

DISTRICT OF COLUMBIA COURT OF APPEALS

Ortberg v. Goldman Sachs Group

64 A.3d 158 (D.C. 2013) · Decided April 11, 2013

SUMMARY

The District of Columbia Court of Appeals reversed a preliminary injunction restricting protests outside Goldman Sachs’s office and the home of a Goldman Sachs employee. The court held that the record did not establish a substantial likelihood of success on the employee’s intentional-infliction-of-emotional-distress claim or the plaintiffs’ private-nuisance claim. The court remanded the case for further proceedings.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Senior Judge Reid; Judge Blackburne; Judge McLeese; Judge Rigsby
JURISDICTION	District of Columbia
DECIDED	April 11, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Adam Ortberg and Michael Weber appealed the Superior Court's grant of a preliminary injunction obtained by Goldman Sachs and Michael Paese restricting protests at Goldman Sachs's office and Paese's residence.
STANDARD OF REVIEW	The grant or denial of a preliminary injunction is reviewed for abuse of discretion. The appellate court examines whether the trial court's findings and conclusions are supported by the record, whether the analysis resolves issues necessary to issuance of the injunction, and whether other abuse-of-discretion grounds exist. Legal questions and statutory-interpretation issues are reviewed independently to the extent the injunction decision turns on them.
PRECEDENTIAL VALUE	Published opinion; binding District of Columbia Court of Appeals precedent, subject to the opinion's express reservation of the independent-private-nuisance question for en banc resolution.
PARTIES	Adam Ortberg, Michael Weber v. Goldman Sachs Group, Michael Paese

TOPICS

nuisance intentional infliction of emotional distress equitable relief standard of review
appellate procedure

PRACTICE AREAS

torts equitable relief appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by finding a substantial likelihood that Michael Paese would prevail on his intentional-infliction-of-emotional-distress claim.
2. Whether the trial court abused its discretion by finding a substantial likelihood that Goldman Sachs and Michael Paese would prevail on their private-nuisance claims.
3. Whether the preliminary injunction should be reversed without reaching the injunction's scope or potential conflict with the appellants' First Amendment rights.

HOLDINGS

1. On this record, Paese did not clearly demonstrate a substantial likelihood of success because the protestors' conduct was not extreme and outrageous and the evidence did not establish severe emotional distress.
2. The plaintiffs did not demonstrate a substantial likelihood of success on the private-nuisance claims because the protests did not result in substantial injury or continuous or constantly recurring acts constituting an unreasonable interference with use of the property. The court did not definitively resolve whether private nuisance is an independent tort in the District of Columbia.

KEY QUOTATIONS

“In order to prove the tort of intentional infliction of emotional distress, “a plaintiff must show (1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff [to suffer] severe emotional distress.”” (163)

“we cannot say that the protestors’ behavior resulted in a substantial injury or continuous or constantly recurring acts that constituted “an unreasonable interference” with Mr. Paese’s or Goldman Sachs’ use of their property.” (169)

FACTUAL BACKGROUND

Between August and October 2010, animal-rights protestors affiliated with DARTT held thirteen demonstrations—eight outside Goldman Sachs's District of Columbia office and five outside Goldman Sachs Managing Director Michael Paese's home. Groups of approximately four to six protestors used bullhorns, airhorns, posters, chanting, and speeches, including a slogan stating, "we know where you sleep at night." The demonstrations generally lasted about thirty minutes, and the record showed only a few disturbances over several weeks, with no evidence of severe emotional-distress symptoms or substantial, continuous property harm.

PROCEDURAL HISTORY

After a series of protests, Goldman Sachs and Michael Paese sued Ortberg, Weber, DARTT, and others for private nuisance, intentional infliction of emotional distress, negligent infliction of emotional distress, and conspiracy. Following a preliminary-injunction hearing, the Superior Court found a likelihood of success on the private-nuisance and conspiracy claims and on Paese's intentional-infliction claim, and issued an injunction. The Court of Appeals reversed the grant of the preliminary injunction and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings after reversal of the preliminary injunction.

CASES CITED

- Feaster v. Vance, 832 A.2d 1277 (D.C. 2003)
- In re Estate of Reilly, 933 A.2d 830 (D.C. 2007)
- Baltimore v. District of Columbia, 10 A.3d 1141 (D.C. 2011)
- Bernstein v. Fernandez, 649 A.2d 1064 (D.C. 1991)
- Homan v. Goyal, 711 A.2d 812 (D.C. 1998)
- Wood v. Neuman, 979 A.2d 64 (D.C. 2009)
- Estate of Underwood v. National Credit Union Administration, 665 A.2d 621 (D.C. 1995)
- Drejza v. Vaccaro, 650 A.2d 1308 (D.C. 1994)
- District of Columbia v. Tulin, 994 A.2d 788 (D.C. 2010)
- Waldon v. Covington, 415 A.2d 1070 (D.C. 1980)
- Kotsch v. District of Columbia, 924 A.2d 1040 (D.C. 2007)
- Crowley v. North American Telecommunications Association, 691 A.2d 1169 (D.C. 1997)
- Clark v. Associated Retail Credit Men of Washington, D.C., 105 F.2d 62 (D.C. Cir. 1939)
- Purcell v. Thomas, 928 A.2d 699 (D.C. 2007)
- B & W Management, Inc. v. Tasea Investment Co., 451 A.2d 879 (D.C. 1982)
- District of Columbia v. Beretta, 872 A.2d 633 (D.C. 2005) (en banc)
- District of Columbia v. Fowler, 497 A.2d 456 (D.C. 1985)
- Tucci v. District of Columbia, 956 A.2d 684 (D.C. 2008)
- Jonathan Woodner Co. v. Breeden, 665 A.2d 929 (D.C. 1995)
- Akers v. Marsh, 19 App. D.C. 28 (1901)
- Baltimore & Potomac Railroad Co. v. Fifth Baptist Church, 108 U.S. 317 (1883)
- M.A.P. v. Ryan, 285 A.2d 310 (D.C. 1971)

