

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EATON PINE VILLAGE,

Plaintiff/Counter Plaintiff-  
Appellant,

v

RONALD JACKSON,

Defendant/Counter Defendant-  
Appellee.

UNPUBLISHED

June 21, 2002

No. 224572

Eaton Circuit Court

LC No. 98-000823-AV

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Before: Hoekstra, P.J., and Whitbeck, C.J., and Talbot, J.

PER CURIAM.

A district court jury unanimously found in favor of defendant Ronald Jackson in the suit to evict him and his family from plaintiff Eaton Pine Village (EPV) mobile home park, also awarding him \$12,000 on his counterclaim for intentional infliction of emotional distress. This appeal comes to us from the Supreme Court as on leave granted. We affirm the jury's verdict and award.

I. Basic Facts And Procedural History

In October 1996, Jackson rented a lot in the EPV mobile home park in Eaton Rapids. Jackson, who lived at EPV with his wife and three children, evidently signed a lease allowing eviction for "just cause." He also received a copy of the EPV booklet of rules and regulations pertaining to numerous issues, including excessive noise, barking dogs, inoperable vehicles, and outside storage. Unfortunately, this living arrangement did not work well.

EPV sued in district court to evict Jackson and his family in February 1998. Jackson raised several defenses and counterclaims related to EPV's eviction procedures, as well as his argument that the eviction was retaliation for his decisions to enforce his legal rights, oppose harassment by Carol Rial, EPV's employee, and his consultation with an attorney regarding the harassment. Jackson also filed a counterclaim in which he contended that Rial's actions constituted the common law tort of intentional infliction of emotional distress. After the trial court denied EPV's motion to summarily dispose of Jackson's intentional infliction of emotional distress claim, the case proceeded to trial. At trial, the parties called witnesses who outlined the

nature of the strife between EPV residents who liked the Jackson family, and those who disliked the family, including Rial.

As the witnesses retold the story, shortly after Jackson and his family moved into the mobile home park, another resident, allegedly Rial, complained to EPV manager Kim Treleaven about an inoperable vehicle on Jackson's lot. Jackson, however, denied that his car was inoperable. Rather, the car remained parked on his lot because he was the only driver in the family and his family usually rode in their van. After receiving a complaint from Rial, Sergeant Francis Kelly of the Eaton Rapids Police Department investigated Jackson's vehicle and found no city code violations. Rial later called Sergeant Kelly to EPV several times to ask Sergeant Kelly to investigate complaints about Jackson. When Jackson learned of the complaints about his car, including subsequent complaints about the vehicle having Canadian license plates, he worked to maintain the car and obtained a Michigan license plate for it.<sup>1</sup>

In August 1997 and January 1998, Jackson also learned that someone had been complaining about his dog and the way he was storing his trash cans. In response, Jackson got rid of the dog. Jackson, however, did not place the trash cans in a storage shed as the EPV rules required, citing soil drainage problems on his site that prevented him from having a shed. As Jackson explained it, his lot flooded every time it rained and the flooding did not abate for up to a week after each incident. This problem had existed since his family moved into the park, but EPV did not correct the problem until much later.

After the Jackson family moved into the park, Rial began working for EPV. She started working maintenance and became the manager in October 1997. Her relationship with Jackson and his family was acrimonious, at best. According to Jackson, Rial complained frequently about him and his family both before and after she became manager. Jackson testified that Rial subjected his children to angry, insulting, and prejudicial comments, including one incident in September 1997 in which Rial called Jackson's son a "worthless piece of trash" and contacted the police. Rial conceded that she was the source of some of the complaints against Jackson and his family, and admitted to making that statement to his son. However, according to her, she made the comment in April 1997, before she worked for EPV.

In January or February 1998, Jackson and his attorney met with Rial and Guy Cicerone of Choice Properties, EPV's owner, in an attempt to resolve the differences between the Jackson family and Rial. According to Jackson, the parties agreed at that meeting that EPV would correct the drainage problem on his lot as early as September 1997 and, until the problem was fixed, he would be allowed to use another storage shed. During this meeting, Rial alleged that Jackson harassed her by blocking her driveway, which Jackson denied.

Rial was not the only EPV resident who complained about Jackson and his family. Christine Larock and her fiancé James Malinowski were upset that Jackson's children frequently trespassed on their property, a problem that ended as soon as Jackson learned of it. Michael Baldwin complained to EPV management that Jackson shouted profanity loudly in public on

<sup>1</sup> Apparently, Jackson was originally from Great Britain and had immigrated to the United States from Canada.

more than one occasion, even calling Rial a “f---ing bitch,” which Jackson denied saying. Similarly, Frank Levandowski alleged that Jackson confronted him with foul language because Jackson thought Levandowski had yelled at one of his (Jackson’s) children. Carolyn Levandowski, Frank Levandowski’s wife, claimed that this incident prompted her to call the police, though Jackson did not believe that the incident with Frank Levandowski was confrontational. Carolyn Levandowski also claimed to hear noise coming from Jackson’s home frequently, while Lynn Merrill added that Jackson’s children made considerable noise and Jackson’s dog ran loose.

Treleaven testified that she gave Jackson a few written complaints about his trash can and flat tires on his car while she was manager, including complaints Rial made. She recalled that Susan Baldwin made comments about Jackson’s family “goin’ back where they came from,” which Baldwin admitted. Treleaven, however, discounted the significance of the complaints about Jackson and his family from Rial and the Baldwins, which she deemed “petty.” Treleaven described Jackson’s children as hesitant and polite. In fact, while Treleaven was manager, she was unaware of any rules Jackson or his family had violated that would warrant their eviction. Though Treleaven had no experience with Jackson being inappropriately loud or using obscenities, she was aware of times when Rial had used obscenities or was inappropriately loud. When Treleaven left her position as EPV manager, she advised the mobile home park owners that Rial was interested in the manager position, but had conflicts with more than one family in the mobile home park, including the Jackson family. Treleaven, along with Jackson and other residents, eventually signed a petition to remove Rial as EPV manager.

Treleaven was not alone in her relatively favorable impression of the Jackson family. Barbara Stiles stated that she had no problems with members of the Jackson family, even though she lived next door to them. Stiles also did not report having personal problems with Rial, but still signed the petition to have Rial removed from her position as manager because Rial changed the rules every month and was fixated with what EPV residents were doing wrong. Jason Depew, the Jackson family’s other next-door neighbor, also testified that he had no problems with Jackson or his family, and that he never heard Jackson’s dog barking or saw it running loose.

Stacy Brown characterized Jackson as quiet and his children as well-mannered, indicating that Rial treated them differently than other EPV residents. She noted that other residents violated the rules, but did not receive violation notices. Brown also verified that Jackson’s yard had a severe drainage problem. According to Brown, Guy Cicerone of Choice Properties promised to fix the problem in the summer 1997, but did not do so until a couple of weeks before trial.

Cindy Charles also stated that she had no problems with Jackson or his family, and never heard their dog barking excessively. Charles, who had been cited for EPV rules violations and had entered into a consent agreement with EPV regarding her nonpayment of rent, claimed that Rial yelled at Jackson’s children and treated them differently than other children in the mobile home park.

At trial, Jackson had an opportunity to outline the effect of the harassment he claimed that he and his family suffered. He alleged that Rial’s conduct had forced his wife to break down

and cry. Jackson stated that he had encountered difficulty controlling his own diabetes because of the conflict. He also claimed that Rial's constant complaints about his children forced him to restrict his children's play time outdoors. To make matters worse, according to Jackson, Rial had changed the playground rules so that they prohibited children over twelve years old from playing there, which meant that his daughter had to remain in the house while her friends were playing outside. Additionally, Jackson said that he suffered embarrassment at work because many of his subordinates were aware that EPV was trying to evict him and his family.

Jackson's wife, Tina Jackson, denied that Jackson used obscene language or that her children were unusually noisy. She had heard Rial shouting at her children to shut up. On one occasion when her daughter was playing in the playground, Tina Jackson observed four male EPV residents following her daughter and then sitting on a bench watching her. When her daughter came home, the men left. Tina Jackson claimed that these men had some connection to Rial, and that her daughter refused to go to the playground after that for fear that the men would return. According to Tina Jackson, her children were no longer comfortable living in the park and frequently asked if they could move.

When the parties finished presenting their proofs, EPV moved for a directed verdict on Jackson's intentional infliction of emotional distress counterclaim.<sup>2</sup> EPV argued that Jackson failed to present evidence that proved Rial's conduct was outrageous, failed to establish that EPV's intent was to inflict emotional distress, and failed to prove how the alleged harassment damaged him. Jackson contended that he presented sufficient evidence to raise a factual question for the jury to decide regarding whether EPV's conduct was outrageous. He contended that he proved intent by providing evidence that EPV was reckless in allowing the conduct to continue, and added that he and his family suffered damages from the severe emotional distress. In response to these arguments, the district court stated that "what's outrageous to one person may not be outrageous to another," determined that a factual question existed concerning whether EPV's conduct was outrageous, and denied EPV's motion.

On June 9, 1998, the jury returned a verdict for Jackson on EPV's action to terminate his tenancy. With respect to Jackson's counterclaim of intentional infliction of emotional distress, the jury also found for Jackson, awarding him damages in the amount of \$12,000. According to the jurors, whom the district court polled, the verdict was unanimous. After the district court dismissed the jury, EPV moved for judgment notwithstanding the verdict (JNOV), arguing that the verdict on the intentional infliction of emotional distress claim was contrary to the law and the evidence because Jackson had failed to establish the elements of the claim. The district court denied the motion, concluding that there was no error of law because neither party objected to the jury instructions, and noting that it was the jury's province to weigh the appropriate facts. The district court also denied EPV's motion to reduce the award.

On July 6, 1998, EPV appealed the district court judgment to circuit court. At a hearing on December 11, 1998, EPV claimed that the trial court erred in denying its motions for

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<sup>2</sup> The trial court directed a verdict in favor of EPV on Jackson's counterclaim for retaliatory eviction, which is not at issue in this appeal.

summary disposition, for directed verdict, and for JNOV on Jackson's intentional infliction of emotional distress counterclaim. EPV reiterated the arguments it had made in the trial court challenging the evidence supporting the jury's verdict on the intentional infliction of emotional distress counterclaim. Citing *Warren v June's Mobile Home Village & Sales*,<sup>3</sup> EPV argued that Jackson's evidence failed to create an issue of fact in the district court and should have been dismissed. EPV further argued that public policy considerations should protect a party from being sued for exercising its legal rights.

Jackson, however, contended that it was the jury's role to determine whether the conduct was outrageous, reasonable jurors could have reached different opinions concerning whether the conduct in this case was outrageous, and the district court did not err in allowing this claim to go to the jury. Jackson also argued that *Warren, supra*, did not apply to this case because it was not a jury trial and, unlike this case, the landlord in *Warren* was only trying to exercise its legal rights in a permissible way. In addition, Jackson denied that any public policy considerations would favor a landlord over a tenant in terms of the ability to exercise legal rights.

The circuit court agreed with the district court that, when viewed as a whole, there was adequate evidence of harassing conduct by EPV's agents to submit to the jury, making the district court's rulings on the motions for summary disposition, directed verdict, and JNOV related to the intentional infliction of emotional distress claim proper. Similarly, the circuit court held that the amount of damages awarded for this tort claim was a matter for the jury to decide, and the damages actually awarded were not so excessive that the district court erred in denying the motion for remittitur. Consequently, the circuit court entered an order denying EPV's appeal, affirming the district court.

Following its loss in the circuit court, EPV sought leave to appeal to this Court, raising numerous issues. On March 29, 1999, this Court denied EPV leave to appeal.<sup>4</sup> EPV then sought leave to appeal to our Supreme Court. On January 11, 2000, the Supreme Court entered the following order:

In lieu of granting leave to appeal, the case is remanded to the Court of Appeals for consideration as on leave granted with regard to the issue whether defendants presented sufficient evidence to avoid directed verdict or a judgment notwithstanding the verdict on the tort of intentional infliction of emotional distress. MCR 7.302(F)(1). In all other respects, leave to appeal is denied.<sup>5]</sup>

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<sup>3</sup> *Warren v June's Mobile Home Village & Sales*, 66 Mich App 386; 239 NW2d 380 (1976).

<sup>4</sup> *Eaton Pine Village v Ronald Jackson and All Other Occupants*, unpublished order of the Court of Appeals, entered March 29, 1999 (Docket No. 217054).

<sup>5</sup> *Eaton Pine Village v Jackson*, 461 Mich 945; 607 NW2d 365 (2000).

Clearly, the Supreme Court's order limits the scope of our analysis in this case to the single issue of whether there was sufficient evidence of intentional infliction of emotional distress to present to the jury, excluding consideration of EPV's other issues.<sup>6</sup>

## II. History Of Intentional Infliction Of Emotional Distress

### A. The Supreme Court's Approach

The tort at issue in this case, intentional infliction of emotional distress, has a curious history in Michigan jurisprudence. The earliest case law on the tort stems, primarily, from *Nelson v Crawford*,<sup>7</sup> which held that an individual could not recover for emotional damages without evidence of a physical injury.<sup>8</sup> The Michigan Supreme Court, however, modified that rule as early as 1932, when it held that a plaintiff could recover for "fright" and "nervous prostration" caused by the defendants' *intentional acts* that could be classified as an assault even though the plaintiff did not sustain a physical injury.<sup>9</sup> In essence, this set the foundation for recovering damages for emotional injuries that result from intentional conduct, even if not specifically an assault.<sup>10</sup>

The modern Michigan Supreme Court has consistently avoided recognizing that intentional infliction of emotional distress exists as a cause of action in this state.<sup>11</sup> Rather, the Supreme Court has chosen to assume only for the sake of argument that the tort does exist so that it may examine the evidence of the elements of such a claim. The case that best exemplifies this analytical approach, and a case cited most often in other opinions, is *Roberts v Auto-Owners Ins Co*.<sup>12</sup>

In *Roberts*, the plaintiffs claimed that they had suffered "mental anguish" and "exemplary or punitive damages" because of Auto-Owners' allegedly "improper and/or outrageous and/or malicious" in denying paying replacement benefits after an automobile struck and severely injured their daughter.<sup>13</sup> After the trial court denied Auto-Owners' motion for summary disposition and the jury found in favor of the plaintiffs, this Court affirmed the trial court,

<sup>6</sup> We agree with the dissent's comment that the rules of evidence seem to have taken a holiday in this case. However, as the dissent notes, these types of evidentiary issues are not before us.

<sup>7</sup> *Nelson v Crawford*, 122 Mich. 467; 81 N W 335 (1899).

<sup>8</sup> See, e.g., *Schroeder v Detroit, GH & M Railway Co*, 174 Mich 684; 140 NW 968 (1913).

<sup>9</sup> *Warmelink v Tissue*, 257 Mich 228; 241 NW 203 (1932); Cf. *Alexander v Pacholek*, 222 Mich 157; 192 NW 652 (1923) (no recovery for emotional injury because there was no assault).

<sup>10</sup> See *Daley v LaCroix*, 384 Mich 4, 12; 179 NW2d 390 (1976) (overruling the impact requirement in *Nelson*); see also *Brown v Brown*, 338 Mich 492, 498; 61 NW2d 656 (1953) ("The parent wrongfully deprived of the custody of his child *may recover for the loss of society of his child and for the emotional distress* resulting from the abduction.") (emphasis added).

<sup>11</sup> See *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401, 421; 295 NW2d 50 (1980).

<sup>12</sup> *Roberts v Auto-Owners Ins Co*, 422 Mich 594; 374 NW2d 905 (1985).

<sup>13</sup> *Id.* at 598.

concluding that there was sufficient evidence of tortious conduct to justify the award of mental distress damages.<sup>14</sup>

When the *Roberts* case reached the Supreme Court, the Court commenced its analysis by noting that it had ordered the parties to brief whether the tort of intentional infliction of emotional distress exists in this jurisdiction.<sup>15</sup> Additionally, the Supreme Court asked the parties to brief whether, assuming that this tort did exist, the plaintiffs had adequately pleaded and proved an intentional infliction of emotional distress claim.<sup>16</sup> However, in its opinion, the Court moved directly to the second question concerning the pleadings and the record, explaining:

Since we conclude that plaintiff failed even to meet the threshold requirements of proof to make out a prima facie claim of intentional infliction of emotional distress, we are constrained from reaching the issue as to whether this modern tort should be formally adopted into our jurisprudence by the well-settled rule that statements concerning a principle of law not essential to determination of the case are obiter dictum and lack the force of an adjudication.<sup>[17]</sup>

In conclusion, the majority of the Supreme Court in *Roberts* reiterated its belief that, despite “widespread acceptance” of this tort in other states, it had yet to be presented with the suitable case in which to “review both of the policy implications for adopting this tort in general and of the propriety of allowing such recovery in the insurance context.”<sup>18</sup>

There the matter has rested, at least at the Supreme Court level. Despite additional cases involving intentional infliction of emotional distress, the Supreme Court has, evidently, not yet found a suitable case to examine whether Michigan law recognizes this tort.<sup>19</sup> For instance, the Court recently examined a claim for intentional infliction of emotional distress in *Smith v Cavalry Christian Church*.<sup>20</sup> Again, however, the Court ruled on other grounds.<sup>21</sup> Chief Justice Weaver remarked in her concurrence, “As to the plaintiff’s tort claim of intentional infliction of emotional distress, I note that *this Court has not recognized or adopted that tort, see Roberts v Auto-Owners Ins Co*, 422 Mich 594; 374 NW2d 905 (1985), and does not do so here.”<sup>22</sup>

## B. Court of Appeals Cases

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<sup>14</sup> *Id.* at 599-600.

<sup>15</sup> *Id.* at 597.

<sup>16</sup> *Id.* at 597.

<sup>17</sup> *Id.* at 597-598 (footnote and citation omitted).

<sup>18</sup> *Id.* at 611.

<sup>19</sup> See *Phillips v Butterball Farms Co, Inc*, 448 Mich 239, 252-253; 531 NW2d 144 (1995); *Fulghum v United Parcel Service, Inc*, 424 Mich 89, 96-97; 378 NW2d 472 (1985).

<sup>20</sup> *Smith v Cavalry Christian Church*, 462 Mich 679; 614 NW2d 590 (2000).

<sup>21</sup> *Id.* at 686, n 7.

<sup>22</sup> *Smith, supra* at 690 (Weaver, C.J., concurring).

In contrast to the Supreme Court, precedent from this Court has addressed the tort of intentional infliction of emotional distress almost from the first days following this Court's creation. Our research has failed to reveal a case from this Court that rejects, overrules, or otherwise abrogates the vitality of intentional infliction of emotional distress as a cause of action in this state. Rather, this Court's opinions can be divided into two groups. The first group of opinions reflects the Supreme Court's analytical approach established in *Roberts*. These opinions look first to the adequacy of the evidence and then avoid deciding whether Michigan law respects this tort. The second group of opinions hold that the tort of intentional infliction of distress is a viable cause of action in Michigan.

As with any question of precedent from this Court, whether MCR 7.215(I) makes a particular opinion binding on other panels of this Court is an important question to ask. Under MCR 7.215(I)(1) “[a] panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.”

In the group of opinions that avoid endorsing the tort of intentional infliction of emotional distress, there are cases from this Court that predate the *Roberts* opinion and occur at regular intervals in the time leading up to November 1, 1990.<sup>23</sup> While the panels deciding these cases demonstrated varying degrees of concern over or attention to the Supreme Court's stance on this issue of law, opinions like *Bonelli v Volkswagen*<sup>24</sup> reflect the Supreme Court's enduring influence in shaping how courts treat this tort. Citing *Roberts*, the *Bonelli* panel observed that “the Supreme Court has not formally adopted the modern tort of intentional infliction of emotional distress into this state's jurisprudence as a separate theory of recovery, [but] it nevertheless has identified the four elements comprising a prima facie case . . . .”<sup>25</sup> There was no transformation in this school of thought after November 1, 1990. Published opinions as recent as last year take this approach.<sup>26</sup> One such recent case, *Nelson v Ho*,<sup>27</sup> commented in a footnote that the panel felt “it necessary to note that the tort of intentional infliction of emotional distress has yet to be formally recognized by the Michigan Supreme Court,” though this Court had recognized the tort.

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<sup>23</sup> See, e.g., *Priest v Canada Life Assur Co*, 179 Mich App 731, 737; 446 NW2d 352 (1989); *Sankar v Detroit Bd of Ed*, 160 Mich App 470, 482; 409 NW2d 213 (1987); *Deitz v Wometco West Michigan TV*, 160 Mich App 367, 381; 407 NW2d 649 (1987); *Valentine v General American Credit, Inc*, 123 Mich App 521, 527; 332 NW2d 591 (1983); *Butler v DAIIE*, 121 Mich App 727, 735-736; 329 NW2d 781 (1982).

<sup>24</sup> *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 514-518; 421 NW2d 213 (1988).

<sup>25</sup> *Id.* at 514 (citation omitted).

<sup>26</sup> See, e.g., *Corley v Detroit Bd of Ed*, 246 Mich App 15, 25-26; 632 NW2d 147 (2001); *Sudul v City of Hamtramck*, 221 Mich App 455, 462; 562 NWS2d 478 (1997); *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 80-81; 480 NW2d 297 (1991); *Espinoza v Thomas*, 189 Mich App 110, 120; 472 NW2d 16 (1991).

<sup>27</sup> *Nelson v Ho*, 222 Mich App 74, 85, n 6; 564 NW2d 482 (1997).

In contrast, however, there are many examples of this Court directly recognizing the tort. Among the numerous published opinions issued before November 1, 1990, that recognize the tort of intentional infliction of emotional distress,<sup>28</sup> *Bhama v Bhama*<sup>29</sup> serves as an apt example. The *Bhama* panel stated, “This Court has recognized the tort of intentional infliction of emotional distress in noninsurance cases.”<sup>30</sup> This position also appears in this Court’s opinions after November 1, 1990.<sup>31</sup> In, for instance, *Haverbush v Powelson*,<sup>32</sup> this Court recited the four elements of the tort set out in *Roberts* and, without further analysis, assumed that liability for this tort would exist “where the conduct complained of 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.”

### C. Conclusion

Given the proper circumstances, this Court has not felt constrained from considering whether a tort exists when neither the Michigan Supreme Court nor the Michigan Legislature has recognized it.<sup>33</sup> In this case, however, two factors persuade us that we may not enter the fray and decide this question either by harmonizing or distinguishing the case law, or by declaring a conflict. First, the Supreme Court did not ask us to address whether the tort of intentional infliction of emotional distress exists, or should exist, in this jurisdiction. Rather, it asked us to address the question – and only the question – whether Jackson presented sufficient evidence to

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<sup>28</sup> See, e.g., *McCahill v Commercial Ins Co*, 179 Mich App 761, 775-776; 446 NW2d 579 (1989); *Maciejewski v Breitenbeck*, 162 Mich App 410, 415-416; 413 NW2d 65 (1987); *Dickerson v Nichols*, 161 Mich App 103, 107-108; 409 NW2d 741 (1987); *Early Detection v New York Life Ins Co*, 157 Mich App 618, 625-626; 403 NW2d 830 (1986); *Margita v Diamond Mortgage Corp*, 159 Mich App 181, 189; 406 NW2d 268 (1987); *Sawabini v Desenberg*, 143 Mich App 373, 382-383; 372 NW2d 559 (1985); *Hajciar v Crawford & Co*, 142 Mich App 632, 638; 369 NW2d 860 (1985); *Harris v Citizens Ins Co*, 141 Mich App 110, 113; 366 NW2d 11 (1983); *Ferrell v Vic Tanny International, Inc*, 137 Mich App 238, 245; 357 NW2d 669 (1984); *Rosenberg v Rosenberg Bros Special Account*, 134 Mich App 342, 350; 351 NW2d 563 (1984); *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 590-591; 349 NW2d 529 (1984); *Holmes v Allstate Ins Co*, 119 Mich App 710, 714; 326 NW2d 616 (1982); *Ledsinger v Burmeister*, 114 Mich App 12, 17; 318 NW2d 558 (1982); *Mosley v Federal Dep't Stores, Inc*, 85 Mich App 333, 338; 271 NW2d 224 (1978); *Campos v General Motors Corp*, 71 Mich App 23, 25; 246 NW2d 352, 353 (1976); *Warren, supra* at 390; *Frishett v State Farm Mutual Automobile Ins Co*, 3 Mich App 688, 692; 143 NW2d 612 (1966).

<sup>29</sup> *Bhama v Bhama*, 169 Mich App 73; 425 NW2d 733 (1988).

<sup>30</sup> *Id.* at 78.

<sup>31</sup> See, e.g., *Duran v Detroit News, Inc*, 200 Mich App 622, 629-630; 504 NW2d 715 (1993); *Robert Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 657; 517 NW2d 864 (1994).

<sup>32</sup> *Haverbush v Powelson*, 217 Mich App 228, 233-234; 551 NW2d 206 (1996).

<sup>33</sup> See *Brandy Taylor v Kurapati*, 236 Mich App 315; 600 NW2d 670 (1999).

avoid directed verdict or a judgment notwithstanding the verdict on the tort of intentional infliction of emotional distress. Secondly, while it is fair to say that the language in opinions from this Court concerning this tort is occasionally elliptical or conclusory, there is binding precedent holding that the tort exists.<sup>34</sup>

We observe, however, that the Supreme Court is under no such constraint. It is perfectly free to address the question of whether the tort of intentional infliction of mental distress exists, or should exist, in this jurisdiction. The wisdom of recognizing yet another cause of action, when adequate remedies at law exist, is, as Justice Levin pointed out in his concurrence in *Roberts*, highly questionable.<sup>35</sup> We therefore leave it to the Supreme Court to determine whether this case is the one that necessarily presents the concerns over the general policy implications of allowing recovery for intentional infliction of emotional distress.

### III. Directed Verdict

#### A. Standard Of Review

Turning to the substantive issues raised in this appeal, we review de novo a trial court's decision to deny a motion for a directed verdict.<sup>36</sup>

#### B. Legal Standard

When deciding whether to grant a motion for a directed verdict, “the court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in the nonmoving party’s favor.”<sup>37</sup> The critical issue the trial court must “determine [is] whether a prima facie case has been established.”<sup>38</sup> A directed verdict is “appropriate only when no factual question exists upon which reasonable minds may differ.”<sup>39</sup> When the evidence could lead reasonable jurors to disagree about the facts, the trial court must allow the jurors to carryout their role as factfinders.<sup>40</sup>

#### C. Intentional Infliction Of Emotional Distress

There are four elements of a prima facie case of intentional infliction of emotional distress: “(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress.”<sup>41</sup> The conduct underlying this tort claim must be “so outrageous

<sup>34</sup> See *Duran, supra*; *Haverbush, supra*; *Robert Taylor, supra*.

<sup>35</sup> See *Roberts, supra* at 611-621 (Levin, J., concurring).

<sup>36</sup> See *Meagher v Wayne State University*, 222 Mich App 700, 707-708; 565 NW2d 401 (1997).

<sup>37</sup> *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994).

<sup>38</sup> *Latimer v William Mueller & Son, Inc*, 149 Mich App 620, 630; 386 NW2d 618 (1986).

<sup>39</sup> *Brisbois v Fibreboard Corp*, 429 Mich 540, 549; 418 NW2d 650 (1988).

<sup>40</sup> *Tobin v Providence Hospital*, 244 Mich App 626, 652; 624 NW2d 548 (2001).

<sup>41</sup> *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999).

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.”<sup>42</sup> As EPV suggests, and the dissent emphasizes, there is no liability for “mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.”<sup>43</sup> Although the trial court must determine initially whether the conduct underlying the claim was sufficiently extreme it could permit recovery, conflicting evidence on this issue must be submitted to the jury.<sup>44</sup>

EPV directly challenges whether Jackson’s proof of the first element of his prima facie case of intentional infliction of emotional distress was disputed and, therefore, properly submitted to the jury to resolve. Viewing, as we must, the evidence presented at trial in a light most favorable to Jackson,<sup>45</sup> the record reveals that he brought this counterclaim for several reasons. According to Jackson, Rial made false allegations regarding Jackson and his family; Rial selectively enforced EPV rules in a manner that resulted in Jackson and his family receiving more citations than other residents, while restricting their ability to use facilities at the mobile home park; Rial directed insults, angry comments, and threats at Jackson and his family; Rial also involved the police in minor and meritless disputes with Jackson and his family. Further, Jackson asserted, EPV failed to correct the drainage problem on Jackson’s lot, which may have been tangentially related to some minor complaints against him. Additionally, Jackson claimed that EPV knew that Rial caused problems at the mobile home park and took no action to curb her misconduct, and that Rial’s friends assisted her in perpetrating threatening or hostile behavior toward Jackson and his family.

This certainly is not the most extreme and outrageous conduct ever perpetrated. Case law provides examples of extraordinary harassment, such as serious threats of physical violence directed at disturbing the victim to an extreme degree, that epitomize more egregious intentional infliction of emotional distress claims.<sup>46</sup> At the same time, however, we are not prepared to say that Rial’s conduct was inconsequential. There is at least some evidence that Rial’s behavior involved more than “mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities”<sup>47</sup> and it is here that we part company with the dissent. As a whole, the evidence also suggests that Rial’s behavior may have virtually penned the Jackson family in their home, transforming it from the haven that the law typically envisions a home to be to a type of prison.<sup>48</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999), quoting *Doe v Mills*, 212 Mich App 73, 92; 536 NW2d 824 (1995).

<sup>45</sup> See *Locke*, *supra*.

<sup>46</sup> See, generally, *Haverbush*, *supra* at 234-235.

<sup>47</sup> *Graham*, *supra* at 674.

<sup>48</sup> See, generally, *Vanden Bogert v May*, 334 Mich 606, 611; 55 NW2d 115 (1952), quoting LRA 1916D, p 281 *et seq.*

*Warren*, the case EPV cited in the circuit court appeal, does appear analogous to this case at first blush because it also involved an rancorous relationship between a home owner and an owner/manager in a mobile home park.<sup>49</sup> However, in *Warren*, this Court determined that a directed verdict was appropriate because the evidence of the third element of a prima facie case of intentional infliction of emotional distress, causation,<sup>50</sup> was lacking.<sup>51</sup> Apparently, on cross-examination, the plaintiff in *Warren* revealed that she had a number of physical conditions that could have also created the symptoms she claimed as the damages sustained from the defendant's harassment.<sup>52</sup> Having decided the case on that ground, the Court's brief statement without analysis questioning whether "an unfriendly attitude and namecalling constitute extremely outrageous conduct"<sup>53</sup> was obiter dictum.<sup>54</sup> Moreover, even if that statement had some precedential effect, the evidence here reveals that Rial actively harassed the Jackson family, which was at least arguably more than an "unfriendly attitude and namecalling."

Michigan's relatively inconsistent precedent concerning intentional infliction of emotional distress does little to resolve this issue. This Court has found evidence of outrageous conduct sufficient to submit to a jury solely in the form of verbal or written communications.<sup>55</sup> In contrast, exploitation of a vulnerable individual has been insufficiently outrageous to submit to a jury.<sup>56</sup> Even when looking at relatively similar manners of harassment, such as racial epithets, this Court has found both sufficient<sup>57</sup> and insufficient<sup>58</sup> evidence to submit to a jury. Though EPV argues that chaos will result if we allow the test to determine what constitutes intentional infliction of emotional distress to be subjective, this precedent demonstrates that the only viable approach to determining the merits of a claim for this tort depends largely on the specific facts underlying the claim.

No one incident in this case was necessarily so outrageous that, standing alone, it could have created an issue for the jury to resolve. However, when we apply the proper legal standard to the evidence, which inherently favors Jackson,<sup>59</sup> we conclude that there was a dispute at trial concerning this first element of the prima facie case. With the Supreme Court's restrictive order eliminating other issues from our review, we have no basis to conclude that the district court erred in denying the motion for a directed verdict on the counterclaim for intentional infliction of

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<sup>49</sup> See *Warren*, *supra* at 387-389.

<sup>50</sup> *Graham*, *supra* at 674.

<sup>51</sup> *Warren*, *supra* at 392.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See *People v Higuera*, 244 Mich App 429, 438; 625 NW2d 444 (2001).

<sup>55</sup> See *Doe*, *supra* at 93; *Margrita*, *supra* at 190.

<sup>56</sup> See *Teadt*, *supra* at 582-583.

<sup>57</sup> See *Ledsinger*, *supra* at 17-21.

<sup>58</sup> See *Graham*, *supra* at 675.

<sup>59</sup> See *Locke*, *supra*.

emotional distress. It was the jury's duty to determine whether the conduct in this case was sufficiently outrageous.

#### IV. JNOV

EPV apparently recognizes that addressing a motion for JNOV essentially entails using the same substantive analysis as a motion for directed verdict.<sup>60</sup> Consequently, EPV simply relies on its argument with respect to the district court's decision to deny the motion for directed verdict in arguing that the district court also erred in denying the motion for JNOV. Not surprisingly, the same evidence that persuaded us that the district court did not err in denying the motion for a directed verdict also persuades us that there is no merit to this same argument advanced under a separate heading. Further, the fact that we must largely defer to the trial court's discretion to grant or deny a motion for JNOV makes it harder for us to conclude that the same substantive ruling, viewed in the context of this type of motion, was error requiring reversal.<sup>61</sup>

This is not to say that we would have ruled as the district court did on evidentiary matters in this case, nor that we would have reached the same conclusion had we been allowed to consider all the issues EPV attempted to raise on appeal. However, only the Supreme Court can address the merits of all of EPV's arguments, especially with respect to the fundamental question whether the tort of intentional infliction of emotional distress exists, or should exist, in this jurisdiction.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ William C. Whitbeck

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<sup>60</sup> See *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000).

<sup>61</sup> See MCR 2.610(B)(1) ("If a verdict was returned, the court *may* allow the judgment to stand or *may* reopen the judgment and either order a new trial or direct the entry of judgment as requested in the motion.") (emphasis added); *Anton v State Farm Mutual Auto Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999) ("Without a clear abuse of discretion, the trial court's decision to deny JNOV . . . will not be disturbed on appeal."); see also *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993) ("The term 'shall' ordinarily designates a mandatory provision, and the term 'may' designates a permissive provision.").