IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SHELDON REYNOLDS, an individual, and BRICE BATES, an individual,	)	No. 63259-1-I
Appellants,	)	
v.	)	
JANIE HENDRIX, an individual,	)	UNPUBLISHED OPINION
Respondent.	)	FILED: July 6, 2010

Ellington, J. — In a notice pleading state, a complaint must at least identify the legal theories upon which the plaintiff is seeking recovery. The complaints filed by Sheldon Reynolds and Brice Bates against Janie Hendrix pleaded, solely and specifically, the tort of outrage. The trial court correctly ruled that causes of action for malicious interference with a parent-child relationship were not put at issue. The court therefore also correctly refused to instruct the jury on the elements of that claim. We affirm.

FACTS

Sheldon Reynolds is a professional musician who has played with a number of bands, including The Commodores and Earth Wind & Fire. On January 29, 1986, Brice Bates was born to Gina Bates, with whom Reynolds had had a two month relationship.

As early as 1988, Gina Bates told Reynolds that Brice was his son. Reynolds did not believe her for several reasons, including the fact that she had unsuccessfully sued another musician for paternity of another child.

When Brice Bates was seven years old, his mother told him Reynolds was his father. In 1994, she took him to an Earth Wind & Fire concert in Dallas to meet Reynolds for the first time. Reynolds contends he was willing to mentor young Bates and to have a relationship with him, but did not believe he was his son. Between 1995 and 2002, Reynolds saw Bates perhaps twice. Reynolds never contributed financially to Bates' upbringing.

Janie Hendrix is the sister of Jimi Hendix and the president and chief executive officer of Experience Hendrix, LLC. Hendrix and Reynolds married in 2001. In 2002, when Bates was 16, Reynolds decided to take a deoxyribonucleic acid (DNA) test to learn whether he was really Bates' father. Hendrix was supportive and bought the test kit and then mailed it to the lab on Reynolds' behalf.

When the test results arrived, Reynolds could not understand them and asked Hendrix for help. According to Reynolds, Hendrix called later that day and told him Bates was not his son. Reynolds claims to have relied on Hendrix because, during their marriage, Hendrix was involved in two paternity suits against the Jimi Hendrix estate that involved DNA tests. He admits he was not disappointed to learn the results were negative.

Hendrix denies telling Reynolds anything about the results except that the numbers were confusing and he should contact the lab for an interpretation. It is

undisputed that Reynolds did not contact the lab or anybody else (including friends in the medical field) for help with the interpretation. Reynolds had no further contact with Bates.

In the spring of 2006, Hendrix and Reynolds separated. Reynolds requested that Hendrix forward him the DNA test results. She never did. She contends she could not find them and assumed Reynolds had taken them when he moved out.

In July 2006, Bates, then 20 years old, found Reynolds' My Space page and contacted him in a "a last ditch effort" to find his father.[1] Reynolds and Bates arranged another DNA test. The test confirmed that Bates is Reynolds' son.

PROCEDURAL HISTORY

Reynolds and Hendrix dissolved their marraige in July 2007. Within days, Reynolds and Bates filed identical complaints against Hendrix, both titled "Complaint for Tort of Outrage." The complaints alleged that Hendrix had falsely reported the DNA results were negative, for her own purposes. On January 24, 2008, Bates and Reynolds filed separate confirmations of joinder stating, "No additional claims or defenses will be raised."[2] The two actions were later consolidated.

The discovery cut-off date was December 8, 2008. Before that date, the plaintiffs conducted no discovery. On December 5, Hendrix moved for summary judgment. The plaintiffs deposed Hendrix on December 15.

The hearing on the summary judgment motion was originally scheduled for January 2, 2009. Plaintiffs filed their response on December 30, 2008. The hearing

[1] Report of Proceedings (RP) (Feb. 3, 2009) at 25.

[2] Clerk's Papers at 1245.

was rescheduled for January 9, 2009.

On January 8, plaintiffs moved to amend their complaints to add claims of custodial interference, defamation, detrimental reliance, interference with the right to an accurate determination of paternity, and spoliation.

In the motion for summary judgment, Hendrix argued there were no genuine issues of fact supporting a claim that her conduct was outrageous or caused severe emotional distress, and further that Bates' claim was precluded as a matter of law because he was not present when she allegedly misrepresented the test results.

Reynolds and Bates responded that genuine issues of fact did exist, and that "[e]ven if Plaintiff Bates does not have a claim for outrage, his complaint sufficiently plead[ed] claims for interference with the right to an accurate determination of paternity."[3] They argued the title of the complaint was "largely irrelevant" and that "[t]he complaint sufficiently apprised Defendant that she would have to defend against a claim of intentional interference with the father/son relationship of the Plaintiffs."[4]

Judge Douglas McBroom denied summary judgment against Reynolds, but dismissed Bates' "claim for the tort of outrage."[5] The order specified that "[a]ll claims alleged against defendant Janie Hendrix in Brice Bates [c]omplaint ~~are~~ is hereby

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[3] Clerk's Papers at 74 (citing In re Parentage of Calcaterra, 114 Wn. App. 127, 56 P.3d 1003 (2002)). In Calcaterra, the court held that the Uniform Parentage Act, chapter 26.26 RCW, preserves the right of a child of any age who alleges sufficient underlying facts to seek a determination of the existence of a parental relationship. Calcaterra, 114 Wn. App. at 131–32. To so hold, the court relied in part on the fact that a child has a constitutionally protected interest in an accurate determination of paternity. Id. at 131.

[4] Clerk's Papers at 75.

[5] Clerk's Papers at 258.

dismissed with prejudice."[6] The singular verb "is" was handwritten by the court.

Meanwhile, the motion to amend the complaints was set for January 16 without oral argument. In their motion papers, Reynolds and Bates claimed Hendrix's deposition revealed facts previously unknown to them from which a jury could infer that Hendrix lied about the DNA results in order to protect her own financial interests and those of the Hendrix estate. They further argued the amended complaint merely clarified claims arising out of facts initially pleaded, and that amendment was necessary for the claims to conform to the evidence.

Hendrix opposed the amendment, arguing it was untimely and prejudicial. She pointed out that the motion came almost one year after plaintiffs confirmed they would bring no new claims, one month after the discovery cut-off, 18 days before trial, and one day before the hearing on summary judgment. She also denied that her deposition disclosed any new facts.

On January 19, Judge Laura Inveen denied the motion to amend. This order is not challenged on appeal.

On January 20, Reynolds and Bates asked Judge McBroom to revise the summary judgment order to clarify that he dismissed only Bates' outrage claim and not claims of custodial interference and interference with the right to an accurate determination of paternity. They contended the complaint alleged facts sufficient to state a cause of action for malicious interference with the parent-child relationship and again argued that "[w]hether the claim is titled as a claim for 'outrage', a claim for

[6] Id.

interference with a family relationship, or a claim for interference with the right to an accurate determination of paternity, or otherwise, is largely irrelevant."[7]

On January 26, Judge McBroom denied the motion. His order states, "the tort of outrage . . . was the only cause of action contained in the complaint."[8]

The trial of Reynolds' claim began on February 2, 2009 before Judge William Downing. At the close of the evidence, the judge instructed the jury on the elements of the claim of outrage. Reynolds also requested, "based on the effort to amend the pleadings,"[9] that the jury be instructed on the claim of malicious interference with a parent-child relationship, a child's constitutional interest in an accurate determination of paternity (based on Calcaterra), and a parent's fundamental interest in being an active and integral part of his children's lives (based on Troxel v. Granville[10] and Spurrel v. Block[11]). Before the court had the opportunity to rule, Reynolds stated, "I understand that the court's not going to give instructions having to do with malicious interference with a parent-child relationship."[12] The court declined Reynolds' request and instructed solely on the elements of the claim of outrage.

The jury returned a verdict in Hendrix's favor.

Plaintiffs appeal summary dismissal of Bates' claim, denial of the motion to revise the summary judgment order and refusal to instruct the jury on the elements of

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[7] Clerk's Papers at 294.

[8] Clerk's Papers at 618.

[9] RP (Feb. 4, 2009) at 51.

[10] 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

[11] 40 Wn. App. 854, 701 P.2d 529 (1985).

[12] RP (Feb. 4, 2009) at 53.

malicious interference with the parent-child relationship.

ANALYSIS

The crux of this case is whether the complaints filed by Reynolds and Bates adequately stated a claim of malicious interference with the parent-child relationship. This is a question of law and review is de novo.[13] The court's denial of the motion to revise its summary judgment order is reviewed for abuse of discretion.[14] The refusal to give an instruction based on a ruling of law is reviewed de novo.[15]

Washington is a notice pleading state. This means a simple concise statement of the claim and the relief sought is sufficient.[16] "[P]leadings are to be liberally construed; their purpose is to facilitate a proper decision on the merits, not to erect formal and burdensome impediments to the litigation process."[17]

Even in a notice pleading state, however, a complaint must give sufficient notice of the claim asserted. It must at least identify the legal theories upon which the plaintiff

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[13] See State v. Adams, 107 Wn.2d 611, 619–20, 732 P.2d 149 (1987) (in the context of summary judgment, reviewing de novo the issue of whether relief sought was broad enough to encompass money judgment); Kirby v. City of Tacoma, 124 Wn. App. 454, 470–71, 98 P.3d 827 (2004) (reviewing de novo and affirming court's order summarily dismissing claim for failure to properly plead a First Amendment claim); Dewey v. Tacoma Sch. Dist. No. 10, 95 Wn. App. 18, 23, 974 P.2d 847 (1999) (reviewing de novo court's ruling made in conjunction with motion for a directed verdict that a First Amendment claim had not been properly pleaded); accord San Juan County v. No New Gas Tax, 160 Wn.2d 141, 164, 157 P.3d 831 (2007) (court's ruling on a motion to dismiss for failure to state a claim upon which relief can be granted under CR 12(b)(6) is a question of law that appellate courts review de novo).

[14] Weems v. North Franklin School Dist., 109 Wn. App. 767, 777, 37 P.3d 354 (2002) (order on motion for reconsideration is reviewed for abuse of discretion).

[15] Kappelman v. Lutz, 167 Wn.2d 1, 6, 217 P.3d 286 (2009).

[16] Pacific Northwest Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 352, 144 P.3d 276 (2006) (citing CR 8(a)).

[17] Adams, 107 Wn.2d at 620.

seeks recovery.[18] Complaints that fail to give the opposing party fair notice of the claim asserted and the ground upon which it rests are insufficient.[19] Inexpert pleadings may survive a summary judgment motion, but insufficient pleadings cannot.[20]

Plaintiffs' complaints alleged that Bates is Reynolds' son, that they undertook genetic testing to determine paternity, that Reynolds was unable to read the results and asked Hendrix for help, that Hendrix offered to have the results interpreted and then untruthfully reported that the results were negative, and that Hendrix made the false report to protect her financial interest in the Jimi Hendrix estate and to avoid financial entanglement with Brice. The complaint alleged Hendrix's conduct was "extreme and outrageous conduct which resulted in intentional or, at best, reckless infliction of emotional distress,"[21] and that as a result of Hendrix's outrageous conduct, plaintiffs "suffered damage to the parent-child relationship, severe mental suffering, and emotional distress."[22]

Bates' outrage claim was dismissed on summary judgment. The court later ruled that no other claim was asserted in the complaint. Bates contends this was error because the factual allegations in the complaint gave sufficient notice that he claimed intentional interference with the parent-child relationship.[23]

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[18] Dewey, 95 Wn. App. at 25.

[19] Lewis v. Bell, 45 Wn. App. 192, 197, 724 P.2d 425 (1986); see also Shooting Park Ass'n, 158 Wn.2d at 352 ("party who fails to plead a cause of action 'cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along'") (quoting Dewey, 95 Wn. App. at 26).

[20] Id. at 23.

[21] Clerk's Papers at 4.

[22] Id.

[23] Elements of a claim for malicious interference with the parent-child

[24] Bates points out that there is no requirement that a claim be titled, and contends that if a complaint states facts entitling a plaintiff to some relief, it is immaterial by what name the action is called. He also points out that initial pleadings which may be unclear may be clarified during the course of summary judgment proceedings, and argues he did so.

Bates is mostly correct regarding pleading formalities. But the trial court properly ruled that his complaint asserted only one cause of action.

Just because facts specifically alleged might support more than one claim does not mean that all such possible claims have been asserted in a complaint. As our Supreme Court explained in discussing an unpleaded Consumer Protection Act (CPA) claim:

> [A] litigant must plead more than general facts in a complaint to properly allege a CPA cause of action. If no reference is required to the CPA, a litigant would not have to amend its complaint to assert a violation. If this were the rule, a litigant could simply await trial and surprise its adversary with a CPA claim so long as enough facts were intermixed in the complaint. In hindsight it is easy to view facts and agree they support a CPA claim. *It is a much more difficult, if not an impossible task, to predict whether a plaintiff will raise such a claim when it is not alleged in the complaint*.[25]

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relationship are: an existing family relationship; malicious interference with that relationship by a third party who intends that the malicious interference result in a loss of affection or family association; a causal connection between the third party's conduct and the loss of affection; and that such conduct resulted resulting damages. Strode v. Gleason, 9 Wn. App. 13, 14–15, 510 P.2d 250 (1973). The maliciousness required is an unjustifiable interference with the relationship between the parent and the child. Id. at 20.

[24] Malicious interference with the parent-child relationship is also referred to as alienation of a child's affection or custodial interference. See, e.g., Babcock v. State, 112 Wn.2d 83, 107, 768 P.2d 481 (1989); Waller v. State, 64 Wn. App. 318, 338, 824 P.2d 1225 (1992); Spurrel v. Bloch, 40 Wn. App. 854, 867, 701 P.2d 529 (1985); Strode, 9 Wn. App. at 15, 20.

[25] Trask v. Butler, 123 Wn.2d 835, 846, 872 P.2d 1080 (1994) (emphasis

While the facts alleged might support more than one cause of action, the complaint specifically and solely alleged the tort of outrage. Bates contends this is irrelevant, because a plaintiff need not give a title to his complaint. But when a plaintiff chooses to title his complaint, the title is part of the inquiry into the nature of the claims asserted.[26] And Bates did not just title the pleading. He specifically asserted extreme and outrageous conduct resulting in severe emotional distress. These are the elements of the tort of outrage.[27] By title and by express language, Bates' complaint unambiguously announced that his legal theory was the tort of outrage.

This situation is unlike cases where courts have found that the claim expressly pleaded subsumes other claims, which are therefore also adequately pleaded. Thus, in Adams v. King County,[28] the complaint included a claim titled "Tortious Interference with a Dead Body Restatement (Second) of Torts § 868 [1979]."[29] Our Supreme Court has never adopted that section of the Restatement, but it has recognized a common law action for tortious interference with a dead body.[30] Defendants argued plaintiff did not plead a viable claim. Plaintiff responded that the stated cause of action

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added).

[26] See, e.g., Durrah v. Wright,115 Wn. App. 634, 648–49, 63 P.3d 184 (2003) (relying on the title of the complaint and the factual allegations in the body of the complaint to hold that the complaint pleaded exclusively a quiet title action, upon which plaintiff was not entitled to a jury trial).

[27] See Lewis, 45 Wn. App. at 195 (elements of the tort of outrage are severe emotional distress, inflicted intentionally or recklessly by conduct which was outrageous and extreme and either plaintiff was the object of defendant's actions or there was an immediate family member present at the time).

[28] 164 Wn.2d 640, 192 P.3d 891 (2008).

[29] Id. at 656.

[30] Id.

encompassed the common law claim, and the Supreme Court agreed. The only difference between the two claims was that the Restatement required only negligence, whereas the common law required willful conduct. Plaintiff had alleged in the complaint that defendants "intentionally, recklessly, and/or negligently" misused the body.[31] Therefore, the complaint sufficiently apprised defendants they would have to defend against a claim of intentional misuse of the dead body.[32] Furthermore, plaintiff correctly cited the common law tort in response to summary judgment.[33]

Here, outrage and malicious interference with the parent-child relationship are fundamentally distinct causes of action. Their elements are different, different evidence is necessary to prove them, and different defenses apply. Hendrix had no reason to develop or present a defense to a claim of malicious interference with the parent-child relationship.

Even assuming the complaint was somehow unclear and therefore subject to clarification in summary judgment proceedings, Bates failed to clarify it in his summary judgment response. He contended he had sufficiently stated a claim for interference with the right to an accurate determination of paternity pursuant to Calcaterra. In that context, he claimed that "[t]he complaint sufficiently apprised Defendant that she would have to defend against a claim of intentional interference with the father/son relationship of the Plaintiffs."[34] But this argument conflates two different causes of

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[31] Id. at 657.

[32] Id.

[33] Id.

[34] Clerk's Papers at 75.

action, and Bates offered no citation relevant to malicious interference with the parent-child relationship. It is thus unclear whether Bates contended that just one or both of these proposed claims were part of his case.[35]

Further, in their motion to amend, Bates and Reynolds argued that *four* claims were impliedly asserted in the complaint: custodial interference, defamation, detrimental reliance, and interference with the right to an accurate determination of paternity. The court refused to allow the amendment, and neither Reynolds nor Bates challenges this ruling.

Then, less than two weeks before trial and after the motion to amend had been denied, plaintiffs abandoned the claims of defamation and detrimental reliance. In their motion to "revise" the summary judgment order, they argued only that malicious interference with the parent-child relationship and interference with the right to an accurate determination of paternity had been impliedly pleaded and had thus survived summary judgment.

The ever-changing number of claims alleged to be found in the complaint and the plaintiffs' inconsistent positions as to what those claims might be further illustrate the propriety of the court's ruling that the complaint contained only one cause of action for outrage and its rejection of Bates' argument that he had clarified his claims during the summary judgment proceedings.

The tort of malicious interference with a parent-child relationship was therefore not before the jury. If, as Reynolds contends, evidence was presented at trial that

[35] We express no opinion as to whether a cause of action for interference with the right to an accurate determination of paternity exists in Washington.

might have supported the elements of that claim, this is irrelevant. That claim was not tried and not defended. The court properly declined Reynolds' request to instruct the jury on the elements of malicious interference with the parent-child relationship.

Affirmed.

Ellington, J.

WE CONCUR:

Leach, A.C.J.

Cox, J.