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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

AMY V. SCHLAF, as Administrator of the Estate of Albert W. Schlaf, Deceased,

Plaintiff-Appellee,

vs.

AMF, Inc., RAYMOND F. KENNEDY and FRED SIEDEL,

Defendants-Appellants.

Filed February 22, 1979

AMF, Inc.

Third-Party Plaintiff,

vs.

JOHN W. EVANS, Jr., MARJORIE J. EVANS and ERVIN J. HOCH,

Third-Party Defendants.

717
2-61160

Appeal from Cerro Gordo District Court - Jack W. Frye, Judge.

Defendants appeal with permission from trial court's overruling motion for summary judgment. Affirmed.

Erwin L. Buck, of Buck & Hill, of Britt, and Frederick A. Nicoll, of Rogers, Hoge & Hills, of New York, counsel for appellants.

Herman P. Folkers, of Nelson & Folkers, of Mason City, counsel for appellee.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

This interlocutory appeal by defendants AMF, Inc., Raymond Kennedy and Fred Siedel is from an order of trial court overruling their motion for summary judgment in an action for damages founded on alleged intentional infliction of emotional harm arising out of an employment dispute. In plaintiff's [1] Second Substituted Petition, filed April 24, 1974, it is alleged that defendants undertook a program of harassment against plaintiff's decedent, Albert Schlaf, in an effort to force his resignation from AMF, Inc. As part of the purchase of Atlas Recreatonal Vehicles in 1972, AMF executed a 3-year employment contract with Schlaf, a major stockholder and employee of Atlas. Schlaf did resign on December 20, 1972, and received $15,000 from AMF in settlement of the employment contract.

The original petition was filed by Schlaf March 23, 1973, alleging defendants undertook a malicious course of conduct of intimidation and harassment designed to impair his performance of the employment contract and lead to his rescission of it. Defendant AMF counterclaimed and filed a cross-petition against third-party defendants, who are not involved in this appeal. After several amendments to the original pleadings and some discovery, defendants moved for summary judgment on August 1, 1977. After briefs were submitted and oral argument heard, the motion was denied on September 26, 1977. Permission to take an interlocutory appeal was granted by Justice Mason on April 3, 1978, and the case was transferred to this court.

A motion for summary judgment may be sustained only where the moving party demonstrates the absence of any genuine issue of material fact. Rule 237(c), Rules of Civil Procedure; Swets Motor Sales, Inc. v. Pruisner, 236 N.W.2d 299, 303 (Iowa 1975); Daboll v. Hoden, 222 N.W.2d 727, 731 (Iowa 1974); Gruener v. City of Cedar Falls, 189 N.W.2d 577, 580 (Iowa 1971). The purpose of the rule is to avoid useless trials. Where there is no genuine fact issue to be decided, the party with a just cause should be able to obtain a judgment promptly and without the expense and delay of a trial. In ruling on a motion for summary judgment, the court's function is to determine whether such a

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[1] The original plaintiff, Albert Schlaf, died on January 26, 1974 of a self-inflicted gunshot wound and his wife, as administrator, was substituted as plaintiff.

genuine issue exists, not to decide the merits of one which does. Meyer v. Nottger, 241 N.W.2d 911, 916-917 (Iowa 1976); **Daboll,** supra at 731.

All material facts properly before the court must be viewed in the light most favorable to the resisting party. **Daboll,** supra at 731; Shulte v. Mauer, 219 N.W.2d 496, 500 (Iowa 1974). In ruling on a motion for summary judgment, the court must examine the entire record including the pleadings, admissions, depositions, answers to interrogatories and affidavits, if any, to determine what evidentiary facts are presented which disclose a genuine issue of fact.

> Even in cases where the judge is of the opinion that he will have to direct a verdict for one party or the other on the issues that have been raised he should ordinarily hear the evidence and direct the verdict rather than attempt to try the case in advance on a motion for summary judgment.

Daboll, supra at 735.

Plaintiff's second substituted petition cites 13 specific alleged acts by defendants which support her allegation of intentional infliction of emotional distress. In Amsden v. Grinnell Mutual Reinsurance Co., 203 N.W.2d 252, 255 (Iowa 1972), the following elements were held necessary to the presentation of a prima facie case for the tort of intentional infliction of severe emotional distress: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing, or reckless disregard of the probability of causing, emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. See Meyer v. Nottger, supra at 918. "Outrageous" conduct is defined as "conduct exceeding all bounds usually tolerated by decent society." See **Amsden,** supra at 255; Restatement (Second) of Torts § 46, Comment d at p. 73 (1965); Meyer v. Nottger, supra at 918.

The trial court ruled that several of plaintiff's allegations singly or in combination create a triable issue of fact as to whether defendants actions rise to the level of abhorrent conduct considered in **Amsden** and **Meyer.** We agree. We have examined the materials before the court in the light most favorable to plaintiff, granting her all reasonable inferences therefrom, and we believe that, so viewed, there is sufficient evidence from which a reasonable trier of fact could conclude all elements of the tort have been satisfied. See **Meyer,** supra at 919. While a claim may be anemic, it is not

for a court in a summary judgment motion to determine whether it has a meritorious factual basis. See Daboll, supra at 727. Defendant's motion for summary judgment was properly overruled and the trial court is affirmed.

As a further ground for affirmance, plaintiff asks us to determine whether certain tape recordings allegedly made by Schlaf of conversations he had with Kennedy and Siedel were adequately shown to be "accurate and trustworthy" so as to be considered as evidence supporting the resistance to the motion for summary judgment. The trial court ruled that the requisite foundation for admissibility had not been shown and it would not consider the tapes in deciding whether a genuine issue of material fact had been shown. Since we have held that the trial court did not err in overruling the motion for summary judgment on the basis of the evidence considered by the trial court, it is not necessary for us to determine whether the tapes should have been considered. Any decision by us as to the establishment of an adequate foundation showing the accuracy and trustworthiness so as to admit the tapes for purposes of trial would be premature. See State v. Russell, 261 N.W.2d 490, 495 (Iowa 1978).

AFFIRMED.