SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House

Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication on Complaint for Other Employment (Over $25,000) of BRENDA DENNSTEDT

04/15/2024
8:30 AM
Department 4

CVRI2200885
DENNSTEDT vs COUNTY OF RIVERSIDE

Honorable Daniel Ottolia, Judge
T. Aragon, Courtroom Assistant
Yolanda Huff, Pro Tempore, Court Reporter

APPEARANCES:

DENNSTEDT, BRENDA [PLA] Represented by Joseph Richardson appearing remotely in Court.
COUNTY OF RIVERSIDE [DEF] Represented by Natalee Jung appearing remotely in Court.
HEWITT, JEFFREY [DEF] Represented by Jamie Wrage appearing remotely in Court.
SHANNON, MATTHEW [DEF] represented by Karen Capasso.

At 08:43 AM, the following proceedings were held:
Motion by Defendant Matthew Shannon regarding Summary Judgment is called for hearing.
A tentative ruling was posted pursuant to California Rules of Court, Rule 3.1308 (a)(1) and a request oral argument was made.
Counsel presents argument.
Court makes the following order(s):
Tentative ruling shall become the ruling of the court.
Motion by Defendant Matthew Shannon regarding Summary Judgment is denied.

Defendant Mathew Shannon moves for summary judgment on the grounds that Plaintiff cannot prevail on her Intentional Infliction of Emotional Distress ("IIED") and Negligent Infliction of Emotional Distress ("NIED") claims. On the IIED claim, Shannon argues that Plaintiff cannot establish that Defendant's conduct was extreme or outrageous, or that Plaintiff sustained severe emotional distress as a result of Defendant's conduct. For NIED, Shannon argues that there is no independent tort of NIED, but rather a negligence claim, and Plaintiff cannot establish any duty owed by Shannon to her, cannot establish any breach of any duty, and cannot establish that his conduct caused her to suffer severe emotional distress.

Sixth Cause of Action for IIED

To establish IIED, a plaintiff must allege: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress, (2) plaintiff suffered severe emotional distress, and (3) defendant's extreme and outrageous conduct was the actual and proximate cause of the severe emotional distress. (Crouch v. Trinity Christian Ctr. of Santa Ana, Inc. (2019) 39 Cal.App.5th 995, 1007.)

A. Extreme and Outrageous Conduct

"A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.'" (Ibid.) Additionally, the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.'" (Hughes v. Pair (2009) 46 Cal.4th 1035, 1050–51.) It is the specific intent to inflict severe harm or disregard of a substantial certainty of severe harm that makes the conduct outrageous, "such that it would cause an average member of the community to immediately react in outrage." (Gormon v. TRW, Inc. (1994) 28 Cal.App.4th 1161, 1172.) There is no liability under a claim for intentional infliction of emotional distress for insults, indignities, or threats that amount to nothing more than mere annoyances. (Pilotrik v. Melhaus (2012) 208 Cal.App.4th 1590, 1610.) However, aggravating circumstances, such as a supervisory employment relationship, can elevate inappropriate conduct to conduct that is outrageous enough to support a claim for IIED. (See, Alcorn v. Anbro Engineering, Inc. (1970) 2 Cal.3d 493, 498.) The court in Alcorn noted:

The cases and commentators have emphasized the significance of the relationship between the parties in determining whether liability should be imposed. … Thus, plaintiff's status as an employee should entitle him to a greater degree of protection from insult and outrage than if he were a stranger to defendants.
(Id. at n.2 [citations omitted].)

In the present case, Shannon presents evidence that: he never made inappropriate comments to Plaintiff about her appearance or dating life; he never spoke to her in a sexually suggestive way; he

never intended to cause her emotional distress; while he attended a Zoom meeting in a robe, it was because he was very ill and was asked to join to address staff concerns about Covid-19, the robe was not revealing or sexual, and he did not intend to harass or offend anyone by his appearance; and Plaintiff was terminated for good cause due to job performance. (UMF ## 18-24, 64, 75-78, 88-91.) This is sufficient to meet moving party's burden and shift the burden to Plaintiff to show that a triable issue of one or more material facts exists.

In response, Plaintiff presents evidence, in the form or her declaration and the declarations of two former employees of Defendants, that: Shannon and Hewitt constantly teased her about her dating life; they made sexually suggestive comments about her clothing, including asking about one outfit "who will be unzipping that dress tonight;" Shannon attended a Zoom meeting wearing a robe when he was not sick, walked around so everyone on the call could see the robe, and several employees found it to be inappropriate and offensive; Hewitt made the comment "I like my coffee like I like my women, strong and black" in front of Shannon and other employees; Shannon and Hewitt made inappropriate comments in front of employees about high school girls participating in the sport of wrestling; while she was in the office with Hewitt and Shannon, they started talking about masturbation, including an incident involving a CNN commentator who was caught exposing himself during a Zoom meeting, causing Plaintiff to complain and leave; and Shannon's inappropriate and sexist comments made not only Plaintiff, but other employees as well feel uncomfortable and like the work environment was toxic. (Decl. of Brenda Dennstedt ["Dennstedt Decl."] at ¶¶ 9-10, 13-16, and 24-25; Decl. of Barry Busch ["Busch Decl."] at ¶¶ 7, 9-11, and 14-16; Decl. of Thomas E. Kuhlmeier ["Kuhlmeier Decl."] at ¶¶ 7, 16-20.)

Based on this evidence, Plaintiff has established a triable issue of material fact regarding whether Shannon engaged in extreme or outrageous conduct sufficient to support a cause of action for IIED. Specifically, given the nature and volume of the comments and conduct by Shannon, along with his position of authority over Plaintiff, a jury could find that this conduct was "so extreme as to exceed all bounds of that usually tolerated in a civilized community," and further, that he engaged in the behavior "with the realization that injury would result." (See, Crouch, supra, 39 Cal.App.5th at 1007; Hughes, supra, 46 Cal.4th at 1050–51; and Alcorn, supra, 2 Cal.3d at 498.) Accordingly, summary

judgment cannot be granted on this basis.

B. Severe Emotional Distress

In addition to the above, to defeat summary judgment on the IIED cause of action, Plaintiff must establish a triable issue of material fact regarding whether she suffered severe emotional distress. “Severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it.” (Potter v. Firestone Tire & Rubber Co. (1993) 6 Cal.4th 965, 1004; see also, Hughes v. Pair (2009) 46 Cal.4th 1035, 1051.) It “may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry.” (Fletcher v. Western National Life Ins. Co. (1970) 10 Cal.App.3d 376, 396.) Plaintiff presents evidence that, among other things: she was embarrassed and mortified by many of Shannon’s inappropriate comments; that she was shocked and disgusted by the masturbation conversation Hewitt and Shannon had in front of her; and she attends counseling to address the lingering effects of the emotional distress caused by the harassment, bullying, and intimidation. (Dennstedt Decl. at ¶¶ 9, 25, 30.) This is sufficient to create a triable issue of material fact on the element of severe emotional distress. Accordingly, Shannon’s motion as to the IIED cause of action is denied.

Seventh Cause of Action for NIED

Generally speaking, there is no independent tort of negligent infliction of emotional distress; the tort is negligence. (Potter v. Firestone Tire & Rubber Co. (1993) 6 Cal.4th 965, 984; see also Barker v. Fox & Associates (2015) 240 Cal.App.4th 333, 356.) The elements of negligence are: (1) legal duty to use due care; (2) breach of such duty: (3) damages and injury; (4) causation of the resulting damage or injury. (Huggins v. Longs Drug Store (1993) 6 Cal. 4th 124, 129.) Direct victim NIED cases, like Plaintiff’s here, involve damages for serious emotional distress that results from the breach of a duty owed to the plaintiff that is assumed by the defendant or imposed as a matter of law. (Burgess v. Superior Court (1992) 2 Cal. 4th 1064, 1073.)
While Shannon argues he had no duty to Plaintiff, he cites to no authority for this assertion. In his

position of authority over Plaintiff in her employment, Shannon had a duty not to unlawfully harass or discriminate against Plaintiff. Further, while emotional distress claims against employers that are based on conduct that is a normal risk of the employment relationship are prohibited, such claims are appropriate if "the defendants' misconduct exceeded the normal risks of the employment relationship." (See, Fretland v. County of Humboldt (1999) 69 Cal.App.4th 1478, 1492.) Based on the evidence discussed above (sexual comments, attending a staff meeting in a robe, discussing masturbation in front of subordinate colleagues, etc.), Plaintiff has created a triable issue of material fact as to whether Shannon's conduct "exceeded the normal risks of the employment relationship" so as to support a cause of action of NIED. Accordingly, the motion is denied as to the NIED cause of action as well.

Court further orders:
Mandatory Settlement Conference set on 10/16/2024 at 10:30 AM in Room 3540.
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Notice waived.