

Agent Dendinger and Terry Botdorf, a captain with the Plymouth Police Department, interrogated plaintiff regarding a complaint that Mease had filed, which alleged that plaintiff had forged Mease's name on a document relating to the incorporation of their business. Upon completion of her investigation, Agent Dendinger forwarded her report to the Richland County Prosecutor. After reviewing the report, the Richland County Prosecutor decided not to file charges against plaintiff.

{¶4} Plaintiff admits that he signed Mease's name on the document but asserts that he had Mease's permission to do so. Plaintiff further alleges that he has been diagnosed with bi-polar disorder, and that the interview triggered a depressive episode. He also asserts that defendant was negligent for failing to investigate his complaints that Mease had allegedly converted the property that plaintiff had purchased or donated to the restaurant.

{¶5} Captain Botdorf testified that Mease had filed a complaint regarding a forged incorporation form. Because the document containing the alleged forgery was a form document generated by the Secretary of State's office, Botdorf contacted BCI and asked for assistance. Botdorf testified that he was not aware that plaintiff had taken medication before the interview, that plaintiff gave appropriate answers to his questions, and that there were no physical cues to call into question plaintiff's mental state during the interview.

{¶6} Agent Dendinger testified that she also interviewed Mease and Hughes who had both made the complaint that plaintiff had incorporated their business without their knowledge and had forged their names on an incorporation document, known as an "Appointment of Agent" document. She stated that it appeared that the signatures on the document had been forged. Dendinger further testified that plaintiff had told her that he had taken his evening medication before the interview began; that she asked for and received plaintiff's permission to conduct the interview; that plaintiff told her that he was mentally ill and had been in the hospital; and that she was not aware at the time of questioning that plaintiff could have been provoked into an "episode." She added that she conducted the interview in a professional manner.

{¶7} To state a cause of action for intentional infliction of emotional distress, plaintiff must show that: 1) defendant intended to cause emotional distress, or that defendant knew or should have known that its actions would result in serious emotional distress; 2) defendant's conduct was extreme and outrageous; 3) defendant's actions proximately caused plaintiff's psychic injury; and 4) the mental anguish plaintiff suffered was serious. *Hanley v. Riverside Methodist Hosp.* (1991), 78 Ohio App.3d 73, 82, citing *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 34.

{¶8} “*** It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice,’ or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where 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. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’” *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 374-375, quoting 1 Restatement of the Law 2d, Torts (1965) 73, Section 46, Comment d.

{¶9} Plaintiff has failed to prove by a preponderance of the evidence that Agent Dendinger intended to cause plaintiff emotional distress or that she knew or should have known that her actions would result in serious emotional distress. Agent Dendinger was contacted by the Plymouth Police Department to assist in its investigation of plaintiff. R.C. 109.54 authorizes BCI to assist local authorities under certain circumstances where criminal activity of statewide concern is involved. The court finds that defendant had authority pursuant to R.C. 109.54 to assist the Plymouth Police Department and acted within that authority when Agent Dendinger interviewed plaintiff. Plaintiff was free to leave the interview before its conclusion and did so. Dendinger's testimony that she treated plaintiff in a professional manner was credible. The court finds that plaintiff has failed to

prove by a preponderance of the evidence that Agent Dendinger's conduct was extreme and outrageous. Therefore, judgment is rendered in favor of defendant as to plaintiff's first claim.

{¶10} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285.

{¶11} Plaintiff asserts that defendant was negligent "in the performance of a sworn duty" when it failed to investigate his claims that Mease had taken his property. Plaintiff, however, has not referred this court to any statute, rule or case law which obligates defendant to investigate the theft offense which falls under the jurisdiction of local authorities. Moreover, the court notes that in plaintiff's amended complaint, he alleges that the Village of Plymouth Police failed to act on crimes brought to their attention. The Village of Plymouth Police is not a defendant in this case. See R.C. 2743.03.

{¶12} Plaintiff also claims that defendant breached a duty it owed to him pursuant to R.C. 2305.43. R.C. 2305.43 creates a duty for any law enforcement officer to make a diligent effort to determine whether any disabled person whom he encounters is an epileptic or diabetic, or suffers from some other type of illness that would cause the condition, and allows the officer to search for some identifying device that the person may be wearing. Plaintiff asserts that defendant violated this duty when Agent Dendinger took him to the police station to interview him with knowledge that he had been hospitalized for mental illness. However, the court is not persuaded that R.C. 2305.43 creates a cause of action. Even if it were to create a cause of action, the court finds that R.C. 2305.43 is inapplicable in the instant case. In the final analysis, the court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant breached any duty it owed to him. Therefore, judgment is rendered in favor of defendant.

J. WARREN BETTIS

Judge

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