STATE OF MICHIGAN

COURT OF APPEALS

AIMAN FARHOUD and SOUHAR FARHOUD, Plaintiffs-Appellants,	UNPUBLISHED February 21, 2013
v	No. 308566 Washtenaw Circuit Court
DARICE ROSARIO, Defendant-Appellee.	LC No. 11-000853-NZ

Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Plaintiffs Aiman Farhoud and Souhar Farhoud, husband and wife, brought an action for defamation, intentional infliction of emotional distress, and intentional interference with a contractual relationship against defendant Darice Rosario. The trial court dismissed the defamation claim pursuant to MCR 2.116(C)(7) and granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on the remaining claims. Plaintiffs appeal as of right the dismissal of the claim for intentional infliction of emotional distress. We affirm.

Aiman and defendant were coworkers in a large hospital where Aiman worked as a patient care assistant and defendant worked as a registered nurse. Specifically, Aiman was a "sheath puller," meaning that he would pull the line from a patient after a heart catheterization. On July 26, at about 4:30 p.m., defendant allegedly overheard Aiman ask a fellow coworker, "Can you pull this sheath for me before I have to shoot somebody?" Defendant believed that this comment was "unsettling" and "inappropriate," and reported it to her direct supervisor on July 27.

Hospital security confronted Aiman about the alleged comment the same day. Aiman was "shocked" that he had been reported and told the security officer that he had no recollection of making the comment, but if he did make the comment it was only made in jest. During his deposition, Aiman explained, "There is an American joke . . . [w]hen you come to me, you tell me, 'How you doing?' I tell you, 'Oh, shoot me. I'm so tired,' and that was going on a lot in our unit." No disciplinary action was ever taken against Aiman as a result of defendant's report.

On August 1, 2011, plaintiffs filed the present action against defendant. The complaint alleged that, "as a result of the false accusation, [Aiman] suffered substantial damages" including "embarrassment, humiliation, depression, anxiety," and missed time from work. Aiman alleged that defendant reported him in retaliation for Aiman previously reporting defendant for

"workplace misconduct." Souhar alleged that she suffered emotional distress from the incident and that this stress resulted in a heart attack. On January 20, 2012, the trial court granted defendant's motion for summary judgment with regard to Aiman's claims, stating,

> If in fact I believe the plaintiff's [sic] case that there is this animosity by [defendant] that she does not like and does not treat the plaintiff very well, that she may have misunderstood, or took a statement that [Aiman] made and reported it and there was a subsequent investigation, at best this is an insult, indignity, threat, annoyance, petty oppression, or other triviality. It does not rise to the level of extreme and outrageous conduct, and therefore I am granting your motion . . . .

Aiman argues that an issue of material fact exists as to whether he made the alleged comment about wanting to shoot someone. He contends that if he never made the alleged comment, then defendant's fabrication of the comment was done in an attempt to exact revenge on Aiman and that this would constitute extreme and outrageous conduct that would support a claim of intentional infliction of emotional distress.

"This Court reviews de novo a trial court's grant or denial of a motion for summary disposition." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). This Court reviews "a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id.* Ultimately, summary disposition is appropriate where "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.* (citation omitted). "A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ." *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006).

In order 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). Moreover, the *Graham* Court stated:

> Liability . . . 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. Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. It is not enough that the defendant has acted with an intent that is tortuous or even criminal . . . or even that his conduct has been characterized by "malice," or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort. . . . The test is whether . . . an average member of the community would . . . exclaim, "Outrageous!" [*Id.* at 674-675 (citations and quotations omitted.)]

Upon review of Aiman's deposition testimony and other supporting evidence in the record, it is clear that Aiman concedes that he may have made a comment that was perceived by defendant as inappropriate. Aiman has not presented any evidence that defendant harbored ill will toward him or made up a false report, and "[m]ere conclusory allegations that are devoid of

detail are insufficient to demonstrate that there is a genuine issue of material fact for trial." *Bennett*, 274 Mich App at 317. Aiman has failed to present any evidence to demonstrate that a genuine issue of material fact exists with regard to whether defendant's conduct was extreme and outrageous.

Aiman claims that the affidavit of a coworker, which states that he "distinctly recall[ed] the events of July 26, 2010," and that "at no time whatsoever did [he] ever hear Aiman Farhoud make any commentary that he would shoot someone or have someone shoot him, whether serious or in jest," demonstrates that there is an issue of material fact with regard to whether Aiman made the comment. However, the affidavit of the coworker is in direct conflict with admissions Aiman made during his deposition testimony. "[S]ummary disposition cannot be avoided by a party's conclusory assertions in an affidavit that conflicts with the actual historical conduct of the party." *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004). Moreover, the principle "that parties may not contrive factual issues merely by asserting the contrary in an affidavit after having given damaging testimony in a deposition," is "not limited to *parties* who make contradictory assertions." *Kaufman & Payton, PC v Nikkila*, 200 Mich App 250, 257; 503 NW2d 728 (1993). "The principle that contradictory affidavits should be disregarded stands irrespective of the identity of the maker of the conflicting statements." *Id.* at 257. Therefore, the conflicting affidavit does not create a genuine issue of material fact.

In sum, defendant's conduct in reporting the comment was not extreme and outrageous and does not rise to the level of sustaining a claim for intentional infliction of emotional distress. Accordingly, the trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter