

[Cite as *Dunina v. Stemple*, 2008-Ohio-2064.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

OLGA DUNINA :  
Plaintiff-Appellant : C.A. CASE NO. 21992  
vs. : T.C. CASE NO. 06CV4209  
ROBERT STEMPLE, et al. : (Civil Appeal from  
Common Pleas Court)  
Defendant-Appellee :

. . . . .

O P I N I O N

Rendered on the 29<sup>th</sup> day of February, 2008.

. . . . .

Olga Dunina, 10661 North Montgomery County Line Road,  
Brookville, OH 45309

Plaintiff-Appellant, pro se

James R. Kirkland, 111 W. First Street, Suite 518, Dayton, OH  
45402

Attorney for Defendant-Appellee

. . . . .

GRADY, J.:

{¶1} Plaintiff, Olga Dunina, appeals from an order granting a Civ.R. 56 motion for summary judgment filed by Defendants, Robert and Sharlene Stemple, on Dunina's claims for relief alleging negligent and intentional infliction of emotional distress and breach of a duty of good faith and fair

dealing.

{¶ 2} Dunina was formerly married to Mark Stemple, who is not a party to this action. Defendant Robert Stemple is Mark Stemple's brother. Defendant Sharlene Stemple is Robert Stemple's wife.

{¶ 3} Dunina alleged in her complaint that Robert and Sharlene Stemple falsely accused Dunina of telephone harassment in connection with inquiries Dunina had made concerning Mark Stemple's welfare and/or whereabouts. Dunina further alleged that, as a result of the Stemples' wrongful conduct, she was required by Dayton Mental Health Center ("DMHC") to submit to mediation, on threats that a criminal complaint on the Stemples' allegations would be filed should Dunina not agree to mediate.

{¶ 4} Following Dunina's complaint, DMHC filed a Civ.R. 12(B)(6) motion to dismiss, and the motion was granted. The Stemples filed a similar motion, which the court overruled. The Stemples then filed a responsive pleading denying Dunina's allegations.

{¶ 5} The Stemples filed a motion for summary judgment (Dkt. 28), supported by their respective affidavits. (Dkt 26 and 27). Both stated that they had filed a complaint to police accusing Dunina of telephone harassment, and that a

prosecutor who reviewed their complaint requested that the Stemples participate in mediation with Dunina at DMHC. The Stemples state the parties voluntarily agreed to mediate, and that they neither threatened Dunina nor falsely represented that Dunina would be subject to criminal charges should she fail to mediate.

{¶ 6} In their motion for summary judgment, the Stemples argued that the facts portrayed in their affidavits cannot reasonably be construed to support a finding of intentional infliction of emotional distress, which requires proof of extreme and outrageous conduct of an intentional and reckless character. The Stemples also argued that a claim for relief for negligent infliction of emotional distress does not lie on the causes Dunina alleged. They further argued that they owed Dunina no duty of good faith and fair dealing they had breached.

{¶ 7} Dunina filed a memorandum in opposition, supported by her signed statement in which Dunina denies committing telephone harassment and states that she was threatened with a one thousand dollar fine and three months jail time should she not agree to mediate. However, Dunina suggests that the threats were made by the prosecutor, not the Stemples. Further, Dunina did not state those facts under oath. Rather,

a notary public attested that Dunina had signed the statement in his presence. Dunina also attached other documents relating to her divorce from Mark Stemple and her legal representation in various proceedings, and she swore that those are true and correct copies of the originals.

{¶ 8} The trial court granted the Stemples' motion for summary judgment. Dunina filed a timely notice of appeal from that final order. Dunina did not identify the earlier judgment dismissing DMHC as an order from which her appeal is taken.

ASSIGNMENT OF ERROR

{¶ 9} "IN COURTS OF LAW, THE MAJORITY OF JUDGES AND MAGISTRATES QUICKLY AND ARROGANTLY TELL PRO SE LITIGANTS TO HIRE A LAWYER WITHOUT ANY CONSIDERATION OF THEIR ECONOMIC STATUS. RECENTLY, APPELLANT HAD EXTREME DIFFICULTIES IN OBTAINING ADMINISTRATIVE, COMPETENT, TRUTHFUL AND TIMELY LEGAL REPRESENTATION, INVOLVING LEGAL MATTERS IN COURTS OF LAW AND HAS PAID OUT OVER \$30,500.00."

{¶ 10} This purported assignment of error does not identify any error of law the trial court committed relative to the motion for summary judgment from which the appeal was taken. In support of her assignment, Dunina complains of her attorney's performance; the trial court observed that neither

party had complied with the requirements of Civ.R. 56. However, the alleged failures of her attorney is not a matter which is before us with respect to the correctness of the summary judgment from which Dunina's appeal is taken.

{¶ 11} Reviewing the issues the trial court addressed in granting the Stemples' motion for summary judgment, we agree that Dunina's claim for negligent infliction of emotional distress cannot lie, because Dunina does not allege and failed to demonstrate that the acts or omissions of the Stemples caused Dunina a contemporaneous physical injury or put her in physical peril. *Paugh v. Hanks* (1983), 6 Ohio St.3d 72; *Heiner v. Moretuzzo* (1995), 73 Ohio St.3d 80.

{¶ 12} We also agree that Dunina failed to demonstrate any breach of the duty of good faith and fair dealing the Stemples owed her. That duty is imposed on a party to a contract with respect to the rights conferred on the other party by the contract. *McLemore v. McLemore* (Oct. 19, 1994), Montgomery App. No. 13802. The requirements of good faith and fair dealing are part of the contract, and not a separate tort claim. *Littlejohn v. Parrish* (2004), 163 Ohio App. 3d 456, 2005-Ohio-4850. The only contract between the Stemples and Dunina was the agreement to mediate through DMHC which they signed. The Stemples are not responsible for any coercion the

prosecutor allegedly used to get Dunina to sign the agreement, which is the only matter to which Dunina points in support of the alleged breach.

{¶ 13} Finally, we further agree that the trial court did not err when it granted the Stemples' motion for summary judgment on Dunina's claim for intentional infliction of emotional distress. The claim requires proof of extreme and outrageous conduct of an intentional or reckless character. *Yeager v. Local Union 20, Teamsters, Chauffers, Warehousemen & Helpers of America* (1983), 6 Ohio St.3d 369. For that purpose, a claimant must prove that "the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."

*Id.*, at 375, quoting Restatement of the Law 2d, Torts (1965), 73, § 46.

{¶ 14} Dunina alleges that the Stemples falsely accused her of telephone harassment in their complaint to police. Even if their claims were false, reasonable minds could not find that the Stemples' conduct was so extreme as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society. *Id.* Therefore, the trial court was required to grant summary

judgment for the Stemples on their motion.

{¶ 15} The assignment of error is overruled. The judgment of the trial court will be affirmed.

WOLFF, P.J. And BROGAN, J., concur.

Copies mailed to:

Olga Dunina  
James R. Kirkland, Esq.  
Hon. Mary L. Wiseman