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Maryland Embraces Emotional Distress

by Andrea Gentile

Although plaintiff Harris did not prevail in his case, *Jones v. Harris*, 35 Md.App. 556, 371 A.2d 1104 (1977) saw the first direct judicial recognition of intentional infliction of emotional distress as an independent tort in Maryland.

Harris brought an action for damages against Jones and against General Motors Corporation alleging that Jones, while in the course of his duty as a G.M.C. supervisor, intentionally mimicked his (Harris') speech impediment, attempted to humiliate him with snide remarks, and continued to do so for an extended period of time with resulting emotional distress to Harris.

The tort of intentional infliction of emotional distress has been recognized for a number of years in California, Virginia and other jurisdictions. However, as this was a case of first impression in Maryland, the court first traced "The Interest In Freedom From Emotional Distress" from the 1934 Restatement of Torts which refused to recognize it as an independent tort, to PROSSER'S LAW OF TORTS (4th Edition) where the distinguished dean gave recognition to the tort and described its boundaries. General recognition of the tort was found, said the court, in 64 A.L.R. 2d 100 (dealing with emotional distress) where it is stated that the earlier case opinions which disallowed recovery for emotional distress alone should be treated as dicta. The trend is toward allowing recovery when there is severe emotional distress caused by an intentionally or recklessly committed, unprivileged act of the defendant, which was reasonably calculated to cause severe emotional distress to the plaintiff.

In *Great Atlantic & Pacific Tea Co. v. Roch*, 160 Md. 189, 153 A. 22 (1931), the court allowed damages for emotional distress suffered by the plaintiff and caused by the defendant's agent's delivery of a package containing a dead rat in lieu of the requested loaf of bread. The court based its decision on a negligence theory, concluding that the agent of the defendant had carelessly and negligently performed his duty by allowing the rat to be substituted for the bread. However, the *Jones* court said that in the *Roch* case the string was "... quite lightly tied ..." to the tort of negligence, and they infer that the *Roch* and *Mahnke v. Moore*, 197 Md. 61, 77 A.2d 923 (1951) (damages allowed where the father of a young child forced her to watch him murder her mother and then kill himself) were, in effect, cases of intentional infliction of emotional distress. The court concluded that the new tort would be viable in Maryland in a proper case. 35 Md.App. at 561, 371 A.2d at 1107.

The case of *Womack v. Eldridge*, 215 Va. 338, 210 S.E.2d 140 (1974) provided the guidelines used by the *Jones* court to determine when a cause of action would lie for emotional distress unaccompanied by physical injury. The elements outlined by the court are:

1. The wrongdoer's conduct is intentional or reckless. *Womack* held that, "this element is satisfied where the wrongdoer had the specific purpose of inflicting emotional distress or where he intended his specific conduct and knew or should have known that emotional distress would likely result." 35 Md. App. at 569-570, 1371 A.2d at 1108.
2. The conduct is outrageous to the extent that it offends the generally accepted standards of decency and morality.
3. There is a causal connection between the wrongdoer's actions and the emotional distress.
4. The emotional distress must be severe.

Harris provided testimony from a co-worker as to Jones' conduct toward Harris, and it was probably based on that testimony that the court found that the first two elements were clearly met in the instant case. However, there was no evidence presented to show a causal connection between Jones' alleged harassment

and Harris' emotional distress. Testimony by Harris' wife pointed out that Harris' problems started at least seven months prior to the time Jones began his harassment. Emotional disturbance could be inferred by Mrs. Harris' testimony that in November, 1974 he was drinking heavily and threw a meat platter at her. Finally Harris' own testimony tended to refute his allegation of causal connection between his emotional disturbance and Jones' harassment. He stated that he began seeking medical attention for his problems six years prior to this case.

With no evidence to support the third and fourth elements of the tort, Harris could not prevail. But the tort of intentional infliction of emotional distress is now alive in Maryland. Be kind to neighbors and co-workers.

Solicitation Broadened

by John Jeffrey Ross

Of no small consequence in local criminal jurisprudence is D.C. Code §22-2701, popularly known as the "solicitation statute":

It shall not be lawful for any person to invite, entice, persuade, or to address for the purpose of inviting, enticing, persuading, any person or persons sixteen years of age or over in the District of Columbia, for the purpose of prostitution, or any other immoral or lewd purpose . . .

Nearly six percent of the arrests in the District of Columbia in 1975 were for commercial sex crimes and over 1100 of these were prosecuted by the U.S. Attorney. See J.D. Welsh and D. Viets, *The Pretrial Offender in the District of Columbia* (District of Columbia Bail Agency/Office of Criminal Justice Plans and Analysis, Washington, D.C. 1977).

The Metropolitan Police Department of the District is entitled to exercise considerable police power through this statute, which provides congressional assent to law enforcement activities