

UNOFFICIAL COPY

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT,
SUBURBAN LAW DIVISION,
SECOND DISTRICT

JOSEPH A. LUNINI, JR., Plaintiff,

v.

PATRICIA A. WITT, Defendant.



Doc#: 1618119111 Fee: \$74.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/29/2016 12:36 PM Pg: 1 of 19

Case No. 13 L 62018

CERTIFIED MEMORANDUM OPINION AND ORDER OF JUDGMENT

Dated MARCH 3, 2016
FOR RECORDING IN
COOK COUNTY, ILLINOIS

PROPERTY LOCATED AT:

2537 1/2 Prairie, Unit 2S, Evanston, IL 60201
PIN#: 10-12-104-020-1015

UNIT NUMBER 2537-1/2 #2S IN THE PRAIRIE MANOR CONDOMINIUMS, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND:

LOTS 6 AND 7 IN BLOCK 19 IN NORTH EVANSTON IN THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED MAY 5, 2006 AS DOCUMENT 0612532016; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY ILLINOIS.

Prepared by/After Recording- Return to:

Joseph A. Lunini, Jr.
1919 Lincoln Street
Evanston, IL 60201

UNOFFICIAL COPY

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, SUBURBAN LAW DIVISION, SECOND DISTRICT

Joseph A. Lunini, Jr.,)	
)	
Plaintiff,)	
)	
v.)	13 L 62018
)	
Patricia A. Witt,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Pursuant to an Order entered on November 18, 2015 (the "11-18-15 Order"), this case was set for trial on the afternoons of February 16, 17, 18 and 19, 2016. The parties were provided with a copy of the 11-18-15 Order. Defendant Patricia A. Witt ("Pat") moved to vacate the 11-18-15 Order, which was denied in an Order entered on January 29, 2016 (the "1-29-16 Order"). The 1-29-16 Order made clear that the previously set dates of February 16-19, 2016 for the trial would stand. A copy of the 1-29-16 Order was provided to the parties. No subsequent motions were made by either party relating to the trial dates. Except however, see the section below titled "Pat's Untimely and Inappropriate Attempt to Postpone Trial".

Plaintiff Joseph A. Lunini, Jr. ("Joe") appeared on February 16, 2016, to commence the trial. Pat did not appear, nor did Pat communicate with the Court or Joe on or prior to February 16, 2016 that she would not be attending the trial. Joe was well prepared for trial on February 16, 2016, and on February 16, 2016 in addition to his own opening statement and testimony he called three witnesses to testify. The trial continued on February 17, 2016, with Joe providing additional testimony and the testimony of another witness. On February 18, 2016, the trial continued with further testimony from Joe and his closing argument. After Joe rested his case on February 18, 2016, the Court took the matter under advisement and informed Joe that the Court would issue its rulings as promptly as practicable.

The Second Amended Complaint

Joe has filed a verified two Count Second Amended Complaint (the "Complaint"). Count I of the Complaint seeks a judgment against Pat for up to \$50,000 for "intentional infliction of severe emotional distress." Count II of the Complaint seeks a judgment against Pat for up to \$200,000 for "intrusion upon seclusion".

Joe also seeks a judgment for his court costs, reasonable attorney fees, plus costs of the lawsuit. The Court has previously informed Joe that even if he prevails in this action, he would not be entitled to an award for reasonable attorney fees because the American Rule would be applicable whereby each

UNOFFICIAL COPY

side is responsible for their own attorney fees unless there was an Illinois statute that provided otherwise or the parties had entered into a contract that provided otherwise. Neither of those exceptions to the American Rule is applicable here.

Explanation of the Alleged Torts and the Burden of Proof

The tort of "intentional infliction of emotional distress" is based on the *Restatement (Second) of Torts* §46. The requirements are:

- (1) The conduct involved must be truly extreme and outrageous;
- (2) The actor must either intend that his or her conduct inflict severe emotional distress, or know that there is at least a high probability that his or her conduct will cause severe emotional distress; and
- (3) The conduct must in fact cause severe emotional distress.

The law intervenes only where the distress inflicted is so severe that no reasonable person could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining its severity.

Also relevant for serious consideration in some cases, such as this one, is the defendant's awareness that the plaintiff is peculiarly susceptible to emotional distress by reason of some physical or mental condition or peculiarity. Therefore, behavior, which (though rude, abrasive or extremely inconsiderate) may not otherwise be actionable, may be deemed outrageous if the defendant knows that the plaintiff is peculiarly susceptible to emotional distress.

See generally the *Restatement (Second) of Torts* §46; and *McGrath v. Fahey*, 126 Ill. 2d 78 (1988) and the cases cited therein; and *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1 (1992).

The tort of "intrusion upon seclusion" is recognized in Illinois and originates from a right of privacy, and is found in the *Restatement (Second) of Torts* § 652B (1977), which provides:

One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another of his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.

Typically, a plaintiff must prove actual injury in the form of, for example, medical care, an inability to sleep or work, or a loss of reputation and integrity in the community in order to recover damages for the tort of intrusion upon seclusion.

Compensatory damages are damages sufficient in monetary amount awarded to a plaintiff to indemnify the injured person as compensation for the loss or injury suffered.

With regard to intrusion upon seclusion, see *Lawlar v. North American Corporation of Illinois*, 2012 IL 112530, and *Schmidt, et al. v. Ameritech Illinois, et al.*, 329 Ill. App. 3d 1020 (2002).

UNOFFICIAL COPY

Joe has the burden of proving his case by a preponderance of the evidence. That means that all the facts are more probably true than not. Thus Joe must prove each of the elements of the torts that he has alleged he has suffered and that they were caused by Pat, as well as the amount of damages he should be awarded. That was the purpose of the trial.

As will be more fully explained below, the Court finds that the preponderance of the evidence presented at the trial has proven that Pat caused Joe to suffer damages for her intentional infliction of severe emotional distress on Joe, and for her intrusion upon Joe's seclusion.

Explanation of Stiff Person Syndrome

Joe was diagnosed with Stiff Person Syndrome ("SPS") in September 2011. SPS is an extremely rare disease of the nervous system. Progressively severe muscle stiffness or rigidity or increased tone and painful spasms typically develop in the lumbar spine and legs (but can also affect the face, neck, abdomen or arms), often beginning very subtly during a period of emotional distress. This causes poor balance and painful dystonic posturing. Most patients experience painful episodic muscle spasms that are triggered by sudden stimuli. SPS is severely disabling. SPS requires treatment under the care of a neurologist. SPS can substantially affect life expectancy and impair physical and mental capabilities.

Certain medications are essential to managing the stiffness and spasms of SPS. If these medications are withdrawn from SPS patients, the muscle rigidity can be over-whelming and fatal respiratory compromise may occur. Benzodiazepines are the treatment of choice for rapid control of SPS. Joe requires high doses of muscle relaxants and analgesics to treat his symptoms.

There is no known cure for SPS. SPS is a chronic condition for which only symptomatic treatment is available. SPS is a serious potentially life-threatening disease.

As will be more fully discussed below, Pat knew that Joe had SPS, and that persons with SPS were peculiarly susceptible to emotional distress. Joe has sworn in the Complaint and testified at the trial that the numerous incidents involving Pat described in the Complaint caused extreme and severe emotional and physical suffering to Joe, exasperating Joe's SPS, causing attacks and requiring increased medication. The trial witnesses corroborated all of the allegations made in the Complaint.

The Trial Witnesses

In addition to himself, Joe presented the following witnesses who clearly testified under oath at the trial, each for approximately one hour:

1. Charles Semmelhack ("Chuck"). Chuck has been an attorney since 1985, and is in private practice with the firm of Howard & Howard in Chicago, Illinois. Chuck owns and lives at 1919 Lincoln in Evanston, Illinois, which is half of a two-flat building (the "Residence"). Joe, Joe's daughter Bonnie, Bonnie's husband and their minor daughter, also live at the Residence.
2. Diana Semmelhack, Psy D, ABPP ("Diana"). Diana is the sister of Chuck, and has been a Professor of Clinical Psychology at Midwestern University in Downers Grove, Illinois,

UNOFFICIAL COPY

since July 2004. As can be seen from Diana's resume, an Exhibit admitted into evidence at the trial, Diana has multiple licenses and certifications, has had extensive teaching experience, clinical experience, authored numerous publications, lectures, posters, workshops and presentations, and co-authored numerous publications. Diana is a confidant and friend of Joe.

3. Bonnie Sayers-Lunini ("Bonnie"). Bonnie is Joe's daughter and lives at the Residence with her husband, minor daughter, Joe and Chuck.
4. Aikaterini Markopoulou, M.D. (the "Doctor"). The Doctor has been a Staff Neurologist, Department of Neurology, NorthShore University Health System, Evanston, Illinois, since 2011. The Doctor has been since 2013 a Clinical Assistant Professor, Department of Neurology, Pritzker School of Medicine, University of Chicago, Chicago, Illinois, and since 2014, Director, Neurodegenerative Disorders Program, Department of Neurology, NorthShore University Health System, Evanston, Illinois. As can be seen from the Doctor's Biographical Sketch, an Exhibit admitted into evidence at the trial, the Doctor has several graduate degrees, has received numerous honors, has held many positions, has multiple certifications and licenses, has had 34 publications, seven book chapters, 40 presentations/abstracts, and was program director or principal investigator for 15 research projects. The Doctor is and was qualified as an expert on SPS, and has treated multiple patients with SPS, including Joe.

What was proven at the trial

Through his own testimony, the testimony of Chuck, Diana, Bonnie, and the Doctor, and the Exhibits admitted into evidence, Joe proved to the satisfaction of the Court generally all of the material allegations in the Complaint, and specifically the following allegations:

- Joe has SPS, what SPS is, how it is treated, and what can cause its severe muscle spasms, including but not limited to fear, anxiety, emotional stress, extreme sensitivity and agitation.
- Joe informed Pat of his SPS condition in September 2011, when he was diagnosed with SPS, what brings on SPS attacks, the painful and extreme sensitivity of the effects of SPS attacks, and the treatment for SPS.
- Joe requested that Pat not tell anyone of his diagnosis, because he found it embarrassing to have been stricken with SPS and the effects associated with it. Pat promised to keep Joe's diagnosis private. As will be shown, Pat did not keep her promise, which were incidents of her intrusions into Joe's privacy and seclusion.
- Commencing in September 2011 Pat started to invade Joe's privacy and seclusion with unsolicited and unwanted extreme and outrageous interferences with his SPS treatment and treated Joe as if he was one of her nursing patients. Pat left at the Residence documents about SPS and information about another

UNOFFICIAL COPY

- disorder that Pat believed Joe had. Pat attempted to force her opinions on Joe, including that he should stop taking the medicines that had been prescribed for him. Joe never asked Pat to get involved in his treatment.
- Joe told Pat in October 2011 that he was confident in his diagnosis and treatment, and because her constant badgering would and did greatly aggravate his condition, Joe asked Pat to stop her interfering with his condition and treatment. Despite the request to stop, Pat continued to try to talk Joe out of taking the medicines prescribed during numerous phone conversations. Joe had to repeat several times in October and November 2011 his requests to have Pat stop interfering and badgering because it was causing Joe's SPS to exacerbate.
 - In December 2011 and January 2012, although less frequent, Pat's badgering of Joe about his treatment continued.
 - Joe was hospitalized in January 2012 for a medical treatment that has helped some SPS patients. It was not successful with Joe. Pat was informed of the unsuccessful attempt and the side effects suffered as a result of the treatment, which resulted in an additional hospitalization. Pat then again attempted to have Joe allow her to handle his medical treatment.
 - In February 2012, Pat left a letter at the Residence for Joe acknowledging that Joe did not want Pat to treat him or his treatment plan, but she attached a list of doctors she felt would better treat Joe.
 - Also during February and March 2012 on an almost daily basis Pat attempted to invade Joe's right to privacy by entering the Residence and repeatedly ringing the doorbell in an attempt to confront Joe, and by leaving six messages on Joe's phone and making numerous attempts to get Joe on the phone.
 - Joe made further attempts in February and March 2012 to have Pat leave him alone because she was causing his SPS attacks to become more frequent and emotionally upsetting. Pat ignored Joe's demands to be left alone.
 - In February and /or March 2012, Pat violated her confidentiality agreement by informing two postal workers at the Evanston Post Office about Joe having SPS. Pat also informed her friend Sharon Ericksol ("Sharon") in March 2012 that Joe had SPS.
 - In March 2012, Pat left cupcakes at the Residence and left 38 messages on Joe's telephone message system.
 - In late March 2012, Joe had some phone conversations with Pat wherein he pleaded with her to stop calling and informed her that he did not want any contact with her. Pat was defiant, belligerent and hysterical in these calls, and at times appeared to be drunk.
 - In March 2012, Joe filed a complaint against Pat with the Evanston Police Department ("EPD") for phone harassment.
 - In April 2012, Pat left 78 messages on Joe's phone answering system, including messages left at 12:46 AM and 12:59 AM on April 4, 2012. In the latter call, Pat

UNOFFICIAL COPY

threatened to kidnap Joe so she could take care of him. The late night calls caused Joe to suffer a SPS attack.

- Pat left 12 phone messages on April 4, 2012, nine on April 5, 2012, and nine on April 15, 2012, and Pat made numerous calls to Joe's phone which Joe did not answer and Pat did not leave a message. The messages and calls seemed endless to Joe, and caused Joe to suffer emotionally and physically all day.
- On April 26, 2012, Pat had her friend Sharon phone Joe in an attempt to get Joe to have a romantic interlude with Pat, and Pat left four other messages that day as well as making other unanswered calls. Joe had no interest whatsoever in having any romantic relationship with Pat.
- From the end of March 2012 to the end of April 2012, Pat left for Joe over 100 items at the Residence for Joe by entering the foyer of the Residence uninvited, such items included printouts, church bulletins, sexually explicit photos, pornographic material (stating that she uses it for therapy), books, cards, medical printouts, including medicines Pat wanted Joe to use, medical powder, three Easter baskets, printouts of emails, certified letters Joe had refused, an email printout to another person wherein Pat stated that she had fallen head over heels for Joe, and identified Joe as "the man with the degenerative neuromuscular disorder" sometimes there were several deliveries of such items during a day, and the doorbell was usually rung with each delivery.
- Joe continually tried to get Pat to stop contacting him. In mid-April 2012 Joe hung a 14 inch by 18 inch sign in the foyer of the Residence reading "PAT PLEASE LEAVE ME ALONE! STOP LEAVING THINGS HERE! STAY AWAY! I AM WELL TAKEN CARE OF BY MY FAMILY! LEAVE ME ALONE!" Joe placed below the sign a large gift bag in which Joe placed everything that Pat had left in the foyer of the Residence. These over 100 items included, among other things, letters, love interest letters, cards, small gifts, sexually explicit pictures, and keys to Pat's condominium. On April 30, 2012 Joe told Sharon to pick up the bag, to return its contents to Pat, and to tell Pat to never again leave anything at the Residence or he would report it to the police.
- Before Easter 2012, Pat left approximately 100 plastic eggs in the front yard of the Residence.
- Each of the foregoing instances, and those mentioned below, are examples of Pat's outrageous behavior, invasions of Joe's privacy, and caused extreme emotional and physical suffering to Joe, exasperating Joe's SPS.
- In May 2012, Joe filed a police report for phone harassment. EPD told Pat to cease all contact with Joe. Pat ignored the EPD demand to cease calling Joe, and left nine phone messages and made numerous unanswered phone calls to Joe in May 2012, and had two of her friends call Joe to attempt to have him call Pat.
- Joe attempted in May 2012 through the EPD, Sharon and Pat's son to have them intervene to attempt to get Pat to leave Joe alone. Sharon told Joe that Pat told

UNOFFICIAL COPY

Sharon that she was in love with Joe. All of these efforts were unsuccessful. Pat's son told Joe that he did not want anything to do with Pat and wanted to keep her away from his children.

- In mid May 2012, Joe allowed his answering machine to fill up so Pat could not leave any more messages. Pat continued to call Joe's phone.
- Pat acknowledged in emails to Diana in May 2012 that she knew Joe did not want any contact with her.
- On May 25, 2012, Pat phoned Joe at 1:31 AM requesting that he spend the night with her in a neighbor's condominium.
- In June 2012, Joe sought a no stalking/no contact order against Pat, which was granted (the "NSNC Order"). The NSNC Order required Pat not to contact Joe in any way and to stay away from the Residence, the block that it is on, and the alley behind it..
- Subsequently in June 2012 Joe filed a police report as Pat left items in the foyer of Joe's Residence in violation of the NSNC Order
- On June 30, 2012, Pat phoned Joe and reported that her dog left a dead rabbit on the front yard of the Residence. Joe reported the incident to the EPD. EPD ordered Pat arrested for the violation of the NSNC Order. Pat was arrested on July 3, 2012.
- Even after Joe obtained the NSNC Order, Pat was relentless in her pursuit of Joe, causing in June 2012 Joe's SPS to become worse and attacks more frequent requiring Joe to increase his dosages of medicines to help subside the SPS attacks.
- On June 22, 2012, Pat stapled to a tree at the Residence an invitation seeking Joe as a dance partner.
- On July 6, 2012, the State of Illinois filed charges against Pat for violating the NSNC Order, for criminal phone harassment and criminal stalking of Joe. Joe believes that there were more than 300 phone calls made to Joe by Pat from February 2012 to June 30, 2012.
- In July 2012, Pat filed a response in the NSNC case stating that Joe was mentally ill and suffered a breakdown in April 2012, that his family was doing bad things to him, and making false statements about the relationship between Joe and Pat. The response was mailed to Joe using a false return address. This caused Joe to suffer extreme emotional anguish and further exasperated Joe's SPS systems, causing Joe to increase his SPS medicines.
- Joe filed several police reports in August and September 2012 against Pat. The August 10, 2012 report related to Pat sending Joe a letter with the return address of "The Office of the Inspector General". August 11, 2012 reports were for (1) what appeared to be Pat's attempt to run over Joe with her car, and (2) Pat sending Joe a letter with the return address of the FBI. The September 17, 2012 police report was to report that Pat walked in front of the Residence. Each

UNOFFICIAL COPY

of these incidents were thought to be violations of the NSNC Order; and each incident caused Joe extreme emotional distress and physical anguish by Pat's continued efforts to invade Joe's right to privacy. The run in involving Pat's car caused Joe to have a severe SPS attack requiring medical attention at Evanston Hospital.

- On August 11, 2012, Pat was arrested within 300 feet of the Residence.
- A police report was filed on January 9, 2013, because Pat drove slowly past the Residence and was looking in the window of the Residence.
- Pat was found guilty of criminal phone harassment on May 22, 2013.
- On May 22, 2013, Pat plead guilty to criminal stalking of Joe.

Specific Testimony Of Witnesses

Chuck's Testimony:

Chuck testified, among other things, that:

- He has known Joe since 1997 and considers him to be like a brother;
- He knows Joe has SPS;
- He knows how SPS has emotionally affected Joe, including how an attack can be like an epileptic fit, lasting up to an hour causing rigidity, stiffness, pain, usually requiring additional medication and sometimes hospitalization;
- He knows Pat who has been at the Residence;
- In late March 2012 he overheard telephone conversations between Joe and Pat wherein Joe told Pat to stop calling him. Nevertheless, he was aware of Pat's continued calling in April and May, day and night, multiple times in a day. These situations were stressful to Joe, causing agitation, anger, despair, pouting, negative demeanor, crying, all affecting Joe's emotional state and SPS;
- He remembers Joe contacting the EPD on multiple occasions because of what Pat continued to do to Joe;
- Pat was combative;
- Pat left for Joe stacks of newspapers, documents, notes, flowers, Easter baskets, hundreds of plastic eggs, photographs, and pornographic videos by the front door or in the vestibule of the Residence numerous times;
- He is aware of the sign Joe placed in May 2012 in the vestibule of the Residence stating to Pat to stop leaving things, and a bag including the stuff that Pat had dropped off for her to take back. Nevertheless, Pat continued to leave items and to phone, all affecting Joe's frame of mind;
- He was worried about his safety and the safety of others who lived in the Residence, including Joe, because Pat acted similar to the female in the movie Fatal Attraction;
- He is aware of the evening Pat arrived uninvited and unannounced at the Residence at dinner time wearing a tiara and would not leave;

UNOFFICIAL COPY

- He is aware of Joe contacting Pat's son and Pat's friend Sharon in an effort to have them intercede to get Pat to stop bothering Joe;
- He is aware that Joe obtained an emergency and a permanent NSNC Order against Pat, that Pat was arrested three times in violation of that order, and once because of a dead rabbit she left in the yard of the Residence;
- He is aware that Pat apparently tried to run over Joe with her automobile, causing Joe's SPS to increase so much that he had to go to the hospital emergency room and caused a police report to be made;
- He is aware of a note Pat tacked onto a tree in the front yard of the Residence asking Joe to be her dance partner which disturbed Joe emotionally a great deal and led to Joe filing a police report;
- Each incident caused by Pat reactivated Joe's SPS and Joe became affected more and more after each time;
- He is aware of emails between Pat and his sister Diana wherein Diana sought to have Pat leave Joe alone;
- He is aware of Pat's leaving of a skinned rabbit in the foyer of the Residence;
- He is aware that the fish in an outside pond at the Residence were poisoned of which Pat is suspect;
- He is aware that Joe is an avid gardener but spends less time doing so due to fear of Pat coming by and doing something to him;
- His security concerns has led to the installation of security cameras at the Residence, and he and all of the occupants of the Residence locking their bedroom doors at night, and locking outside doors at all times that used to be kept unlocked;
- He is aware of Pat using fictitious return addresses on correspondence to Joe, such as the FBI;
- He identified the stack of over 100 documents left for Joe at the Residence by Pat, all of which were admitted into evidence at the trial as a Group Exhibit; and
- He generally corroborated all of the material allegations made in the Complaint.

Diana's Testimony:

Diana testified, among other things, that:

- She has known Joe for 20 years; and is a confidant and friend to Joe;
- She deals with severe mental illness in patients in her professional practice;
- She knows Pat, and has met her at family occasions;
- At a holiday party in 2012, Pat expressed disagreement to her with the protocol for the treatment Joe was getting;
- She is aware of Joe's requesting Pat to stop calling him as early as March 2012 because Pat called often and Joe became more and more upset with Pat's calling and stalking him;

UNOFFICIAL COPY

- In connection with an email exchange in 2012 between Pat and Diana, Pat was told by Diana to leave her and her family alone and to cease communicating with them;
- Diana talked to Joe numerous times on any given day and Joe would inform her of the numerous calls from Pat, the boxes of food and letters left by Pat, the dead rabbit left at Residence by Pat and Pat's admission thereof. Joe became overwhelmed by the messages, had traumatic experiences resulting therefrom, and was afraid that the situation was like the Fatal Attraction movie;
- In her professional opinion, Joe's mental state as a result of Pat's actions on a scale of 1-10 was at least 7;
- She feared that Pat would poison the animals in the Residence and was generally concerned about what Pat might do to the persons who live there. In her opinion, Pat was definitely stalking Joe, and could be a dangerous person;
- She identified the emails exchanged between Diana and Pat which are exhibits, especially those of May 20, 2012;
- She is aware that Joe had called the EPD on multiple occasions and had made complaints to them about Pat's actions to Joe;
- As a result of Pat's actions, Joe became extremely stressed out, emotionally challenged, angry, had personality changes, and became concerned with the safety of himself and those who lived at the Residence, all of which increased Joe's level of SPS and led to epileptic episodes;
- In view of her profession, Diana opined that she was aware that stress affects persons with SPS;
- The concern for safety lead to installation of security cameras at the Residence and house doors being locked;
- She identified over 100 documents that had been delivered to the Residence in March and April 2012 by Pat, all of which were aggressive, unrequested and unwanted, as well as 175 pages of transcriptions of phone messages left by Pat on Joe's phone. The messages were very intrusive and emotionally disturbing, sometimes there were eight to nine messages a day;
- She is aware of the sign left in the foyer of the Residences requesting Pat to stop leaving material for Joe and the bag that was left containing the unwanted material;
- She is aware that Pat wanted to be the nurse for Joe and that in Pat's opinion no one could fix Joe except Pat. In Diana's opinion Joe had an excellent medical team, and did take high doses of muscle relaxers and pain killers;
- She confirmed that Pat had left hundreds of plastic eggs in the front yard of the Residence and three Easter baskets, and had heard about Pat leaving pornographic images at the Residence;
- In Diana's opinion, Pat wanted to injure Joe;
- Pat did not stop coming around to the Residence after Joe had requested Pat to stay away; Pat was arrested three times for violating the NSNC Order;
- Pat was never sexually involved with Diana, Joe or with her brother Chuck;

UNOFFICIAL COPY

- Pat was very intrusive into Joe's life;
- Joe talked to Diana often about what Pat was doing to Joe via the phone calls and delivery of materials. Joe was desperate for help. Diana tried to calm down Joe in these instances; and
- Diana generally corroborated all of the material allegations made in the Complaint.

Bonnie's Testimony:

Bonnie testified, among other things, that:

- Joe's diagnosis with SPS caused great emotional strain because of the possibility of it being terminal;
- In September 2011, after Joe was diagnosed with SPS, Joe and Pat were then friendly and Joe told Pat not to tell anyone that Joe had SPS;
- Pat started calling Joe non-stop;
- Joe said to Pat multiple times to stop contacting Joe, and that his family was taking good care of him;
- When Pat's calls first started Joe would answer, later he stopped answering or answered and hung up immediately. Pat's phone messages were daily and multiple times in any given day until Joe's voicemail capacity became full;
- Joe had contacted the EPD multiple times and the police problem solving team tried to contact Pat to calm the situation and have her stop; however, the frequency of calls only increased as did Pat leaving things at the Residence;
- Joe contacted Pat's son to try to get his assistance to have Pat stop contacting Joe, but his attempts were unsuccessful;
- Pat sounded drunk on many phone messages that she heard;
- Joe felt tortured and stressed out from the unwanted affection and harassment from Pat;
- When Joe had SPS attacks because of Pat's actions, he would be in extreme constant pain, had to be held down with pillows surrounding him so that he would not hurt himself as he violently moved around;
- Pat would ring the doorbell at the Residence and run away, multiple time in a day;
- Pat came unannounced one evening to the Residence wearing a tiara and with provocative and lewd pictures of herself and others;
- Pat would walk her dogs in front of the Residence while dressed inappropriately in a sports bra and short shorts;
- She saw Pat looking into the windows of the Residence;
- She saw the sign placed in the foyer of the Residence addressed to Pat to stop leaving things and a bag containing items that should be taken back;
- From 70 to 100 plastic eggs were left by Pat in the yard of the Residence, along with three Easter baskets, none of which were asked for;

UNOFFICIAL COPY

- In August 2012 she heard the screeching of car tires just before Joe came inside the Residence to announce that Pat had just tried to run over him;
- Joe never abused Bonnie, and Bonnie never abused Joe;
- The NSNC Order entered against Pat was ineffective as Pat continually violated it;
- Everyone who lived at the Residence become fearful of Pat which caused great family strain;
- Pat left a dead rabbit at the Residence and she saw it; and
- She generally corroborated all of the material allegations made in the Complaint.

The Doctor's Testimony:

The Doctor testified, among other things, as to what SPS was, about her treatment of Joe for SPS since 2011, her expertise with SPS which expanded her medical practice from Greece to the East Coast to the West Coast and now to Chicago; and that she examines Joe three to four times each year. The Doctor acknowledged that Joe has complained to her about Pat stalking him, the numerous actions that Pat has taken against Joe that are recited in the Complaint, and the SPS attacks Joe has suffered as a result of Pat's numerous actions against Joe. The Doctor confirmed that Pat's stalking of Joe could set off increased problems for Joe, as over 100 calls from Pat to Joe could exacerbate Joe's condition and cause excessive stress, that seven calls from Pat to Joe in one day could set off negative systems in Joe, that leaving a dead rabbit at the Residence could set off SPS attacks for Joe, as could phone calls in the middle of the night from Pat, and Joe having constant fear of Pat's invasion of Joe's space.

Pat's actions have caused from moderate to severe systems in Joe.

In the Doctor's medical opinion it would be extremely harmful to Joe if he stopped taking the medications she has prescribed for him as Pat had suggested.

The Doctor's medical treatment of Joe was supported by 64 pages of her medical records which were introduced as an Group Exhibit at the trial.

Joe's Testimony:

Joe testified at great length, among other things, that:

- He believes that Pat acted out of malice and wanted to cause as much trouble as possible for Joe;
- Pat's above described actions were stressful to him. It was stressful to have to go to court to get the NSNC Order and to bring complaints of violations of the NSNC Order;
- He was an avid gardener, but because he did not want to see Pat who walked around the neighborhood, she took away his freedom to garden outside; and
- Each of the allegations in the Complaint are true and correct, and he explained clearly and in depth each of those allegations, and also explained all of the Exhibits that were admitted into evidence. Attached to this Order is a list of all of those Exhibits.

UNOFFICIAL COPY

Pat's Untimely and Inappropriate Attempt to Postpone the Trial

On the last day of the trial Thursday, February 18, 2016, Joe advised the Court that he had received in the mail a handwritten letter from Pat dated and postmarked Tuesday, February 16, 2016, the first day of the trial. The return address on the envelope was 2537 ½ Prairie Avenue, Evanston, IL 60201, which is Pat's condominium address. The introductory portion of the letter stated that it was being sent to Joe and to the Court. However, the Court had not then received a copy of the letter, and Joe was so informed. The letter was difficult, if not impossible, to read in view of Pat's handwriting not being clearly legible. In view of the poor quality of Pat's handwriting, she had been previously directed by this Court to submit only typewritten documents. It appears that Pat's letter was saying that she was ill and unable to attend the trial. It is not clear if Pat was attempting to postpone the trial. Although the letter was received in the office of the Clerk of this Court on Thursday, February 18, 2016, it was not delivered to this Court until Monday, February 22, 2016. The trial was concluded on Thursday, February 18, 2016. Pat never contacted the Court by telephone or fax or in any other manner to advise of her illness or unavailability. The proper procedure to request a continuation of a trial is to file a written motion therefor explaining the reason for the requested postponement, and to serve the motion on the other party. Pat's untimely and inappropriate letter was ineffective because by the time Joe received it, two days and the bulk of the trial had already been held, and Joe only had a small amount of testimony to add on the last day of the trial, and by the time the Court received its copy of the letter any such postponement request was moot because the trial had concluded.

Pat's letter dated February 16, 2016, and the envelope in which it was received, are being placed in the Court's file for this case. As noted above, the envelope shows that it was received by this Court on February 22, 2016, postmarked on February 16, 2016 and received in the Office of the Clerk of this Court on February 18, 2016.

Punitive Damages

During the trial Joe inquired as to whether he could be awarded punitive damages if he was successful. Punitive damages are not recoverable for intentional infliction of emotional distress. An award of compensatory damages is deemed to be sufficiently punitive. See *Knierim v. Izzo*, 22 Ill. 2d 73 (1961).

Punitive damages may be awarded for intrusion upon seclusion. However, after considering the penal nature of punitive damages, the character of Pat's actions, her senior status age, the special circumstances here that make it unlikely that she would repeat her actions against Joe to another person, the nature and extent of the harm to Joe that Pat caused or intended to cause, the lack of any evidence that Pat acted to others as she had to Joe, and Pat's likely lack of a substantial financial net worth, this Court finds that Pat's actions do not evince the high degree of moral culpability warranting punitive damages. Thus, punitive damages are found not to be appropriate in this case.

In order for punitive damages to be awarded in any case, the plaintiff must plead and prove willful and wanton conduct on the part of the defendant.

UNOFFICIAL COPY

All of the foregoing regarding punitive damages is surplusage in nature or dictum because Joe did not specifically plead for punitive damages in the Complaint. However, the discussion may be useful to put the issue to rest if it had been specifically pleaded initially, or if the Court would have allowed a last minute amendment of the prayers for relief to request it.

See generally, *Slovinski v. Elliot*, 237 Ill. 2d 51 (2010); and *Cybart v. Michael Reese Hospital and Medical Center*, 50 Ill. App. 3d 411 (1977).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds that:

1. Through the testimony of the witnesses at the trial and the Exhibits introduced into evidence at the trial, Joe has proven the allegations made in the Complaint.
2. Pat's conduct to Joe was truly extreme and outrageous.
3. Pat intended that her conduct inflict severe emotional distress on Joe, or at least Pat knew that there was at least a high probability that her conduct would cause Joe severe emotional distress, and she recklessly or consciously disregarded that probability.
4. As a direct and proximate result of Pat's conduct, Joe suffered severe or extreme emotional and physical distress.
5. The distress inflicted by Pat on Joe was so severe that no reasonable person could be expected to endure it.
6. Pat was aware of Joe having SPS, and that as a result, he was peculiarly susceptible to emotional distress.
7. Joe did require medical and hospital services as a proximate result of Pat's conduct, and Joe incurred expenses therefor.
8. Pat is liable to Joe for her intentional infliction of emotional distress on Joe.
9. Pat has intentionally intruded upon the solitude or seclusion of Joe's private affairs and concerns.
10. Pat's intentional intrusion on Joe's seclusion would be highly offensive to any reasonable person.
11. Pat's intrusion on Joe's right of seclusion was unauthorized and offensive, and was the proximate cause of anguish and mental and emotional suffering by Joe.
12. Pat is liable to Joe for her intrusion on Joe's seclusion.
13. Pat's actions were particularly offensive because she was a nurse, she was knowledgeable about medical issues, she knew about SPS, she knew how vulnerable SPS patients, like Joe, were to emotional distress, and she continued endlessly causing intentional infliction of severe emotional distress on Joe and continued intrusion upon Joe's privacy or seclusion despite numerous requests and demands from Joe, the EPD, the Court, and several other persons to stop her harassing of Joe, and to leave Joe and his family alone.
14. Pat's actions were so intentional, deliberate, willful and wanton, and caused such repeated infliction of severe emotional and physical distress and suffering to Joe, that

UNOFFICIAL COPY

the Court could have easily justified damages in an amount in excess of the up to \$50,000.00 requested by Joe in the Complaint for intentional infliction of emotional distress. Therefore, the Court finds that Joe's request for up to \$50,000.00 in damages for Pat's intentional infliction of severe emotional distress on Joe is extremely fair and reasonable.

15. The Court finds that an award of damages of \$100,000.00 for Pat's intrusion on Joe's seclusion is fair and reasonable under the circumstances.

ORDER

In view of the foregoing, IT IS ORDERED THAT:

1. The Court's above comments, rulings and findings are incorporated by reference herein.
2. Damages are awarded to Joe, payable by Pat, in the amount of \$50,000.00 for Pat's intentional infliction of emotional distress on Joe.
3. Damages are awarded to Joe, payable by Pat, in the amount of \$100,000.00 for Pat's intrusion on Joe's seclusion.
4. Pat is ordered to pay Joe's court costs for this case, including the filing fees paid to the Clerk of this Court and the service fees paid to the Sheriff of Cook County for this case (the "Court Costs").
5. Judgment is entered in favor of Joe and against Pat in the amount of \$150,000.00 plus the amount of the Court Costs.

8001
8001
4293

8001

4399-

9208

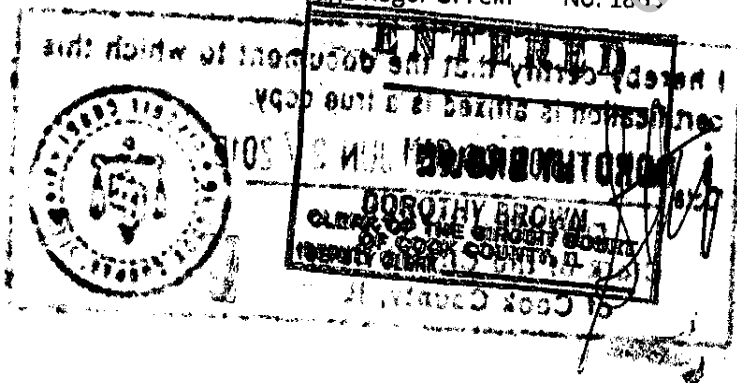
The Court is causing a copy of this Order to be mailed to Joe at the Residence address and to Pat at her condominium address and the two Post Office box addresses (has) she has provided to the Court.

The Court finds that there is no just reason to delay the enforcement or appeal of this Order.

March 3, 2016

ENTER: *Roger Fein*

Judge Roger G. Fein No. 1863



UNOFFICIAL COPY

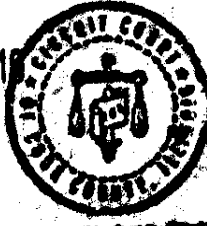
Property of Cook County Clerk's Office

I hereby certify that the document to which this certification is affixed is a true copy.

DOROTHY BROWN JUN 27 2018

Date _____

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL



UNOFFICIAL COPY

**LIST OF EXHIBITS ADMITTED INTO EVIDENCE DURING THE TRIAL OF LUNINI V. WITT,
FEBRUARY 16-18, 2016-CASE NO. 13 L 62018**

Abbreviations used herein are the same as those used in the Memorandum Opinion and Order to which this List is attached.

Group Exhibit A, consisting of Exhibits numbered 1 through 20, being receipts of reports, Incident Reports or Arrest Reports involving the Evanston Police Department and Pat and/or Joe from 2010 through August 26, 2015.

Group Exhibit B, being Exhibits numbered 21-132, which are over 100 miscellaneous writings, documents and other items left for Joe's at the Residence by Pat, some of which are romantic and/or sexual in nature, medically related, suggest alternative medical treatment, suggest stopping the prescribed medical treatment and drugs, and some contain admissions of leaving things at the Residence, including a dead and skinned rabbit.

Group Exhibit C, being Exhibits numbered 152-177, containing hundreds of pages of documents including, among other things, AT&T phone voicemail records; No Stalking No Contact Order against Pat, Case No. 12 OP 20255 (the "NSNC Order"); conviction of Pat for harassment by telephone, No. 12200207501; Plenary Order of Protection against Pat, May 2013, transcript of proceedings before the Court on August 14, 2012 re 12OP20255, 12MC20027501 and 12MC200572201, and May 8, 2013 re 12DV2041801, 12MC25722 and 12MC22075; emails, communications, an acknowledgment by Pat of some of the complained of activities; partial transcript of Pat's deposition on August 6, 2015.

Group Exhibit D, being 64 pages of medical records of services rendered to Joe by Dr. Aiketerini Makopouvlou, MD, from November 7, 2011 to November 10, 2014.

Group Exhibit E, being 45 pages of a copy of Joe's cell phone showing message left by Pat.

Group Exhibit F, being 4 disks of over four hours of telephone messages left by Pat for Joe from October 2011 to June 30, 2012.

Group Exhibit G, being 176 pages of transcriptions of the 4 disks that are Group Exhibit F.

Group Exhibit H, being 23 pages of AT&T phone records of calls to or from Pat from March 18 to June 17, 2012.

Exhibit 3b, being a 2-page Explanation of Stiff Person Syndrome ("SPS") from John Hopkins Hospital.

Exhibit 4b, being a 2-page Explanation of SPS from Medscape.

Exhibit 5b, being a 1-page list of Joe's cell phone calls to Pat from March 18, 2012 to April 4, 2012.

UNOFFICIAL COPY

Exhibit 101, being a 2-page series of May 20 and 21, 2012 emails exchanged between Diana and Pat, including Diana's direction to Pat to "stay away from me and my family".

Exhibit 103, being a 1-page pornographic cartoon picture left at the foyer of the Residence for Joe by Pat.

Exhibit 104, being a 1-page pornographic picture left at the foyer of the Residence for Joe by Pat.

Exhibit 140, being a 1-page letter dated August 15, 2014 from Laurie D. Roston, L.C.S.W, stating that there is no evidence of mental illness regarding Pat.

Exhibit 190, being a 14-page Resume of Diana J. Semmelhack, Psy D., ABPP, Professor Clinical Psychology, Midwestern University, Downers Grove, IL.

Exhibit 191, being a 10-page Biographical Sketch of Aikaterina (Katherina) Markopoulou, Staff Neurologist, Department of Neurology, NorthShore University Health System.