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STATE OF MICHIGAN

COURT OF APPEALS

ZACHARY MICHAEL MARTIN,

Plaintiff-Appellant,

v

HARRY JOHN SMITH,

Defendant-Appellee.

UNPUBLISHED
December 10, 2020

No. 354128
Wayne Circuit Court
LC No. 19-004999-NO

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

In this tort action plaintiff-appellant, Zachary Michael Martin, appeals the trial court's order dismissing his claims against defendant-appellee, Harry John Smith, as a sanction for Martin's failure to pay $25,000 in security for costs. Martin also challenges the trial court's order denying Martin's motion for summary disposition under MCR 2.116(C)(10). We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

The parties met through an internet dating application and maintained a relationship for a period of time. Smith provided Martin with money, and Martin sent Smith intimate photographs and videos during the relationship. After the relationship soured, Smith allegedly distributed photographs and/or videos to some of Martin's family members and one of Martin's friends as a form of retaliation. Smith also repeatedly contacted Martin and threatened to disclose information and to send more intimate materials to Martin's friends and family. In February 2019, Martin obtained a personal protection order ("PPO") against Smith. However, evidence supports that Smith continued to contact Martin despite being aware of the PPO. Several of the contacts were in reference to Smith's desire to be repaid the money that he had provided to Martin over the course of their relationship.

In April 2019, Martin sought to recover damages for invasion of privacy based upon the public disclosure of private facts, intentional infliction of emotional distress, and civil stalking under MCL 600.2954. Martin also sought injunctive relief. Martin ultimately filed a motion for summary disposition under MCR 2.116(C)(10), which Smith opposed. The trial court determined

that genuine issues of material fact existed for trial and denied the motion. The trial court ordered Martin to post a security bond in the amount of $25,000. After Martin failed to post a security bond within the time designated in the order, the trial court dismissed the action. This appeal followed.

II. ANALYSIS

A. SECURITY BOND AND DISMISSAL OF THE ACTION

Martin argues that the trial court abused its discretion when it ordered Martin to post a security bond of $25,000, and by dismissing Martin's claim after he failed to do so. We agree.

This Court reviews for an abuse of discretion a trial court's dismissal of a cause of action for failure to comply with the court's orders. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Similarly, this Court reviews for an abuse of discretion a trial court's decision to require a security bond for costs. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). "An abuse of discretion occurs when a court chooses an outcome outside the range of principled outcomes." *Baynesan v Wayne State Univ*, 316 Mich App 643, 651; 894 NW2d 102 (2016). A trial court's determination regarding the legitimacy of a party's claim is a finding of fact that is reviewed for clear error. *In re Surety Bond for Costs*, 226 Mich App at 333. A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008).

The Michigan Court Rules permit a defendant in a civil action to bring a motion to require a plaintiff to post a bond to cover costs and expenses associated with litigation. In relevant part, MCR 2.109 provides:

> **(A) Motion.** On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion.
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> **(B) Exceptions.** Subrule (A) does not apply in the following circumstances:
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> (1) The court may allow a party to proceed without furnishing security for costs if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond.

Thus, under MCR 2.109(A), "[s]ecurity should not be required unless there is a substantial reason for doing so. A substantial reason for requiring security may exist where there is a tenuous legal theory of liability, or where there is good reason to believe that a party's allegations are groundless and unwarranted." *In re Surety Bond for Costs*, 226 Mich App at 331-332 (quotation marks and citation omitted).

When the trial court entered the order requiring Martin to post a security bond of $25,000, the court did not make any findings of fact as to whether Martin was pursuing a tenuous legal theory of liability or whether Martin's allegations were groundless and unwarranted. Rather, the trial court only noted that "[t]his is a PPO matter." In doing so, the trial court incorrectly characterized Martin's claims. Martin was not seeking to obtain a PPO or to enforce the terms of the existing PPO against Smith. Instead, Martin sought to recover damages from Smith for invasion of privacy based upon the public disclosure of private material, intentional infliction of emotional distress, and civil stalking. Martin also sought injunctive relief. As discussed in greater detail later in this opinion, Martin presented evidence to support his tort claims. Although questions of fact remain, there was no good reason to believe that Martin's allegations were groundless and unwarranted. Thus, there was no substantial reason for the trial court to order Martin to post a security bond. Because the trial court abused its discretion when it entered the order requiring Martin to post a security bond, it necessarily follows that the trial court abused its discretion by dismissing Martin's claims for his failure to do so.

B. SUMMARY DISPOSITION

Martin next argues that the trial court erred by denying his motion for summary disposition. This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "Questions of statutory interpretation are also reviewed de novo." *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

> A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*El-Khalil*, 504 Mich at 160 (quotation marks and citations omitted).]

"If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion." *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 370; 775 NW2d 618 (2009). See also *Meyer v Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)). If the moving party properly asserts and supports his or her motion for summary disposition, "[t]he burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

When considering a motion for summary disposition, this Court's review is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009). "Courts are liberal in finding a factual dispute sufficient to withstand summary disposition." *Id*. at 476.

1. INVASION OF PRIVACY

In order "to prove invasion of privacy through the public disclosure of private facts, a plaintiff must show (1) the disclosure of information (2) that is highly offensive to a reasonable person and (3) that is of no legitimate concern to the public." *Doe v Henry Ford Health Sys*, 308 Mich App 592, 597; 865 NW2d 915 (2014) (quotation marks and citation omitted). This Court has held that "the publicity must consist of communicating that information to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Id*. at 598 (quotation marks and citation omitted).

In *Beaumont v Brown*, 401 Mich 80; 257 NW2d 522 (1977), overruled in part on other grounds by *Bradley v Saranac Community Sch Bd of Ed*, 455 Mich 285; 565 NW2d 650 (1997), our Supreme Court engaged in a lengthy analysis of the appropriate standard to apply in defining the nature of the "publicity" necessary to show an unlawful public disclosure of private facts. The *Beaumont* Court concluded that establishing this tort required "unnecessary publicity" or "an unreasonable and serious interference with the plaintiff's interest in not having his affairs known to others." *Beaumont*, 401 Mich at 99 (quotation marks and citations omitted). The Court held that determining whether this standard has been satisfied is generally a fact question that depends on the circumstances present in each individual case. See *id*. at 100 ("Only after a careful study of the facts in plaintiff's case will we be able to decide whether a fact question has been presented on the issue of public disclosure."). The *Beaumont* Court made it clear that this determination was not based on a numerical measure of the number of people receiving the disclosure. *Id*. Rather, the Court concluded that publication of embarrassing facts to only a single person can constitute the requisite publicity under certain circumstances. *Id*.

Furthermore, noting that this Court had previously addressed the publicity requirement under a standard requiring "communication to the general public as opposed to a few" or "communication . . . to the public in general or . . . to a large number of people," our Supreme Court specifically held in *Beaumont* that "the Court of Appeals language is unduly restrictive." *Id*. at 104 (quotation marks and citations omitted). The Supreme Court explained that, unlike the Court of Appeals, it employed a "more liberal standard." *Id*. The Supreme Court further explained its reasoning as follows:

> "[U]nnecessary publicity" does not call to mind the necessity of publication to everyone and there certainly can be "unreasonable and serious interference" with one's privacy without everyone being informed. This raises a question as to the Court of Appeals language "communication . . . to the public in general or . . . to a large number of people" or "communication to the general public as opposed to a few."
>
> To begin with "communication to the general public" is somewhat ambiguous, because a communication rarely, if ever, reaches everyone. It is therefore in order to consider the significance of communicating to the public. Communication of embarrassing facts about an individual to a public not concerned with that individual and with whom the individual is not concerned obviously is not a "serious interference" with plaintiff's right to privacy, although it might be "unnecessary" or "unreasonable". An invasion of a plaintiff's right to privacy is

> important if it exposes private facts to a public whose knowledge of those facts would be embarrassing to the plaintiff. Such a public might be the general public, if the person were a public figure, or a particular public such as fellow employees, club members, church members, family, or neighbors, if the person were not a public figure.
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> Here we have developed the criterion of a particular public, whose knowledge of the private facts would be embarrassing to the plaintiff, and this criterion is not consonant with the two generalizations of the Court of Appeals . . . . [W]e do not engage in a numbers game and therefore we leave the criterion here announced to be illustrated by this and future cases. [*Id*. at 104-105.]

In this case, Martin alleges that Smith sent explicit photographs and/or videos of Martin to Martin's grandparents, mother, brother, cousin, and friend. However, as argued by Smith, Martin improperly relied on hearsay to support part of this argument.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). "Hearsay is inadmissible except as delineated within the rules of evidence." *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). In this case, Martin averred that his mother and grandparents "reported to [Martin] that they received photographs of [Martin] nude and/or engaged in sexual activity." Martin further averred that, in February 2019, his grandparents contacted him "via text message to inform [Martin] that they received said content of [Martin]." Martin attached the purported text messages from his grandparents to the affidavit. Martin further averred that his cousin, who is now deceased, "reported to [Martin] that he had received photographs of [Martin] nude and/or engaged in sexual activity."

Martin's averments and text message attachments concerning his grandparents, mother, and cousin receiving videos and/or photographs constitute out-of-court statements that are offered to prove the truth of the matter asserted, i.e., that Smith disclosed Martin's private material to multiple family members.[1] Martin does not acknowledge this on appeal; nor does he offer any authority to support that this evidence was substantively admissible. Consequently, Smith's alleged distribution of private material to Martin's grandparents, mother, and cousin cannot be considered when reviewing the trial court's decision to deny Martin's motion for summary disposition on his claim of public disclosure of private information. See MCR 2.116(G)(6); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999) (stating that a "court should evaluate a motion for summary disposition" by "considering the substantively admissible evidence actually proffered . . . . A mere promise [to produce evidence at trial] is insufficient under our court rules."). Thus, we can only review the affidavit of Martin's friend, who averred that he had

[1] Smith argued that Martin's grandparents executed an affidavit, averring that they did not receive videos or photographs of Martin from Smith. However, because the affidavit is not notarized, it cannot be considered. See *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

received "pornographic videos and pictures of Martin" from an account associated with Smith, and the affidavit of Martin's brother, who averred that he had received "pornographic pictures of Martin which depicted Martin engaged in sexual activity" from an account associated with Smith.[2]

After reviewing the affidavits of Martin's friend and brother, we conclude that a reasonable jury could conclude that Smith's alleged actions did not constitute an unreasonable and serious interference with Martin's interest in not having his affairs known to others in a particular public. As already stated, the evidence that is properly before us only supports that someone using an account associated with Smith had sent the photographs and/or videos to two people. Although the disclosure of private information to a small group of individuals may be sufficient to establish liability, that determination is generally a question of fact. See *Beaumont*, 401 Mich at 100.[3] Thus, there was a genuine issue of material fact regarding whether the small group of individuals who received the photographs and/or videos of Martin constituted the public for purposes of invasion of privacy based upon the public disclosure of private material. Accordingly, the trial court did not err when it denied Martin's motion for summary disposition in regard to this claim.

2. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

"To establish a claim of intentional infliction of emotional distress, a plaintiff must prove the following elements: (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Hayley v Allstate Ins Co*, 262 Mich App 571, 577; 686 NW2d 273 (2004) (quotation marks and citation omitted). "It is for the trial court to initially determine whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. But where reasonable individuals may differ, it is for the jury to determine if the conduct was so extreme and outrageous as to permit recovery." *Id.* (citations omitted).

"Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). "The test to determine whether a person's conduct was extreme and outrageous is whether recitation of the facts of the case to an average member of the community would arouse his

[2] Smith opined in an affidavit that the private material may have come from other sources because Martin had previously lost his cellular telephone, which contained explicit material. However, this statement amounts to speculation. A party opposing a motion for summary disposition under MCR 2.116(C)(10) cannot create a question of fact based upon speculation or conjecture. *Libralter Plastics Inc v Chubb Group of Ins Co*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

[3] To the extent that *Doe* and *Beaumont* conflict, this Court is bound to follow the standard articulated in *Beaumont* because *Beaumont* has not been overruled in that regard. See *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016) ("The Court of Appeals is bound to follow decisions by this Court except where those decisions have clearly been overruled or superseded and is not authorized to anticipatorily ignore our decisions where it determines that the foundations of a Supreme Court decision have been undermined.") (Footnotes and emphasis omitted.)

resentment against the actor, and lead him to exclaim, 'Outrageous!' " *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003) (quotation marks and citation omitted). This test is a demanding one. Indeed, the necessary threshold for establishing that conduct is extreme and outrageous has been described as "formidable." *Atkinson v Farley*, 171 Mich App 784, 789; 431 NW2d 95 (1988).[4]

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has 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. [*Id.* (quotation marks and citation omitted).]

In this case, Martin's intentional infliction of emotional distress claim is based on evidence that someone using an account associated with Smith sent explicit photographs and/or videos to Martin's friend and brother.[5] Additionally, Martin presented evidence that Smith had repeatedly contacted Martin after their relationship ended and that several of the unwanted contacts occurred after Martin had obtained a PPO against Smith. During these unwanted contacts, Smith sent Martin threatening text messages and left threatening voice mails, indicating that he was going to disclose unspecified information about Martin to Martin's family. Smith also threatened to send additional photographs and videos of Martin to third parties, including Martin's family.

We are unaware of any published opinion addressing whether sending private photographs and videos to third parties meets the intentional infliction of emotional distress threshold. However, in *Lewis*, 258 Mich App at 197-198, this Court held that secretly recording consensual sexual activity, even though the recordings were not published or distributed, presented a factual question for the jury to resolve. In *Swain v Morse*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 346850); slip op at 13, lv pending, the plaintiff alleged that the defendant had engaged in extreme and outrageous conduct by sexually assaulting her when he unexpectedly grabbed and squeezed her breast while the two were taking a "selfie." The trial court granted the defendant's motion for summary disposition on the plaintiff's intentional infliction of emotional distress claim. *Id.* at 12. However, this Court concluded that "reasonable minds may differ as to whether the alleged conduct was extreme and outrageous and therefore the trial court erred in granting [the

[4] Although cases decided before November 1, 1990, are not binding precedent, they may be considered as persuasive authority. MCR 7.215(J)(1).

[5] Martin's statements concerning his grandparents, mother, and cousin cannot be considered when reviewing the trial court's decision to deny Martin's motion for summary disposition on his claim of intentional infliction of emotional distress. The statements are out-of-court statements that are offered to prove the truth of the matter asserted, i.e., that Smith disseminated photographs and/or videos of Martin, thereby causing Martin severe emotional distress. See *Maiden*, 461 Mich at 121.

defendant's] summary disposition of [the] plaintiff's [intentional infliction of emotional distress] claim." *Id*. at 13.

Sending explicit photographs and videos to two people is less extreme and outrageous than unwanted sexual contact or the secret recording of sex acts. Although sending such photographs and videos to Martin's friend and brother is clearly offensive and a significant breach of trust, the undisputed evidence establishes that Martin (who was an adult at the time) knowingly and willingly took photographs and videos of his person and then relinquished control over the images and videos when he sent them to Smith, whom he had never met in person. This is unlike the plaintiffs in *Lewis*, who were unknowing participants in pornography, *Lewis*, 258 Mich App at 197-198, and unlike the plaintiff in *Morse*, who did not consent to the alleged inappropriate sexual contact, *Morse*, ___ Mich App at ___, slip op at 13. Additionally, this is not a case where Martin's private materials were stolen and then disseminated to the public at large. Thus, we conclude that reasonable minds may differ as to whether the alleged conduct of sending the photos and videos to two people was extreme and outrageous.

Moreover, we conclude that a question of fact exists as to whether Martin suffered "severe emotional distress." In *Haverbush v Powelson*, 217 Mich App 228, 235; 551 NW2d 206 (1996), this Court held as follows:

> 1 Restatement Torts, 2d, § 46, Comment j p 77, states that emotional distress "includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea." However, the comment continues:
>
> > The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining its severity. Severe distress must be proved; but in many cases the extreme and outrageous character is in itself important evidence that the distress has existed. [Citation omitted.]

Additionally, "while severe emotional distress is normally accompanied by bodily harm, bodily harm is not required if the enormity of the outrage carries with it the conviction that there has been severe emotional distress." *Dickerson v Nichols*, 161 Mich App 103, 108; 409 NW2d 741 (1987).

In this case, Martin's affidavit indicated in a conclusory manner that Martin suffered from "severe emotional distress" as a result of Smith's actions, i.e., sending the photographs and videos to third parties and repeatedly making unwanted contact with Martin. However, Martin's affidavit then provided further detail:

> I have received mental health therapy . . . due to [Smith] having victimized me. I have pertinently been diagnosed by said healthcare provider with major depressive disorder, posttraumatic stress disorder, and generalized anxiety disorder. I have suffered mental anguish in the form of frustration, irritation, humiliation, embarrassment, shame, anger, anxiety, depression, insomnia, outrage, annoyance,

> discomfort, inconvenience, indignation, insult, disgust, vexation, and utter contempt.

In so averring, however, Martin did not indicate how Smith's alleged behavior and actions affected the manner in which he lived his life or interacted with others. Rather, Martin simply averred that he had submitted to therapy and was "pertinently diagnosed" with mental health conditions. Cf. *Haverbush*, 217 Mich App at 235-236 (finding sufficient evidence to establish severe emotional distress where the plaintiff testified that the defendant's harassment over a two-year period affected the way he did his work, that he was concerned that the plaintiff was going to interfere with his wedding, that he was worried about his reputation, and that he was concerned about his patients' safety); *Dickerson*, 161 Mich App at 108-109 (finding that the jury's finding of severe emotional distress was "established by both expert and lay witnesses," some of whom testified that the plaintiff was prescribed medication for his "stress-related symptoms," that the plaintiff was believed to be developing an ulcer, that the plaintiff's family noticed that he was argumentative and depressed, and that the plaintiff was in "an extreme state of agitation"). Moreover, Martin did not submit evidence to support that his mental health conditions were linked to Smith's alleged behavior and actions. Because reasonable minds could differ regarding whether Martin's alleged severe emotional distress constituted "distress . . . so severe that no reasonable man could be expected to endure it," we conclude that a genuine issue of material fact existed for trial. Consequently, the trial court did not err by denying Martin's motion for summary disposition on the intentional infliction of emotional distress claim.

3. CIVIL STALKING

The civil stalking statute, MCL 600.2954, creates a civil cause of action for victims of stalking as defined by the criminal stalking statute, MCL 750.411h. MCL 600.2954(1). Under MCL 750.411h(1)(d), stalking is defined as

> a willful course of conduct[6] involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Thus, "under Michigan civil and criminal law, stalking constitutes a willful course of conduct whereby the victim of repeated or continuous harassment actually is, and a reasonable person would be, caused to feel terrorized, frightened, intimidated, threatened, harassed, or molested." *Nastal*, 471 Mich at 722. "Harassment" has been defined by our Legislature to mean:

> conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer

[6] "Course of conduct" is defined as "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a).

emotional distress and that actually causes the victim to suffer emotional distress. [MCL 750.411h(1)(c).]

"Thus, there must be two or more acts of unconsented contact that actually cause emotional distress to the victim and would also cause a reasonable person such distress." *Nastal*, 471 Mich at 723 (citation omitted).

In this case, the undisputed record evidence supports that Smith engaged in two or more acts of unconsented contact with Martin. Martin's romantic relationship with Smith ended sometime before December 2018. Thereafter, Smith sent Martin threatening text messages and left threatening voice mails, indicating that he was going to disclose unspecified information about Martin to Martin's family. Smith also threatened to send additional photographs and videos of Martin to third parties, including Martin's family. Martin averred that, in January 2019, Smith "left dozens of unwanted and threatening voicemails on [Martin's] phone despite [Martin] repeatedly demanding that the contact cease." Martin obtained a PPO against Smith in February 2019. Although Smith was advised of the PPO by Martin's attorney at the time, Smith e-mailed Martin several times and text messaged Martin. In one of the e-mails, Smith instructed Martin, "[i]t would be best if you contact me." Importantly, Smith did not deny that he contacted Martin multiple times after he became aware of the PPO. Rather, in Smith's affidavit, he acknowledged that he violated the PPO by contacting Martin.

With respect to whether Smith's conduct "actually cause[d] [Martin] to suffer emotional distress," "[e]motional distress" is defined as "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling."[7] MCL 750.411h(1)(b). Because the statute does not define "significant mental suffering or distress," it is proper to consult dictionary definitions. *Nastal*, 471 Mich at 723. "Significant" is defined as "of a noticeably or measurably large amount," and "suffering" is defined as "pain." *Merriam-Webster's Collegiate Dictionary* (11th ed). Thus, "significant mental suffering" means as "a noticeably or measurably large amount" of mental "pain." "Distress" is defined as "subject to great strain or difficulties[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed).

We conclude that Martin has failed to establish that reasonable minds could not differ as to whether Martin suffered from "emotional distress" as a result of Smith's alleged conduct and behavior. Although Martin averred that he participated in mental health therapy as a result of Smith's conduct and had been diagnosed with mental health issues, he does not offer evidence to support that Smith's conduct "actually cause[d]" the mental health issues. The same is true of Martin's assertions that he had suffered mental anguish in the "form of frustration, irritation, humiliation, embarrassment, shame, anger, anxiety, depression, insomnia, outrage, annoyance, discomfort, inconvenience, indignation, insult, disgust, vexation, and utter contempt." Moreover, although the evidence supports that Martin suffered from mental health issues, reasonable minds

[7] Statutes are interpreted according to their plain meaning. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009). " '[O]r' is a disjunctive term, indicating a choice between two alternatives[.]" *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010).

could differ as to whether the mental health issues created "a noticeably or measurably large amount" of mental "pain" or whether they created "great strain or difficulties[.]" Indeed, as already noted, Martin did not offer evidence to support that his mental health issues impacted his life. Furthermore, although Martin submitted scholarly articles concerning the impact of "revenge porn" on its victims, there is no evidence to support that the opinions in the articles could be applied to Martin. Thus, when viewing the evidence in a light most favorable to Smith, we conclude that a question of fact exists as to whether Martin suffered "emotional distress." Consequently, the trial court did not err by denying Martin's motion for summary disposition with respect to the civil stalking claim.

C. UNCLEAN HANDS

Smith argues on appeal that Martin is not entitled to recovery because Martin had "unclean hands." "[O]ne who seeks the aid of equity must come in with clean hands." *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 463; 646 NW2d 455 (2002) (quotation marks and citation omitted). "The clean hands maxim is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002) (quotation marks and citations omitted).

Martin does not request that this Court review any claims concerning equitable relief on appeal. Rather, Martin seeks a determination of the parties' legal rights in regard to Martin's claims for invasion of privacy based upon the public disclosure of private material, intentional infliction of emotional distress, and civil stalking. Because "defendants may not raise the equitable defense of unclean hands as to plaintiffs' request for a determination of their legal rights," the doctrine of unclean hands is not applicable to the issues presented on appeal. *Waldorf v Zinberg*, 106 Mich App 159, 165; 307 NW2d 749 (1981). To the extent that Smith is arguing that Martin is not entitled to injunctive relief under the doctrine of unclean hands, the trial court is the proper venue for that argument.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron