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IN THE SUPREME COURT OF FLORIDA

Case No. 81,234

RONDA C. WEINSTOCK, Ph.D.

Petitioner,

v.

SUZANNE GROTH,

Respondent.
_____/

PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL FIFTH DISTRICT OF FLORIDA

INITIAL BRIEF OF PETITIONER, RONDA C. WEINSTOCK, PH.D.

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STATEMENT OF THE FACTS AND OF THE CASE

Respondent commenced this action by the filing of a two count complaint in the Circuit Court, Eighteenth Judicial Circuit, in and for Seminole County, Florida in February of 1991. Count I of respondent's complaint attempted to assert a claim for professional negligence and Count II attempted to allege a cause of action for intentional infliction of mental and emotional distress. Both counts of respondent's complaint purported to arise out of an alleged breach of the standard of care by petitioner, a licensed clinical psychologist. (R 1.7). Respondent asserted in her complaint that she began seeking professional mental health care from Dr. Weinstock on or about 1985, (R 1) (Paragraph 3 of the complaint), and that this course of mental health care continued until May, 1986 (R 2) (Paragraph 7 of the complaint). It was further alleged that after May, 1986 that petitioner entered into a personal relationship with Mr. and Mrs. Groth. Thereafter, according to the complaint, Dr. Weinstock allegedly entered into a relationship with respondent's ex-husband. Approximately four years after therapy with Dr. Weinstock was terminated, Ms. Groth sued her ex-husband for divorce; nearly five years after she had terminated therapy with Dr. Weinstock, Ms. Groth filed this lawsuit.

Knowing Ms. Groth's complaint to be wholly devoid of any factual or legal merit, Dr. Weinstock moved to dismiss respondent's complaint, asserting, among other things, that the complaint failed to allege that Ms. Groth had complied with the

presuit screening requirements for a malpractice action against a health care provider as required by Chapter 766, Florida Statutes. It is undisputed, and it is not alleged in the complaint, that at any time during the nearly five-year interval after termination of therapy with Dr. Weinstock that respondent conducted any presuit investigation or otherwise complied with the Florida Statutes requiring notice of intent to initiate litigation for malpractice.

The trial court granted Dr. Weinstock's motion to dismiss and on December 12, 1991 entered a final judgment in her favor. Respondent appealed that judgment to the Florida Fifth District Court of Appeal, which reversed the trial court in its decision rendered November 6, 1992. The Fifth District Court of Appeal held that Dr. Weinstock was not a health care provider to whom the presuit screening requirements applied. Dr. Weinstock now petitions this court to reverse the decision of the Fifth District Court of Appeal and to affirm the final judgment entered by the trial court.

SUMMARY OF ARGUMENT

The trial court did not err in dismissing respondent's complaint with prejudice and the final judgment entered in favor of the petitioner should be affirmed. Both counts of respondent's complaint arise out of the psychotherapist/patient relationship which existed between Dr. Weinstock and Ms. Groth from some time in 1985 until May of 1986. However, respondent's complaint centers around allegations that after the termination of the psychotherapist/patient relationship Dr. Weinstock allegedly entered into an intensely personal relationship with respondent's ex-husband. Since such a claim for alienation of affections has been statutorily abolished, respondent is relegated to a cause of action for professional malpractice if she is to be able to state a cause of action at all.

In order to sue a mental health care provider for a breach of the applicable standard of care, however, a plaintiff must first comply with the statutory presuit screening requirements contained in Chapter 766, Florida Statutes. Further, a suit must be brought within the two year statute of limitations period for such actions. Respondent in this case did neither, such that the trial court correctly dismissed her case with prejudice.

Florida Statute §766.106 states that the presuit screening requirements apply to any claim for medical malpractice and defines "claim for medical malpractice" as a claim arising out of the rendering of, or the failure to render, medical care or services. As has been noted by the Second District Court of Appeal, it is not realistic to believe that the legislature

intended to limit the scope of the presuit screening requirements to physical, as opposed to mental, health care services. While psychologists may not be expressly included in the definition of "health care provider" contained in other portions of the Act, this is not dispositive of the question of whether the Act's presuit screening requirements apply to malpractice claims against psychologists. Furthermore, the statutory provision in Section 766.106(2) expressly states that all prospective defendants are to be notified prior to filing a claim for medical malpractice, and does not limit those health care providers to whom notice is owed to the specifically listed health care providers contained in unrelated definitional subsections of the act. The statute merely requires the statutory notice to also be sent to the Department of Professional Regulation for certain enumerated health care providers. This does not mean that psychologists are not "health care providers" for purposes of the Act.

Clearly, if one looks to the definition of the practice of psychology contained in Florida Statute §490.003, as well as the commonly accepted understanding of what psychologists do, it is evident that psychologists are "health care providers". Moreover, in order to establish the standard of care and the alleged breach of that standard, a claimant would be required to present expert testimony. This has been identified by the Second District Court of Appeal as the best test for determining whether the presuit screening requirements apply. In fact, if one looks at the definition of a "medical expert" contained in Florida

Statute §766.202(5), it is clear that any psychologist called to establish the applicable standard of care would also meet the definition of a "medical expert" as contained in that section. Accordingly, since expert testimony would be required to establish the applicable standard of care in this case, no action can be brought against this mental health care provider without first complying with the presuit screening requirements.

Finally, as would have been established by presuit screening, respondent's complaint simply failed to state a cause of action against the petitioner. Since as has been apparently alleged, the conduct complained of did not occur until after the termination of the psychotherapist/patient relationship in May, 1986, there would be no professional relationship existing at the time which potentially could have prohibited Dr. Weinstock from entering into the alleged relationship with respondent's ex-husband. On the other hand, if respondent wishes to assert that the psychotherapist/patient relationship was ongoing at the time the conduct complained of occurred, then surely respondent's claim was barred by the statute of limitations and judgment was correctly entered against her. In any event, either there was no cause of action because the conduct complained of occurred so long ago, or if appellant wishes to assert that the alleged conduct occurred more recently, no cause of action exists because there simply was no duty to respondent if there was no existing psychotherapist/patient relationship.

ARGUMENT

I. RESPONDENT'S COMPLAINT WAS PROPERLY DISMISSED WITH PREJUDICE SINCE THE PRESUIT SCREENING REQUIREMENTS APPLY TO THIS CLAIM AND RESPONDENT FAILED TO COMPLY WITHIN THE APPLICABLE TWO-YEAR STATUTE OF LIMITATIONS

Suzanne Groth, one of petitioner's former patients, filed this lawsuit nearly five years after termination of therapy with Dr. Weinstock, without making any effort to first comply with the statutory presuit screening requirements contained in Chapter 766, Florida Statutes. The allegations of Ms. Groth's complaint center around an allegedly improper relationship which respondent alleges occurred between Dr. Weinstock and Ms. Groth's ex-husband. Perhaps perceiving it to be unseemly to bring an action for alienation of affections after suing her ex-husband for divorce, or perhaps cognizant of the statutory abolition of such claims[1], respondent chose to couch this lawsuit in terms of a malpractice action instead. However, in order to bring an action for professional malpractice against a mental health care provider such as Dr. Weinstock, in which a breach of the applicable standard of care must be established, a prospective claimant must first comply with the presuit screening requirements contained in Florida's Medical Malpractice Act. Having wholly failed to comply with the statute, the trial court correctly dismissed respondent's complaint.

First of all, a party desiring to bring a claim for medical malpractice must initially pursue presuit investigation pursuant

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[1]Florida Statutes §771.01 (1991).

to Florida Statute §766.203 (1991). As a part of that presuit investigation, a claimant is required to have the claim reviewed by a "medical expert" to determine whether there are reasonable grounds to believe that a breach of the standard of care has occurred. "Medical expert" is defined by Florida Statute §766.202(5) to mean ."...a person duly and regularly engaged in the practice of his profession who holds a health care degree from a university or college and has had special professional training and experience or one possessed of special health care knowledge or skill about the subject upon which he is called to testify or provide an opinion." As can be seen from this definition, experts are not limited to medical doctors and the definition is clearly broad enough to include other mental health care providers, such as doctorate level psychologists. If a Ph. D. psychologist such as Dr. Weinstock, can serve as a medical expert, it would make little sense to hold that an action against her should not first be reviewed by another such expert. After all, the purpose of the Act is to dispose of groundless claims without unnecessary litigation and to resolve meritorious claims at the earliest possible opportunity. Application of the presuit investigation requirements contained in Florida Statute §766.203 to all health care providers, not simply to medical doctors or physical health care providers, would further the meaning and intent of the Act and is consistent with sound public policy.

Assuming that the claimant is able to obtain an opinion from an expert who believes there are reasonable grounds to assert a claim for malpractice, the next step for any potential claimant

is to then provide all prospective defendants with notice of the claim. Florida Statute §766.106(2) does not limit application of its notice provisions to only a limited group of health care providers. Rather, that section provides that notice is to be provided to each prospective defendant and then goes on to require for certain listed health care providers that notice also be given to the Florida Department of Professional Regulation by certified mail. Clearly, if the legislature had intended for notice of intent to initiate litigation to be provided only to the health care providers licensed pursuant to the specifically enumerated chapters, then the legislature would not have bothered to create the distinction between health care providers for whom notice is to be provided to D.P.R. and the other defendants for whom notice is only provided to the defendant. Instead, the statute makes it clear that notice is to be provided to each prospective defendant, regardless of whether the defendant is licensed pursuant to any of the enumerated chapters of the Florida Statutes.

Once the notice of intent to initiate litigation for malpractice is served on each prospective defendant, the presuit screening period called for pursuant to Florida Statute §766.106 commences. During that 90-day time period, the defendants and their respective insurers are required to investigate the claim and make a determination whether to reject the claim or to make a settlement offer. The statute also provides for informal discovery to be conducted during this period so that a reasonable evaluation of the claim can be made during the presuit period and

unnecessary litigation avoided. Clearly, the purpose and intent of this section are equally applicable to psychologists as they are to other mental and physical health care providers. For example, in cases in which both the treating psychologist and treating psychiatrist are sued by the same patient as often happens, it would make no sense to require the psychiatrist and the plaintiff to go through the presuit screening procedures, but not to require the same procedure to be followed with the treating psychologist.

In Kalbach v. Day, 589 So.2d 448 (Fla. 4th DCA 1991), plaintiff sued both the decedent's treating psychologist and his medical doctor claiming professional malpractice in their treatment of the decedent. The court stated that the statutory limitations period for such actions is two years and then noted that notice of intent to pursue litigation was to be served on prospective defendants prior to filing suit. In that case, the court apparently treated the psychologist and psychiatrist who were both sued for the alleged wrongful death of plaintiff's decedent in a similar fashion. After all, both professionals were treating the patient for mental illness and to treat them differently in the same lawsuit would be clearly arbitrary.

Further, if one looks to the definition of psychology contained in Florida Statute §490.003 (1991), it becomes clear that psychologists are licensed for the purpose of providing mental health care to members of the public and that the practice of psychology includes the treatment of mental illness, as well as the psychological aspects of physical illness. This is

exactly what psychiatrists do, except that psychiatrists are authorized to prescribe psychotropic drugs to their patients.

Perhaps more importantly, the normal everyday definition of a health care provider would be expected to include a licensed clinical psychologist with a Ph.D. Indeed, not only has the Second District Court of Appeal recognized that the Medical Malpractice Act applies to "mental", as well as physical health care providers,[2] Webster's Dictionary defines health as "the condition of being sound in body, mind or spirit..." Webster's New Collegiate Dictionary 150th anniversary edition, copyright 1981. This is confirmed by the nature of the mental health treatment provided by Dr. Weinstock prior to termination of Ms. Groth's therapy and Ms. Groth's subsequent treatment by an M.D. psychiatrist. In short, not only did Dr. Weinstock provide Ms. Groth with the same kind of treatment that would ordinarily be provided by a psychiatrist, Ms. Groth, in fact, received the same kind of treatment from her psychiatrist.

In addition, psychologists and medical doctors are treated similarly by the applicable statute with respect to the psychotherapist/patient privilege. Florida Statute §90.503 (1991). Under that statute, a "psychotherapist" is defined as a medical doctor who is engaged in the diagnosis or treatment of a mental or emotional condition or a person licensed or certified as a psychologist who is engaged primarily in the diagnosis or treatment of a mental or emotional condition. Just last year,

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[2]Pinellas Emergency Mental Health Services, Inc. v. Richardson, 532 So.2d 60, 62 (Fla. 2d DCA 1988).

the legislature broadened this statutory definition of psychotherapist to include a person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor who is engaged primarily in the diagnosis or treatment of a mental or emotional condition. Ch. 92-57, §1, Laws of Fla. Based upon this statutory recognition of the importance of the psychotherapist/patient relationship, it would seem inconsistent for the legislature to demean the profession of psychology by excluding it from the statutory protection from frivolous lawsuits afforded other "health care practitioners" under Chapter 766.

In this regard, it should be noted that the protections and responsibilities of the presuit screening provisions have been applied to mental health care providers even when the health care provider is not a licensee under one of the specifically enumerated chapters referred to in Florida Statute §768.50(2) (1985). Pinellas Emergency Mental Health Services, Inc. v. Richardson, 532 So.2d 60 (Fla. 2d DCA 1988). In Pinellas Emergency Mental Health Services, the court held that the Center was subject to the provisions of the Act even though emergency mental health service providers were not specifically included in any section of the Act. The court concluded that the legislature intended "medical care or services" to include mental as well as physical, medical care and focused on the services provided, rather than any list contained in the statute.

In NME Properties, Inc. v. McCullough, 590 So.2d 439, (Fla. 2d DCA 1991), the court again did not feel constrained by the

statutory definition of health care provider contained in §768.50(2)(b) (1985). Specifically, the court stated that "... the simplest test to determine whether the notice provisions apply to a claim is whether the professional medical negligence standard of care described in §766.102, Florida Statutes (1989), applies to the active tortfeasor." NME Properties, at 441. Accordingly, the court felt that the dispositive question was whether expert testimony concerning a breach of the professional standard of care would be necessary to establish liability to be the most important factor in determining whether the presuit requirements of Chapter 766 apply.

The relationship between the presuit screening requirements in Chapter 766.106 and the medical malpractice statute of limitation contained in Florida Statute §95.11(4)(b) also cannot be ignored. Under that statute, "[A]n 'action for medical malpractice' is defined as a claim in tort or in contract for damages because of the death, injury or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment or care by any provider of health care." This statutory definition of medical malpractice has been applied to dental hygienists while cleaning teeth, even though such hygienists are not "health care providers" as enumerated in Florida Statute §768.50(2)(b)(1985). Estes v. Rockinson, 461 So.2d 989 (Fla. 1st DCA 1984). Clearly, it would be bizarre to apply the medical malpractice statute of limitations to an action against a health care provider, but not apply the medical malpractice screening requirements to that health care provider

because such providers are not listed in the statutory definition of health care provider.

Significantly, in its decision reversing the trial court's judgment in favor of Dr. Weinstock, the Fifth District Court of Appeal never stated which definition of "health care provider" it relied upon in reaching its conclusion that psychologists, such as Dr. Weinstock, are not "health care providers" to whom the presuit screening requirements apply. Rather, the court merely makes reference to the different statutory provisions relied upon by the parties and by the trial court and leaves the reader guessing as to which statutory definition the court believes to be controlling. This is significant, not only for psychologists, but for other health care providers since the various statutory definitions are not identical. For example, Florida Statute §766.106 only makes reference to health care providers licensed under Chapters 458, 459, 460, 461, and 466. On the other hand, the definition of "health care provider" in §766.101(1)(b) includes pharmacists licensed pursuant to Chapter 465 and hospitals or ambulatory surgical centers licensed under chapter 395, in addition to those health care providers listed in Chapter 766.106. To obfuscate matters further, the definition contained in Florida Statute §768.50(2)(b) (1985) includes naturopaths licensed under Chapter 462, nurses licensed under Chapter 464, clinical laboratories licensed under Chapter 483, physical therapists and physical therapist assistants licensed under Chapter 486, health maintenance organizations certified under part II of Chapter 641, ambulatory services centers as defined in

paragraph (c) of §768.50[3], blood banks, plasma centers, industrial clinics and renal dialysis facilities, as well as professional associations, partnership, corporations, joint ventures, or other associations for professional activity by health care providers.

The analysis followed by the Second District Court of Appeal, while not perfect, is more practical, and more fair, than referring to one of a number of arbitrary lists of health care providers contained in various sections of the Act to determine whether the presuit requirements apply to a particular health care provider. The analysis followed by the Second District Court of Appeal in Pinellas and other cases examines the nature of the health care services rendered and the identity of the health care provider who actually provided the services. If one compares the services and the individuals performing the services in Pinellas Emergency Mental Health Services to the therapy provided by Dr. Weinstock, it becomes apparent that the level of skill and expertise required by Dr. Weinstock far exceeds those skills required by the "intake specialist" who was the subject of the complaint in Pinellas.

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[3]The Fifth District noted that §768.50(2)(b) (1985) was repealed except to the extent that it was incorporated within §766.102(1). However, the court makes no reference to the treatment of §768.50(2)(c) which was repealed at the same time. The question, of course, becomes whether subsection (c) of §768.50(2) was also not repealed to the extent that it was incorporated in subsection (b) of §768.50(2). Plainly, there is no clear definition of "health care provider" contained within Chapter 766.

Further, it makes no sense to distinguish the Pinellas case from the instant case on the grounds that Pinellas was a mental health services facility located at a hospital and had authority to admit patients to that hospital, if appropriate. It should make absolutely no difference whether the alleged malpractice occurs in a health care provider's office or at another facility for purposes of determining whether the malpractice acts provisions apply. The rights and responsibilities of a party should not depend upon such meaningless distinctions.

This is particularly significant in light of the current health insurance crisis facing not only the state of Florida, but the entire country as well. To suggest that health care providers will only be afforded the protection of presuit screening requirements under the medical malpractice act when a patient is treated at a hospital, as opposed to treatment on an outpatient basis, will do nothing but exacerbate the already spiraling cost of health care. After all, treatment for mental health care, as well as physical health care, is normally covered by health insurance. Further, health insurance carriers pay for treatment by psychologists, as well as treatment by medical doctors, such that health insurance premiums are affected by claims paid for all such health care providers.

In addition, the same concerns regarding the availability of affordable professional liability coverage that was one of the considerations for passage of the Medical Malpractice Reform Act pertain to psychologists as well as they do to other health care providers. For example, the regulations passed pursuant to the

Health Care Quality Improvement Act of 1986, Title IV of Pub. L. 99-660, as amended, do not limit the scope of the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners to licensed medical doctors only. Rather, the regulations expressly include other health care practitioners, in addition to physicians and dentists. For purposes of the regulations, ... health care practitioner means an individual other than a physician or dentist, who is licensed or otherwise authorized by a state to provide health care services." Since a psychologist falls within this definition of health care practitioner, the Act's reporting requirements also apply to psychologists as well. 45 C.F.R. §60.3 (1989).

Of course, the cost of professional liability insurance is affected by the overall cost of litigation on professional liability claims, not just the cost of indemnity payments made pursuant to settlements or judgments which must be reported pursuant to the National Practitioners Data Bank. The interest of maintaining litigation expenses, as well as the interest of the court in minimizing docket congestion, are served by broadly applying the presuit screening requirements under the medical malpractice act. In this case, for example, had any presuit investigation been conducted, it is highly unlikely that this lawsuit would have ever been filed. As it is, the complaint filed by Ms. Groth fails to state a cause of action under Florida law, regardless of the applicability of the presuit screening requirements.

Not only is the respondent confronted with insurmountable statute of limitations problems, there simply is no duty to her which has been breached by Dr. Weinstock. Even assuming Ms. Groth's statements to be true concerning Dr. Weinstock's alleged relationship with her ex-husband, Ms. Groth has no cause of action recognized in Florida law against Dr. Weinstock for involvement in a relationship with Ms. Groth's ex-husband after the psychotherapist/patient relationship had been terminated. Of course, if Mr. Groth wishes to assert that the relationship was ongoing prior to the termination of her psychotherapist/patient relationship with Dr. Weinstock, then her claim will be clearly time-barred.

II. COUNT II OF RESPONDENT'S COMPLAINT FAILED TO STATE A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Not only was Count II of Respondent's complaint properly dismissed for all of the reasons stated above, but Count II also fails to state sufficient allegations, even if susceptible of proof, which would rise to the level of conduct required to support a cause of action for intentional infliction of emotional distress. In Metropolitan Life Insurance Co. v. McCarson, 467 So.2d 277 (Fla. 1985), the Supreme Court of Florida adopted section 46, Restatements (Second) of Torts (1965), as the appropriate definition of the tort of intentional infliction of emotional distress. The court quoted the comment to the Restatement as follows:

> (d) *Extreme and outrageous conduct* .... It has not been enough that the defendant has acted with an intent which is

> tortious or even criminal, or that he had 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. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

McCarson, at 278-279.

In McCarson, the defendant insurance carrier was found to be in breach of contract on a group insurance policy under which Mr. McCarson's wife was a beneficiary. The court ordered the insurance carrier to provide coverage pursuant to the contract for Mrs. McCarson who was suffering from Alzheimer's and requiring round-the-clock nursing care. Subsequently, the insurance carrier discontinued payment because Mrs. McCarson had not provided it with proof of ineligibility for Medicare. However, in the meantime, Mrs. McCarson had to be removed from her home and placed in a total care nursing facility since the at-home nursing care ceased when the carrier refused to pay for it any further. Medical testimony indicated that the stress of the new nursing home surroundings probably brought about Mrs. McCarson's fatal heart attack. Noting that, "... although we must assume from the jury's verdict that it found Metropolitan was in reckless disregard of the potential for such tragedy ..." the court found that no cause of action for intentional

infliction of emotional distress supported Mrs. McCarson's suit for wrongful death. The court stated "[n]onetheless, looking at the facts in the light most favorable to [plaintiff], the facts as a matter of law are not 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.'"

Plainly, the allegations asserted in respondent's complaint are nowhere near the egregious level of facts alleged, and apparently found to exist by the jury, in the McCarson case. Indeed, it would be absurd to suggest that a cause of action for intentional infliction of emotional distress existed in favor of the respondent in this case when she is merely struggling to convert a dead cause of action for alienation of affections into some viable cause of action recognized under Florida law. This is particularly true when it is considered that the allegedly outrageous conduct did not occur during the course of the psychotherapist/patient relationship which was terminated over four years before suit was filed.

In Baker v. Florida National Bank, 559 So.2d 284 (Fla. 4th DCA 1990) (rehg. and rehg. en banc denied), the court shed further light on what is required to state a cause of action for intentional infliction of emotional distress. In that case, Dr. Baker sued the bank as trustee under a trust agreement for the emotional distress caused by the doctor's discovery of the bank's investment of all of his liquid assets in a fund declining in value contrary to his desires and instructions, the investment plan the doctor prepared and the bank's proposal. The doctor

also alleged that the bank had abused its confidential and fiduciary relationship for its own benefit and had refused to return his assets about which he was extremely sensitive. Dr. Baker ended up having to be hospitalized for three days for angina and ventricular arrhythmia, which Dr. Baker attributed to the aggravation over the bank's allegedly wrongful investment of his money. The appellate court affirmed the summary judgment entered in favor of the bank by the trial court because the court found that the actions of the bank did not reach the level of outrageous conduct contemplated by McCarson, supra. The court went on to note that "[w]e determined this, even though the agreement in question was a trust agreement imposing a fiduciary relationship upon the actor in this case." Baker at 289. The facts alleged in Count II of respondent's complaint simply do not constitute facts sufficiently outrageous to support a cause of action for intentional infliction of emotional distress.

In addition, petitioner would refer the court to the case of M.M. and M.M. v. M.P.S. and B.S., 556 So.2d 1140 (Fla. 3d DCA 1989), in which the court affirmed a dismissal of a plaintiffs' complaint for intentional infliction of emotional distress when it was alleged that plaintiffs had suffered severe emotional distress when defendant told them he had sexually abused their daughter and that his wife had supplied her with illegal drugs from the time she was eight years old until she was 23. The Second District Court of Appeal also affirmed the dismissal of a complaint for intentional infliction of emotional distress in Kent v. Harrison, 467 So.2d 1114 (Fla. 2d DCA 1985). Plaintiff

alleged in that case that defendant had initiated and for several months continued a campaign of harassing and offensive telephone calls to plaintiff's home. In neither case did the court find that the facts alleged were sufficient to rise to the level of the outrageous conduct required to support a claim for intentional infliction of emotional distress. Similarly, the facts in the instant case do not support a claim for either compensatory or punitive damages for intentional infliction of emotional distress and were properly dismissed by the trial court.

CONCLUSION

Based upon the foregoing authorities and legal argument, Petitioner, Ronda C. Weinstock, Ph.D., respectfully requests this Honorable Court to reverse the decision of the Florida Fifth District Court of Appeal rendered November 6, 1992, and affirm the final judgment of the trial court in her favor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 21st day of June, 1993, to JOHN L. MAYNARD, ESQUIRE, 191 Circle Drive, Post Office Drawer 1960, Maitland, Florida 32751-6486 and L. DANNER HEIRS, ESQUIRE, 1222 Burning Tree Lane, Winter Park, Florida 32792.

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