

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

DON BRYANT,)	CASE NO. CV 13 816548
)	
Plaintiff,)	
)	JUDGE BRENDAN J. SHEEHAN
v.)	
)	
JEFF JOHNSON,)	
)	OPINION AND JUDGMENT
Defendant.)	ENTRY
)	

I. FACTS AND ISSUES PRESENTED.

This matter is before the Court on Defendant's Motion for Summary Judgment. The issues have been fully briefed to the Court.

Plaintiff's cause of action arises out of an incident on June 6, 2013 at a City of Cleveland Safety Meeting held at a recreation center in the Glenville neighborhood of Cleveland, Ohio. It is undisputed that Defendant Jeff Johnson, a City of Cleveland councilman representing Ward 10 which includes Glenville, was one of the co-hosts of the meeting and served as the meeting moderator. The hosts of the meeting provided an update to the Glenville community on issues of concern including women's safety, traffic light cameras, and a police shooting incident in East Cleveland. The East Cleveland incident was a topic of intense reaction because it involved Cleveland police firing 137 bullets after a lengthy and massive chase, killing both suspects. Also present at the meeting was former Cleveland Police Chief Michael McGrath who answered questions from the attendees including numerous questions about the police shooting case.

Plaintiff is not a Glenville area resident but he attended the meeting to present petitions demanding a federal investigation into the police shooting case. Plaintiff described pertinent events at the meeting in his deposition as:

Q So you got these 12 people speaking before you. They're clapping for certain questions. People have raised some issues about the 137 bullets, right, before you?

A. Correct.

Q. And then McGrath talks about that. Then you get there and the rules change as soon as you walked up there?

A. Yes.

Q. Mr. Johnson said, "McGrath has answered these questions fully. We don't need to talk about 137 bullets. We just need to focus on Glenville issues"?

A. Correct.

Q. Okay. Is he speaking with the microphone himself or he just talking to you directly or is he yelling?

A. He's telling the entire audience speaking from a microphone in the front of the room.

Q. Is it handheld or is it like at a stand?

A. I believe it had a stand from my recollection.

Q. So he said this. What happens next?

A. And that's when he came over to me and asked me what I was going to say.

Deposition of Don Bryant, Tr. 33:15-25, 34:1-13.

Q. And what did you say?

A. I said, "I have Glenville residents on these petitions." And I had the petitions in this hand, a stack of them, my right hand.

Q. And then what happened at that point?

A. That's when he grabbed the microphone from my hand and I could barely get those words out about the petitions and I have Glenville residents.

It was right in the middle of that answer, I mean, answering him that he did it. He grabbed the microphone out of my hand.

Id. at 35:2-13.

Q. ...So when he walked over to you, were you in fear? Did you know what was happening?

A. I felt intimidated by his quick steps towards me, almost a trot, and long strides and I was feeling slightly intimidated at that point.

Q. Okay. What was different about this, I mean?

A. That was different? He didn't do that to anybody else.

Q. Okay. And this grabbing the microphone, did he grab the microphone or did he grab your hand, both; what do you recall?

A. Grabbed the microphone and, you know, brushed my hand with his hand, you know.

Id. at 39:6-19.

Plaintiff then left the meeting and forwarded the petitions to the U.S. Department of Justice, Cuyahoga County Prosecutor McGinty and Mayor of Cleveland Frank Jackson.

Plaintiff filed this action alleging causes of action for civil assault and intentional infliction of emotional distress.

II. LAW AND ANALYSIS.

A. Standard for Summary Judgment.

Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.*, 86 Ohio St.3d 414, 715 N.E.2d 532 (1999); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1997). When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The nonmoving party must produce evidence on any issue for which that party bears the burden of production at

trial. *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc.*, 8th Dist. No. 70175, 1997 WL 578940, 2 (1997), citing *Redd v. Springfield Twp. School District*, 91 Ohio App.3d 88, 92, 631 N.E.2d 1076 (9th Dist. 1993).

Plaintiff attempts to support his claims by imputing various motives to Defendant's change of topics at the meeting. However, Plaintiff's evidence is citation to the website: www.clevelandchallenger.com. Citation to a website constitutes multiple hearsay. It is not competent or admissible evidence and cannot serve as a basis to defeat a motion for summary judgment.

B. Plaintiff's Claim for Civil Assault.

"Civil assault is the 'intentional offer or attempt, without authority or consent, to harm or offensively touch another that reasonably places the other in fear of such contact.'" *Burks v. Torbert*, 8th Dist. No. 91059, 2009-Ohio-486, P22.

It is undisputed that Defendant was one of the leaders of the public meeting, charged with control of the agenda. As such, Defendant had the authority to restrict the length or topic of questions at the meeting. Plaintiff admitted in his deposition that he intended to revisit a topic closed after discussion at the meeting, was "slightly intimidated" by Defendant approaching him to remove the microphone and that Defendant "brushed" his hand when removing the microphone from Plaintiff. The Court cannot find, based on the evidence presented, that Defendant exceeded his authority in controlling the public meeting by striding to Plaintiff and removing the microphone when Plaintiff chose not to adhere to the announced agenda of the meeting. While it may have been more prudent for Defendant to maintain control of the meeting

by alternate means, the fact that Plaintiff was "slightly intimidated" and had his hand brushed by Defendant's hand does not constitute civil assault as a matter of law.

C. Plaintiff's Claim for Intentional Infliction of Emotional Distress.

A claim for intentional infliction of emotional distress requires proof of the following elements: (1) the defendant intended to cause, or knew or should have known that his actions would result in serious emotional distress; (2) the defendant's conduct was so extreme and outrageous that it went beyond all possible bounds of decency and can be considered completely intolerable in a civilized community; (3) the defendant's actions proximately caused psychological injury to the plaintiff; and (4) the plaintiff suffered serious mental anguish of a nature no reasonable person could be expected to endure. *Ashcroft v. Mt. Sinai Med. Ctr.*, 68 Ohio App.3d 359, 366, 588 N.E.2d 280 (8th Dist. 1990).

The Eighth District Court of Appeals has further explained this tort as:

It is the rare case that reaches the very high bar of showing "extreme and outrageous" conduct. "Only the most extreme wrongs, which do gross violence to the norms of a civilized society, will rise to the level of outrageous conduct." *Brown v. Denny* (1991), 72 Ohio App.3d 417, 423, 594 N.E.2d 1008. In *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 6 Ohio B. 421, 453 N.E.2d 666, the supreme court stated:

"It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and 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. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'

"The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where someone's feelings are hurt. There must still be freedom to express an unflattering opinion, and some safety valve must be left through which irascible tempers may blow off relatively harmless steam. See Magruder, *Mental and Emotional Disturbance in the Law of Torts*, [49] *Harvard Law Review* 1033, 1053 (1936)." *Id.* at 374-375.

Lombardo v. Mahoney, 8th Dist. No. 92608, 2009-Ohio-5826, P6-P9.

The Court has no doubt that Plaintiff was shocked that he could not present his petitions at the meeting as he desired. As the Court previously mentioned, Defendant's conduct was less than ideal in his attempt to maintain order at the public meeting. However, Plaintiff has not suffered any documented physical or psychological harm as a result of the incident at issue.


This is not the rare case where the conduct complained of is so extreme and outrageous that it does gross violence to the norms of a civilized society and Plaintiff's claim for intentional infliction of emotional distress must fail as a matter of law.

III. CONCLUSION.

For the foregoing reasons, Defendant's Motion for Summary Judgment is **GRANTED.**

Judgment in favor of Defendant and against Plaintiff. Each party to bear their own costs.

Dated: 9/23/14


JUDGE BRENDAN J. SHEEHAN

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 30th day of September, 2014:

Don Bryant
4053 Akins Road
North Royalton, OH 44133

Jerome A. "Jay" Payne, Jr.
City of Cleveland Department of Law
601 Lakeside Avenue, Suite 106
Cleveland, OH 44114