MEMORANDUM

TO: Mr. Posner

FROM: 1000

DATE: October 30, 2021

RE: Perez v. DiMaggio: Potential Claim for Intentional Infliction of Emotional Distress

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QUESTION PRESENTED

Under Georgia law, can a person prove extreme and outrageous conduct when a baseball coach yells crude and humiliating insults in front of fellow teammates and spectators at baseball practice?

BRIEF ANSWER

Most likely, no. Under Georgia law, the tort of intentional infliction of emotional distress includes four elements: (1) the defendant's conduct was intentional or reckless; (2) that conduct was extreme and outrageous; (3) a causal connection existed between the wrongful conduct and the emotional distress; and (4) the emotional harm was severe. A court will likely conclude that DiMaggio's conduct was not extreme and outrageous, despite the existence of a special relationship between the two and the coach's knowledge of Pete's potential susceptibility.

STATEMENT OF FACTS

Our client, Pete Perez, is seeking recovery on a claim for intentional infliction of emotional distress after Dave DiMaggio, his former baseball coach, made insensitive and rude remarks about his on-field performance and recently deceased father in front of teammates and spectators.

Pete was a member of DiMaggio's prestigious travelling baseball team, the Georgia Chiefs, when his father unexpectedly passed away. Pete took two weeks off from the team to attend his father's funeral and tend to other family matters. When he returned to practice, DiMaggio was displeased with his performance. After Pete did not respond to the coach's first remarks such as "look alive," DiMaggio yelled in front of Pete's teammates, "You don't even deserve to play in a pee wee girls' league the way you're playing! How the hell did you make this team in the first place?" and, "Your dad is turning over in his grave if he can see how you're playing now." Many other comments were made that humiliated Pete, and after playing for two more weeks he quit the team.

One week after quitting, Pete was diagnosed by a physician as clinically depressed and he was prescribed antidepressant medication. He is still currently taking this medication today.

DISCUSSION

Pete will likely not prove the second element of his potential claim for intentional infliction of emotional distress ("IIED"). In Georgia, a plaintiff must prove four elements to prevail on an IIED claim: (1) the defendant's conduct was intentional or reckless; (2) that conduct was extreme and outrageous; (3) a causal

connection existed between the wrongful conduct and the emotional distress; and (4) the emotional harm was severe. Ghodrati v. Stearnes, 723 S.E.2d 721, 723 (Ga. Ct. App. 2012). You have asked me to address only the second element.

I. Pete will likely not prove that Coach DiMaggio's conduct was extreme and outrageous.

The court will likely conclude that Coach DiMaggio's conduct was not outrageous on its face. It will consider the existence of a special employer-employee type relationship, and the defendant's prior knowledge of a plaintiff's potential susceptibility when determining whether the conduct may rise to the requisite level of egregiousness needed to recover. These factors will most likely still not raise the Coach's level of conduct to the amount that would satisfy the second element of IIED.

A. Coach DiMaggio's conduct was likely not outrageous on its face.

Pete will likely not be able to prove that Coach DiMaggio's conduct was extreme and outrageous on its face. A defendant is held liable for an IIED claim 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." Bowers v. Estep, 420 S.E.2d 336, 339 (Ga. Ct. App. 1992). For conduct to be considered extreme and outrageous, it must cause severe emotional distress in the plaintiff that no reasonable person would be expected to endure. Hodor v. Gte Mobilnet, 535 S.E.2d 300, 302 (Ga. Ct. App. 2000). Outrageous conduct for which the law grants a remedy does not include "mere insults, indignities, threats, annoyances, petty oppressions, or other vicissitudes of

daily living." Ghodrati, 723 S.E.2d at 723. Furthermore, conduct displayed in such a way as to threaten, embarrass, or humiliate a plaintiff is not considered the "type of shocking and outrageous behavior" that would satisfy a claim for IIED. Bowers, 420 S.E.2d at 339.

Here, a jury would likely find that Coach DiMaggio's conduct was not extreme and outrageous enough on its face to satisfy a claim for IIED. During practice, DiMaggio yelled remarks such as, "You're nothing but a worthless piece of crap with a glove, and you'd probably be lucky if anyone thought you were even competent enough to clean their darn toilet." Although DiMaggio did embarrass and humiliate Pete in the presence of his teammates and others, his comments would most likely be seen as "mere insults and indignities." The court would likely expect Pete to be hardened to these types of statements when considering that Coach DiMaggio has a history of being tough on the players when they do not perform to his pro-standards. DiMaggio's offensive remarks about Pete's performance the day of the incident will likely be classified as a normal condition of playing baseball for a prestigious team, and thus be viewed as a "vicissitude" of the average day for a baseball player of Pete's stature. The court will likely conclude that this type of conduct is not enough to satisfy the second element of outrageous conduct.

B. Pete will likely not satisfy the second element, even with the existence of a special "employer-employee" relationship between him and Coach DiMaggio.

Pete will likely not be able to satisfy the second element of an IIED claim, even where a special relationship exists in which Coach DiMaggio exercises authority over him. When determining whether or not conduct was sufficiently extreme and

outrageous, courts will consider "the existence of a relationship in which one person has control over another such as an employer-employee relationship." Jarrard v. Ups, 529 S.E.2d 144, 148 (Ga. Ct. App. 2000). Furthermore, such factors as this might "produce a character of outrageousness that otherwise might not exist." Id. However, such a relationship is not by itself enough, the actor's actions "must have been so terrifying or insulting as naturally to humiliate, embarrass or frighten the plaintiff." Anderson v. Chatham, 379 S.E.2d 793, 800 (Ga. Ct. App. 1989). For example, "threatening encounter[s] within the context of the special relationship . . . would naturally give rise to intense feelings so as to cause severe emotional distress." Id.

Evaluations of one's performance in the workplace, although given in "crude and obscene language, . . . conducted in a belittling, rude, and condescending manner to embarrass and humiliate the employee, [and] given at a poor time, . . . do not fall into the outrageous category" needed to recover for IIED. Jarrard, 529 S.E.2d at 147. In Jarrard, the plaintiff alleged that he received a "stinging" job evaluation of his performance covering three months of work preceding six weeks of medical leave. Id. at 146. Despite the plaintiff's tearful pleas to stop, the job supervisor continued administering the evaluation. Id. The plaintiff was forced to remain and receive a full oral review of the twenty-page evaluation, which lasted nearly 20 minutes. Id. As a result of the ordeal, the plaintiff experienced a mental breakdown from which he did not recover. Id. The court held that there was nothing "inherently outrageous" with subjecting an employee to a "straightforward evaluation of his job

performance." Id. at 149. It reasoned that forthright evaluations are to be expected and encouraged, and while such a review might be "tactless, insensitive, rude, inconsiderate and unkind," it is not wrong and outrageous conduct as defined under Georgia law. Id.

In order to recover on a claim for IIED, the plaintiff must show that the defendant's conduct was "so abusive or obscene as naturally to humiliate, embarrass, frighten, or extremely outrage the plaintiff. Anderson v. Chatham, 379 S.E.2d 793, 800 (Ga. Ct. App. 1989). In Anderson, the plaintiff alleged that her former boss "threatened her and intentionally and willfully inflicted emotional harm upon her," during her termination. She stated that her boss told her to "just get your stuff and leave . . . don't try to sue me if you have any thoughts about trying to sue me, . . . you're going to be playing with the big boys and you're going to be sorry . . . ." Id. at 799. As a result of their last encounter, the plaintiff was unable to sleep for several nights, vomited and took medication for nerves. Id. The court held that the plaintiff satisfied the second element of IIED, and thus was able to recover on the claim. Id. at 800. It reasoned that the defendant's conduct was threatening in manner and, in the context of an employer-employee relationship, would "naturally give rise to intense feelings so as to cause severe emotional distress." Id.

Pete will probably not prove the second element of IIED, even where his special relationship with Coach DiMaggio is considered as a determinate factor. Like the plaintiff in Jarrard, Pete was considered an employee of DiMaggio. The defendant's

conduct in Jarrard is comparable to DiMaggio's in that such remarks about Pete's performance on the field were made within the context of his "employment," and are generally to be expected in the workplace. Such as the evaluation given to the plaintiff in Jarrard, DiMaggio's remarks centered mostly around Pete's performance since his return to practice. It was held that the evaluation in Jarrard was a common vicissitude of employment, and is to be expected in the regular course of one's job. Similarly, it is well known that this type of behavior is to be expected from DiMaggio as a coach. While the remarks may have been rude, inconsiderate and ill-timed, such comments are anticipated when playing for a competitive and prestigious team.

Conversely, the plaintiff in Anderson alleged that her employer repeatedly subjected her to inconsiderate conduct during the course of the relationship, and threatened her during her termination from the job. DiMaggio never implied that he was threatening Pete with repercussions for his performance during practice, only that he may be cut from the team if it was not corrected. Unlike the incident in Anderson, where the defendant insinuated that the plaintiff would regret suing him, DiMaggio merely yelled at Pete in an effort to motivate his performance. This incident, although lasting several minutes, did not span over years of the relationship, and therefore would likely not be viewed as conduct that is egregious within the context of one's employment. Because of this, the court will probably conclude that the coach's conduct did not rise to the level of extreme and

outrageousness needed to satisfy the second element where his and Pete's relationship is considered as a factor.

Opposing counsel will probably claim that the relationship between Pete and DiMaggio does effectively raise the conduct to the level of extreme and outrageousness needed to recover. They might argue that DiMaggio's comments were so insensitive and traumatizing, that they naturally give rise to intense feelings of embarrassment and humiliation. They could cite the Anderson case, stating that it supports their claims that an "employer-employee" type relationship would qualify comments made about Pete's deceased father in the context of his performance on the field as sufficiently outrageous. This argument disregards the presumption that comments made within the context of one's employment and performance are to be expected, and that people are expected to be hardened to a certain amount of hurtful and inconsiderate behavior.

C. Pete will likely not satisfy the second element of IIED where Coach DiMaggio's knowledge of his prior susceptibility is considered as a factor.

Pete will likely not be able to satisfy the second element of an IIED claim where DiMaggio's knowledge of his prior vulnerability over his father's death is considered as a factor. When determining whether or not conduct is extreme and outrageous, courts will consider " . . . whether the defendant knew of the victim's particular susceptibility to emotional distress." Jarrard v. Ups, 529 S.E.2d 144, 148 (Ga. Ct. App. 2000). "[T]he conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know." Williams v. Voljavec, 415 S.E.2d 31, 33 (Ga. Ct. App. 1992). Summary

rulings are held in favor of the defendant " . . . who . . . was aware of the plaintiff's delicate mental condition at the time of the incident," if the conduct is not inherently outrageous or extremely wrong. Jarrard, 529 S.E.2d at 148. Conduct is inherently outrageous or extremely wrong if, "through the use of abusive or obscene language, the defendant's conduct must have been so abrasive or obscene as to naturally humiliate, embarrass, frighten, or outrage the plaintiff." Williams, 415 S.E.2d at 33.

Evaluations of one's job performance "cannot rise to the 'outrageous' level even though the employee is experiencing emotional problems at the time of the evaluation and the employer is aware of such." Jarrard, 529 S.E.2d at 149. In Jarrard, the plaintiff was forced to undergo a harsh job evaluation on his first day back from six weeks of medical leave for psychiatric care. Id. at 146. His employer knew of his reasons, yet still continued on with the evaluation despite his pleas to stop. Id. The court held that the plaintiff did not satisfy the second element. Id. at 149. It reasoned that when an employee returns to work with no medical restrictions stating that he/she is mentally unstable, the employer "cannot be expected to exempt that employee from the same rigors of job evaluations that all other employees experience." Id.

A defendant's conduct may be extreme and outrageous where "the defendant was then aware of [the] plaintiff's potentially fragile physical condition . . . ." Williams, 415 S.E.2d at 33. In Williams, the plaintiff was a patient of the defendant, and suffered from complications due to chronic diabetes. Id. at 32. When she could not

produce her insurance documents, the defendant began yelling at her, using loud and abusive language in the presence of nurses. Id. at 33. The plaintiff asked the doctor to leave, but he refused and "got louder." Id. The plaintiff began experiencing severe chest pain as a result of the exchange and later had to be transferred to the coronary care unit. Id. The court held that the defendant's actions were sufficient enough to satisfy a claim. Id. It reasoned that because the defendant relentlessly vented his anger against a patient, was aware of her fragile physical condition, and as a result caused the plaintiff's condition to deteriorate, his conduct rose to the requisite level of outrageousness to allow the plaintiff recovery. Id.

Pete will likely not be able to prevail on the second element of his IIED claim where the actor's awareness of prior susceptibility is considered as a factor. Like the defendant in Jarrard, DiMaggio knew of Pete's vulnerability. Despite this knowledge, DiMaggio continued to hurl insults toward Pete regarding his performance on the field. Similar to the evaluation in Jarrard, DiMaggio's remarks can be compared to a performance evaluation at a job. Because Pete produced no evidence that he was mentally unable to undergo normal scrutiny at practice, DiMaggio would not be expected to spare him treatment that his teammates regularly endure. Conversely, the plaintiff in Williams differs from Pete because the relationship between a patient and doctor is not one where harsh treatment is to be expected. While Pete is expected to be hardened to the type of treatment DiMaggio might subject him to as his coach, the plaintiff in Williams does not have an obligation to tolerate egregious treatment from her doctor. Because of this, the court

will likely conclude that Pete has not satisfied the second element of his potential claim for IIED.

The opposing counsel will probably claim that DiMaggio's awareness of Pete's susceptibility does qualify the coach's conduct as outrageous. They might argue that DiMaggio's knowledge of Pete's grief pushed his conduct to be so "heartless and flagrant" that the outrageousness of it will be sufficient. They could cite the Williams case, stating that although Pete should be hardened to certain behavior, the coach should have considered his vulnerability. This argument disregards the absence of a special "employer-employee" like relationship between the plaintiff and defendant in this case. While the plaintiff in Williams was not expected to endure such behavior from her doctor, Pete will be expected to endure such scrutiny from his baseball coach.

II. Assuming that Pete will win his case, he will most likely be able to recover punitive damages under Georgia Statute O.C.G.A § 51-12-5.1.

Our client, Pete Perez, will most likely be able to recover punitive damages per Georgia Statute O.C.G.A § 51-12-5.1, if he proves his IIED claim against DiMaggio.

The controlling statute states that "[p]unitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences." O.C.G.A. § 51-12-5.1(b). Furthermore, it is also provided that in tort cases where "[I]t is found that the defendant acted, or failed to act, with the specific intent to cause harm, . . . there shall be no limitation

regarding the amount which may be awarded as punitive damages . . . ." O.C.G.A. § 51-12-5.1(f). However, in tort cases arising out of a claim for intentional infliction of emotional distress, liability for punitive damages is "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 . . . ." Bowers v. Estep, 420 S.E.2d 336, 339 (Ga. Ct. App. 1992).

If Pete wins his claim against DiMaggio, he will most likely be able to recover punitive damages. Assuming that DiMaggio's conduct is found by the jury to rise to the requisite level of outrageousness needed to satisfy an IIED claim, then this determination will satisfy the requirement of the statute. Section (f) of the statute includes certain causes of action that do not rise out of product liability, where the defendant was found to have acted, or failed to act with specific intent to cause harm. Because the first element of IIED requires that the defendant acted intentionally or recklessly, this hurdle is satisfied under the statute. Additionally, it has been held that IIED plaintiffs must further prove that the defendant's conduct was sufficiently extreme and outrageousness as defined under Georgia law to recover such damages. If Pete wins his claim, then it follows that DiMaggio's conduct was found to be extreme and outrageous enough to satisfy the element. When working under the assumption that Pete has successfully proven IIED against DiMaggio, he will be entitled to punitive damages.