

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

CLERK SUPREME COURT

CHARLOTTE REAFLENG, Administrator)
of the Estate of BOBBY C. REAFLENG,)
Deceased, and CHARLOTTE REAFLENG,)
Individually,)

Plaintiffs-Appellees,)

vs.)

THE BANKERS LIFE INSURANCE)
COMPANY,)

Defendant-Appellant,)

and JOHN HENSELY,)

Defendant.)

Filed August 29, 1985 330

5-240
84-1518

Appeal from the Iowa District Court for Mills County - Leo Connolly,
Judge.

Defendant appeals an unfavorable verdict in an intentional infliction of
emotional distress action. REVERSED.

Curtis Hewett of Smith, Peterson, Beckman & Willson, Treynor, Iowa,
for defendant-appellant.

Michael G. Reilly of Perkins, Sacks, Hannan & Reilly, Council Bluffs,
Iowa, for plaintiffs-appellees.

Heard by Oxberger, C.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Defendant Bankers Life Company appeals an unfavorable verdict in an intentional infliction of emotional distress action. Plaintiff alleged that defendant Bankers Life breached its contract with plaintiff in that it had issued her an individual life insurance policy on her husband in the amount of \$10,000, but then unilaterally cancelled it once it paid her \$10,000 under a group plan. She also alleged that Bankers Life and its agent John Hensley, intentionally inflicted severe emotional distress upon her, generally in the course of handling her claims under the group policy, and specifically, when defendant Hensley allegedly made a statement that the company was refusing to pay her claim because it considered her claim to be fraudulent and that the company was investigating the claim on that basis.

The jury found for defendant Bankers Life on the breach of contract claim and for defendant Hensley on plaintiffs' claim of intentional infliction of emotional distress. However, the jury found defendant Bankers Life liable to plaintiff for intentional infliction of severe emotional distress and awarded her \$75,000 in compensatory damages. We reverse.

Plaintiff is the widow of the insured and beneficiary of a group life insurance policy issued by defendant Bankers Life Company. The deceased was employed by Vandenberg Electric, Inc., until March 15, 1983, when he was diagnosed as having cancer which permanently and totally disabled him. After the diagnosis, plaintiff and her son, Randall, began attempts to convert the coverage under The Bankers Life group policy to individual life insurance coverage, and health and hospitalization insurance. Initially, plaintiff attempted to file a claim for disability income payments under the group policy based upon her interpretation of the benefits described in a booklet provided by defendant Bankers Life to her husband. While this claim and the request for conversion

to individual coverage were being processed, however, plaintiff's husband died. Plaintiff then added another claim for death benefits under the group policy. On June 23, 1983, defendant Bankers paid plaintiff \$10,000 under the death benefit provision of the group policy, plus interest in the amount of \$66.00. Plaintiff refused to cash the check representing these amounts. Instead she brought this action for breach of contract and intentional infliction of emotional distress.

On appeal, defendant raises two issues: (1) that there was insufficient evidence of "outrageous conduct" by the defendant Bankers Life; and (2) that there was insufficient evidence that plaintiff suffered severe emotional distress.

The case was tried by ordinary proceedings and our review is on assigned errors. Iowa R. App P. 4. The trial court's findings of fact are binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

The elements of the tort of intentional infliction of severe emotional distress are:

- (1) Outrageous conduct by the defendant;
- (2) The defendant's intentional causing, or reckless disregard of the probability of causing the emotional distress;
- (3) Plaintiff suffering severe or extreme emotional distress; and
- (4) Actual and proximate causation of the emotional distress by the defendant's outrageous conduct.

Harsha v. State Sav. Bank, 346 N.W.2d 791, 800 (Iowa 1984).

I. "Outrageous Conduct by the Defendant" "It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery." Restatement (Second) of Torts § 46(1) comment h at 77 (1965). For conduct to be "outrageous" it must be "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." Restatement (Second) of Torts § 46 comment d at 72-73 (1965); Harsha v. State Sav. Bank, 346 N.W.2d 791, 801 (Iowa 1984). Other opinions have expressed out-

rageous behavior as "conduct exceeding all bounds usually tolerated by decent society." Amsden v. Grinnell Mutual Reinsurance Co., 203 N.W.2d 252, 255 (Iowa 1972).

We do not believe the evidence is sufficient in this case to support a finding of outrageous conduct by the defendant. The evidence shows nothing more than delays which angered and frustrated the plaintiff. The delays certainly do not amount to "outrageous conduct." The group policy was converted within approximately one month, from March 14 to 15 to April 16, 1983; and plaintiff's claim on the group life insurance policy was paid within a month, from May 18 to June 14, 1983.¹

During cross-examination plaintiff's son admitted that defendant's employees were never rude or discourteous over the phone or in their dealings with either him or the plaintiff. In fact, he admitted that plaintiff herself was rather nasty on the phone. It appears that the most upsetting problem with defendant Bankers Life was that plaintiff and her son felt they were getting the runaround.

Plaintiff also claimed that defendant's agent, Hensley, told her that Bankers Life was investigating her claim as fraudulent. It appears that this episode is a primary source of alleged tortious conduct on the part of defendant Bankers Life. However, the evidence is, at best, conflicting as to whether Mr. Hensley said Bankers Life considered the claim fraudulent, or if he merely said they "might" suspect the claim as fraudulent. Clearly this type of conduct can be distinguished from the conduct described in Meyer v. Nottger, 241 N.W.2d 911

¹ In a similar factual setting, the Iowa Supreme Court determined that a 60-day period between a settlement of a loss and payment of the claim did not amount to "outrageous conduct." Indeed it wasn't even unreasonable. See Amsden v. Grinnell Mutual Reinsurance, 203 N.W.2d 252, 253 (Iowa 1972).

(Iowa 1976). There the Supreme Court decided that a series of false representations by the defendant mortician, and failure to comply with direct specific requests concerning the funeral procession was sufficient evidence to create an issue for resolution by a finding of fact as to whether there had been "outrageous conduct." In contrast, the evidence in this case shows nothing other than delays which simply angered and frustrated the plaintiff.

II. "Severe Emotional Distress by the Plaintiff" Plaintiff's son testified that his mother's characteristics had changed due to the problems incurred in dealing with defendant Bankers Life. He also stated that their family had separated and that he could see that she was going through great mental distress. Finally, he said that while his father was still alive, the plaintiff cried alot while on the phone with defendant Bankers Life but that the crying stopped after his father died. Plaintiff testified in a deposition that she was never physically ill but that her nerves kind of aggravated her asthma which she has had since she was 21 years old. She also complained of excessive eating habits, lack of sleep, and anger at the whole world.

The court in Harsha v. State Sav. Bank, 346 N.W.2d 791, 801 (Iowa 1984), discussed the degree of emotional distress required for an action of this nature.

This evidence is similar to that in cases where evidence of severe or extreme emotion distress was held to be insufficient. Poulsen v. Russell, 300 N.W.2d at 297 (plaintiff was "very, very down," "feeling super badly," and feeling as if he had "lost everything"); Vicnire v. Ford Motor Co., 401 A.2d 148, 155 (Me. 1979) (plaintiff felt "kind of down," "mad," and "nervous for about a month"); Harris v. Jones, 281 Md. 560, 572, 380 A.32d 611, 617 (1977) (plaintiff was "shaken up" and "felt like going into a hole and hide"); Hubbard v. United Press International, 330 N.W.2d 428, 440 (Minn. 1983) (plaintiff was "depressed" and became "physically ill in terms of throwing up"). The present evidence does not measure up to the proof of the distress in the cases allowing recovery. Randa v. U.S. Homes, Inc., 325 N.W.2d at 908 (evidence of substantial defects in new home costing \$160,000 caused near nervous breakdown); Ford v. Hutson, 276 S.C. 157, 165, 276 S.E.2d 776, 780 (1981) (plaintiff diagnosed as

suffering from depression after suffering attack of shaking, nausea, cramps, and hysteria).

It appears that much of the distress experienced by plaintiff is due to the fact that neither she nor her son had actually read the policy and determined the specific benefits and procedures to follow.

On the record in this case, there was insufficient evidence to submit the case to the jury. Defendant's motion for a directed verdict at the end of plaintiff's evidence should have been sustained. The judgment of the district court is reversed.

REVERSED.