

**IN THE COURT OF CLAIMS OF OHIO**

DEBRA EBLIN :  
Plaintiff : CASE NO. 2000-05517  
v. : Judge J. Warren Bettis  
CORRECTIONS MEDICAL CENTER : DECISION  
Defendant :  
: :  
: :

{¶1} Plaintiff brought this action against defendant, Corrections Medical Center (CMC), asserting claims of intentional tort and intentional infliction of emotional distress.<sup>1</sup> The issues of liability and damages were bifurcated and on April 14, 2003, the case proceeded to trial before Judge Everett Burton on the issue of liability. In the intervening period between trial and the filing of a decision and judgment entry, Judge Burton died. This case was subsequently reassigned to Judge Bettis whereupon the parties agreed to have the case decided on the trial transcript and post-trial briefs.

{¶2} In April 1997, plaintiff was hired by defendant as a Licensed Practical Nurse (LPN). Her duties included administration of medications and medical treatments to patients, as well as lifting and repositioning patients. Plaintiff worked third shift, which began at 11 p.m. and ended at 7:30 a.m. the next morning. She alleges that on May 28, 1998, during her regular shift, she suffered an injury to her back when she struggled to lift a patient who had fallen at bedside. Plaintiff testified that she had been asked to assist another nurse because the patient, who weighed over 200 pounds, suffered from end-

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At trial, plaintiff dismissed her claim of violation of R.C. 4101.12 that concerned the employer's duty to provide a safe place of employment.

stage cancer, with the result that he could not bear even his own weight. Plaintiff related that she made several attempts to move the patient back to bed and that the other nurse once lost her grip, which caused plaintiff suddenly to bear all of the patient's weight. Plaintiff maintained that she did not immediately experience pain, but that pain did gradually develop over the next few hours. Plaintiff was able to complete her shift, including the preparation of an incident report which described the event.

{¶3} Due to staffing shortages on the day shift, plaintiff was assigned mandatory overtime and reported to a different unit to work another eight hours. Plaintiff alleges that she was required to remain at work despite notifying her supervisors that she was in pain and that she wished to seek medical attention. Plaintiff contends that her request to leave was summarily denied. Plaintiff remained at work until approximately 3 p.m. when she was released from her patient-care responsibilities. Plaintiff subsequently sought medical treatment wherein she was diagnosed with cervical and lumbar strain; she later developed post-traumatic fibromyalgia. Plaintiff asserts that, even though defendant knew of her injury, it subjected her to a dangerous condition whereby harm was substantially certain to occur when she was required to work an additional eight-hour shift.

{¶4} Defendant argues that plaintiff failed to prove its agents had sufficient notice of the purported injury and that defendant could not have known with any certainty that plaintiff would suffer further injury by working additional hours. The nursing supervisor from each shift testified at trial; neither was able to verify that plaintiff's incident was communicated during "shift report." Candace Bruenig, the day shift nurse in charge, stated that she did not remember the day in question nor could she recall being informed of any back injury prior to informing plaintiff that she was being assigned to work overtime. Defendant further maintains that plaintiff would not be required to work under dangerous conditions and that plaintiff could have refused to work overtime. Indeed, several witnesses who had worked at CMC testified that no employees could be forced to stay and that they often refused to work overtime. They stated that while such refusal would be documented in writing, the employee could supply a doctor's excuse to avoid any

discipline. None of the witnesses was able to recall a specific instance where an employee's job had been terminated merely for refusing overtime.

{¶5} Courts in Ohio have ruled that "in order to establish 'intent' for the purpose of proving the existence of an intentional tort committed by an employer against his employee, the following must be demonstrated: (1) knowledge by the employer of the existence of a dangerous process, procedure, instrumentality or condition within its business operation; (2) knowledge by the employer that if the employee is subjected by his employment to such dangerous process, procedure, instrumentality or condition, then harm to the employee will be a substantial certainty; and (3) that the employer, under such circumstances, and with such knowledge, did act to require the employee to continue to perform the dangerous task." *Fyffe v. Jeno's, Inc.* (1991), 59 Ohio St.3d 115, paragraph one of the syllabus. See, also, *Arrigo-Klacik v. Germania Singing and Sports Soc.* (Aug. 30, 2001), Franklin App. No. 00AP-1397.

{¶6} "Even if an injury is foreseeable, \*\*\* there is a difference between probability and substantial certainty. The mere knowledge and appreciation of a risk - something short of substantial certainty - is not intent. Unless the employer actually intends to produce the harmful result or knows that injury to its employee is certain or substantially certain to result from the dangerous instrumentality or condition, the employer cannot be held liable. Accordingly, an intentional-tort action against an employer is not shown simply because a known risk later blossoms into reality. Rather, the level of risk-exposure must be so egregious as to constitute an intentional wrong." *Arrigo-Klacik* supra, quoting *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 308-309.

{¶7} Based upon a review of the testimony and evidence presented in this case, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that her supervisors knew with certainty or with even substantial certainty that plaintiff would suffer harm when she was assigned to work an additional eight-hour shift. In addition, the court is convinced that plaintiff could have refused the overtime and that she was fully aware of this option. Plaintiff's claim that she would lose her job if she refused to work the mandated additional shift is not supported by the evidence. For the foregoing reasons, the

court finds that plaintiff has failed to provide sufficient evidence to demonstrate the three elements described in *Fyffe*, supra, which are necessary to establish intent for the purpose of proving the existence of an intentional tort claim.

{¶8} Plaintiff's complaint also alleges a claim for intentional infliction of emotional distress. Under Ohio law, a plaintiff claiming the tort of intentional infliction of emotional distress must show: "(1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff, (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community, (3) that the actor's actions were the proximate cause of the plaintiff's psychic injury, and (4) that the mental anguish suffered by the plaintiff is serious and of a nature that no reasonable man could be expected to endure it." *Burkes v. Stidham* (1995), 107 Ohio App.3d 363, 375. Further, "[s]erious emotional distress requires an emotional injury which is both severe and debilitating." *Id.* (Citations omitted.) The Tenth District Court of Appeals has also addressed this issue and held that "to constitute extreme and outrageous behavior, the actions must go beyond all possible bounds of decency and can be considered as utterly intolerable in a civilized community." *Perry v. Speedway SuperAmerica, L.L.C.*, Franklin App. No. 01AP-908, 2002-Ohio-1260.

{¶9} Upon review of all the testimony and evidence submitted, the court finds that plaintiff has failed to show extreme and outrageous conduct on the part of defendant. As noted above, the record indicates that through its agents, defendant assigned plaintiff to an additional eight-hour shift in order to meet staffing needs. Defendant did not act unreasonably under the circumstances and certainly did not engage in outrageous behavior. In addition, the court finds that plaintiff has not demonstrated that she suffered extreme and severe emotional distress. For the foregoing reasons, the court finds that plaintiff has failed to prove any of her claims and, accordingly, judgment shall be rendered in favor of defendant.

{¶10} The issue of liability was submitted to the court for determination based on the trial transcript and post-trial briefs. The court has considered the evidence and, for the

reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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J. WARREN BETTIS  
Judge

Entry cc:

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