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Fourth Circuit Sends an Employee's Intentional Infliction of Emotional Distress Claim Against an Employer to the Jury

Historically, employees in Maryland have found grave difficulty in getting a claim for intentional infliction of emotional distress to survive summary judgment. Last week, however, the Fourth Circuit Court of Appeals, interpreting Maryland law, in *Gantt v. Security USA*, held that an employee stated a claim for intentional infliction of emotional distress and thus, the employee will be entitled to have her day in court.

Dominique Gantt, a female security guard, filed a lawsuit against her employer, Security USA, for, among other things, intentional infliction of emotional distress. Gantt sought damages for her manifestation of severe emotional and mental distress she suffered as a result of her employer's actions.

While employed by Security USA as a security guard, Gantt informed her employer that she had obtained a protective order against her boyfriend, prohibiting him from contacting her anywhere, including her home and place of employment and, by any means, in person, on the telephone or in writing. Gantt provided her supervisors with a copy of the protective order. As a result, Security USA's Project Manager instructed all Security USA supervisors, including Gantt's immediate supervisor, to assign Gantt only to an inside security post in order to prevent the boyfriend access should he violate the protective order. Furthermore, the Project Manager instructed that Gantt was never to be placed at an outside security post.

A month later, Gantt was assigned to an outside security post. Gantt attempted to refuse, but to no avail. Within minutes of assuming her post, Gantt's supervisor forwarded a phone call to Gantt from the boyfriend. Distraught, Gantt then telephoned her supervisor, asking that she be moved inside but the supervisor refused. Within an hour, the boyfriend appeared at the premises with a shotgun, chasing Gantt until he caught her, dragging her off the premises and into his van. He then proceeded to drive Gantt around for six hours through three states, raping and physically and mentally torturing her. The boyfriend ultimately surrendered to police.

Gantt filed suit against Security USA alleging that as a result of these events, she had suffered physical injury, severe emotional distress, recurring nightmares and other mental health issues that have dramatically reduced her quality of life. Gantt further contended that she underwent medical evaluation and treatment, incurred medical expenses and lost wages.

In Maryland, an employee must satisfy four elements in order to maintain a claim for intentional infliction of emotional distress: (1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe. Gantt succeeded in satisfying these four elements, thereby defeating Security USA's motion for summary judgment.

The Court stated that a jury could conclude that the supervisor "intentionally inflicted emotional distress upon Gantt when she ordered her to assume [an outside post], while fearing for her life." The Court noted that a jury could infer from the evidence proffered by Gantt that despite awareness of the boyfriend's abuse of Gantt, the protective order and Gantt's well-founded fear of the boyfriend, Security USA's supervisor deliberately determined to inflict on Gantt emotional distress by putting phone calls from the boyfriend through to her and placing her in an outside security post.

The Fourth Circuit explained that: "Gantt appears to have forecast evidence that [her supervisor] engaged in conduct that knowingly assisted or recklessly disregarded a high probability that Gantt would be subjected to severe emotional distress in connection with . . . her emotional distress claim." The Court pointed out that the presence of an intervening actor, the boyfriend, does not necessarily sever any causal connection between the supervisor's intentional conduct and the severe emotional distress suffered by Gantt during the abduction.

This case is instructive on a variety of fronts. First, it highlights how an employee's outside personal relationships can invade the workplace. Employers need to be aware of and sensitive to such situations, and take all appropriate and reasonable steps to ensure the safety of its employees from workplace violence. Establishing both rules that prohibit outsiders from entering the employer's premises and procedures to deal with emergent situations are a good start. Second, once an employer, like Security USA, is aware of a specific problem and particularly a court protective order issued against an individual, it must provide its supervisory, security staff and all others who have a need to know of the situation, with explicit instructions, advising them of the potential problem and measures that must be taken to protect the employees (please note, those in danger may also include the subject employee's co-workers). In the instant case, although the employer sought to take such measures, the supervisor failed to heed and comply with its orders. As such, the employer was liable for the supervisor's actions, despite the employer's own best efforts. The lesson learned is that it is not sufficient to just issue orders; rather an employer must supervise its supervisors to ensure compliance with its directives.

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