STATE OF MICHIGAN

COURT OF APPEALS

JULIE MARIE DAVIS HOFF, Personal Representative of the Estate of KENNETH HOFF, Deceased,

Plaintiff-Appellant,

v

SMITH, BOVILL, FISHER, MEYER & BORCHARD, P.C., MICHAEL J. SHOVAN and CARROLLTON TOWNSHIP,

Defendants-Appellees.

UNPUBLISHED
April 13, 1999

No. 208254
Saginaw Circuit Court
LC No. 96-015137 NZ

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

Plaintiff appeals as of right from a final judgment ordering defendant Carrollton Township to pay her $5,500 pursuant to a settlement agreement. On appeal, plaintiff challenges the lower court's order granting partial summary disposition to defendants regarding her intentional infliction of emotional distress claim before the close of discovery. We affirm.

Plaintiff first argues that her complaint stated a legally sufficient claim of intentional infliction of emotional distress arising out of a letter sent by defendants, her husband's former employer and their attorneys, to her attorney. The letter disclaimed Carrollton Township's liability to her deceased husband's estate for any unpaid wages or benefits. The trial court granted defendants' summary disposition motion pursuant to MCR 2.116(C)(8), and we review that decision de novo. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim, accepting all well-pleaded facts as true. *Id.* The pertinent inquiry is whether "the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Harrison v Dep't of Corrections*, 194 Mich App 446, 450; 487 NW2d 799 (1992).

The elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602; 374 NW2d 905 (1985); *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). Liability for the intentional infliction of emotional distress has been found only where the conduct complained of 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. *Johnson v Wayne Co*, 213 Mich App 143, 161; 540 NW2d 66 (1995); *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d 585 (1993). It is initially for the court to determine whether the defendant's conduct may be regarded as so extreme and outrageous as to permit recovery. *Doe v Mills*, 212 Mich App 73, 92; 536 NW2d 824 (1995).

Defendants' actions in this case do not approach the appalling and abusive behavior described in other cases where this Court has found the conduct to be outrageous. See, e.g., *Haverbush*, *supra* at 234; *Johnson*, *supra* at 161; *Doe*, *supra* at 93. The very words that plaintiff finds objectionable in the letter defendants wrote to her attorney, like "fraud," are reasonable when exchanged on paper between lawyers who use similar legal terminology as a part of everyday business. See *Swenson-Davis v Martel*, 135 Mich App 632, 639; 354 NW2d 288 (1984) (Kelly, J., concurring). Indeed, the letter expressly stated concern for the decedent's family and defendants had previously sent plaintiff a certificate recognizing her husband's service. Defendants' actions are also distinguishable from the conduct in the case plaintiff cites, *Rosenberg v Rosenberg Brothers Special Account*, 134 Mich App 342; 351 NW2d 563 (1984). There, the plaintiff's complaint described numerous instances of conduct, while here plaintiff's complaint is based only on the letter. We do not find the letter to be so extreme and outrageous that it went beyond all possible bounds of decency. We agree with the trial court's conclusion that defendants' actions were not outrageous as a matter of law, and we find that the trial court did not err in granting partial summary disposition.

Plaintiff also challenges the trial court's decision to grant the motion for partial summary disposition before the close of discovery. Pursuant to MCR 2.116(D)(3), a party may bring a motion for summary disposition under MCR 2.116(C)(8) at any time during the proceedings of a case. A trial court does not err in granting a motion for summary disposition under MCR 2.116(C)(8) prior to the close of discovery when "no fair chance exists that further discovery will result in factual support for the nonmoving party." *Northland Wheels Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 329-330; 539 NW2d 774 (1995). While discovery might have helped plaintiff to establish other elements of her claim, such as defendants' intent, no amount of discovery would have made the letter so extreme and outrageous as to permit recovery. Accordingly, we find the trial court did not err in granting defendants' motion before the close of discovery.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Barbara B. MacKenzie
/s/ Gary R. McDonald