

No. 1-15-2371

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JERRY ORLOFF,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 11 L 008361
)	
)	
SUPERVALU INC., d/b/a Jewel-Osco, and)	
North Central Security Agency, Ltd.,)	Honorable
)	James N. O'Hara,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court granting summary judgment for the defendants is affirmed, where the plaintiff failed to establish a genuine issue of material fact that the conduct of the defendants' employee was sufficiently extreme and outrageous to support a claim for intentional infliction of emotional distress.

¶ 2 The plaintiff, Jerry Orloff, filed suit against the defendants, Supervalu, Inc., d/b/a Jewel Osco (Supervalu), and North Central Security Agency (North Central), seeking damages for intentional infliction of emotional distress following an altercation between him and a security

guard stationed in the parking lot of a Supervalu store. The circuit court granted summary judgment for the defendants under section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)), and the plaintiff now appeals. For the following reasons, we affirm.

¶ 3 The plaintiff filed a fifth amended complaint (complaint) alleging that, on August 11, 2009, he drove to a Supervalu store in Chicago where he regularly shopped for groceries. As the plaintiff suffered from chronic congestive heart failure, he typically parked his vehicle in one of the spaces that were designated as reserved for handicapped patrons. The plaintiff's vehicle was equipped with the special registration license plates and decals issued by the Illinois Secretary of State to disabled persons requiring the use of handicap spaces. Upon arriving in the parking lot on August 11, the plaintiff noticed that there were vehicles parked in the handicap-designated spaces that did not display the requisite special registration plates or decals. Accordingly, he complained about the matter, as he had frequently done in the past, to specific Supervalu employees, managers, and security personnel. The plaintiff alleged that, based upon the volume of prior complaints he had made to Supervalu's managers, employees and security personnel regarding the unauthorized parking situation, Supervalu knew or should have known about his congestive heart failure condition. The plaintiff claimed that, on August 11, 2009, Supervalu and its agents and employees engaged in extreme and outrageous conduct by, in relevant part: initially ignoring his complaints about the unauthorized parking situation, and then using denigrating language designed to incite anger, intimidation, anxiety, and fear in him, and continuing to castigate him for bringing his complaint to the attention of security personnel when it was obvious that he was extremely upset and spiraling into distress over the course of events and interaction between the parties. As a result of the conduct of Supervalu and its security personnel, the plaintiff was caused to suffer a massive cardiac infarction and heart failure in the

Supervalu parking lot, ultimately requiring extended hospitalization in an intensive care unit and leading to further and permanent damage to his heart.

¶ 4 The pleadings, depositions and other evidence on file establish the following facts which are substantially undisputed by the parties. The plaintiff testified that, prior to August 11, 2009, he had repeatedly complained to Supervalu agents and employees that the handicap spaces in the parking lot were being habitually occupied by vehicles that did not display the proper registration plates or decals. The plaintiff testified that, on August 11, he drove his van into the Supervalu parking lot and parked in a reserved handicap space. He noticed a vehicle parked in the handicap space next to him without the requisite plates or decals. He proceeded into the store to shop for a few minutes, and when he returned to his van, noticed another vehicle in a handicap space without the requisite identification. As he backed out of his space, he motioned to the security guard, later identified as George Hill, who was stationed outside of the store. According to the plaintiff, he told Hill "you have another person without handicap placards in a handicap spot that does not belong there," to which Hill responded "mind your own f*** business." The plaintiff replied "I will mind my own f*** business." He then stopped his van in front of the store, went inside and informed the store manager, Joseph Escobar, about Hill's comment. The plaintiff described his feelings at that point as "shaky," "nervous" and "real angry." He later testified that he felt "belittled" and upset that he was being spoken to in an unprofessional manner.

¶ 5 The plaintiff testified that, shortly thereafter, he returned outside with Escobar and another security guard, Sederick Williams. As the plaintiff, who walked with a cane, followed behind Escobar and Williams, he could hear Hill denying the entire occurrence. The plaintiff told Hill that he was lying, and Hill then threatened the plaintiff by pointing his finger at him and yelling "you don't know who you're dealin' with." The plaintiff stated that he heard Escobar tell

Hill to back off, and then "passed out, hit the ground, and my defibrillator was going off on me three times." According to the plaintiff, the entire exchange lasted about one minute. During the exchange, he was standing opposite Hill, with Escobar and Williams standing in between them.

¶ 6 Williams testified that shortly after he, Escobar and the plaintiff went outside of the store, he heard "loudness" between the plaintiff and Hill, with Hill repeatedly stating to the plaintiff that he was just trying to do his job. Williams then interjected, telling Hill to refrain from speaking directly to the customer and to allow Escobar to handle the situation. Williams testified that Hill stated that he was going to "clock out" and go home. The plaintiff then collapsed, and his pacemaker "went off."

¶ 7 In its response to the motion for summary judgment, the plaintiff relied in part upon Hill's deposition. Hill testified that, on the day of the occurrence, he saw the plaintiff driving in the Supervalu parking lot. According to Hill, as the plaintiff was driving out of the lot, he said to Hill "do your f*** job, n***r." Hill replied, "What?" and that was the end of the dispute. Hill testified that he had never seen the plaintiff before and denied that there were any complaints from the plaintiff about unauthorized vehicles parking in handicap-designated spaces.

¶ 8 Escobar testified that, on the day of the occurrence, the plaintiff entered Supervalu and informed him about the illegally-parked cars and the failure of the security guard to respond to his report. He told the plaintiff to let him handle the situation, and that he would go outside and speak with the security guard on duty. Escobar and Williams proceeded outside to the parking lot, and Escobar asked Hill what was going on. Hill was visibly upset, and responded that he was doing his job in patrolling the parking lot. Escobar testified that the plaintiff had come out behind him and was "yelling that this is the car [he] was talking about." The plaintiff and Hill were "both yelling, both upset," with Hill repeatedly stating that he was doing his job. Escobar

No. 1-15-2371

testified that he then "asked [Hill] to step aside[,] because when people get angry it just makes things worse so I wanted him to calm down and go to the side." He and Williams both repeated this request, asking Hill to relax. Escobar denied that there was ever any mention of anyone having called someone a "n***r," stating that he would have included such an occurrence in his incident report.

¶ 9 The circuit court entered a written order granting summary judgment for the defendants, finding that Hill's conduct was neither extreme nor outrageous. The plaintiff's motion for reconsideration was denied, and the instant appeal followed.

¶ 10 Summary judgment is appropriate where the pleadings, depositions, and admissions on file establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. *Ulm v. Memorial Medical Center*, 2012 IL App (4th) 110421, ¶¶ 15-17. Summary judgment is a drastic measure, and should only be granted when the moving party's right to judgment is "clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992)). In considering whether a genuine issue of material fact exists, we construe the evidence strictly against the movant and liberally in favor of the opponent. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). "Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied." *Outboard Marine Corp.*, 154 Ill. 2d at 102. We review the circuit court's entry of summary judgment under the *de novo* standard. *Id.*

¶ 11 To state a claim for intentional infliction of emotional distress, a plaintiff must allege that (1) the defendant engaged in conduct that was extreme and outrageous; (2) the defendant intended to inflict severe emotional distress or knew that there was a high probability that his

conduct would cause the plaintiff to experience severe emotional distress; and (3) the defendant's conduct in fact caused severe emotional distress. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 268-69 (2003). The tort does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Public Finance Corp. v. Davis*, 66 Ill. 2d 85, 89-90 (1976) (citing Restatement (Second) of Torts § 46, comment d, at 73 (1965)). Rather, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable in a civilized community. *Feltmeier*, 207 Ill. 2d at 269. Summary judgment for the defendant is therefore appropriate where the conduct is merely "openly hostile," stressful and displeasing (*Ulm*, 2012 IL App (4th) 110421, ¶¶ 45-46), or causes the plaintiff embarrassment or distress. *Lundy v. City of Calumet City*, 209 Ill. App. 3d 790, 794 (1991).

¶ 12 The plaintiff asserts that Hill subjected him to extreme and outrageous conduct solely because he voiced his concern over Supervalu's persistent failure to monitor its handicap-reserved parking spaces. Specifically, he contends that Hill, "a uniformed officer," reacted to his complaint with a "misdirected rage," wrongly accusing the plaintiff of calling him a "n***r" in the presence of other African-American men in a crowded urban parking lot. We find this argument to be unsupported by the evidence and without merit.

¶ 13 We note that there was no testimony, by the plaintiff or any other witness, that Hill ever accused him of making a racial slur during the altercation in the Supervalu parking lot that gave rise to the plaintiff's claim. Nor was there any evidence that a false accusation regarding a racial slur played any role in the plaintiff's ultimate emotional or physical distress. Rather, the only evidence of an alleged racial slur came from Hill's deposition, wherein Hill stated that the plaintiff uttered such a comment as he was "leaving the [parking] lot" in his van. In light of the

complete lack of proof of any alleged "false accusation" being a factor in the altercation at issue in this case, the plaintiff's argument on this point is without merit.

¶ 14 The undisputed evidence established that, when the plaintiff complained to Hill about the improper occupancy of handicap parking spaces, Hill told him to "mind his own f***ing business." This prompted the plaintiff to go into the store and report the matter to Escobar, who came outside and asked Hill what was going on. Hill responded that he was doing his job, and then became increasingly upset, yelling and pointing his finger in the plaintiff's face, stating "you don't know who you're dealin' with." Both Escobar and Williams ordered Hill more than once to "step aside" and "calm down." Hill eventually left the scene, and the plaintiff, who was also upset and yelling, collapsed and suffered a myocardial infarction.

¶ 15 We do not agree that Hill's conduct was so extreme or outrageous as to constitute intentional infliction of emotional distress. Viewed in the light most favorable to the plaintiff, the evidence established that Hill used profanity against the plaintiff, became overly loud and aggravated, and bordered upon engaging in threatening behavior by pointing his finger in the plaintiff's face. However, it was also undisputed that the plaintiff was similarly yelling and angry or upset, and that he accused Hill of "lying," which exacerbated Hill's reaction. Further, by the time the plaintiff collapsed, Hill had retreated from the scene to "clock out" and was no longer yelling or arguing with the plaintiff. A case for intentional infliction of emotional distress requires conduct going beyond mere insults or threats, or even malicious intent; the distress must be "so severe that no reasonable man could be expected to endure it." *Lundy*, 209 Ill. App. 3d at 793. While the facts here demonstrate offensive or disconcerting behavior, it did not approach the level of being unendurable to a reasonable person. Accordingly, summary judgment was

No. 1-15-2371

properly granted for the defendants. In light of our decision, we do not reach the plaintiff's contention that Jewel must be held vicariously liable for Hill's conduct.

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court granting summary judgment for the defendants.

¶ 17 Affirmed.