



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2026

Todd Ramos* v. Thomas Shea	}	APPEALED FROM:
	}	Superior Court, Bennington Unit,
	}	Civil Division
	}	CASE NO. 23-CV-04512
		Trial Judge: David A. Barra

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the civil division's decision granting judgment as a matter of law to defendant on plaintiff's claim of intentional infliction of emotional distress (IIED). We affirm.

In October 2023, plaintiff filed a complaint alleging that one afternoon in October 2020, he pulled over to the side of the road in Searsburg, Vermont, to make a phone call. Defendant's driveway met the main road at the point where plaintiff pulled over. Plaintiff and defendant had never met or interacted before. Defendant told plaintiff to leave, and plaintiff complied. Defendant pulled out a handgun and fired it twice at plaintiff's vehicle as he drove away. Plaintiff alleged that as a result of this incident, he suffered from extreme emotional distress. Plaintiff was subsequently permitted to amend his complaint to add a count of assault.

The parties stipulated prior to trial that: defendant fired his handgun twice; after one of the shots, plaintiff shouted, "what's your problem?" and plaintiff's passenger remarked that he saw tree bark fall from above; plaintiff had a fourteen-year history of anxiety; plaintiff was diagnosed with post-traumatic stress disorder (PTSD) in 2014 or 2015 and was issued a medical cannabis card to treat that condition at that time; and at a doctor's appointment in December 2020, plaintiff reported that he did not feel his anxiety was well controlled.

At trial, plaintiff testified that when defendant fired the handgun, plaintiff felt a rush of "fight or flight" adrenaline. After the incident, he "went backwards," suffering from flashbacks that made it hard for him to get out of bed. This sometimes caused him to miss work, and he had difficulty talking about the incident for three years. He and his wife sold their home in Vermont and never returned to the area. Plaintiff then called defendant, who testified that he was wrong to fire the gun but did not realize it was likely to cause plaintiff emotional distress.

Both parties moved for judgment as a matter of law after plaintiff concluded his presentation of evidence. The court deferred its ruling until after the close of all evidence. After testimony from defendant's and plaintiff's wives, the trial court granted judgment in defendant's favor on plaintiff's IIED claim. The court reasoned that, even if plaintiff's testimony about his emotional distress was sufficient to meet the IIED standard, he had failed to prove that defendant's actions caused his symptoms. The court noted that plaintiff had testified that "he couldn't sort out what of his symptoms related to things beforehand, what related to this incident, what related to things happening afterwards." The court explained that plaintiff's testimony was insufficient to show that defendant's action caused specific symptoms. The court denied judgment on the assault claim. The jury found in defendant's favor on that claim. This appeal followed.

Plaintiff first claims that the court erred in granting defendant's motion for judgment as a matter of law on his IIED claim and denying plaintiff's motion.* Vermont Rule of Civil Procedure 50(a)(1) provides that once a party has been fully heard on an issue at trial, the court may grant judgment as a matter of law against that party if "there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." This Court reviews a decision on a motion for judgment as a matter of law using the same standard as the trial court and will "consider the evidence in the light most favorable to the nonmoving party, excluding the effect of any modifying evidence." Follo v. Florindo, 2009 VT 11, ¶ 26, 185 Vt. 390.

Vermont first recognized the tort of IIED as described by the Restatement (Second) of Torts § 46 in Sheltra v. Smith, 136 Vt. 472, 475 (1978). To prevail on an IIED claim, "plaintiff must demonstrate that defendant's conduct was outrageous, that he acted intentionally or with reckless disregard of the probability of causing emotional distress, and that defendant's outrageous conduct was the actual or proximate cause of plaintiff's extreme emotional distress." Long v. L'Esperance, 166 Vt. 566, 575 (1997).

Plaintiff testified that for fourteen years prior to the incident, he had suffered from anxiety and clinical depression and experienced sweaty hands, racing thoughts, nausea, and "wrenching." He tried antidepressants and medical cannabis to deal with his issues. There were also "significant issues" in his life that made his anxiety worse, including financial stress and physical injuries. He stated that when defendant fired the gun, he felt an adrenaline rush, "like fight or flight." He further stated that after the October 2020 incident, he "went backwards" and experienced flashbacks. He spent days in bed and missed work and other events. However, plaintiff testified that he could not say that any specific symptom of stress or depression that he experienced was from the incident. He further testified that he did not claim that the incident caused his PTSD, anxiety, or depression. On cross-examination, plaintiff confirmed that he attended seventeen medical appointments between December 2020 and October 2023, including an April 2022 appointment when he stated that financial stress was causing his anxiety, but never

* Defendant argues that plaintiff failed to preserve his claim that the court should have granted him judgment as a matter of law by renewing the motion after judgment as required by Rule 50(b). Plaintiff indicated that he wished to renew his judgment after the jury verdict, but did not file a motion after the court formally entered judgment. See V.R.C.P. 58(a) (requiring entry of judgment on separate document). We agree that in the absence of a post-judgment motion, we could not enter judgment for plaintiff if we agreed with his position. See V.R.C.P. 50(b) (requiring motion based on sufficiency of evidence to be renewed after entry of judgment to preserve appellate review). However, we may still review plaintiff's claim that the court erred in granting defendant's motion, as defendant evidently concedes.

mentioned the October 2020 incident to his providers. Later, he testified that “it’s significantly gotten worse in 2020,” but did not specify what he meant by “it” or when in 2020 he was referring to. Plaintiff’s wife testified that plaintiff would sometimes be unable to get out of bed or eat and experienced sweaty palms and dry heaving. She stated that he had these symptoms before the October 2020 incident. She further stated that he did not talk to her about the incident afterward or about his feelings.

Taking this evidence in the light most favorable to plaintiff, it is insufficient to demonstrate a causal connection between the shooting and subsequent emotional distress experienced by plaintiff. Plaintiff admitted that he suffered the same symptoms before and after the incident, and his wife corroborated this statement. He stated that he could not attribute any particular symptom to the incident and did not think the incident caused his PTSD, anxiety, or depression. Absent expert testimony to demonstrate a causal link between the incident and any of his subsequent symptoms, a reasonable jury could not conclude that defendant’s acts caused plaintiff severe emotional distress without engaging in impermissible speculation. The trial court therefore properly granted judgment as a matter of law to defendant on the IIED claim. See Stocker v. State, 2021 VT 71, ¶ 38, 215 Vt. 432 (holding that trial court properly granted judgment to child-protection agency on claim that agency negligently failed to determine whether allegations of child abuse were valid, because jury would have to engage in speculation to find that agency’s failure to act was proximate cause of children’s injuries).

Plaintiff argues that reversal is required because the court engaged in credibility determinations that were reserved for the jury. In explaining its reasoning for granting defendant’s motion, the court noted that it had previously denied defendant’s motion for summary judgment, which argued that expert testimony was required to prove causation. The court stated that under Rule 56, “the standard is similar but different under Rule 50, credibility of a witness can be taken into account. And what we didn’t have in Rule 56 was that we didn’t have the testimony that we do now.” Plaintiff argues that this shows that the court improperly weighed the credibility of the witnesses in granting defendant’s motion.

We disagree. As explained above, when deciding a motion for judgment as a matter of law the court must view the evidence in the light most favorable to the nonmoving party, excluding modifying evidence. Follo, 2009 VT 11, ¶ 26. “Modifying evidence is that evidence which the jury is free to disbelieve because of questions about its credibility,” such as testimony from the defendant. Monahan v. GMAC Mortg. Corp., 2005 VT 110, ¶ 2, 179 Vt. 167; see State v. Gibney, 2003 VT 26, ¶ 14, 175 Vt. 180 (“By modifying evidence, we mean exculpatory evidence introduced by defendant, such as countervailing testimony.”). The court here examined only the evidence presented by plaintiff, and concluded that even if true, it was insufficient to establish causation. Accordingly, we see no error.

Because we conclude that the trial court correctly granted defendant’s Rule 50 motion, we need not address plaintiff’s arguments that the court erred in excluding evidence from a separate proceeding involving defendant or demonstrative exhibits prepared by plaintiff to illustrate the parties’ relative locations when defendant fired the gun. Any error in excluding this evidence was harmless because it would not have altered the court’s conclusion that plaintiff failed to establish that defendant’s actions were the cause of emotional distress subsequently suffered by plaintiff. See Lasek v. Vt. Vapor, Inc., 2014 VT 33, ¶ 24, 196 Vt. 243 (declining to reverse based on error that did not affect outcome of case); V.R.C.P. 61 (stating that harmless error in exclusion or admission of evidence does not require reversal).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice