

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

HOME FORWARD,  
*Plaintiff-Appellant,*

*v.*

Tenna GRAHAM,  
Tanna Graham,  
and all others,  
*Defendants-Respondents.*

Multnomah County Circuit Court  
15LT09162; A160851

Stephen K. Bushong, Judge.

On respondents' amended petition for reconsideration filed August 15, 2017, and appellant's response to petition for reconsideration filed August 22, 2017. Opinion filed August 2, 2017. 287 Or App 191, 401 P3d 797.

Ann B. Witte, for respondents' petition.

Eric S. Postma and Bittner & Hahs, P.C., for appellant's response.

Before DeVore, Presiding Judge, and Garrett, Judge, and Duncan, Judge pro tempore.

PER CURIAM

Reconsideration allowed; former opinion modified and adhered to as modified.

**PER CURIAM**

Defendants petition for reconsideration of our decision in [\*Home Forward v. Graham\*](#), 287 Or App 191, 401 P3d 797 (2017), in which we held that the trial court applied an incorrect legal standard in determining whether an act was “outrageous in the extreme” within the meaning of ORS 90.396(1)(f). We reversed and remanded to permit the trial court to apply the correct legal standard in the first instance.

In their petition, defendants argue, among other things, that the following sentence incorrectly states the standard applicable for determining whether an act is “outrageous in the extreme” within the meaning of ORS 90.396(1)(f):

“An act need not violate a criminal statute to qualify as ‘outrageous in the extreme,’ ORS 90.396(4), but it must *either* be comparable to the offenses listed under paragraph (f)—such as prostitution or burglary—or be ‘similar in degree’ to the conduct described in paragraphs (a) through (e), such as an act that ‘seriously threatens to inflict substantial personal injury’ on another person.”

*Home Forward v. Graham*, 287 Or App at 198 (emphasis added).

We agree with defendants that that sentence contains a misstatement of law insofar as it suggests that an act may qualify as “outrageous in the extreme” even if it is *not* “similar in degree” to the acts listed in ORS 90.396(1)(a) to (e), so long as it is comparable to the offenses listed in ORS 90.396(1)(f)(A) to (E). Cf. [\*Emon Enterprises, LLC v. Kilcup\*](#), 285 Or App 639, 642, 395 P3d 78 (2017) (“As guidance for applying that somewhat imprecise standard, the legislature has specified that the act must be ‘similar in degree’ to the acts—listed in paragraphs (a) to (e) of the statute—that also justify termination in as few as 24 hours.”). We therefore allow reconsideration for the limited purpose of correcting that error. We replace the above-quoted sentence with the following:

“An act need not violate a criminal statute to qualify as ‘outrageous in the extreme,’ ORS 90.396(4), but it must be ‘similar in degree’ to the conduct described in paragraphs

(a) to (e), such as an act that ‘seriously threatens to inflict substantial personal injury’ on another person.”

Otherwise, we adhere to our original opinion and reject the remainder of defendants’ arguments without written discussion.

Reconsideration allowed; former opinion modified and adhered to as modified.