

STATE OF MICHIGAN
COURT OF APPEALS

EATON PINE VILLAGE,

Plaintiff/Counterdefendant-
Appellant,

v

RONALD JACKSON,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED

June 21, 2002

No. 224572

Eaton Circuit Court

LC No. 98-000823-AV

Before: Hoekstra, P.J., and Whitbeck, C.J., and Talbot, J.

TALBOT, J., (*dissenting*).

I respectfully dissent. In accordance with the Supreme Court's directive, I limit my analysis to the question whether Ronald Jackson presented sufficient evidence to defeat Eaton Pine Village's (EPV) motions for directed verdict or judgment notwithstanding the verdict (JNOV) on his claim of intentional infliction of emotional distress.¹ Because my review of the record leads me to conclude that Jackson failed to present evidence of outrageous and extreme conduct attributable to EPV, I would reverse.

The evidence adduced at trial established that residents voiced complaints against Jackson for trash cans in his yard, deflated tires on his car, his children running through neighbors' yards, obscenities uttered by Jackson, his dog's incessant barking, and that the police were called to respond to disturbances involving Jackson. The testimony showed that Jackson had conflicts with some of the residents of EPV, while other residents enjoyed good relations with him. The evidence also demonstrated a mutual animosity between Jackson and Carol Rial. Although there was testimony that Rial, as EPV's agent, did not treat Jackson in the same way she treated other residents regarding violations of the rules, the testimony was general and did not specify what the violations were, or whether similar violations by other residents went unaddressed.

¹ The Supreme Court order requires this Court to confine its review to the question whether sufficient evidence was presented on the claim for intentional infliction of emotional distress. If given a free hand, I would address numerous concerns, not the least of which is that the rules of evidence seem to have taken a holiday in this case.

I conclude that reasonable minds could not disagree that the actions of EPV do not constitute outrageous and extreme conduct. *Corley v Detroit Bd of Educ*, 246 Mich App 15, 25-26; 632 NW2d 147 (2001); *Smith v Jones*, 246 Mich App 270, 273-274; 632 NW2d 509 (2001). Resolving all conflicts in the evidence in favor of Jackson for purposes of review, I accept as true the evidence that Jackson was treated unfairly, received a disproportionate number of citations, was the subject of baseless complaints, and was the victim of selective enforcement of the park rules. I also disregard Jackson's admission that there was "a certain amount of truth" to his neighbors' complaints. Further, for purposes of discussion I ignore the important distinctions among Rial's actions taken in her capacity as manager and those taken as an employee or as a resident of EPV. The various incidents of which Jackson complained, to the extent that they can be gleaned from the record,² viewed singly or collectively, do not rise to the level of outrageous and extreme conduct because they do not "go beyond all possible bounds of decency" nor are they "to be regarded as atrocious and utterly intolerable in a civilized community." *Corley, supra* at 25-26, quoting *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). They are at most "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," to which liability does not extend. *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). Accordingly, EPV was entitled to a directed verdict or JNOV. *Smith, supra* at 273-274.

/s/ Michael J. Talbot

² Noticeably absent from the lower court record is a comprehensive list of the incidents which Jackson alleges supports his claim for intentional infliction of emotional distress. Nowhere in the record does Jackson articulate with specificity the acts which he claims rise to the level of extreme and outrageous conduct. *Corley, supra* at 25-26. Rather, the trial record consists of the testimony of residents and agents of EPV regarding Jackson's level of compliance with the park rules and regulations and the many complaints lodged against him. Moreover, Jackson's allegations of harassment do not delineate those acts of EPV's agents as separate from the acts of its residents, which is a meaningful distinction for purposes of holding EPV liable. Although EPV may be held liable for Rial's intentional acts while she was manager of EPV, it is questionable whether her acts as a mere employee performing maintenance work could be attributed to EPV, and it is unlikely that EPV could be held liable for Rial's acts when she was only a resident of EPV. See *Travis v Dreis and Krump Mfg Co*, 453 Mich 149, 171-172; 551 NW2d 132 (1996); *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 528-529; 529 NW2d 318 (1995); *Bryant v Brannen*, 180 Mich App 87, 108; 446 NW2d 847 (1989).