

SUPREME COURT OF NORTH CAROLINA

Dickens v. Puryear, 302 N.C. 437

276 S.E.2d 325 (1981) · No. No. 86 · Decided April 6, 1981

SUMMARY

The North Carolina Supreme Court considered whether defendants could raise the statute of limitations through motions for summary judgment filed before answering. The court held that the defense was properly raised, but concluded that the plaintiff's allegations and factual showing could support a claim for intentional infliction of mental distress governed by a three-year limitations period rather than an assault-and-battery claim subject to a one-year period. Summary judgment was nevertheless affirmed as to the female defendant because the plaintiff had not made a sufficient showing against her.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Exum, Justice; Meyer, Justice
JURISDICTION	North Carolina
DECIDED	April 6, 1981
DOCKET	No. 86
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from summary judgments dismissing his action for intentional infliction of mental distress on statute-of-limitations and evidentiary grounds. The Supreme Court of North Carolina reversed the judgment for Earl Puryear and affirmed the judgment for Ann Puryear.
STANDARD OF REVIEW	Summary judgment is proper only when the movant clearly demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. The record and reasonable factual inferences are viewed in the light most favorable to the nonmovant, and the court does not resolve factual disputes.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of North Carolina
PARTIES	John Robert Dickens v. Earl V. Puryear, Ann Brewer Puryear

TOPICS

intentional infliction of emotional distress

summary judgment

statute of limitations

civil procedure

assault

PRACTICE AREAS

Torts

Civil procedure

Statute of limitations

Summary judgment

Intentional infliction of emotional distress

QUESTIONS PRESENTED

1. Whether defendants could raise the statute of limitations as an affirmative defense in motions for summary judgment filed before their answers were due or filed.
2. Whether the factual forecast established as a matter of law that Dickens's claim was only for assault and battery, subject to the one-year statute of limitations, rather than intentional infliction of mental distress, subject to the three-year statute of limitations.
3. Whether the evidence was sufficient to allow Dickens to proceed against Earl Puryear on a claim for intentional infliction of mental distress.
4. Whether the evidence was sufficient to support a civil-conspiracy claim against Ann Puryear.

HOLDINGS

1. A defending party whose responsive pleading is not yet due may raise an affirmative defense, including the statute of limitations, by motion for summary judgment before filing an answer.
2. Failure to expressly state the statute-of-limitations defense in a summary-judgment motion does not bar consideration of that defense when the opposing party was not surprised and had a full opportunity to present argument and evidence on it.
3. A claim for intentional infliction of mental distress is governed by North Carolina's three-year statute of limitations for other injuries to the person or rights of another, rather than the one-year statute applicable to assault and battery.
4. The tort of intentional infliction of mental distress consists of extreme and outrageous conduct that is intended to cause and does cause severe emotional distress; liability may also arise from reckless indifference to the likelihood of causing such distress. Physical injury and foreseeability are not additional elements of the tort.
5. The forecast of evidence was sufficient to indicate that Dickens might prove intentional infliction of mental distress against Earl Puryear; the future conditional threat of death was not an assault because it was not a threat of imminent harm, and summary judgment based on the one-year assault-and-battery limitations period was therefore improper.
6. Summary judgment for Ann Puryear was proper because the evidence showed no more than her presence at the scene and departure before the assaults and future threat, which was insufficient to create more than suspicion or conjecture of an agreement to intentionally inflict mental distress.

KEY QUOTATIONS

“A mere threat, unaccompanied by an offer or attempt to show violence, is not an assault.” (331)

“This tort, under the authorities already cited, consists of: (1) extreme and outrageous conduct, (2) which is intended to cause and does cause (3) severe emotional distress to another.” (335)

“The threat was not one of imminent, or immediate, harm. It was a threat for the future apparently intended to and which allegedly did inflict serious mental distress; therefore it is actionable, if at all, as an intentional infliction of mental distress.” (337)

FACTUAL BACKGROUND

On April 2, 1975, Earl Puryear lured Dickens to a rural location, pointed a pistol at him, and arranged for masked men to beat and handcuff him. Puryear threatened Dickens with castration, discussed whether Dickens should be killed or castrated, and ultimately threatened to kill him in the future unless he left North Carolina. Ann Puryear was present briefly, expressed that she did not want to see Dickens, and left with her daughter before the beatings and future threat occurred. Dickens alleged continuing severe emotional and physical effects, including fear, insomnia, nervous-system problems, impaired work performance, and lost income.

PROCEDURAL HISTORY

Dickens filed his complaint on March 31, 1978, alleging that the defendants intentionally inflicted severe mental and emotional distress during an April 2, 1975 incident. Before filing answers, the defendants moved for summary judgment. The trial court granted summary judgment for both defendants on the ground that the claim was for assault and battery and was barred by the one-year limitations period; the Court of Appeals affirmed. The Supreme Court held that the limitations defense could properly be raised by summary judgment, but that the evidentiary forecast supported a potentially timely claim for intentional infliction of mental distress against Earl Puryear, while the evidence against Ann Puryear was insufficient to support a conspiracy-based claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The claim against Earl Puryear was remanded to the Court of Appeals with instructions to remand it to Wake Superior Court for further proceedings not inconsistent with the opinion. Summary judgment for Ann Puryear was affirmed.

CASES CITED

- Dendy v. Watkins, 288 N.C. 447, 219 S.E.2d 214 (1975)
- Brewer v. Harris, 279 N.C. 288, 182 S.E.2d 345 (1971)
- Bank v. Gillespie, 291 N.C. 303, 230 S.E.2d 375 (1976)
- Cooke v. Cooke, 34 N.C. App. 124, 237 S.E.2d 323 (1977)

- Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979)
- Hayes v. Lancaster, 200 N.C. 293, 156 S.E. 530 (1931)
- Ormond v. Crampton, 16 N.C. App. 88, 191 S.E.2d 405, cert. denied, 282 N.C. 304, 192 S.E.2d 194 (1972)
- McCracken v. Sloan, 40 N.C. App. 214, 252 S.E.2d 250 (1979)
- State v. Ingram, 237 N.C. 197, 74 S.E.2d 532 (1953)
- State v. Roberts, 270 N.C. 655, 155 S.E.2d 303 (1967)
- State v. Johnson, 264 N.C. 598, 142 S.E.2d 151 (1965)
- State v. Daniel, 136 N.C. 571, 48 S.E. 544 (1904)
- State v. Milsaps, 82 N.C. 549 (1880)
- Trogdon v. Terry, 172 N.C. 540, 90 S.E. 583 (1916)
- Hodges v. Hall, 172 N.C. 29, 89 S.E. 802 (1916)
- Bedsole v. Atlantic Coast Line R.R. Co., 151 N.C. 152, 65 S.E. 925 (1909)
- Stanback v. Stanback, 297 N.C. 181, 254 S.E.2d 611 (1979)
- Wilson v. Wilkins, 181 Ark. 137, 25 S.W.2d 428 (1930)
- Kimberly v. Howland, 143 N.C. 398, 55 S.E. 778 (1906)
- Kirby v. Jules Chain Stores Corp., 210 N.C. 808, 188 S.E. 625 (1936)
- Crews v. Finance Co., 271 N.C. 684, 157 S.E.2d 381 (1967)
- Slaughter v. Slaughter, 264 N.C. 732, 142 S.E.2d 683 (1965)
- Langford v. Shu, 258 N.C. 135, 128 S.E.2d 210 (1962)
- Martin v. Spencer, 221 N.C. 28, 18 S.E.2d 703 (1942)
- Sparks v. Products Corp., 212 N.C. 211, 193 S.E. 31 (1937)
- Williamson v. Bennett, 251 N.C. 498, 112 S.E.2d 48 (1960)
- Pitts v. Pizza, Inc., 296 N.C. 81, 249 S.E.2d 375 (1978)
- Caldwell v. Deese, 288 N.C. 375, 218 S.E.2d 379 (1975)
- Page v. Sloan, 281 N.C. 697, 190 S.E.2d 189 (1972)
- Zimmerman v. Hogg & Allen, 286 N.C. 24, 209 S.E.2d 795 (1974)
- Kessing v. Mortgage Corp., 278 N.C. 523, 180 S.E.2d 823 (1971)
- Best v. Perry, 41 N.C. App. 107, 254 S.E.2d 281 (1979)
- Moore v. Fieldcrest Mills, Inc., 296 N.C. 467, 251 S.E.2d 419 (1979)
- Hayes v. Ricard, 244 N.C. 313, 93 S.E.2d 540 (1956)
- State v. Dalton, 168 N.C. 204, 83 S.E. 693 (1914)
- Shope v. Boyer, 268 N.C. 401, 150 S.E.2d 771 (1966)
- Edwards v. Ashcraft, 201 N.C. 246, 159 S.E. 355 (1931)
- State v. Martin, 191 N.C. 404, 132 S.E. 16 (1926)