STATE OF MICHIGAN

COURT OF APPEALS

RENEE RUDOVER,

Plaintiff-Appellant,

v

NEUROSURGERY GROUP, P.C., d/b/a WELLNESS PHYSICAL MEDICINE CENTER, FAYE POSNER, and MARK BRENNAN, M.D.,

Defendants-Appellees.

UNPUBLISHED
February 3, 2009

No. 282562
Macomb Circuit Court
LC No. 2006-002649-CZ

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendants. We affirm in part, reverse in part, and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Facts

Plaintiff worked for defendant the Wellness Center as a physical therapy assistant from March 2003 until she was terminated the following June. Defendant Posner was a patient of defendants Dr. Brennan and the Wellness Center, and also plaintiff's aunt by marriage. According to plaintiff, Posner, who had a history of mental illness, complained to Dr. Brennan that plaintiff had used the terms "faker" and "crazy" disparagingly, and also engaged in stalking and other harassment. Brennan asked Posner to detail her allegations in a letter. Posner responded with a letter to the Wellness Center's office manager, accusing plaintiff of accosting her repeatedly on the facility's premises, and of making menacing, disparaging, and intimidating statements there and also in private communications. Posner additionally asserted that plaintiff had improperly obtained and disclosed some of her medical records.

Plaintiff was terminated shortly thereafter. The office manager composed a written list of reasons for the termination, specifying a violation of the Health Insurance Portability and

Accountability Act (HIPAA),[1] along with excessive cell-phone usage, misuse of lunch breaks, and that plaintiff "manipulated the staff today so she could get her hours in even through she was aware that the work/patient load was not available."

Plaintiff filed suit, alleging that she was wrongfully terminated because of her pregnancy, and also because of false allegations by Posner that she violated the HIPAA. Plaintiff brought claims of violation of the Civil Rights Act,[2] breach of implied employment contract, discharge against public policy, and tortious interference in a business relationship. The first three claims were pleaded against the medical defendants, the fourth against Posner, only.

Defendants moved for summary disposition, and the trial court granted the motions. Plaintiff moved to amend her complaint to include claims of negligence and intentional infliction of emotional distress against the medical defendants, but the court made no mention of that motion in the final order closing the case.

On appeal, plaintiff first argues that the trial court erred in granting Posner's motion for summary disposition, then argues that the court erred in refusing to allow plaintiff to amend her complaint, and then finally argues that the court erred in granting Brennan's and the Wellness Center's motion for summary disposition.

II. Summary Disposition: Defendant Posner

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor,* 263 Mich App 618, 621; 689 NW2d 506 (2004).

Tortious interference with a business expectancy or relationship consists of

> (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Health Call v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 90; 706 NW2d 843 (2005).]

"Interference" for purposes of this tort involves "the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the

---

[1] 42 USC 1320d *et seq.*

[2] MCL 37.2101 *et seq*.

contractual rights or business relationship of another." *Badiee v Brighton Area Schools*, 265 Mich App 343, 367; 695 NW2d 521 (2005) (internal quotation marks and citations omitted).

In this case, the trial court held, "the evidence presented showed that Posner had concerns regarding her health and safety while attending appointments at Wellness Center and reasonably acted upon those concerns by reporting the incidents to Wellness Center administration," and that there was "no basis for concluding that defendants' actions were inherently wrongful." The court further noted that Posner's letter never called for plaintiff's discharge or referenced the HIPAA, but instead merely requested assurances that her medical records would not be misused, and that contact with plaintiff would be avoided. The court granted summary disposition to Posner because "[t]here is no indication that Posner was acting with a wrongful or malicious intent to interfere with plaintiff's employment." The court further noted that office records indicated that problems with Posner were among several reasons for plaintiff's termination.

However, plaintiff's complaint alleged that Posner *falsely* made the accusations that the trial court appears to have credited, and, at deposition, plaintiff testified that she had minimal contact with Posner at the Wellness Center, and denied having spoken adversely to her or disclosing any confidential information. Again, a court deciding a motion for summary disposition under MCR 2.116(C)(10) is obliged to view the pleadings and evidence in the light most favorable to the nonmoving party, in this case plaintiff. See *Walsh*, *supra*. Further, in deciding motions for summary disposition, a court "may not make factual findings or weigh credibility." *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993). The trial court thus erred in crediting the veracity of Posner's assertions while disregarding or discrediting those of plaintiff.

Although the court noted that Posner never called for plaintiff's discharge, nor cited the HIPAA, if Posner in fact fabricated her allegations against plaintiff in her communications to Brennan and the Wellness Center, as the trial court was obliged to assume when reviewing the evidence in the light most favorable to plaintiff, that those false allegations, if believed, could lead to an adverse employment decision seems obvious. Although truthfully expressing concerns about unpleasant confrontations is not itself a wrongful act, falsely complaining to an employee's superiors about such confrontations most certainly is.

The trial court additionally noted that there was evidence that plaintiff was terminated for reasons beyond Posner's complaints. But plaintiff testified that the Wellness Center's office manager had said that plaintiff would not have been terminated but for the alleged HIPAA violation, which stemmed entirely from what Posner had reported. Further, the office manager's written statement of reasons why plaintiff was terminated first mentions the alleged HIPAA violation. Considering this evidence in the light most favorable to plaintiff means presuming, for present purposes, that Posner's false accusations led directly to plaintiff's termination.

For these reasons, the trial court erred in granting Posner's motion for summary disposition. We vacate that aspect of the decision below, and remand this case to the trial court for further proceedings in this regard.

III. Motion to Amend

"[D]ecisions granting or denying motions to amend pleadings . . . are within the sound discretion of the trial court and reversal is only appropriate when the trial court abuses that discretion." *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). However, a trial court's failure to exercise its discretion, when properly asked to do so, is itself an abuse of discretion. *Rieth v Keeler*, 230 Mich App 346, 348; 583 NW2d 552 (1998).

In this case, the trial court made no mention of plaintiff's motion to amend her complaint in its opinion and order closing the case. Leave to amend a pleading "shall be freely given when justice so requires." MCR 2.118(A)(2). The trial court must specify its reasons for denying the motion; failure to do so requires reversal unless the amendment would be futile. *Noyd v Claxton, Morgan, Flockhart & VanLiere*, 186 Mich App 333, 340; 463 NW2d 268 (1990). Amendment in this instance would have been futile, so appellate relief in this regard is not warranted.

A. Intentional Infliction of Emotional Distress

To prevail on a claim of intentional infliction of emotional distress, the plaintiff must show that the defendant intentionally or recklessly engaged in extreme and outrageous conduct that proximately caused the plaintiff to suffer severe emotional distress. *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). "Liability for such a claim 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." *Id.* The Restatement goes so far as to suggest that the complained-of conduct much be so horrendous as to cause an ordinary member of the community "to exclaim, 'Outrageous!'" Restatement Torts, 2d, § 46, cmt d, pp 72-73, quoted approvingly in *Roberts, supra* at 603. Whether the conduct in question is extreme and outrageous is initially a question for the court. See *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004).

In this case, plaintiff premises her intentional infliction theory on the allegation that the medical defendants improperly disclosed her medical information. However, misuse of medical records, although offensive, is not the sort of thing that would normally cause an onlooker to scream "Outrageous!" Plaintiff does not describe any prolonged course of egregious conduct on the part of the medical defendants, only an improper retrieval and limited exposure of her records. Moreover, plaintiff complains that the medical defendants obtained medical records "that revealed the original emotional trauma to Plaintiff" allegedly caused by those defendants, but does not otherwise specify precisely what that information was, let alone explain what about it was of an embarrassing or otherwise seriously distressing nature. For these reasons, plaintiff has failed to show that amendment of her complaint to include a claim for intentional infliction of emotional distress would not have been futile.

B. Negligence

Plaintiff argues for a claim of negligence by asserting that, even if an at-will employee of the medical defendants, "a false an needless criminal accusation" against her "would

foreseeablly [sic] prevent her from obtaining employment and in fact did prevent her from obtaining employment . . . ." But this is substantially a recasting of plaintiff's breach of implied employment contract claim. Beyond that, plaintiff seems to be arguing a defamation theory under the rubric of negligence. But ordinary negligence is a theory under which to prosecute unintended, not intentional, misconduct. See *Tull v WTF, Inc*, 268 Mich App 24, 32; 706 NW2d 439 (2005) (distinguishing ordinary negligence from gross negligence and intentional torts); *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 201 n 2; 446 NW2d 648 (1989) (distinguishing ordinary negligence from gross negligence and intentional torts). Because plaintiff complains of intentional misconduct on the part of the medical defendants, a count of negligence would have been inapt, and thus an amendment to her complaint for that purpose would have been futile.

IV. Summary Disposition: Defendants Brennan and the Wellness Center

Plaintiff presents the applicable standard of review for this issue, then, as her entire argument, states as follows: "Plaintiff reserves all arguments concerning issue III, and these arguments are dependent on a ruling by the Court of Appeals and any remanded action by the Trial Court." Plaintiff has thus abandoned this issue for want of proper presentation.

A party's mere assertion that the party's rights were violated, unaccompanied by record citations, cogent argument, or supporting authority, is insufficient to present this issue for consideration by this Court. MCR 7.212(C)(7). See also *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). A party may not leave it to the appellate court to "'unravel and elaborate for him his arguments . . . .'" *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). A bald assertion without supporting authority precludes appellate examination of the issue. *Impullitti v Impullitti*, 163 Mich App 507, 512; 415 NW2d 261 (1987).

Plaintiff's suggestion that whether summary disposition was proper with respect to the medical defendants is wholly a function of the other issues on appeal is inapt. The question whether plaintiff offered sufficient evidentiary support of her Civil Rights Act, contract, and public policy claims against Brennan and the Wellness Center is an issue substantially distinct from whether plaintiff adequately supported her tortious interference claim against Posner, or whether the trial court should have allowed plaintiff to add claims of negligence or intentional infliction of emotional distress.

Further, declaring herself to be reserving argument with respect to this issue pending the outcome of the others, plus possible developments on remand, shows plaintiff to misapprehend appellate procedure. Plaintiff cites no authority for the proposition that an appeal may be presented in such piecemeal fashion.

For these reasons, we deem this issue abandoned.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra