

ONTARIO COURT OF APPEAL FINDS THAT THE COMMON LAW TORT OF NEGLIGENT INFLICTION OF MENTAL SUFFERING DOES NOT EXIST IN A NON-UNION EMPLOYMENT CONTEXT

Piresferreira v. Ayotte and Bell Mobility Inc., 2010 ONCA 384

The Ontario Court of Appeal recently limited non-union employees' ability to claim against their employers in finding that the common law tort of negligent infliction of mental suffering does not exist in the non-unionized employment context. The case involved an appeal of an Ontario Superior Court decision that found Bell Mobility Inc. vicariously liable for a supervisor's negligent and intentional infliction of mental suffering on the plaintiff. The appeal court overturned the lower court's rulings with respect to both torts.

The Facts and the Lower Court's Decision

The trial judge, Justice Catherine Aitken ordered Bell Mobility Inc. and one of its Ottawa sales managers, Richard Ayotte, to pay close to half a million dollars to a former employee, Piresferreira, who had been verbally abused by Ayotte. Piresferreira, a woman in her sixties, was routinely verbally abused from 2004 to 2005, and pushed on the shoulder and into a filing cabinet during an argument with Ayotte in 2005.

Until 2004, the plaintiff had maintained an excellent performance record. From 2004 onward, she had been unable to meet her sales quota. Ayotte had grown increasingly frustrated with her performance, resulting in verbal and physical abuse, and culminating in the pushing incident. Twelve days after the pushing incident, the employee was constructively dismissed. She suffered post-traumatic stress disorder following the events.

Justice Aitken awarded the plaintiff \$500,955 for the three torts of battery, and intentional and negligent infliction of mental suffering.

Court of Appeal

On appeal, the plaintiff's damages were reduced to about \$147,655, broken down as follows: \$15,000 for workplace battery, \$87,855 for lost wages, and \$45,000 for mental suffering caused by the manner in which she was dismissed.

The Court of Appeal ruled that the tort of negligent infliction of mental suffering was unavailable as a free-standing cause of action against employers. Justices Russell Juriansz, Eleanore Cronk and Susan Lang held that public policy reasons militate against finding such a far-reaching duty of care. Recognition of the tort would mean that employers would be required to shield employees from the acts of other employees, not only at the time of termination, but throughout an employee's entire period of employment. Courts considering this tort would have to venture too-deeply into a workplace's operations.

The Court did acknowledge the tort of intentional infliction of mental suffering remains available to employees who wish to sue their employers or supervisors. It was found that the requisite elements of that tort were not made out in this case.

September 28, 2010