COURT OF APPEALS
DECISION
DATED AND FILED

May 25, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1207 **Cir. Ct. No. 2008CV11301**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

JEANINE L. JACKSON,

PLAINTIFF-APPELLANT,

V.

UNITED MIGRANT OPPORTUNITY SERVICES, CHELSHETE NASH, FELICIA L. POWELL, KEITH BRIGGS, MONTREAL WADE, MICHAEL NEWMAN, PAULA LAMPLEY, V.E. CARTER DEVELOPMENT GROUP, INC., FLORENCE MCNEIL, JEAN MARIE FEEDHAM, GERARADO H. GONZALEZ, GONZALEZ, SAGGIO & HARLAN, LLP, GONZALEZ, SAGGIO & HARLAN, LLC, ANGELA PERRY THOMPSON, ZATOCREE FLETCHER DAVIS, EMERY K. HARLAN, DAVID R. SAGGIO AND BARBARA MANN,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Fine, JJ.

¶1 PER CURIAM. Jeanine L. Jackson, *pro se*, appeals from an order dismissing her amended complaint against United Migrant Opportunity Services (UMOS), and several of its current and former employees and agents; the law firm of Gonzalez, Saggio & Harlan, LLC, and several of its attorneys who had represented UMOS in an earlier lawsuit filed by Jackson; and V.E. Carter Development Group, Inc., a day-care business that had contracted with UMOS, and one of Carter's employees. The circuit court also found that Jackson's lawsuit was frivolous under WIS. STAT. § 802.05, ordered Jackson to pay attorney fees in the amount of $10,000 as a sanction, and enjoined Jackson from further litigation against UMOS, its employees and agents without first obtaining leave of the court. We affirm.

BACKGROUND

¶2 This is the second appeal arising from Jackson's participation in a job-training program at a UMOS facility in 2006. In the first lawsuit, Jackson alleged that Montreal Wade, a security guard at UMOS, and UMOS had intentionally inflicted emotional distress on her, and that Wade had been negligently supervised by UMOS personnel. The circuit court granted the defendants' motion for a directed verdict, and this court affirmed. ***Jackson v. UMOS***, No. 2008AP1987, unpublished slip op. (WI App July 7, 2009).

¶3 This appeal arises from a second lawsuit commenced by Jackson against many of the same defendants involved in her first lawsuit. In addition, Jackson targeted additional UMOS employees, the attorneys who had represented UMOS in the first lawsuit, a day-care facility operated at a UMOS site, and its director, Florence McNeil. In an amended complaint containing 306 paragraphs,

Jackson attempted to allege several causes of action, which she described as: harassment; negligence; negligent infliction of emotional distress; blackmail; defamation; negligent supervision; 42 U.S.C. §§ 1983 and 1985; and intentional infliction of emotional distress. All of the defendants moved to dismiss and/or for summary judgment. Following a hearing, the circuit court granted the defendants' motions and ordered that Jackson's amended complaint be dismissed with prejudice.[1] The trial court also granted the defendants' motion for sanctions under WIS. STAT. § 802.05.[2]

¶4 On June 3, 2008, while the first lawsuit was pending in circuit court before the Honorable Michael B. Brennan, Jackson made a telephone call to the day-care facility located at the UMOS Job Center. Jackson spoke with McNeil, who knew Jackson from prior interactions. During the conversation, Jackson made comments that McNeil felt were threatening. McNeil reported them to UMOS management, and the entire UMOS site was evacuated for the afternoon. The comments were also reported to police. Following Jackson's threats, UMOS

[1] The circuit court dismissed Jackson's claims against the Gonzalez law firm and its individual attorneys for lack of personal jurisdiction. Jackson does not challenge those dismissals on appeal.

[2] Although Jackson refers to the "permanent injunction" and "sanction costs" in her notice of appeal, Jackson does not make any argument on appeal directed at the circuit court's determination that her lawsuit was frivolous under WIS. STAT. § 802.05, at the imposition of a monetary sanction, or at the limitation on future litigation. *See* ***Minniecheske v. Griesbach***, 161 Wis. 2d 743, 748, 468 N.W.2d 760, 762 (Ct. App. 1991) (a court faced with a litigant engaged in a pattern of frivolous litigation may prohibit future filings related to the same issues). Therefore, those portions of the circuit court's order are affirmed without further discussion. *See* ***State v. Johnson***, 184 Wis. 2d 324, 344, 516 N.W.2d 463, 470 (Ct. App. 1994) ("On appeal, issues raised but not briefed or argued are deemed abandoned.").

sought and obtained an injunction under WIS. STAT. § 813.125, prohibiting Jackson from further contact with UMOS, and its employees and agents, except through UMOS's attorneys, Gonzalez, Saggio & Harlan. In granting the injunction to UMOS, Judge Brennan found that McNeil was "very credible," and that Jackson was "not credible" when she denied making the threats. Judge Brennan further found that Jackson had made an "implied threat of violence or an implied threat of harm to McNeil and other individuals" present at the UMOS site. Jackson was later charged with disorderly conduct arising from the telephone call.

DISCUSSION

¶5 We review *de novo* a circuit court's grant of summary judgment. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315–317, 401 N.W.2d 816, 820–821 (1987). Summary judgment must be granted when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Under well-settled summary judgment methodology:

> th[is] court first examines the pleadings to determine whether claims have been stated and a material issue presented. If the complaint states a claim and the pleadings show the existence of factual issues, the court examines the moving party's affidavits or other evidence for evidentiary facts admissible in evidence or other proof to determine whether that party has made a *prima facie* case for summary judgment. If the moving party made a prima facie case, the court examines the opposing party's affidavits for evidentiary facts or other proof to determine whether a genuine issue exists as to any material fact, or reasonable conflicting inferences may be drawn from the undisputed facts, and therefore a trial is necessary.

State Bank of La Crosse v. Elsen, 128 Wis. 2d 508, 511, 383 N.W.2d 916, 917 (Ct. App. 1986).

¶6 Initially, we reject Jackson's contention that the circuit court erroneously stayed discovery and proceeded to address the defendants' motion for summary judgment. The first step in the summary judgment methodology is to examine the pleadings to determine whether a claim has been stated. As discussed below, Jackson's amended complaint, when examined against facts established in the first lawsuit, does not state any viable causes of action. Therefore, discovery would have served no useful purpose.

¶7 Jackson's amended complaint alleged eight causes of action. We will address them *seriatim* below. In her amended complaint, Jackson did little to differentiate between the many defendants, and unless necessary to the analysis, we will refer to the defendants generally. Further, in light of the scattergun nature of the amended complaint and Jackson's disjointed appellate argument, we begin by noting that to the extent that we do not address a point mentioned by Jackson, we deem it inadequately briefed and, therefore, not worthy of response. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147, 151 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

A. Defamation

¶8 Jackson alleged that various defendants intentionally made false statements to the police in connection with the June 3, 2008, telephone call which subjected her to public hatred and humiliation, that the defendants acted willfully and wantonly, and that the defendants knew the statements were false. The circuit court properly granted summary judgment in favor of the defendants on this claim.

¶9 The elements of a defamatory communication are:

> "(1) a false statement; (2) communicated by speech, conduct or in writing to a person other than the person defamed; and, (3) the communication is unprivileged and tends to harm one's reputation so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her."

Torgerson v. Journal/Sentinel, Inc., 210 Wis. 2d 524, 534, 563 N.W.2d 472, 477 (1997) (citation omitted). WISCONSIN STAT. § 802.03(6) requires that "[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint." That requirement has been interpreted to mean that the specific words upon which the plaintiff bases the claim must be alleged in the complaint. *See* ***Olston v. Hallock***, 55 Wis. 2d 687, 700, 201 N.W.2d 35, 41 (1972). Although Jackson repeatedly alleged that various defendants made false statements to the police, nowhere did she set forth the "particular words" used by any of the defendants. Moreover, in the first lawsuit, Judge Brennan expressly found that Jackson had made implied threats to UMOS and its employees during the June 3, 2008, telephone call. Issue preclusion precludes Jackson from relitigating that finding and, therefore, Jackson's characterization of the defendants' statements concerning the incident as false is incorrect. *See* ***Michelle T. v. Crozier***, 173 Wis. 2d 681, 687, 495 N.W.2d 327, 329 (1993) (issue preclusion limits the relitigation of issues that have been contested in a previous action between the same parties). As will be seen below, Judge Brennan's factual findings, which Jackson cannot relitigate, are critical components to the failure of several of Jackson's claims.

B. Harassment

¶10 Jackson alleged that the defendants filed false police reports regarding the June 3, 2008, telephone call in an effort to compel her to drop the first lawsuit. Similar to the defamation claim, Jackson's description of the police reports as false is inaccurate in light of Judge Brennan's finding that Jackson had made threats against UMOS during the June 3, 2008, telephone call. Additionally, WIS. STAT. § 947.013, which criminalizes certain harassing behavior, does not create a private cause of action—aggrieved persons instead may seek relief under WIS. STAT. § 813.125. *See* ***Estate of Drab v. Anderson***, 143 Wis. 2d 568, 570–573, 422 N.W.2d 144, 145–146 (Ct. App. 1988). The circuit court correctly dismissed Jackson's harassment claim.

C. Negligent Infliction of Emotional Distress

¶11 In this claim, Jackson again alleged that the false statements of the defendants caused police to harass her, that UMOS and V.E. Carter, as employers, were responsible for their employees' actions, and that UMOS attorneys caused her to suffer emotional distress when they "constantly accus[ed] [her] of criminal activities" during the first lawsuit.

¶12 A claim for negligent infliction of emotional distress contains three elements: "(1) that the defendant's conduct fell below the applicable standard of care, (2) that the plaintiff suffered an injury, and (3) that the defendant's conduct was a cause-in-fact of the plaintiff's injury." ***Bowen v. Lumbermens Mut. Cas. Co.***, 183 Wis. 2d 627, 632, 517 N.W.2d 432, 434 (1994). Additionally, "a plaintiff must prove … severe emotional distress [although] the plaintiff need not prove physical manifestation of that distress." ***Ibid.***

¶13 The circuit court correctly granted summary judgment on this claim. Because the defendants' statements to the police were not false, Jackson cannot show that their conduct violated any standard of care. Additionally, severe emotional distress cannot be a temporary discomfort and must be of '"'such substantial quantity or enduring quality that no reasonable person could be expected to endure it.'" ***Hicks v. Nunnery***, 2002 WI App 87, ¶26, 253 Wis. 2d 721, 742–743, 643 N.W.2d 809, 818 (citation omitted). Jackson's allegations that she had "problems sleeping," was "nervous," and "suffered a mild seizure in her sleep" do not rise to the level of "severe emotional distress" necessary to support a claim for the negligent infliction of emotional distress.

D. Intentional Infliction of Emotional Distress

¶14 Jackson alleged that the defendants made false statements about her "which caused her to have emotional distress," that the defendants subjected her "to public hatred, and serious criminal allegations," and that because of the defendants' conduct, she "has lost all desire to want to become a lawyer" and "has suffered from anxiety, depression, and loss of sleep."

¶15 A claim for intentional infliction of emotional distress contains four elements: (1) the defendant intended to cause emotional distress by his or her conduct; (2) the conduct was extreme and outrageous; (3) the "conduct was a cause-in-fact of the plaintiff's emotional distress; and (4) that the plaintiff suffered an extreme disabling response to the defendant's conduct." ***Rabideau v. City of Racine***, 2001 WI 57, ¶33, 243 Wis. 2d 486, 501, 627 N.W.2d 795, 802–803. Again, the linchpin of Jackson's claim—the falsity of the defendants'

statements—is missing. Therefore, the defendants' conduct cannot be considered "extreme and outrageous." And, as with the claim for negligent infliction of emotional distress, Jackson did not allege "an extreme disabling response." *See* ***id.***

E. Negligence

¶16 Jackson alleged that the defendants "mishandle[d] the situation between" herself and McNeil with regards to the June 3, 2008, telephone call, that McNeil caused Jackson and her minor daughter to suffer emotional distress,[3] that the defendants caused Jackson "to be subjected to harassment, by law officials," and that the employer-defendants are responsible for their employees' conduct. The circuit court noted that Jackson's claim for negligence was, in actuality, a claim for the negligent infliction of emotional distress, and granted summary judgment. We agree with the circuit court. In addition to the same failing identified above, that is, that the statements were found to be not false, "[s]tatements made in the course of judicial proceedings are absolutely privileged and insulate the speaker from liability so long as the statements 'bear a proper relationship to the issues.'" ***Snow v. Koeppl***, 159 Wis. 2d 77, 80, 464 N.W.2d 215, 216 (Ct. App. 1990) (citation omitted). Because the defendants' statements

[3] Jackson included her daughter, Cheyenne Jackson, as a plaintiff. The circuit court dismissed Cheyenne because she was a minor and, therefore, Jackson's purported representation of her constituted the unauthorized practice of law. *See* WIS. STAT. § 803.01(3)(a) ("If a party to an action or proceeding is a minor, … the party shall appear by an attorney … or by a guardian ad litem who may appear by an attorney."). On appeal, Jackson does not challenge the dismissal of her daughter.

were made in connection with UMOS's request for a harassment restraining order filed in the first lawsuit, they were privileged, and Jackson cannot rest a negligence claim upon them.

F. Blackmail

¶17 Jackson alleged that Wade came to her house while the first lawsuit was pending "to try to intnimade [sic]" her into dropping the state lawsuit and a federal lawsuit, and that the defendants filed a false police report in connection with the June 3, 2008, telephone call "as leverage, in an attempt to have [her] … drop her federal and state case[s]." Like the other claims, the finding that the defendants' statements concerning the June 3, 2008, telephone call were not false dooms Jackson's attempted blackmail claim. Additionally, like the harassment claim, the criminalization of blackmail, *see* WIS. STAT. § 943.30, does not create a private cause of action, *see* ***United States ex rel. Verdone v. Circuit Court for Taylor County***, 851 F. Supp. 345, 352 (W.D. Wis. 1993).

G. Negligent Supervision

¶18 Jackson alleged that UMOS and V.E. Carter, as employers of some of the individual defendants, did not adequately train their employees who subjected Jackson to "public hatred, and ridicule" by police officers. Because Jackson's claims against the employee-defendants fail, as discussed above, Jackson necessarily has no claim against the employers for negligent supervision.

H. 42 U.S.C. §§ 1983 and 1985[4]

¶19 Lastly, Jackson alleged that the defendants violated her civil rights "by intentionally intimadat[ing], [and] threatening" her in an attempt to get her to drop her state and federal lawsuits. To state a claim under 42 U.S.C. § 1983, Jackson must allege facts sufficient to show that the defendants, acting under color of state law, deprived her of a specific right or interest protected by the Constitution or the laws of the United States. *See* ***Bublitz v. Cottey***, 327 F.3d 485, 488 (7th Cir. 2003). A § 1983 claim is tenable only if the defendants are state actors. *See* ***Gayman v. Principal Fin. Servs., Inc.***, 311 F.3d 851, 852 (7th Cir. 2002). Simply put, the § 1983 claim fails because Jackson did not allege that any of the defendants are state actors. Although a claim under 42 U.S.C. § 1985 does not require the involvement of state actors, Jackson must show that "the conspirators did or caused to be done an act in furtherance of the conspiracy that injured [her] or deprived … her of having and exercising any right or privilege of

[4] 42 U.S.C. § 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

42 U.S.C. § 1985(3) provides in relevant part:

> If two or more persons … conspire … for the purpose of depriving, either directly or indirectly, any person … of the equal protection of the laws, or of equal privileges and immunities under the laws; … the party so … deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

a citizen of the United States." *See* ***Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc.***, 759 F. Supp. 1339, 1351 (W.D. Wis. 1991). Jackson's amended complaint does not contain any such allegations.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.