

TO: Senior Partner
FROM: New Associate
DATE: Monday, October 11, 2021
RE: Ms. Mason's legal problem involving emotional distress

Question Presented

Under Wisconsin law, does the emotional distress that Ms. Mason is suffering as a result of her appearance on WXCL satisfy each of the remaining (1) intent and (2) severe and disabling elements of intentional infliction of emotional distress (hereinafter "IIED")?

Brief Answer

Yes. A Wisconsin court is likely to conclude that the injuries resulting from the television station's infliction of emotional stress satisfies the elements of IIED. Under Wisconsin law, IIED is established when (1) the defendant acts with an intent of causing emotional distress for the plaintiff, (2) the defendant's actions are extreme and outrageous, (3) the defendant's actions are the cause of the plaintiff's emotional distress, and (4) the plaintiff suffers a severe and disabling response to the defendant's actions. The second and third elements are already established in this case.

In Ms. Mason's situation, a court will likely conclude that WXCL's conduct satisfies the remaining two elements to establish IIED when analyzing the deliberate nature of WXCL's actions as well as the resulting psychological harm inflicted on Ms. Mason. This is evident when considering the clearly stated goal of WXCL to provoke a negative response from its participants as well as that provocation being necessary to accomplish a subsequent goal. These circumstances confirm that Ms. Mason's emotional response is not an unwanted consequence of WXCL's conduct. Rather, it is the station's definite intent. Further, Ms. Mason suffers from health problems that require professional care long after her appearance on the show. She also is unable to perform

her typical work duties that otherwise are routine and fulfilling for her, demonstrating that her emotional distress is severe and disabling.

Facts

Ms. Sue Mason has been the Vice President of Advertising at the Milwaukee-based fashion magazine called “Style and Smile” for eight years. She also regularly volunteers for a local non-profit organization called the Women’s Homeless Coalition (hereinafter “WHC”).

Ms. Mason began experiencing health issues after her appearance on WXCL, a local affiliate of CBS that appears on Channel 14. She came on the show after she responded to an advertisement in a local paper in which WXCL asked Milwaukee residents to nominate a local charity to receive a significant donation. Ms. Mason saw an opportunity to help WHC, so she wrote a letter to WXCL to nominate the non-profit. Ms. Mason does not watch television very often, but she agreed to an offer from Maya Patel, a producer with WXCL, to appear on the show “Good Morning Milwaukee” on April 19, 2021 to present the check to the Executive Director of WHC.

Ms. Patel greeted Ms. Mason upon her arrival at the studio and was asked to wait in the green room with Sonya Norris, the Executive Director of WHC. After waiting patiently, they were escorted onto the set of the live show “Good Morning Milwaukee” during a commercial break. Ms. Mason describes the next five minutes as among the worst in her life.

When the cameras went live again, Charles Rose, a host of the show, told Ms. Mason that she had been selected to be that day’s participant in a segment called “Fashion Disaster.” While Ms. Mason was standing center stage, a video played behind her showing her dressed in unflattering clothing in public. Evidently, someone had been following Ms. Mason around to various locations to make this video without her knowledge. Mr. Rose then went on to call her a fashion disaster to the audience and instructed her as to what clothing she should wear instead.

Ms. Mason was extremely upset at her treatment from WXCL. She felt embarrassed during the segment, standing dazed and confused. She recalls Mr. Rose saying to her, “We expect to get a rise out of our Fashion Disaster guests,” which Ms. Mason was too stunned to respond to.

At the end of the “Fashion Disaster” segment, Mr. Rose presented Ms. Mason with a gift certificate for \$1,000 to Saks Fifth Avenue as well as a check for \$7,000 to Ms. Norris for WHC.

Except for the brief joy she felt in helping WHC, she felt humiliated, distraught, and anxious and continues to feel this way. She called in sick from her job, which she describes as a major part of her identity, while hiding at home for a week. Ms. Mason is currently back at work but claims this part of her identity is destroyed. She visits her doctor twice a week to treat her insomnia, fatigue, and anxiety caused by her distress over the show. She is finally sleeping normally again after two weeks of taking prescription medication. She still takes the prescribed anti-anxiety medication and presently suffers from headaches relating to her anxiety. She also avoids leaving her home due to her fear of being ridiculed.

In preparation for counseling Ms. Mason, you have asked me to research whether a Wisconsin court will likely conclude that the elements of (1) intent and (2) severe and disabling are each satisfied to establish IIED against WXCL.

Discussion

I. A court is likely to conclude that WXCL’s conduct towards Ms. Mason satisfies the (1) intent and (2) severe and disabling elements of IIED.

Under Wisconsin law, four elements must be proven for an injured plaintiff to recover in a claim of IIED. First, the plaintiff must establish that the defendant actions have an intent of causing emotional distress for the plaintiff. Second, the defendant’s actions must be extreme and outrageous. Third, the plaintiff must show that the defendant’s actions are the cause of the emotional distress. Forth, the plaintiff must exhibit that they suffer from a severe and disabling

response to the defendant's actions. *Alsteen v. Gehl*, 124 N.W.2d 312, 318 (Wis. 1963). The purpose of making these elements clear is to have a well-defined set of facts to evaluate and ultimately render an intelligent decision on the plaintiff's claim. These facts become apparent when measuring the severity of an individual's psychological stress as well as the link between the defendant's actions to cause this stress. *Id* at 317.

In asking me to work on this memo, you mentioned that, along with another associate, you have determined that two of the four elements to satisfy this standard, specifically (1) extreme and outrageous conduct and (2) cause of injury, have already been met. Therefore, this memo will discuss each of the two remaining elements of (1) intent and (2) severe and disabling to fulfill the four elements of IIED under Wisconsin law as they are listed above.

A. WXCL's conduct must be intended to cause Ms. Mason emotional distress.

The first element required to establish if conduct meets the standard of intentional infliction of emotional distress is for that conduct to be intended to cause emotional distress. Under Wisconsin law, "if conduct [. . .] was intended to, and did, cause emotional distress, a legitimate goal does not 'immunize' the actor, even if the paramount aim is legitimate." *Heideman v. Am. Fam. Ins. Group*, 473 N.W.2d 14, 21 (Wis. Ct. App. 1991). In *Heideman*, the court concluded that the conduct that American Family Ins. Group directed towards Mr. Heideman met the criteria of intent to cause emotional distress. There was enough evidence in the case to prove that the defendant's actions were intended to cause the plaintiff to be "nervous and worried." *Id*. The defendant's primary "purpose" for putting the plaintiff through this type of emotional distress was to encourage him to increase his insurance sales. While this aim may have been legitimate, it did not excuse the defendant from the emotional distress it intended to cause Mr. Heideman. *Id* at 22.

The court has differentiated between intent versus the consequence of conduct that led to emotional distress. The court stated, “There must be something more than a showing that the defendant intentionally engaged in the conduct that gave rise to emotional distress in the plaintiff; the plaintiff must show that the conduct was engaged in for the purpose of causing emotional distress.” *Rabideau v. City of Racine*, 627 N.W.2d 795, 803 (Wis. 2001). In *Rabideau*, the court concluded that Officer Jacobi’s actions did not constitute the intent to cause emotional distress towards Ms. Rabideau. The court did not dispute the fact that Officer Jacobi intended to shoot the plaintiff’s dog, but it did not find evidence to suggest that he did it so with the purpose of causing the plaintiff emotional distress. It was not relevant if the defendant knew that his conduct would have the consequence that it did. Rather, Officer Jacobi’s only intention was self-defense, and Ms. Rabideau’s emotional distress was simply an unwanted byproduct of this action. There is no evidence that the defendant, at the time of the shooting, said or did anything that would lead one to believe he acted with the intent to cause the plaintiff emotional distress. *Id.*

Therefore, intent to cause emotional distress does not exist when the distress is an unintended consequence of one’s action. Although one may be aware that the consequence would occur, this knowledge does not equate to intent of causing emotional distress. This is especially evident when there is no evidence that the party says or acts in a way to suggest intent. However, when acting with intent to cause emotional distress is a prerequisite for achieving a separate, legitimate goal, the former act is deemed to satisfy the intent element.

The criteria set by the court’s decision for *Heideman*, 473 N.W.2d at 21 directly applies to Ms. Mason’s case. While WXCL has a legitimate goal to create entertainment value for their viewers as well as to donate to the Women’s Homeless Coalition, it does not absolve it from the emotional harm it caused Ms. Mason. WXCL understands that it would not have achieved its goal

of entertainment value without causing Ms. Mason emotional distress. Like American Family in the *Heideman* case, who could not have achieved its goal of urging Mr. Heideman to sell more insurance without causing him emotional distress, WXCL could not create entertainment value without causing Ms. Mason emotional distress.

The facts pertinent to the ruling for *Rabideau*, 627 N.W.2d at 803 are clearly distinguished in Ms. Mason's situation, which favor her. WXCL has taken extensive steps to keep Ms. Mason in the dark about the nature of being followed for embarrassing footage, indicating that, with this knowledge, she would not approve of being featured on the segment. The motivation behind not informing her was because WXCL knows full well that she will be distraught, so it chose to wait until she arrives at the set to capture her live emotional reaction. This reaction is magnified when realizing that an audience comprised of her community is watching her. Unlike Officer Jacobi in the *Rabideau* case, who did not say anything that would lend one to believe he acted with intent, Mr. Rose of WXCL was quoted saying, "We expect to get a rise out of our Fashion Disaster guests." The emotional distress of Ms. Mason is not a simple byproduct of the show's intention to create entertainment or donate to charity. Rather, it is an intention in and of itself.

Because Ms. Mason's emotional distress is not a mere byproduct of another goal, WXCL's actions sufficiently meets the standard for intent to cause emotional distress. The station's stated goal to cause her emotional distress along with that distress being necessary to achieve a subsequent goal suggests that the court will likely conclude that the intent element is satisfied.

B. Ms. Mason's emotional response resulting from WXCL's conduct meets the criteria of severe and disabling.

The second element necessary to determine if conduct meets the standard of intentional infliction of emotional distress is for that conduct to be severe and disabling. Under Wisconsin law, for conduct to meet the criteria of being severe and disabling, "it must be such that the person

was unable to function in other relationships.” This conduct should not be confused with temporary discomfort, as this would not qualify as a severe and disabling emotional response. *Gianoli v. Pfleiderer*, 563 N.W.2d 562, 568 (Wis. Ct. App. 1997). In *Gianoli*, the court concluded that the emotional distress explained by the Gianolis and Carlsons met the criteria of a severe and disabling response. One of the plaintiffs described that they suffered from increased heart rate and intensity of breathing to the point of needing to lie down to recover. She also claimed that she suffered from insomnia, depression, fatigue and anxiety, which her husband claimed started after the confrontations started. The Gianolis also suffered from various health problems after the confrontations began, including “insomnia, migraine headaches, ‘asthmatic type’ attacks, extreme muscle tension, muscle spasms and indigestion” and “headaches, pain in his arms, diarrhea, insomnia and depression.” Mr. Carlson also testified that his anxiety had gotten so bad due to the unease over his wife’s wellbeing that he was forced to change his business schedule to prevent leaving Mrs. Carlson alone. *Id.*

Aside from the aspect of functioning in other relationships due to health reasons stemming from the distress, the court considered whether a reasonable person can endure the anxiety. The court said that the level of emotional distress must be that “anxiety of such substantial quantity or enduring quality that no reasonable person could be expected to endure it.” *Heideman v. Am. Family Ins. Grp.*, 473 N.W.2d 14, 22 (Wis. Ct. App. 1991). In *Heideman*, the court concluded that the emotional distress suffered by the plaintiff was enough to satisfy the element of severe and disabling. Mr. Heideman testified that the level of pressure that was put on him caused emotional distress that led to memory loss and sleep disorders. Subsequently, he became dependent on tranquilizer and disconnected from loved ones. It got to the point where he looked very noticeably

unwell in his doctor's eyes. The court factored in the severity and longevity of the symptoms suffered by Mr. Heideman to determine that he met the standard for this element. *Id.*

The severity of the emotional distress can be established by examining the behavior of the individual after processing the initial unease and if the individual sought help in recovering. The distress in question would have to be enough to seek professional help, rather than being a natural, temporary reaction to something that was unexpected and/or unsettling. *Evrard v. Jacobson*, 342 N.W.2d 788, 791 (Wis. Ct. App. 1983). In *Evrard*, the court held that Mr. Evrard's distress did not meet the standard of severe and disabling. They reached this conclusion when examining his aggressive search for, and ultimately attaining, work. While he did experience symptoms of depression, it was not severe or permanent enough for him to seek professional help. It is fair to say that a reasonable person would be expected to withstand these circumstances. *Id.*

Accordingly, emotional distress can be labeled as severe and disabling when it causes long-lasting health issues that affects one's ability to perform otherwise routine activities. Depending on professional treatment for a period, long after the initial temporary unease, is also a strong indicator that the distress is severe and disabling.

The standard set by the ruling of *Gianoli*, 563 N.W.2d at 562 can directly support Ms. Mason's claims. Just as the plaintiffs in this *Gianoli* asserted, and were supported by the court's conclusion, that they had suffered from insomnia and anxiety, so has Ms. Mason. *Id.* at 568. She is on new prescription medication to treat her insomnia and anxiety. She is unable to sleep normally, and only after taking sleeping medication for two weeks, she is seeing improvements. Also, she is currently taking the anti-anxiety medication weeks after her appearance on the show with no immediate plans to stop, making it clear that this is not temporary discomfort. Additionally, Ms. Mason presently does not leave her home to do things that she otherwise was

routinely doing, such as going to the gym. She also explains that her job is a significant part of her identity. Calling in sick for a week while hiding at home shows how severely this experience is affecting her, as she is essentially giving up part of her identity to cope with her situation.

Ms. Mason suffers from nearly identical circumstances to Mr. Heideman, as she is also dependent on sleeping medication as well as anti-anxiety medication in order to cope with her distress. *Heideman*, 473 N.W.2d at 14. The disconnection from her work is parallel to Heideman's disconnect from his family, as Ms. Mason views work as essential to her identity. This vital connection to her work, one can argue, is just as fulfilling to her as someone's commitment to their family. She is too suffering from sleep disorders and needs medication to sleep as she was able to before her appearance on WXCL.

Ms. Mason claims clearly shows that her symptoms were lasting and needed the assistance of a health professional in order to cope with them, unlike Mr. Evrard. *Evrard*, 342 N.W.2d at 788. She is on a prescription for anti-anxiety as well as sleeping medications and regularly sees her doctor weeks after her show appearance to manage these health problems. Her anxiety goes far past the initial daze and confusion she felt immediately after the show, which a reasonable person can be expected to endure. She is trying to stay home and hide as much as she can, unable to carry on the lifestyle she was living before the show.

Because Ms. Mason suffers from these health condition long after her WXCL appearance, seeks professional medical help to cope, and avoids leaving her home to conduct otherwise normal work, a court is likely to find that the emotional distress she suffers from will satisfy the element of severe and disabling distress.