attributed to this claim.

Plaintiff claims, however, that her claims of emotional distress in connection with her tort claims of conversion and negligence are sufficient to bring this case within the jurisdiction of the circuit court. We disagree. There is no Michigan precedent that permits the recovery of damages for emotional injuries allegedly suffered as a consequence of property damage.<sup>1</sup> *Koester v VCA Animal Hosp*, 244 Mich App 173, 176; 624 NW2d 209 (2000).<sup>2</sup>

## II. Sentimental Value

With regard to the conversion claim, plaintiff argues that the body of law regarding an action for conversion recognizes the "peculiar" or "special" value of converted property as the proper measure of assessing damages where the greater value of the property is in sentiment and not market value. In support of this argument, plaintiff cites *Willis v Ed Hudson Towing, Inc*, 109 Mich App 344, 349; 311 NW2d 776 (1981), in which this Court stated:

The measure of damages for the conversion of personal property is the value of the property at the time of the conversion, in the absence of any testimony establishing a peculiar value in the goods to the owner.

In making this statement, the Court cited *Hudson v Enichen*, 308 Mich 79, 85; 13 NW2d 215 (1944). In neither case did the Court address the issue of "peculiar value." Plaintiff suggests that the term "peculiar value" encompasses the sentimental value of an heirloom. In *Rose v Lewis*, 10 Mich 483 (1862), the Court stated:

It is undoubtedly true that damages for the conversion of articles having a regular market value are measured generally by that value. But that is only because such a measure furnishes the precise redress which the law always aims at giving, by making good as near as may be the injury which the aggrieved party

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<sup>1</sup> Additionally, plaintiff did not allege emotional distress damages in connection with her claim for conversion or negligence.

<sup>2</sup> Damages for emotional distress in tort actions are available only when a definite and objective physical injury is produced as a result of emotional distress proximately caused by a defendant's negligent conduct. *Daley v LaCroix*, 384 Mich 4, 12-13; 179 NW2d 390 (1970). Here, plaintiff did not allege any definite or objective physical injuries as a result of the loss of her jewelry.

has sustained. Where articles have not a standard or market value, then their value to the owner, so far as they are susceptible of pecuniary measurement which is not fanciful or merely speculative, furnishes the true test.

See also *Larson v Van Horn*, 110 Mich App 369, 385; 313 NW2d 288 (1981) (the proper measure of damages in an action for conversion is the fair market value of the item converted at the time of the conversion). However, in the case of family pictures or heirlooms of special value to the plaintiff that cannot be replaced and do not have a market value, the measure of damages may include the value to the owner. See, e.g., *Iler v Baker*, 82 Mich 226, 233; 46 NW 377 (1890). 4 Restatement Torts, 2d, § 911, comment e, pp 474-475, provides:

If the subject matter cannot be replaced, however, as in the case of a destroyed or lost family portrait, the owner will be compensated for its special value to him, as evidenced by the original cost, and the quality and condition at the time of the loss. . . . In these cases, however, damages cannot be based on sentimental value. Compensatory damages are not given for emotional distress caused merely by the loss of the things, except that in unusual circumstances damages may be awarded for humiliation caused by deprivation, as when one is deprived of essential elements of clothing.

In the present case, the two items of jewelry have a market value that can easily be ascertained. Hence, fair market value is the measure of damages. Because the items have a fair market value, there is no need to resort to an alternative measure of damages to compensate plaintiff for her loss.

Affirmed.

Bandstra, P.J., concurred.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald

Gage, J. I concur in the result only.

/s/ Hilda R. Gage