BURR FORMAN LLP

Court finds employee's IIED claim against Columbia employer hopeless

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Attorneys who represent employees beginning to explore the use of nontraditional causes of action against employers. Courts and employers are seeing more defamation, conspiracy, and intentional infliction of emotional distress (IIED) claims instead of discrimination and other traditional employment claims. The U.S. District Court for the District of South Carolina recently addressed a case in which an employee claimed IIED. Read on to find out how the court disposed of the allegations.

Factual background

William D. Sibert was employed by WIS-TV as a senior editor when the station was bought by Raycom Media, Inc. In 1998, well before that business transaction, Sibert was diagnosed with multiple sclerosis (MS). Although he had to adapt his lifestyle to less strenuous activities, the disease did not interfere with his work performance, and his supervisors worked to accommodate his illness and provided minimal reasonable accommodations on occasion.

In November 2016, Sibert was "summoned" by his supervisors to a meeting with Raycom representatives to discuss changes in his job and the way the station would operate. Because the meeting was scheduled in a room more than 100 yards from his workstation, he wouldn't be able to walk to the meeting without significant physical difficulty and pain. He requested that the meeting be moved to a location closer to his workstation, but his request was denied. He was therefore unable to attend the meeting. As a result, he claimed, he suffered substantial stress and anxiety, and missed an entire day of work.

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Sibert also alleged that he was harassed by Lyle Schulze, the manager and vice president of WIS-TV, and Adam Cannavo, an HR representative for Raycom in Charlotte, as well as other Raycom employees. He claimed he was told that his job description was changing, and he would be required to carry cameras and other equipment and could no longer rely on cameramen and other employees to do it for him.

Sibert's duties and title were changed on March 15, 2017. When Sibert notified his supervisor that he would not be able to do his job because of his disability and the change in his job description, he was told to contact HR to discuss reasonable accommodation possibilities. The change in Sibert's job description included a requirement that he (and other employees with his job) carry cameras and other equipment. When Sibert spoke with HR, Cannavo responded that Raycom wouldn't be able to accommodate him. Sibert claimed he had to use leave to make up for a reduction in pay.

Sibert sued Raycom, Cannavo, and Schulze for IIED. The case was transferred to federal court, and Raycom, Schulze, and Cannavo asked the court to dismiss the case because Sibert couldn't establish an IIED claim against them.

Court's decision

In determining whether Sibert could establish a claim for IIED against Raycom, Schulze, and Cannavo, the court looked to South Carolina law. The court observed that the Workers' Compensation Act (WCA) provides rights and remedies that exclude all of an injured employee's other rights and remedies against his employer, at common law or otherwise, based on the injury, loss of service, or death. The South Carolina Supreme Court has held that an employee's IIED claim against an employer based on the actions of another employee are within the scope of the WCA because the claim arises from a personal injury. When the coworker is the "alter ego" of the employer, the employer's liability may fall outside the exclusivity of the WCA. However, the alter ego exception applies only to dominant corporate owners and officers.

The same standard would apply to injuries intentionally inflicted by a coworker. The court noted that it is against public policy to extend immunity to an employee who commits an intentional wrongful act against another employee. The WCA may not be used as a shield for an employee's intentional injurious conduct including emotional distress. Therefore, while an employer may not be sued in civil court for IIED based on a non-alter-ego employee's actions due to the exclusivity of the WCA, an employer or an employee who acts with deliberate or specific intent to injure another employee, even in the course and scope of his employment, may not shelter himself within the exclusivity provision of the WCA.

With that general background in mind, the court found that Sibert simply didn't have a glimmer of hope of recovering against Schulze on his IIED claim because he failed to allege that Schulze acted with a deliberate or specific intent to injure him. The factual allegations didn't give rise to a reasonable inference that Schulze acted with deliberate intent to injure, and Sibert failed to show a there was possibility of recovery on the other elements of his IIED claim.

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To avoid the WCA exclusivity provision, Sibert also had to establish that:

- Schulze intentionally or recklessly inflicted severe emotional distress or was certain, or substantially certain, that emotional distress would result from his conduct.
- His conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.
- His actions caused Sibert's emotional distress.
- The emotional distress was so severe that no reasonable person could be expected to endure it.

Sibert's allegations that Schulze scheduled a meeting far from his workstation and changed his job duties, coupled with a vague reference to workplace harassment, didn't describe conduct so extreme and outrageous that it exceeded all possible bounds of decency or was atrocious and utterly intolerable in a civilized society.

Sibert also failed to demonstrate that Schulze acted with a deliberate or specific intent to injure him, which is necessary to bring a personal injury claim outside the WCA's exclusivity provision. The same was true for Cannavo, meaning Sibert was unable to make an IIED claim against him outside the exclusivity provision of the WCA.

The standard articulated by the court applies to an employer as well. Sibert's allegations against Raycom included his claims against Schulze and Cannavo, harassment by other employees, the change in his job description, and the denial of his request for reasonable accommodations. He claimed that he was put in various positions that Raycom knew or should have known would inflame his condition and cause him grievous pain. Again, however, his allegations didn't rise to the level required to show intentional, rather than accidental, injury.

In fact, Sibert failed to point to any evidence from which an intent to injure could be inferred. He argued that Raycom was aware of his condition and the pain he suffered but nonetheless forced him to walk extended distances and carry heavy gear. However, that was insufficient to satisfy the high standard required to prove an IIED claim under South Carolina law. Therefore, his claim against Raycom was precluded by the exclusivity provision of the WCA.

Lessons for employers

This case shows that courts will look closely at the law and the facts alleged by an employee and refuse to allow a case to proceed when there's no good reason to do so. The company's legal counsel properly assessed the facts, determined the real basis for the claim, and guided the court's focus in that direction. As a result, the employer was able to convince the court to dismiss a case that should have been dismissed.

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Relying on procedural tools and substantive law resulted in a victory for the employer. Cases like this one provide a glimmer of hope that courts will force employees' attorneys to bring claims that can be supported with proper evidence.

For more information on the BLR, click here. For more information on the South Carolina Employment Law Letter, click here.