IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
MOTION SECTION

KEVIN COX, as Administrator of the Estate of ELIZABETH COX Plaintiff, Vs. WILMETTE PARK DISTRICT, a body politic, and STEVE WILSON, an individual, Defendants.	Motion Calendar B No. 2024 L 004783 Michael B. Barrett, Circuit Judge

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MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendants Wilmette Park District and Steve Wilson's combined motion to dismiss. For the following reasons, the motion is **GRANTED**.

I. BACKGROUND

This is a survival claim for negligent infliction of emotional distress and intentional infliction of emotional distress arising from a number of incidents allegedly beginning in 2019 and ending in 2023. Decedent Elizabeth Cox ("Elizabeth") was a longtime employee of Defendant Wilmette Park District ("Wilmette"). She served in the role of superintendent of HR. She claims that while in this role, she suffered emotional distress at the hands of Defendant Steve Wilson ("Wilson"), the Executive Director of the Wilmette Park District. Specifically, she alleges that Wilson had a relationship with an employee and gave her special treatment, resulting in a number of

complaints made to Elizabeth. She alleges she brought these complaints to Wilson and was ignored.

Elizabeth was diagnosed with breast cancer on August 3, 2022. She claims that while she was on FMLA leave, Wilson threatened to replace her as superintendent of HR. In December 2022, Elizabeth waived a training requirement for a colleague at Wilmette, notating that the employee had completed the training when the employee had not. Wilmette's Board investigated the incident, and she was told she would be fired if she did not resign. After she left work, she claims that Wilson did not give her unused sick time that she had accrued even where it was common practice to give the sick time.

Elizabeth passed away from her cancer at the end of 2023. Her husband, Plaintiff Kevin Cox ("plaintiff"), brought suit against Wilmette and Wilson (collectively, "defendants") for negligent infliction of emotional distress and intentional infliction of emotional distress against Elizabeth while she was an employee.

On October 31, 2024, this Court granted defendants' motion to dismiss and gave plaintiff leave to amend his complaint. Plaintiff has filed his amended complaint. Defendants now move for dismissal, arguing that plaintiff's claims are insufficiently plead, that they do not survive Elizabeth's death, that defendants have statutory immunity, and that Wilson cannot be sued as an individual in this instance.

II. ANALYSIS

a. Motion to Dismiss Standard

A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on facially apparent defects. 735 ILCS 5/2-615; *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Section 2-615 motions do not raise affirmative factual defenses. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 382 (2004). In reviewing the sufficiency of a complaint, courts accept all well-pleaded facts, and all reasonable inferences drawn from those facts, as true. *Marshall*, 222 Ill. 2d at 429. The Court also construes the allegations in the light most favorable to the plaintiff. *Id.* Thus, the Court should not dismiss a cause of action unless it is "clearly apparent" that no set of proven facts would entitle recovery. *Id.* Section 2-615 allows a party to object to a pleading or portion of a pleading as "substantially insufficient in law[.]" *See* 735 ILCS 5/2-615.

Illinois is a fact-pleading jurisdiction where plaintiffs must allege sufficient facts to bring a claim within a legally recognized cause of action. *Marshall*, 222 Ill. 2d at 429-30. Plaintiffs need not prove their case, but allege sufficient facts to state all the elements of their causes of action. *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). Mere conclusions are insufficient. *Marshall*, 222 Ill. 2d at 430.

A section 2-619 motion to dismiss admits the legal sufficiency of a complaint, but raises defects, defenses, or some other affirmative matter appearing on the face or by external

submissions, which defeat the plaintiff's claim. 735 ILCS 5/2-619; *Doe v. Univ. of Chi. Med. Ctr.*, 2015 IL App (1st) 133735, ¶ 35. The purpose of a section 2-619 motion to dismiss is to dispose of easily proven factual issues. *Kedzie & 103rd Currency Exch. v. Hodge*, 156 Ill. 2d 112, 115 (1993). When considering a section 2-619 motion, a court must construe all pleadings and supporting matter in the light most favorable to the non-movant. *Doe*, ¶ 35. Dismissal is appropriate only if no set of provable facts support a cause of action. *Id.*

b. Negligent Infliction of Emotional Distress

Plaintiff pleads negligent infliction of emotional distress against Wilmette and Wilson, alleging that the cumulative effect of Wilmette and Wilson's behavior created great emotional stress for Elizabeth.

To state a cause of action for negligent infliction of emotional distress, a plaintiff must allege facts which establish they (a) suffered a direct impact that also caused emotion distress or (b) was a bystander in a zone of danger that caused them to fear for their own safety, and the emotional distress caused physical injury or illness as a result. *Corgan v. Muehling*, 143 Ill.2d 296, 312 (1991); *Rickey v. Chicago Transit Authority*, 98 Ill.2d 546, 555 (1983). The Supreme Court of Illinois has held that where plaintiffs allege that they were the direct victims of the defendants' negligent infliction of emotional distress, they must satisfy the impact rule. *Schweihs v. Chase Home Fin., LLC*, 2016 IL 120041, ¶ 40. Under the "impact rule," a plaintiff alleging negligent infliction of emotional distress can only recover emotional damages where the distress is directly and casually related to a physical injury. *Id.*

Here, plaintiff's negligent infliction of emotional distress claim is barred by the impact rule. Plaintiff does not claim that Elizabeth suffered a physical injury through the actions of defendants. Instead, he argues that Illinois ought to recognize the importance of mental health and allow NIED claims to move forward where plaintiffs plead physical injury in the form of mental illness and its subsequent effects. In support, plaintiff cites a number of cases in other states where courts have recognized physical symptoms created by mental injury. *See, e.g., Poce v. O & G Indus., Inc.*, 210 Conn. App. 82, 86 (2022).

While Illinois may eventually move in a different direction, the fact of the matter is that Illinois requires a physical impact for a negligent infliction of emotional distress claim. Plaintiff has, for the second time, failed to plead one. Accordingly, the negligent infliction of emotional distress claim against both defendants is **dismissed with prejudice.**

Defendants argue a number of other insufficiencies of the claim, including that plaintiff has failed to plead the existence of a duty to Elizabeth, that the claim is barred by statutory immunity, and that the action does not survive Elizabeth's death. The Court does not make any findings in relation to these arguments except for the survival argument examined below. The Court finds that separate from any impact, this action does not survive Elizabeth's death and the claim could be dismissed on this basis alone.

c. Intentional Infliction of Emotional Distress

Plaintiff also brings an intentional infliction of emotional distress claim against defendants, arguing that their behavior was extreme and outrageous and caused great emotional distress in Elizabeth. To state a claim for intentional infliction of emotional distress, a plaintiff must plead facts to establish: (1) that the defendant's conduct was extreme and outrageous; (2) that the defendant knew that there was a high probability that his conduct would cause severe emotional distress; and (3) that the conduct in fact caused severe emotional distress. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 20 (1992). Mere insults, indignities, threats, annoyances, petty oppressions, or trivialities do not constitute extreme and outrageous conduct. *Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 83. Rather, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community. *Kolegas*, 154 Ill. 2d at 21.

Defendants attack the claim on a number of grounds, arguing that plaintiff has failed to sufficiently plead extreme or outrageous behavior, that defendants have immunity for their actions, and that the claim does not survive Elizabeth's death.

The Court finds the argument related to the survival of the claim following Elizabeth's death dispositive. In Illinois, the Survival Statute allows for the survival of "actions to recover damages, including punitive damages when applicable, for an injury to the person (except slander and libel)." 755 ILCS 5/27-6 (West Supp. 2023). Plaintiff argues that the language "for an injury to the person" is not limited to physical injuries but also includes psychiatric injuries resulting from a claim of intentional infliction of emotional distress. He points to the statutory exception for slander and libel as evidence, reasoning that the language would not be necessary if "injury to the person" only included physical injuries.

The Court is not aware of precedential authority exactly on point, but it is nonetheless persuaded by the reasoning in two unpublished opinions that examined this question. In *Law Offices of Brendan R. Appel v. Georgia's Rest. & Pancake House, Inc.*, 2023 IL App (1st) 220588-U, ¶ 38, the court held that plaintiff's defamation and false light claim did not survive death because courts consistently have interpreted "injury to the person" to mean physical injury. *See, e.g., Mattyasovszky v. West Town Bus Co.*, 21 Ill. App. 3d 46, 54 (1974), *aff'd*, 61 Ill. 2d 31 (1975) ("The words 'damages for injury to the person' [in the Survival Act] clearly and unequivocally mean damages of a physical character."); *Denslow v. Hutchinson*, 152 Ill. App. 502, 504 (1910) ("We are of the opinion that the words: 'actions for damages for an injury to the person' in the statute extend to and include only actions for damages to the person of a physical character."). The court in *Brock v. Univ. of Chi. Med. Ctr.*, 2024 IL App (1st) 230625-U made the same ruling, finding that false imprisonment claims do not survive death because they do not require physical injury. *Id.* at ¶ 31. Federal courts examining Illinois law have made the same conclusion. *See, e.g., Strandell v. Jackson County, Illinois*, 648 F. Supp. 126, 135 (1986) (finding that the plaintiff's claims for false arrest, false imprisonment, invasion of privacy, intentional infliction of emotional distress and negligent infliction of emotional distress did not survive under the Survival Act because they are

not physical torts); *Jarvis v. Stone*, 517 F. Supp. 1173, 1176 (1981) ("Illinois courts have expressly held in a variety of factual contexts that non-physical personal torts do not survive under the Act").

Here, the Survival Act is limited to physical injuries. Plaintiff has not pleaded physical injuries. Accordingly, the intentional infliction of emotional distress claim is **dismissed with prejudice**. The Court makes no findings with respect to the immunity and failure to sufficiently plead a claim arguments.

III. CONCLUSION

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For the foregoing reasons, defendants' motion to dismiss is **GRANTED**. Plaintiff's claims are **dismissed with prejudice**.

The court date of April 29, 2025 is stricken. 4331

Dated: April 4, 2025

Michael B. Barrett, Circuit Judge

Judge Michael B. Barrett
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