Parnoff v. Aquarian Water Co. of Connecticut (AC40383)

Brief Summary: Plaintiff filed, amongst others, actions for negligent and intentional infliction of emotional distress against the defendant water company and its employees, after two employees accused him of stealing water from a hydrant they were servicing. Court held: (1) that the negligent infliction of emotional distress claims were time barred as the action was brought more than two years from the date the injury was discovered; and (2) that the intentional infliction of emotional distress claims fail because accusing one of stealing water "rudely" and "aggressively" is not extreme and outrageous.

Background

The plaintiff, Laurence V. Parnoff, filed several actions against the defendants, Aquarion Water Company of Connecticut (Aquarion) and its employees, Beverly A. Doyle, David Lathlean, and Kyle Lavin. On July 11, 2011, the defendants were servicing one of Aquarion's hydrants located on the plaintiff's property. Lavin and Lathlean noticed that the hydrant was missing a cap and leaking. They observed a hose on the ground and traced it to a goat pen. They searched for the missing cap and walked into an open canopy tent located about ten feet from the hydrant, where they spotted the missing hydrant cap on the floor of the plaintiff's tractor, along with a pipe wrench. Both suspected that the plaintiff tampered with the hydrant. Further, they attested that the plaintiff confronted them, yelled at them, and threatened to shoot them if they did not get off his property. After the threat, they called the police and the defendant was eventually arrested. The plaintiff then brought claims against the defendant for: (1) trespass; (2) negligent infliction of emotional distress; (3) invasion of privacy; (4) intentional infliction of emotional distress; and (5) unfair trade practice. This summary focuses on the personal injury

claims- negligent infliction of emotional distress (counts five through eight) and intentional infliction of emotional distress (counts nine through twelve).

The defendant moved for summary judgment on all counts. Regarding the negligent infliction of emotional distress claim in count five directed against Doyle, the court concluded that summary judgment was appropriate because there was no genuine issue of material fact and that her conduct did not rise to the level necessary to sustain such a claim because she never spoke to the plaintiff.

As to the negligent infliction of emotional distress claim against the remaining defendants in counts six through eight the court denied the motion for summary judgment on their statute of limitations argument because it concluded that a trier of fact might find that the actionable harm was not sustained, until sometime after July 11, 2011, when the extent of the alleged distress became known.

As to the intentional infliction of emotional distress claims in counts nine through twelve, the court concluded that the defendants' alleged conduct did "not even approach the threshold for extreme and outrageous conduct" and granted summary judgment.

On February 7, 2017, the defendants filed a motion requesting permission to file a supplemental motion for summary judgment because they obtained evidence that showed that the plaintiff failed to commence the action on the remaining negligent infliction of emotional distress counts (six through eight) within the applicable statute of limitations. The defendants also filed with their motion a copy of the plaintiff's medical records that documented the plaintiff's visit with a psychiatrist on September 6, 2011—two months after the incident on his property. The court granted summary judgment for the defendants because the records indicated

that the actionable harm was sustained in September of 2011, and the action was brought in July of 2014 and was time barred by the statute of limitations.

Issues

The issues on appeal were whether: (1) the court improperly concluded that the negligent infliction of emotion distress claims (counts six through eight) were barred by the two year statute of limitations in General Statutes § 52-584; and (2) the court improperly granted summary judgment as to the intentional infliction of emotional distress claims (counts nine through twelve) because the conduct rose to the standard of extreme and outrageous.

Holding

The court held: (1) that the negligent infliction of emotional distress claims were time barred as the action was brought more than two years from the date the injury was discovered; and (2) that the intentional infliction of emotional distress claims fail because "rudely" and "aggressively" accusing one of stealing water is not extreme and outrageous.

Discussion

Section 52-584 provides in relevant part: "No action to recover damages for injury to the person . . . shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained off. . . ." The first requirement, known as the discovery portion, requires the plaintiff bring an action within two years from the date when the injury is sustained, discovered or should have been discovered through the exercise of reasonable care. The second requirement, absolutely bars claims that are brought more than three years from the date of the act or

omission. In determining whether an action is timely, the court has held that an injury occurs when there is some form of actionable harm. Actionable harm occurs when a plaintiff discovers that they were injured, and the defendant's conduct caused such injury. The statute begins to run when the plaintiff discovers some form of actionable harm. The focus is on the plaintiff's knowledge of the facts, not on the discovery of applicable legal theories.

The defendants argued: (1) the plaintiff's actionable harm occurred on the day of the incident, July 11, 2011, because the plaintiff alleged in his complaint that the defendants terrorized him on that day, which made him fearful and anxious; and (2) even if the plaintiff did not realize the defendant caused him emotional distress on July 11, 2011, his medical records demonstrate that he discovered his injury on September 6, 2011, when his psychiatrist diagnosed him with depression after he complained that he was ''depressed/angry'' because ''water officials came to his property and accused him of stealing water." The court agreed with the defendants, noting that the medical records clearly indicate that the plaintiff discovered the injuries no later than September 6, 2011. Furthermore, the plaintiff did not recite any specific facts that contradict the defendant's arguments. Thus, the court concluded that the plaintiff discovered some form of actionable harm in September of 2011. Because he did not bring the action until July of 2014, it is time barred by the statute of limitation. Consequently, the court concluded that the trial court properly granted summary judgment. Next, the court addressed the intentional infliction of emotional distress claims.

Intentional infliction of emotional distress claim has four elements that must be established: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress;

and (4) that the emotional distress sustained by the plaintiff was severe. Extreme and outrageous conduct is conduct that goes beyond all possible bounds of human decency, and is regarded as atrocious, and utterly intolerable in a civilized community. It is conduct in which the recitation of the facts to an average member of the community would lead them to exclaim "outrageous!" Furthermore, conduct that is merely insulting, displays bad manners or hurts feelings is insufficient.

The plaintiff argued that the events that occurred on July 11, 2011, may not be extreme and outrageous in and of themselves, but the continued cooperation of the defendants with an unfounded criminal investigation along with the events rise to the standard of extreme and outrageous. The court rejected this argument. First, it noted that even if Lathlean and Lavin accused the plaintiff of stealing water in a "rude" and "aggressive" manner, this conduct does not come close to extreme and outrageous conduct as mere insults and bad manners are not extreme and outrageous. Second, it stated that the defendants' mere cooperation with a criminal investigation does not constitute conduct that is so atrocious as to exceed all bounds usually tolerated by a decent society. Consequently, the court concluded that the defendants' conduct was insufficient for an action for intentional infliction of emotional distress, and, thus, the trial court properly granted the motion for summary judgment as to counts nine through twelve.

This case demonstrates that the law does not protect one from distress caused by somebody insulting them and/or being rude to them. Thus, one contemplating filing an action for intentional infliction of emotional distress ought to consider whether the conduct is sufficiently extreme and outrageous to satisfy the significant burden.