

STATE OF MICHIGAN
COURT OF APPEALS

NATHAN MELSON, a Minor, by PAMELA
MELSON, Next Friend and Individually, and
BRIAN MELSON, Next Friend and Individually,

UNPUBLISHED
June 19, 2014

Plaintiffs-Appellants,

v

No. 315014
Van Buren Circuit Court
LC No. 12-620436-CZ

MARY BOTAS,

Defendant-Appellee,

and

LAWTON COMMUNITY SCHOOLS and
JOSEPH TRIMBOLI,

Defendants.

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

In this tort action involving claims of intentional infliction of emotional distress (IIED), plaintiffs appeal as of right the order granting summary disposition to defendants pursuant to MCR 2.116(C)(8), specifically challenging the grant of summary disposition to defendant Mary Botas. Because the trial court erred in concluding that plaintiffs' allegations of IIED failed to state a claim on which relief could be granted, we reverse the trial court's grant of summary disposition to Botas and remand for further proceedings.

On appeal, plaintiffs argue that the trial court erred in granting summary disposition on their claim of IIED related to allegations that Botas intentionally inflicted emotional distress on plaintiff Nathan Melson. In particular, plaintiffs assert that reasonable minds could differ as to the extreme and outrageous nature of the alleged conduct, and that the trial court thus erred in taking the issue from the jury. We agree.

Our review of a trial court's decision on a motion for summary disposition is de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the pleadings alone, *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013), and is properly granted where "the claim is so clearly

unenforceable as a matter of law that no factual development could possibly justify recovery,” *Johnson v Pastoriza*, 491 Mich 417, 435; 818 NW2d 279 (2012). A motion under MCR 2.116(C)(8) may not be supported by documentary evidence. MCR 2.116(G)(5). Further, when reviewing a motion under MCR 2.116(C)(8), all well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmoving party. *Johnson*, 491 Mich at 435.

To state a claim of IIED, a plaintiff must allege: (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). At issue in the present case is whether Botas’ remarks and conduct, as alleged in the complaint, were sufficiently extreme and outrageous so as to state a claim of IIED. Whether the alleged conduct may reasonably be regarded as extreme and outrageous generally presents a question of law for the court. *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004). However, if reasonable minds may differ regarding whether the conduct was extreme and outrageous, the issue constitutes a question for the jury. *Lewis v LeGrow*, 258 Mich App 175, 197; 670 NW2d 675 (2003).

“The test to determine whether a person's conduct was extreme and outrageous is whether recitation of the facts of the case to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’” *Id.* at 196 (citations and quotations omitted). This test is a demanding one, and indeed, the necessary threshold for establishing that conduct is extreme and outrageous has been described as “formidable.” *Atkinson v Farley*, 171 Mich App 784, 789; 431 NW2d 95 (1988).

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. [*Id.*, quoting Restatement Torts, 2d, § 46, comment d.]

Liability will not result from “mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” *Mino v Clio Sch Dist*, 255 Mich App 60, 80; 661 NW2d 586 (2003) (citation omitted). Rather, the law recognizes that there must be “freedom to express an unflattering opinion” and to allow individuals to “blow off relatively harmless steam.” *Atkinson*, 171 Mich App at 789, quoting Restatement Torts, 2d, § 46, comment d. Indeed, people are expected to endure “a certain amount of rough language” and “occasional acts that are definitely inconsiderate and unkind.” *Id.*, quoting Restatement Torts, 2d, § 46, comment d.

However, whether the offending behavior rises to the level of extreme and outrageous conduct must also be assessed within the context in which the remarks or conduct occurred. *Margita v Diamond Mtg Corp*, 159 Mich App 181, 189-190; 406 NW2d 268 (1987). This includes consideration of the position of the actor and his or her relationship to the distressed party. *Id.* at 189. For example, extreme or outrageous conduct might “occur through an abuse of a relationship which puts the defendant in a position of actual or apparent authority over a

plaintiff or gives a defendant power to affect a plaintiff's interest.” *Id.* School authorities, landlords, collecting creditors, and police officials are among those whose position may work to render conduct or remarks extreme and outrageous. See Restatement of Torts, 2d, § 46, comment e.

In the present case, plaintiffs’ complaint alleged that Nathan Melson was a student at Lawton Community Schools, and in particular a student in a home economics class taught by Botas. According to plaintiffs’ complaint, Botas became enraged when Melson stopped working on an art project, and she asked why he had ceased activity on the project. When Melson informed Botas that he had stopped due to pain in his fingers, Botas allegedly yelled “why don’t you just go kill yourself.” She purportedly then ripped the art project from Melson’s hands and, at some point, threatened to lock Melson in a room.

In many contexts, Botas’ remarks and conduct would correctly be characterized as involving mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. However, in this case, given Botas’ position as Melson’s teacher and the classroom setting in which the offending conduct is alleged to have occurred, reasonable minds could conclude that her remarks were extreme and outrageous. That is, accepting as true plaintiffs’ well-pleaded allegations and construing them in a light most favorable to plaintiffs, their complaint indicates that an adult educator, in a position of authority, made demeaning, humiliating, and potentially threatening remarks to a minor child in her care, in the presence of other children, and that she did so in a classroom setting where it could reasonably be concluded that children should not be expected to endure such treatment from a teacher. In these circumstances, an average member of the community, cognizant of Botas’ position of authority over Melson, could reasonably experience resentment against Botas and exclaim “Outrageous!” upon learning of her conduct. Because reasonable minds could differ regarding whether Botas’ comments and behavior rose to the level of the extreme and outrageous, the issue could not be decided as a matter of law by the trial court, and plaintiffs alleged a claim sufficient to survive a motion under MCR 2.116(C)(8).¹

On appeal, Botas presents this Court with an alternative argument for the affirmance of the trial court’s grant of summary disposition. In particular, she maintains that plaintiffs’ allegations relate solely to her failure to properly discipline Melson, an issue which she maintains falls within the scope of the Individuals with Disabilities Education Act (IDEA), 20 US 1400 *et seq.*, because Melson has a learning disability. Noting that IDEA requires exhaustion of administrative remedies, Botas argues that plaintiffs were required to exhaust administrative remedies before initiating the present suit. We disagree.

¹ We note that in granting the motion for summary disposition under MCR 2.116(C)(8), the trial court discussed materials outside the pleadings, including information related to Botas’ record as a teacher and the disciplinary action pursued by the school district. To the extent, if at all, these materials informed the trial court’s decision, consideration of this evidence was in error as a motion pursuant to MCR 2.116(C)(8) is based on the pleadings alone. See *Bailey*, 494 Mich at 603.

As noted, our review of a trial court’s decision on a motion for summary disposition is de novo. *Johnson*, 492 Mich at 173. Relevant to Botas’ arguments, pursuant to MCR 2.116(C)(4), summary disposition is proper when a court lacks subject-matter jurisdiction, including instances in which a court lacks subject-matter jurisdiction because a plaintiff has failed to exhaust required administrative remedies. *Papas v Mich Gaming Control Bd*, 257 Mich App 647, 656; 669 NW2d 326 (2003). A party may support a motion under MCR 2.116(C)(4) with affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(5).

To the extent resolution of Botas’ argument requires statutory interpretation, our review is de novo. *In re Receivership of 11910 South Francis Rd (Price v Komalski)*, 492 Mich 208, 218; 821 NW2d 503 (2012). The primary goal of statutory interpretation is to ascertain and give effect to the legislative intent as expressed in the language of the statute. *Id.* at 222. To accomplish this goal, we read the statute as a whole, giving each word its plain and ordinary meaning unless a term has been otherwise defined. *Id.* Clear and unambiguous language must be enforced as written. *In re Moukalled Estate*, 269 Mich App 708, 715; 714 NW2d 400 (2006). In construing federal law, state courts must follow the decisions of the United States Supreme Court, but the decisions of lower federal courts are merely persuasive. *Abela v Gen Motors Corp*, 469 Mich 603, 606; 677 NW2d 325 (2004).

At issue in this case is IDEA, a federal statutory scheme providing funding to states for special education programs provided that states implement policies and procedures assuring “[a] free appropriate public education . . . to all children with disabilities residing in the State between the ages of 3 and 21.” 20 USC 1412(a)(1)(A). Michigan has implemented legislation to comply with IDEA. See MCL 380.1701 *et seq.*; *Miller ex rel Miller v Lord*, 262 Mich App 640, 645; 686 NW2d 800 (2004). Pursuant to 20 USC 1415(*l*), an individual filing suit under IDEA, or other federal laws protecting the rights of children with disabilities, must first exhaust administrative remedies available under IDEA. Specifically, the relevant provision provides:

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter. [20 USC 1415(*l*).]

This provision has been construed as requiring a plaintiff to exhaust his or her administrative remedies “before bringing suit in federal court to obtain relief that is also available under the IDEA.” *Covington v Knox Co Sch Sys*, 205 F3d 912, 915 (CA 6, 2000). This requirement has been held to apply even when the plaintiffs do not rely exclusively on IDEA for the source of their claims, as when, for example, they bring a § 1983 suit based on violations of IDEA, and even in cases where a federal claim falls within the purview of IDEA but it has not been labeled as involving IDEA. *Id.* at 915-916. In other words, exhaustion has been required “before plaintiffs may file an action under any other *federal* law seeking relief that is also available under” IDEA. See *Waterman v Marquette-Alger Intermediate Sch Dist*, 739 F Supp 361, 365 (WD Mich, 1990) (emphasis added).

However, contrary to Botas' arguments, nothing in 20 USC 1415(l) can be construed as restricting plaintiffs' ability to seek *state* tort remedies or to require exhaustion of administrative remedies before pursuing action on a state law claim. Fairly read, as recognized in *Covington*, 20 USC 1415(l) provides for exhaustion of administrative remedies before pursuing relief under IDEA, or before pursuing relief under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws that protect the rights of children with disabilities. It makes no reference to the exhaustion of administrative remedies before pursuing a state tort claim such as IIED.

Further, in the cases on which Botas now relies, the claims discussed in the context of the administrative exhaustion required by IDEA were premised on federal law. See, e.g., *Covington*, 205 F3d at 915 (considering exhaustion related to allegations of substantive due process violations); *Franklin v Frid*, 7 F Supp 2d 920, 924 (WD Mich, 1998) (holding exhaustion of administrative remedies was required in relation to § 1983 claim implicating IDEA); *Hayes v Unified Sch Dist No 377*, 877 F2d 809, 813 (CA 10, 1989) (finding exhaustion required in relation to federal due process claim); *Waterman*, 739 F Supp at 365 (requiring exhaustion of administrative remedies for actions under the Rehabilitation Act and § 1983 which could have been brought under IDEA's predecessor). Botas fails to draw our attention to any authority holding that dismissal of a state tort claim is similarly appropriate merely because it presents facts which might arguably give rise to a claim under IDEA.² Because Botas fails to present us which such authority and we do not read 20 USC 1415(l) as requiring exhaustion of administrative remedies before a plaintiff may pursue state tort remedies, we concluded Botas' argument is without merit and she is not entitled to summary disposition on this basis.

We reverse the trial court's grant of summary disposition to defendant Botas and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Joel P. Hoekstra

/s/ William C. Whitbeck

² Indeed, while not expressly addressing the issue, federal cases relied on by Botas may be read to suggest that state tort claims have not been subjected to the same administrative exhaustion requirement. For example, in *Waterman*, 739 F Supp at 364, the plaintiffs asserted several claims under federal law and Michigan tort law. Finding administrative exhaustion was required before the plaintiffs could pursue the federal claims, the court remanded for administrative proceedings related to the federal claims, but it held the state law claims in abeyance pending the outcome of the administrative proceedings. *Id.* In doing so, the court differentiated between federal and state claims in a manner suggesting that administrative exhaustion pursuant to IDEA is not required for state tort claims. See also *Franklin*, 7 F Supp 2d at 927 (finding federal claims required exhaustion of administrative remedies and thereafter declining to exercise supplemental jurisdiction over state tort claims).