IN THE COURT OF APPEALS OF IOWA

No. 6-703 / 06-0433
Filed October 11, 2006

MICKEY WHITE and REGINA ANGELL,
Plaintiffs-Appellants,

vs.

CITY OF CRESTON, IOWA, CRESTON WATERWORKS and CRESTON WATER DEPARTMENT,
Defendants-Appellees.

Appeal from the Iowa District Court for Union County, Darrell Goodhue, Judge.

Plaintiffs appeal the grant to summary judgment dismissing their claim for intentional interference with a business relationship and emotional distress. **AFFIRMED.**

Martin L. Fisher of Fisher, Fisher & Fisher, P.C., Adair, for appellant.

William L. Dawe and Apryl M. DeLange of Hopkins and Huebner, P.C., Des Moines, and Arnold O. Kenyon III of Kenyon & Nielsen, P.C., Creston, for appellee.

Considered by Sackett, C.J., and Vaithswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SACKETT, C.J.

The City of Creston sought to locate a new water tower in close proximity to land rented to senior citizens for manufactured home placement. Plaintiffs-appellants, Mickey White and Regina Angell, the owners of the land, sued defendants-appellees, the City of Creston, Iowa (City), Creston Waterworks, and the Creston Water Department, seeking an injunction prohibiting the placement of the water tower in the planned location and seeking damages for nuisance, emotional distress, and interference with a prospective business advantage. The district court granted a temporary injunction and the water tower was located in another location. The court subsequently granted defendants' motion for summary judgment dismissing plaintiffs' action. The plaintiffs contend the district court erred in (1) finding the location of the water town was a discretionary function of the city, (2) in dismissing their claims for interfering with a business relationship and emotional distress. We affirm.

We review a motion for summary judgment for correction of errors at law. *Pinkerton v. Jeld-Wen, Inc.*, 588 N.W.2d 679, 680 (Iowa 1998). The moving party must show the absence of any genuine issue of material fact and is entitled to judgment on the merits as a matter of law. Iowa R. Civ. P. 1.981(3) (2005).

Discretionary Function. The plaintiffs contend the City's actions are not within the discretionary function exception to Iowa Code section 670.4(3) (2005). Essentially they argue that while the actions taken by the City are part of the political process, the City did not appropriately consider necessary factors of the process. The City asserts the decision of where to place the water tower was a

judgment-based determination and the type of decision the discretionary function was designed to shield.

The district court found that in choosing the site for the water tower, the City's decision falls squarely within the discretionary function exception. First, the court found that choosing a location for the water tower involved an element of discretion. Second, the court stated that "[i]f the site selection for a municipal water tower doesn't involve a policy-driven analysis, it is difficult to imagine what would."

Generally, a municipality is liable for its torts; however, an exception applies for certain discretionary functions. *See* Iowa Code §§ 670.2, 670.4(3). The exception applies for

> [a]ny claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise of performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.

Iowa Code § 670.4(3). To determine whether immunity applies the court follows a two part test: First, we determine whether there was an element of discretion in the decision, and second, whether this is the type of discretionary function the immunity was designed to shield from liability. *Berkovitz v. United States*, 486 U.S. 531, 536, 108 S. Ct. 1954, 1958-59, 100 L. Ed. 2d 531, 536 (1988); *Goodman v. City of LeClaire*, 587 N.W.2d 232, 237-38 (Iowa 1998).

Placement of the water tower clearly involved choice and was "grounded in social, economic, and political policy." *Graber v. City of Ankeny*, 656 N.W.2d 157, 160 (Iowa 2003). The City's decision was based on weighing "competing

ideals to promote concerns of paramount importance over the less essential, opposing values." *Id*. at 165. The City's process for locating its new water tower is within the discretionary function exception to municipal liability. We affirm on this issue.

INTERFERENCE WITH PROSPECTIVE BUSINES ADVANTGE AND EMOTIONAL DISTRESS. Plaintiffs contend they were damaged by the prospect of having the water tower next to their land, which they characterize as a retirement community.

The district court in granting summary judgment found causation does not exist because "plaintiff's damages, if any, are beyond the defendant's scope of responsibility based on the defendant's action of selecting a site that was never used."

Interference with a prospective business advantage is an intentional tort and requires the predominant purpose of the actors conduct be to injure or destroy the plaintiff. *Willey v. Riley*, 541 N.W.2d 521, 526-27 (Iowa 1995). The plaintiffs claim the City acted outrageously by violating Iowa Code section 542B.2, its zoning ordinances, its public meeting funding motions, and the City's assurances to a United States Senator. The plaintiffs provide no competent evidence to support this claim; rather, they rely on extraneous reports and written "assurances" to a United States Senator. These references do not provide substantial evidence of intentional interference.

Furthermore, the tort of extreme emotional distress requires 1) outrageous conduct by the defendant; 2) the defendant intentionally causing, or reckless disregard of the probability of causing emotional distress; 3) the plaintiff suffering

severe or extreme emotional distress; and 4) actual proximate causation of emotional distress by the defendant's conduct. *Northrup v. Farmland Industries, Inc.*, 372 N.W.2d 193, 197 (Iowa 1985). Outrageous conduct is that which is "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*. at 198 (quoting Restatement (Second) of Torts § 46, cmt. d, at 73 (1965)). As the district court correctly found, to support a claim of infliction of emotional distress there must be evidence of outrageous conduct. There is no evidence of outrageous conduct.

AFFIRMED.