COURT OF APPEALS
DECISION
DATED AND FILED

June 13, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1938 **Cir. Ct. No. 00-CV-65**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

RICHARD TREVORROW, CHERYL TREVORROW, AND CJT (MINOR),

PLAINTIFFS-APPELLANTS,

V.

VILLAGE OF NECEDAH, FRANK J. MOOTZ, AND WAUSAU INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Juneau County: JOHN W. BRADY, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Richard Trevorrow, Cheryl Trevorrow and their minor son appeal a judgment dismissing their complaint against the Village of

Necedah and Frank J. Mootz. The issue is whether the circuit court properly granted summary judgment. We conclude it did, and therefore we affirm.

¶2 Summary judgment methodology is well-established, and need not be repeated here. *See, e.g.*, ***Grams v. Boss***, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980). On review, we apply the same standard the circuit court is to apply. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315-16, 401 N.W.2d 816 (1987). The Trevorrows' complaint alleged several legal claims based on a single set of facts, and sought ten million dollars in damages. We will address each of the claims in order.

¶3 The factual allegations, in brief, were that defendant Mootz, acting as the Village's chief of police, removed the Trevorrows' fifth-grade son from school on a certain day in 1999, took him into custody, and brought him to the police station. The complaint further alleged that Mootz wrongfully accused, threatened and intimidated him, then released him to his grandparents, to whom Mootz also released confidential information and made false allegations about him.

¶4 The Trevorrows' first claim is for false imprisonment. This is an intentional tort claim. ***Strong v. City of Milwaukee***, 38 Wis. 2d 564, 568, 157 N.W.2d 619 (1968). Intentional tort claims may not be brought against a village. WIS. STAT. § 893.80(4) (1999-2000).[1] Therefore, this allegation fails to state a claim as to the Village. As to Mootz, the complaint may state a claim. However, in his affidavit for summary judgment, Mootz averred that on the day in question,

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

he had been informed by a school official that the Trevorrows' son was "out of control," and was throwing chairs and being very loud and disorderly in school. He averred that he went to the school and eventually took the son into custody. The affidavit makes a *prima facie* defense that Mootz had authority for this action because the juvenile was committing the crime of disorderly conduct. *See* WIS. STAT. § 938.19(1)(d)3.

¶5 In opposition to the motion, the Trevorrows submitted the affidavit of Richard Trevorrow. Most of its averments do not appear to be based on personal knowledge and are not evidentiary facts that would be admissible in evidence, as required by WIS. STAT. § 802.08(3). The Trevorrows also submitted certain other papers that are not admissible. The few admissible averments in Trevorrow's affidavit do not create an issue of material fact as to whether Mootz had grounds to take their son into custody. Accordingly, this claim was properly dismissed.

¶6 The second claim is for abuse of process. For the purpose of this type of claim, "process" involves the power of the court, as explained in ***Wells v. Waukesha County Marine Bank***, 135 Wis. 2d 519, 536-38, 401 N.W.2d 18 (Ct. App. 1986). The Trevorrows' complaint does not allege that either defendant took any action involving process, and therefore it fails to state a claim.

¶7 The third claim is for intentional infliction of emotional distress. This is another intentional tort, and therefore the complaint fails to state a claim as to the Village. As to Mootz, one of the elements of this claim is that the defendant's conduct was extreme and outrageous. ***Gianoli v. Pfleiderer***, 209 Wis. 2d 509, 523, 563 N.W.2d 562 (Ct. App. 1997). As described by Mootz's affidavit, there was nothing about his conduct that a reasonable factfinder could

conclude was extreme or outrageous. The Trevorrows' submission does not raise any issue of material fact about his conduct, and therefore this claim was properly dismissed.

¶8 The fourth claim is for defamation. One element of a defamation action is that the defendant made a false and defamatory statement against another. ***Maguire v. Journal Sentinel, Inc.***, 2000 WI App 4, ¶15, 232 Wis. 2d 236, 605 N.W.2d 881. In an action for libel or slander, the particular words complained of shall be set forth in the complaint. WIS. STAT. § 802.03(6). The Trevorrows' complaint does not identify any particular false statement that Mootz made. Therefore, it fails to state a claim.

¶9 The fifth claim is for "denial of due process of law." This claim alleges that the Trevorrows' son was not provided with notice and an opportunity to be heard before being removed from school and that he was not given the opportunity for an attorney or his parents to be present while he was "interrogated." As to notice and an opportunity to be heard, we are not aware of any law that gives these rights to a juvenile removed from school for disorderly conduct, and the Trevorrows have not cited any. As to the presence of an attorney or parents during interrogation, Mootz averred that he did not interrogate the son, and the Trevorrows have not established a dispute of fact on this point. Therefore, we conclude that summary judgment on this claim was proper.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.