2019 IL App (1st) 181439-U

FIRST DIVISION
June 17, 2019

No. 1-18-1439

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MILTON OWENS, Plaintiff-Appellee, v. UNIVERSITY OF CHICAGO; MARLON C. LYNCH, Individually and as an Agent of the University of Chicago; GLORIA GRAHAM, Individually and as an Agent of the University of Chicago; and KEVIN BOOKER, Individually and as an Agent of the University of Chicago, Defendants, (University of Chicago and Kevin Booker, Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County, No. 15 L 005107 Honorable Joan E. Powell, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Griffin and Walker concurred.

ORDER

¶ 1 *Held*: We affirm the decision of the trial court denying appellants' motions for a directed verdict and for judgment notwithstanding the verdict. The evidence was sufficient to sustain the jury's verdict in plaintiff's favor on his claim of intentional infliction of emotional distress.

¶ 2 Plaintiff Milton Owens was formerly employed as an officer with the University of Chicago Police Department. After he was terminated from the department, he sued the University of Chicago and several employees of the department for intentional infliction of emotional distress and for spoliation of evidence. The case proceeded to trial and the jury found in favor of Mr. Owens with respect to appellants—the University of Chicago and Kevin Booker—on Mr. Owens's claim for intentional infliction of emotional distress. The trial court granted the motion for directed verdict on spoliation of evidence but denied appellants' motions for a directed verdict and for judgment notwithstanding the verdict on the claim for intentional infliction of emotional distress. On appeal, appellants argue that the verdict should be reversed. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case grows out of a protest that occurred on February 23, 2013, at the University of Chicago (University). A detective from the University of Chicago Police Department (UCPD), Janelle Marcellis, whom Mr. Owens supervised, was photographed, dressed similarly to the protestors, holding a protest sign, and wearing a sticker over her mouth. These photographs were published in the University's student newspaper and resulted in a great deal of community and student criticism of the UCPD for improperly infiltrating the protest. After internal and external investigations were completed, on May 20, 2013, Mr. Owens was terminated.

¶ 5 On May 19, 2015, Mr. Owens filed his complaint against defendants the University, Marlon Lynch, Gloria Graham, and Kevin Booker, in which he alleged intentional infliction of emotional distress. The jury trial began on January 18, 2018, and included six days of testimony and arguments.

¶ 6 The evidence at trial was that, at the time of the protest, Marlon Lynch was the chief of

the UCPD, Gloria Graham was the assistant chief, and Kevin Booker and Eric Heath were deputy chiefs. Mr. Owens, who was also a deputy chief, reported directly to Ms. Graham. The jury found Mr. Booker and the University liable in this case but found that Mr. Lynch and Ms. Graham were not liable.

¶ 7 Mr. Owens came to UCPD from the Chicago Police Department (CPD). He had joined the CPD in 1987, and was promoted twice during his 22-year tenure with the department—to detective in 1996 and to sergeant in 2003. During his 22 years with the CPD, Mr. Owens received 73 honorable mentions, 16 salutes, and the superintendent of police received 6 letters based on Mr. Owens's exemplary performance. He never received disciplinary action with the CPD.

¶ 8 Mr. Owens was recruited from the CPD by the UCPD in 2010. He did not have an employment contract with the UCPD, so he was an "at-will" employee. Mr. Owens began as a captain with the UCPD, and was promoted first to commander and then to deputy chief in charge of the detective division. At the time of his termination, Mr. Owens testified that he had been promised what he believed was another promotion, to the new position of Executive Officer.

¶ 9 Between January 2010 and January 2013, Mr. Owens had worked during approximately 12 protests at the University. At a protest on January 27, 2013, which Mr. Owens was not assigned to work, four protestors, including a University student, were arrested and a UCPD officer was injured. This was the first time Mr. Owens was aware of that the UCPD had ever arrested protestors. The University issued several statements about the January 27 protest in which it stressed that it was "working to better understand and address this incident" and that "[f]ree expression is at the core of the University's values." Mr. Owens testified that he had never seen such a "flurry of public statements come out after any kind of protest before."

¶ 10 On February 17, 2013, Mr. Lynch forwarded an email to the UCPD command staff about the protest scheduled for February 23, 2013. The email informed staff that the protestors were going to march to the University hospital to demand a trauma center, then to the University president's house to demand that all criminal charges against the January 27 protestors be dropped.

¶ 11 At a UCPD command staff meeting on February 18, 2013, Mr. Booker presented a PowerPoint presentation of an Incident Command System (ICS) plan that he had created for February 23, 2013. The ICS plan was approved by both Mr. Lynch and Ms. Graham. Mr. Booker had completed ICS plans previously, but had never done an ICS plan for a protest. Mr. Booker testified that the ICS plan he created was not initially for the protest, but rather because patients were scheduled to be moved that day into the Center for Care and Discovery, and then the ICS plan was modified to also include the protest when UCPD learned of it.

¶ 12 According to the ICS plan, Mr. Owens was in charge of the officers outside on the street, supervising between 32 and 35 police officers, including Ms. Marcellis. The plan assigned Ms. Marcellis to gather intelligence and two other detectives to videotape the protest, all wearing plainclothes. The other officers were to be in uniform. Mr. Owens testified that "[r]ed flags went up for [him]" because those three detectives had been with the UCPD for "less than two or three years" and "had never been trained in dealing with protests or demonstrations." Mr. Owens believed it would be better for them to serve as an "arrest processing team in uniform."

¶ 13 Mr. Owens testified that he expressed these thoughts at the meeting on February 18, but that Ms. Graham responded that those officers would be in plainclothes and the ICS plan was to be followed. Mr. Owens said he addressed his concerns to Mr. Booker a second time immediately after the meeting. Mr. Owens said he again asked for the three detectives, including

Ms. Marcellis, to be in uniform rather than in plainclothes, but Mr. Booker responded "[Ms. Graham] wants it that way." Mr. Owens also testified that he was concerned with how vague the ICS plan was and that he did not know what "[g]ather intelligence meant." Mr. Booker told Mr. Owens that the detectives "could mingle and join in with the protestors." Mr. Owens testified that this was "the first time that any officer had been in plainclothes gathering intel[ligence]."

¶ 14 The UCPD had a 6:30 a.m. roll call on the day of the February 23, 2013, protest. Mr. Owens estimated that 20 or 25 officers were present. Ms. Marcellis and the two other detectives who were to be in plainclothes were wearing jeans, sweatshirts, and jackets. After roll call, Mr. Booker gave a brief statement, and then Mr. Owens went to the front of the room and introduced Ms. Marcellis. Mr. Owens testified that he explained, "this is Detective Marcellis, she's going to be with the protestors, you make sure you take care of her if something is going to happen." Mr. Owens also instructed the two other detectives to get the video camera from Mr. Booker to videotape the protest. Mr. Owens testified that he never told Ms. Marcellis to take any signs or stickers or to actively participate in the protest.

¶ 15 During the protest, Ms. Marcellis was walking with the protestors, holding up a sign in front of her. She also received one of the stickers that was being passed out and held it in her hand. The protestors were chanting and instructed everyone to put the stickers by their mouths, which Ms. Marcellis did for "a couple of seconds."

¶ 16 During the protest, Mr. Booker, along with Ms. Graham and Mr. Heath were in the command post area watching video feed of the protest, as it was occurring. One of the detectives testified that when he reported to them that Ms. Marcellis was holding a sign and a sticker, Ms. Graham and Mr. Booker "started laughing."

¶ 17 Mr. Owens testified that he stayed inside the barricaded area during the protest to ensure

the protestors did not attempt to gain access to the medical facilities. Mr. Owens testified that although he communicated with Ms. Marcellis via text throughout the protest, he did not know she had taken a sign or a sticker until after the protest. Mr. Owens acknowledged that Ms. Marcellis texted him about the sign and the sticker during the protest, but testified that he did not see those texts that day. He testified that the first he learned of Ms. Marcellis holding a sign or wearing a sticker was at approximately 5 p.m. on February 23, when he received a call from another of his subordinates who informed him that Ms. Marcellis had taken a sign and sticker.

¶ 18 The following morning, Mr. Owens received an email from Mr. Lynch commending his work from the day before. Later the same day, Mr. Lynch sent another email to Mr. Owens, telling him he would begin his new position as Executive Officer as of March 1 and saying "I know that I can always count on you. Your next role with us is critical to our continued development as a police department. I'm sure that you will do well."

¶ 19 Mr. Owens testified that on February 26, 2013, he met with Ms. Marcellis in the presence of one of his other employees and questioned Ms. Marcellis about why she had a sign and a sticker. Mr. Owens testified that he admonished her and told her that she should not have taken the sign or the sticker: "It wasn't a part of the plan."

¶ 20 Some of the witnesses for defendants disputed some of Mr. Owens's testimony about what occurred the week of the protest. Several witnesses testified that they did not recall Mr. Owens expressing concerns about the detectives being in plainclothes at the command staff meeting on February 18, 2013, and others testified that Mr. Owens definitively did not express those concerns. Mr. Booker testified that he did not tell Mr. Owens that his detectives should mingle and join in with the protestors. Some witnesses testified that they did not recall Mr. Owens introducing Ms. Marcellis at the roll call meeting. Ms. Marcellis testified that it was Mr.

Owens who told her she would be in the crowd with the protestors, mingling and joining in, and that she told him on a phone call during the protest that she was in the crowd holding a sign.

¶ 21 On March 1, 2013, the University's student newspaper—the Maroon—published an article titled "Undercover UCPD detective infiltrates protest." The photographs accompanying the article show Ms. Marcellis at the protest, holding a sign and holding a sticker over her mouth. The caption underneath one of the photographs notes that "an on-duty UCPD detective dressed in plainclothes posed as a protester" and "did not inform protesters that she was a detective." Another caption read: "Throughout the protest, Marcellis texts Deputy Chief of Investigative Services, Milton Owens, updates about the protest and the organizers' demands."

¶ 22 On March 2, 2013, the University provost sent out an "open letter" about the protest, in which he said, in part, that on February 23, 2013, an "on-duty University police department detective dressed in plainclothes apparently posed as a demonstrator and marched in a peaceful trauma center protest" and that he and the president of the University "view the behavior as described to be antithetical to the University's values" and that they "would not tolerate it." The provost also said that the University would "investigate this expeditiously and take immediate steps to ensure that it is not repeated."

¶ 23 On March 3, 2013, the president and provost issued a joint "Message on values and protest" in which they stated, in part:

> "Recently, there was a protest on campus that was an example of [] legitimate expression. However, we subsequently became aware that during this protest a member of the [UCPD] was posing as a protestor. We view this action as totally antithetical to our values, and such activity, which is deeply problematic for discourse and mutual respect on campus, cannot be tolerated. We will appoint an external independent reviewer to

> investigate the precise facts of this incident, as part of taking action to ensure that such behavior does not happen again."

The same statement was also emailed from the president and provost to the faculty, students, and staff of the University.

¶ 24 On March 4, 2013, Mr. Owens was summoned to Mr. Heath's office. Both Mr. Heath and Ms. Graham were there when he arrived. Mr. Heath told Mr. Owens he was being placed on administrative leave, and presented Mr. Owens with a notification of the charges against him, which read:

> "As a result of an incident that occurred on 23rd February between the hours of 12:30 and 14:00 hours the following allegations were made by the complainant, Deputy Kevin Booker. 1) Deputy Chief Owens failed to take action regarding Detective Marcellis's decision to actively engage in the protest thereby violating the Department's Code of Conduct."

As the notification of charges made clear, the University's investigation was initiated by a complaint from Mr. Booker.

¶ 25 The University's internal investigation of the incident was completed on March 14, 2013. At the conclusion of the investigation, Mr. Heath, who had conducted the investigation, recommended that Ms. Marcellis be given a written warning and that Mr. Owens be terminated.

¶ 26 Mr. Lynch received the final internal investigation report on March 15, 2013. He agreed with Mr. Heath's recommendation to terminate Mr. Owens. Mr. Lynch testified that he "was asked by the University administration not to act on the termination at that time," although he said he was not given a reason for the delay. The University hired the law firm of Schiff Hardin LLP to complete an external investigation into the protests of both January 27, 2013, and

February 23, 2013. The findings of that report were released on May 20, 2013 and, at that point, Mr. Owens was fired.

¶ 27 Mr. Owens was notified "several days before" May 20, 2013, to be at UCPD headquarters at 11 a.m. After waiting for three hours, Mr. Owens met with Mr. Lynch and was given his termination letter, effective that day. In the letter, Mr. Lynch stated that based on the findings of the investigations into the incident of February 23, he had "lost confidence" in Mr. Owens's "ability to serve in a leadership position" at the UCPD.

¶ 28 On May 20, 2013, the University published a statement on its website. In that statement, the University said that it had identified "a number of steps" to be taken to "ensure that University policing and staff work to support protest as a legitimate and important form of free expression" at the University. The statement said:

> "In their findings on the use of undercover police tactics at the demonstration of Feb. 23, the investigators deemed a UCPD detective's actions 'reasonable,' while the commanding officer's direction was found 'unreasonable.' Those findings are consistent with a UCPD internal investigation. The commanding officer is no longer employed by UCPD."

Although Mr. Owens's name was not part of that statement, earlier articles about the protest had identified Mr. Owens as the commanding officer of UCPD personnel during the protest.

¶ 29 Mr. Owens did not find new employment until May 5, 2014, almost one year after his termination. At that point he was hired as the director of security for City Colleges, Harold Washington College. He has been employed by the City Colleges of Chicago since then. As he made clear in his testimony, this was a security, not law enforcement, position.

¶ 30 In describing his emotional distress he experienced as the result of defendants' actions,

Mr. Owens stated:

"Since I was nineteen years of age I've been employed to take care of my family. The day that I was put on administrative leave, I didn't tell anyone. I went home. Shortly after that, I got up the next day and I got dressed, I pretended to go to work.

I did that for about a week or so. I was parked at a parking lot not far from the house. My sister recognized my car and she came by and she asked what was going on. I told her, and she said, 'You've got to tell your wife.'

I've been married for 37 years. I went home, told my wife, and it just seemed like my life spiraled out of control

It's true that I've worked in very violent districts in the City of Chicago. The City of Chicago during that time, working in those very violent districts, I was able to build a reputation and be well respected, not just by commanding staff and the police officers, but by the people I served in those communities, which was more important to me, and that's the truth.

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In 25 years of being in law enforcement and working in those districts, I've never, ever been disciplined, and I'm proud of that. I'm proud of how I handled myself.

The University of Chicago has intentionally—intentionally, egregiously and systematically cast aspersions on my good name and my reputation. I'm unable to find employment in the law enforcement field.

I'm blessed, and I truly mean that, I'm blessed that I got employment with Chicago City Colleges. I hope this doesn't sound vain, but at this particular junction in my life with my training and experience, that's not where I want to be in my career.

When I started there, I had to verbally admonish a couple of officers when I saw how they were inappropriately speaking to a student. Later that night, I went upstairs, we have an office, and every computer had a copy of what happened to me at the University of Chicago.

* * *

I went into the washroom, and I won't lie, I was mad. I was mad, I was hurt. I washed my face, calmed myself down, walked past those officers and said, 'You gentlemen have a good night.' And I know people can be cruel, and I let it go.

The only thing that I was wondering is when is this going to end. My integrity—

I'm done. I'm done. I just don't have the energy to do this anymore. I'm sorry."

¶ 31 With respect to the videotape of the protest, one of the detectives who had done the videotaping testified that, after the protest, he returned the camera with the videotape to Mr. Booker, and Mr. Owens testified that at the UCPD command staff meeting on February 18, 2013, he had said that the videotape of the protest should be inventoried. Other witnesses testified that they did not recall Mr. Owens's statement. Mr. Booker testified that he did not know what had happened to the videotape of the protest or where it had been placed after the protest was over. The videotape was never inventoried or produced in discovery and, at trial, the jury, at Mr. Owens's request, was given a missing evidence instruction, Illinois Pattern Jury Instructions, Civil, No. 5.01 (2011).

¶ 32 At the close of Mr. Owens's case, defendants moved for a directed verdict, which the trial court granted with respect to Mr. Owens's claims of spoliation of evidence based on the videotape. Mr. Owens's claim of intentional infliction of emotional distress, however, was submitted to the jury.

¶ 33 After deliberating, the jury found in favor of Mr. Owens and against the University and Mr. Booker, and awarded Mr. Owens damages in the amount of $150,000. The jury did not find against Mr. Lynch or Ms. Graham.

¶ 34 On February 26, 2018, the University and Mr. Booker filed a motion for judgment notwithstanding the verdict. On June 7, 2018, after a hearing, the trial court denied the motion.

¶ 35 II. JURISDICTION

¶ 36 The University and Mr. Booker filed their timely notice of appeal on July 5, 2018. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 37 III. ANALYSIS

¶ 38 Appellants contend that the trial court erred in refusing to grant either their motion for a directed verdict or their motion for judgment notwithstanding the verdict (judgment *n.o.v.*) on the claim for intentional infliction of emotional distress. Although motions for directed verdicts and motions for judgments *n.o.v.* are made at different times, they raise the same questions and are governed by the same standard, which has come to be referenced as the *Pedrick* standard, based on *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 509-10 (1967). A trial court should grant such a motion " 'only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on the evidence could ever stand.' " *Harris v. Thompson*, 2012 IL 112525, ¶ 15 (quoting *Pedrick*, 37 Ill. 2d at 510).

¶ 39 In reviewing these motions, the trial court "must resolve conflicts in the evidence in favor of the plaintiff, and if it finds any evidence which, if believed, could support a verdict for the

plaintiff, it is error to direct a verdict for [the] defendant." *Hicks v. Hendricks*, 33 Ill. App. 3d 486, 490 (1975) (citing *Zank v. Chicago, Rock Island & Peoria R.R. Co.*, 17 Ill.2d 473, 477 (1959)). Our standard of review is *de novo*. *Lawlor v. North American Corporation of Illinois*, 2012 IL 112530, ¶ 37.

¶ 40 To support a claim for intentional infliction of emotional distress, Mr. Owens was required to prove four things: (1) the defendant engaged in "extreme and outrageous" conduct toward the plaintiff; (2) the defendant intended or recklessly disregarded the probability that the conduct would cause the plaintiff to suffer emotional distress; (3) the plaintiff endured "severe [and] extreme" emotional distress; and (4) the defendant's conduct actually and proximately caused the plaintiff's distress. *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶ 36. Appellants contend that the evidence at trial failed to support the first three of these elements, even if viewed in the light most favorable to Mr. Owens. We disagree and will address each of these elements in turn.

¶ 41 A. Extreme and Outrageous Conduct.

¶ 42 Appellants spend most of their briefing arguing that the evidence did not rise to the level of "extreme and outrageous" conduct. They stress that Illinois courts have recognized that "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" do not amount to extreme and outrageous conduct. *Public Financial Corp. v. Davis*, 66 Ill. 2d 85, 89-90 (1976). Appellants also stress that Mr. Owens was an at-will employee whom the University was entitled to terminate for any reason or no reason at all.

¶ 43 Appellants do not dispute that the jury was properly instructed on both of these points. The jury was told that that Mr. Owens was required to prove "extreme and outrageous conduct" and this was specifically defined for the jury as "conduct that goes beyond all possible bounds of

decency such that no reasonable person could be expected to endure it. Mere insults, indignities, threats, annoyances, petty oppressions or trivialities are not extreme and outrageous conduct." The jury was also specifically instructed that Mr. Owens was an at-will employee:

> "Plaintiff was an at-will employee of the defendant University of Chicago. Under the doctrine of at-will employment, either the employer or the employee can terminate an employment relationship for any reason other than a reason prohibited by law. This means that in deciding plaintiff's claims that he was subjected to intentional infliction of emotional distress by defendant, you should not concern yourselves with whether the decision to terminate plaintiff was wise, reasonable or fair. Rather, your concern is only whether plaintiff has proved that the defendants' conduct subjected him to intentional infliction of emotional distress as defined in these instructions."

We must assume that the jury acted in accordance with this definition and these instructions since "[t]he jury is presumed to follow the instructions that the court gives it." *People v. Fields*, 135 Ill. 2d 18, 53 (1990).

¶ 44 Appellants' argument is based on comparing this case to a number of cases in which courts have found a plaintiff's intentional infliction of emotional distress claim to be insufficient. We disregard two of the cases that appellants cite because they were decided under Illinois Supreme Court Rule 23 and it was a clear violation of that rule for appellants to have relied on those cases as precedential authority. Ill. S. Ct. R. 23(e) (eff. Apr. 1, 2018).

¶ 45 The majority of the cases that appellants cite are ones in which an intentional infliction of emotional distress claim was dismissed on the pleadings, including *Lundy v. City of Calumet City*, 209 Ill. App. 3d 790 (1991); *Miller v. Equitable Life Assurance. Society of the U.S.*, 181 Ill. App. 3d 954 (1989); and *Pratt v. Caterpillar Tractor Co.*, 149 Ill. App. 3d 588 (1986). While we

agree with appellants that the holdings of those cases are still relevant, this different procedural posture makes comparison difficult. The courts in those cases were looking at naked allegations, while here the jury had trial testimony and documents that described what had happened to Mr. Owens in great detail. We have examined the allegations in those cases and the evidence presented on summary judgment in the other cases that appellants cite, including *Wynne v. Loyola University of Chicago*, 318 Ill. App. 3d 443 (2000); *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393 (1999); and *Gibson v. Chemical Card Services, Corp.*, 157 Ill. App. 3d 211 (1987). While some of them do indeed describe "bad" conduct by the defendants, none of these cases are so similar to this one or so much more egregious that they suggest that, as a matter of law, this jury verdict cannot stand.

¶ 46 Appellants' leading case is *Wynne*, 318 Ill. App. 3d at 454, in which this court affirmed summary judgment on a plaintiff professor's claim for intentional infliction of emotional distress based on the defendants having allegedly published an embarrassing memorandum about her to other employees, refused to transfer her to another department, and appointed a department chair whom she disliked. *Id.* at 454. But there are many differences between that case and this one including that the mistreatment the professor complained of did not include the loss of her job, the university in that case was not accused of destroying or losing evidence, and the university did not publish, as the University did here on its website, its rationale for its treatment of the professor.

¶ 47 In *Lundy*, 209 Ill. App. 3d at 791-92, police officers alleged that they suffered emotional distress after their supervisor informed them, through a memorandum that was delivered to them by other police officers, that the results of their psychological tests were "indeterminate" and likely invalid. The officers were also temporarily relieved of uniformed duty and ordered to

refrain from wearing their guns or badges until further notice. *Id.* at 791. We upheld the circuit court's grant of summary judgment to the defendants on the intentional infliction of emotional distress claim. *Id.* at 793-94. The police officers were retested within a week and were allowed to return to active duty upon the city's receipt of conclusive test results. *Id.* at 793. That case, in which the entire ordeal was short-lived, is obviously quite different than this one.

¶47 Appellants also cite *Miller*, 181 Ill. App. 3d at 956, a case in which, despite some truly horrific allegations of threats of bodily harm and sexual harassment in the workplace for more than three years, an insurance sales representative's claim of intentional infliction of emotional distress in the workplace was dismissed for failure to state a claim. That case has been criticized and at least one court has suggested that it would not likely be followed by the Illinois Supreme Court. *Class v. New Jersey Life Ins. Co.*, 746 F.Supp. 776, 779 (N.D. Ill. 1990). The record in this case reflects that both the trial court judge and even defendants' counsel had some question as to whether this 1989 case about workplace conduct in the 1980s would come out the same way today. However, assuming, without accepting, that *Miller* is still good law, it still does not compel reversal in this case. *Miller* does not hold, as appellants contend, that in order to sustain a claim of intentional infliction of emotional distress in the workplace an employee must show that he or she has been ordered to do something illegal or has been coerced into an unwanted sexual relationship. Rather, the *Miller* court was simply distinguishing two cases that had rejected a motion to dismiss an intentional infliction of emotional distress claim in the workplace based on those factual scenarios. *Miller*, 181 Ill. App. 3d at 958. *Miller* is quite different from this case; it did not involve, as this one does, deliberate scapegoat-ing of one employee by another employee who was, according to Mr. Owens, the true wrongdoer, nor did it include public dissemination by the employer of the reasons for the termination.

¶ 48 Appellants additionally cite several cases in which the court rejected intentional infliction of emotional distress claims in the workplace where the plaintiff's primary allegation was that he or she was unfairly terminated: *Pratt*, 149 Ill. App. 3d 588; *Vickers*, 308 Ill. App. 3d 393; *Gibson*, 157 Ill. App. 3d 211; and *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302 (1990). In *Pratt*, 149 Ill. App. 3d at 591, the court affirmed dismissal of an intentional infliction of emotional distress claim that it viewed as resting entirely on the "contention that the termination of an employee at will causes severe emotional distress." The court rejected that claim on the basis that "[s]ettled Illinois law holds that the discharge of an employee at will is within an employer's right and does not constitute the extreme and outrageous conduct which is required to maintain a cause of action for intentional infliction of emotional distress." *Id.* In *Vickers*, 308 Ill. App. 3d at 410, this court affirmed summary judgment for the employer because the intentional infliction of emotional distress claim rested on the "defendants' failure to conduct a 'good faith' investigation into the allegations against [the plaintiff] and how he was coerced into accepting a demotion." In *Gibson*, 157 Ill. App. 3d at 213, this court affirmed summary judgment when the plaintiff's employer had accused her of stealing credit cards, threatened to send her to jail for 15 years, and terminated her employment. And *Marin*, 204 Ill. App. 3d at 304, concerned a claim for retaliatory discharge and says nothing about claims for intentional infliction of emotional distress.

¶ 49 While appellants are correct that these cases hold that even an unfair firing of an at-will employee cannot, in and of itself, give rise to a claim of intentional infliction of emotional distress, these holdings do not mandate overturning the jury verdict in this case: Mr. Owens's claim here does not rest on "no more" than the fact that he was unfairly terminated. The jury in this case clearly accepted his version of events—that he was against the plan that resulted in Ms.

Marcellis blending in with the protestors, but was terminated because of that plan. That alone was unfair, but there was also evidence from which the jury could have found that Mr. Owens was deliberately made the scapegoat by Mr. Booker who filed the complaint against him but was, himself, the true wrongdoer: the University made a public statement on its website for anyone to see saying that it had terminated the commanding officer, which the public already knew was Mr. Owens, and that it considered his actions "unjustified"; and the jury was entitled to draw an adverse inference from the fact that defendants did not produce the protest video.

¶ 50 Appellants also rely on three cases that arise out of completely different contexts. In *Pubic Finance Corp. v. Davis*, 66 Ill. 2d 85, 91-92 (1976), our supreme court affirmed the dismissal of an intentional infliction of emotional distress counterclaim based on annoying, but definitely legal, attempts to collect a debt. In *Kahn v. American Airlines*, 266 Ill. App. 3d 726 (1994), this court affirmed the dismissal of an intentional infliction of emotional distress claim based on an airline's false arrest of an airline passenger. And in *Duffy*, 2012 IL App (1st) 113577, ¶ 37, this court affirmed dismissal of an intentional infliction of emotional distress claim based on the defendants' failure to make timely repairs to the plaintiff's condominium. The facts of these cases are so different that they have little relevance here except to underscore that an intentional infliction of emotional distress claim requires the plaintiff to demonstrate that the conduct complained of is "extreme and outrageous." This is a finding that the jury made in this case and we cannot say that the evidence at trial, "when viewed in its aspect most favorable to" Mr. Owens, so "overwhelmingly favors" appellants that this finding cannot stand. *Pedrick*, 37 Ill. 2d at 510.

¶ 51 B. Intent to Cause Emotional Distress

¶ 52 Appellants also contend that there was no evidence that Mr. Booker or anyone else at the

University acted with intent to harm Mr. Owens. However, as Mr. Owens points out, he was only required to show that appellants acted with *reckless disregard* for his emotional distress. *Duffy*, 2012 IL App (1st) 113577, ¶ 36. The jury was instructed that a person "acts recklessly when he or she consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation."

¶ 53 While appellants are correct that there was no evidence of a direct intent to harm Mr. Owens, there was evidence from which a jury could have found a reckless disregard of Mr. Owens's potential for emotional distress in the course of conduct by defendants in this case. That evidence included testimony and documents showing that Mr. Booker was the architect of the ICS plan and Mr. Owens objected to it; that the University disregarded Mr. Owens's statement that he did not see what Ms. Marcellis was doing during the protest; that after the University president expressed outrage, the UCPD began to scapegoat Mr. Owens for what had happened; that Mr. Booker initiated the investigation of Mr. Owens and that Mr. Booker may have destroyed the tape of the protest; and that the University published its own account of what had occurred and its justification for terminating Mr. Owens on its website. In short, the same evidence that would support the jury's finding that defendants' conduct was "extreme and outrageous," if it was indeed accepted by the jury, also would support a finding that defendants acted recklessly with respect to the impact of that conduct on Mr. Owens.

¶ 54 C. Severe Emotional Distress

¶ 55 Appellants argue that the evidence presented at trial was not sufficient to show that Mr. Owens suffered severe emotional distress. Their argument rests primarily on this court's decision in *Adams v. Sussman & Hertzberg, Ltd.*, 292 Ill. App. 3d 30 (1997). In that case, we affirmed a

judgment *n.o.v.* for the defendant because the plaintiff had failed to prove, as a necessary part of his legal malpractice claim, that he could have prevailed on his underlying intentional infliction of emotional distress claim against Hertz, based on Hertz's request that the plaintiff be charged with criminal trespass to its vehicles. *Id.* at 38. Specifically, we noted that the plaintiff had no evidence to show "the severity of the distress he suffered." *Id.* at 39. We likewise noted that the plaintiff there had "no evidence that he was hospitalized, sought and received psychiatric treatment, or even was prescribed medication." *Id.*

¶ 56 We reject appellants' suggestion that the *Adams* case holds that hospitalization or medical treatment is *required* to demonstrate emotional distress. Our supreme court has made clear that a plaintiff is not required to provide medical testimony to prove that he or she suffered emotional distress. *Thornton v. Garcini*, 237 Ill. 2d 100, 109–10 (2010). As the court recognized in *Thornton*, the jury can make this determination "based on personal experience alone."

¶ 57 On its facts, the evidence in *Adams* is quite different than the evidence that Mr. Owens presented to the jury in this case. In *Adams*, the plaintiff's ordeal lasted one night. *Adams*, 292 Ill. App. 3d at 35-36. He testified that when he was arrested, he was afraid, that he was fearful about his career and what his colleagues, friends, and loved ones would think and hear about his being charged with a criminal act that he did not commit. *Id.* at 39. He also testified that he cried when his mother arrived at the police station to post bail. *Id.* In this case, Mr. Owens testified that he was a 54-year-old lifelong law enforcement officer, who has been unable to find a law enforcement job since his termination, whose professional reputation was shattered by false allegations that were ultimately posted on the University's website that continued to haunt him years later in his current security job. The jury clearly accepted this testimony and this was a sufficient basis upon which a jury could have found severe emotional distress.

¶ 58 IV. CONCLUSION

¶ 59 Because there was sufficient evidence, when viewed in the light most favorable to Mr. Owens, from which a jury could have found that Mr. Owens suffered intentional infliction of emotional distress by appellants, the trial court properly denied appellants' motions for directed verdict and judgment *n.o.v. Harris*, 2012 IL 112525, ¶ 15. Accordingly, we affirm the judgment of the trial court.

¶ 60 Affirmed.