STATE OF MICHIGAN

COURT OF APPEALS

MARK BUTLER and SUE BUTLER, Individually, and SUE BUTLER as Guardian ad litem for GABRIEL GREEN and LISA GREEN, Minors,

Plaintiffs-Appellants,

v

JOHN STAFFORD,

Defendant-Appellee.

UNPUBLISHED
April 28, 2000

No. 216948
Ottawa Circuit Court
LC No. 96-026353-NZ

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, a child protective services worker for the Ottawa County Family Independence Agency (OCFIA), f/k/a the Ottawa County Department of Social Services (OCDSS), was assigned to investigate an allegation that Mark Butler had touched the daughter of Sue Butler in an inappropriate manner. Mark Butler was charged with criminal sexual conduct in the fourth degree, MCL 750.520e(1)(a); MSA 28.788(5)(1)(a), and the names of Mark Butler and Sue Butler were added to a central registry of names of persons involved in investigations of sexual abuse. Mark Butler was acquitted of the criminal charge, and the Butlers' names were removed from the registry.

After defendant closed his file, plaintiffs filed suit in circuit court. The complaint, which also named the Michigan Department of Social Services (DSS), n/k/a the Family Independence Agency, and the OCDSS as defendants, alleged violation of various civil rights, intentional infliction of emotional distress, and loss of consortium. Defendants removed the case to federal court. Plaintiffs' federal law claims against the Michigan DSS and the OCDSS were dismissed, and the remaining state law claims were remanded to circuit court.

In circuit court, defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10). In response, plaintiffs indicated that they intended to pursue only the claim for intentional infliction of emotional distress. The circuit court granted defendant's motion pursuant to MCR 2.116(C)(10), finding that plaintiffs' allegations did not qualify as conduct so extreme and outrageous as to permit recovery.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).]

To state a claim of intentional infliction of emotional distress, a plaintiff must show: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). The conduct complained of must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as utterly intolerable in a civilized society. *Id.* The initial determination of whether the conduct complained of meets this threshold is for the trial court. *Id.* If reasonable minds could disagree, the case must be submitted to the jury. *Id.*

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. While the extreme and outrageous character of conduct necessary to support a claim for intentional infliction of emotional distress may arise from the position of the actor, *Bhama v Bhama*, 169 Mich App 73, 80; 425 NW2d 733 (1988), defendant was entitled and had a duty to investigate allegations brought to his agency by the Ottawa County Sheriff's Department. He was not required to terminate his investigation simply because Mark Butler denied the allegations. During the course of his investigation, defendant had little direct contact with plaintiffs. Plaintiffs' reliance on cases such as *Margita v Diamond Mortgage Corp*, 159 Mich App 181; 406 NW2d 268 (1987), and *Haverbush v Powelson*, 217 Mich App 228; 551 NW2d 206 (1996), is misplaced. Unlike the defendants in *Margita, supra*, who continued to send threatening letters and to use abusive and profane language toward the plaintiffs even after a dispute over mortgage payments was supposedly resolved, defendant here did not have any contact with plaintiffs after he closed his file. Furthermore, unlike the defendant in *Haverbush, supra*, who wrote libelous and threatening letters to the plaintiff and others and left weapons on the plaintiff's vehicles, defendant here did not engage in violent or potentially harmful acts. Defendant did not use his position of authority to take unwarranted actions against plaintiffs. The trial court correctly found as a matter of law that defendant's conduct could not be deemed

extreme and outrageous, *Teadt*, *supra*, and properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Janet T. Neff
/s/ Michael R. Smolenski