

STATE OF MICHIGAN  
COURT OF APPEALS

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DEE ANNE KAY,

NOV 28 1988

Plaintiff-Appellee,

v

No. 96166

RICH STREBY and MICHIGAN MUTUAL  
INSURANCE COMPANY,

Defendants-Appellants.

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Before: Sullivan, P.J., and Hood and J. B. Bruff\*, JJ.

PER CURIAM

Defendants appeal by leave granted from an order of the trial court denying defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

This case arises out of an automobile accident which left plaintiff in a condition of permanent paraplegia. She filed a claim for no-fault benefits with defendant Michigan Mutual Insurance Company. Defendant Streby was the claims adjuster assigned to plaintiff's claim.

It was determined that as a result of plaintiff's condition, her home required certain modifications. Plaintiff solicited bids from three contractors to perform the modifications. Michigan Mutual in general agreed that the modifications were required and that it was liable for the cost of the modifications. However, it solicited a fourth bid from Wright and Filippis, Inc., which apparently was substantially lower than the bids received by plaintiff. Michigan Mutual took the position that it would only authorize payment for the modifications pursuant to the Wright bid.

Plaintiff, however, was unwilling to accept the Wright bid. She contended that the bid did not conform to the

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\*Circuit judge, sitting on the Court of Appeals by assignment.

recommendations of her doctor and therapist and that Wright had a poor reputation as a contractor. Subsequent to this refusal, plaintiff alleged that Streby telephoned her and threatened to stop paying for her 16 hours of daily nursing care unless she accepted the Wright bid. A letter containing the same threat was sent to plaintiff's attorney.

The dispute concerning the authorization of the modifications was apparently resolved in a separate action. This action was brought in relevant part on a claim for intentional infliction of emotional distress based on the defendants' actions in handling the claim. The trial court denied defendants' motion for summary disposition for failure to state a claim, GCR 1963, 117.2(1) [MCR 2.116(C)(8)] on the intentional infliction of emotional distress claim, relying in part on this Court's decision in Roberts v Auto-Owners Ins Co, 135 Mich App 595; 354 NW2d 271 (1983). Following the Supreme court's reversal of Roberts, 422 Mich 594; 374 NW2d 905 (1985), defendant renewed their motion for summary disposition based on MCR 2.116(C)(8) and (10). The trial court ruled that given the facts of this case the reversal of Roberts did not mandate a different result and again denied defendants' motion for summary disposition.

The record indicates this motion was decided under MCR 2.116(C)(8), failure to state a claim upon which relief could be granted. A motion under this Rule is to be decided on the pleadings alone. Harris v City of Detroit, 160 Mich App 223, 226; 408 NW2d 82 (1987). The motion should be denied unless plaintiff's claims are so clearly unenforceable as a matter of law that no factual development can possibly furnish the basis for recovery. Id., p 226.

The question in this case is whether the conduct alleged by plaintiff meets the threshold definition for extreme and outrageous conduct, an element of the tort of intentional infliction of emotional distress. Roberts v Auto-Owners

Insurance Co, 422 Mich 594, 602; 374 NW2d 905 (1985). Such conduct is something more than a mere bad faith breach of an insurance contract. Kewin v Massachusetts Mutual Life Insurance Co, 409 Mich 401, 423; 295 NW2d 50 (1980). It is more than mere threats, insults, or indignities. Roberts, supra, p 603.

If defendants had merely impeded plaintiff's efforts to receive benefits or in bad faith attempted to avoid paying benefits, the threshold would not have been met. Roberts, supra, pp 607-608; Crossley v Allstate Insurance Co, 155 Mich App 694, 699; 400 NW2d 625 (1986).

In the instant case, plaintiff relies on defendant Streby's verbal and written threats to terminate payment for much needed nursing care, and possibly defendant Streby's remarks that plaintiff was a liar and her home was dirty and not fit to be remodeled, to establish extreme and outrageous conduct. Plaintiff argues that because of her condition, her life depended on nursing care and a threat to terminate that care, made to a person in her position, is extreme and outrageous.

In its opinion the trial court restated its original decision that:

"Plaintiff had alleged tortious conduct distinct from a mere breach of contract and that, although mere threats in and of themselves do not constitute the basis for a claim of intentional infliction of emotional distress, Defendants' putative conduct satisfied the requisite elements of this tort. Defendants were aware or should have been aware of Plaintiff's vulnerabilities and that she was particularly susceptible to emotional distress because of her physical handicap and limited mobility. The Court also concluded that the tort could arise because of the relation of Defendants to Plaintiff which gave them some power to control (and possibly hurt) Plaintiff's interests."

We agree that where defendants abuse their position of power over a dependent plaintiff extreme and outrageous conduct may result. Margita v Diamond Mortgage Corp, 159 Mich App 181, 189-190; 406 NW2d 268 (1987). Also, it appears that the allegations go beyond merely claiming that Streby was merely unprofessional or insensitive in his conduct with plaintiff. Cf. Harris v Citizens Insurance Co, 141 Mich App 110, 115; 366 NW2d 11 (1983).

Given plaintiff' position and dependence on nursing care, and the allegation that defendant Streby was trying to coerce plaintiff into accepting the Wright bid, we agree that the threshold for extreme and outrageous conduct has been met. Roberts, supra, p 608. Any further resolution of this issue is for the trier of fact. Margita, supra, p 190. The trial court did not err in denying defendants' motion for summary disposition.

Affirmed.

/s/ Joseph B. Sullivan  
/s/ Harold Hood  
/s/ John B. Bruff