

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

KIMBERLY MYERS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 10-00081-CV-W-BP
)	
BLUE SPRINGS SCHOOL DISTRICT,)	
et al.,)	
)	
Defendants.)	

ORDER

This matter comes before the Court on Defendants Emily Stine and Wally Stine’s Joint Motion for Summary Judgment. (Doc. # 163). Each Defendant moves for summary judgment on Counts V and XI. Count V is a claim for “Wrongful Death – Intentional Infliction of Emotional Distress,” and in it, Plaintiffs Kimberly Myers and Randy Myers allege Defendants intentionally inflicted emotional distress upon their son Brandon Myers, thereby causing or contributing to his suicide. Count XI is captioned “Aggravating Circumstances – Punitive Damages,” and in it, Plaintiffs seek punitive damages. For the reasons set forth below, Defendants’ Motion will be **GRANTED** as to Emily Stine and **DENIED** as to Wally Stine.

I. FACTS

Plaintiffs are the parents of Brandon Myers. Plaintiffs allege Brandon was born with a cleft palate, spoke with a speech impediment, attended special education and speech therapy classes, and suffered from attention deficit disorder and clinical depression. Brandon was a student in the Blue Springs School District (“BSSD”), where Plaintiffs allege he suffered relentless bullying. During his fifth grade-year, Brandon committed suicide by hanging.

Defendants Emily and Wally Stine are the parents of Jon Stine. Jon was a BSSD student with Brandon. (Defs.' Statement of Uncontroverted Facts ("Defs.' Facts") ¶¶ 9-10, Doc. # 163). Defendants assert Jon and Brandon were friends who had conflicts typical of children, but Plaintiffs contend Jon bullied Brandon. (*Id.* ¶¶ 9-10; Pls.' Statement of Material Facts ("Pls.' Facts") ¶ 2-3, Doc. # 173). It is undisputed that Emily met Brandon only once, when the boys were playing at the Stine home, and that Wally never met Brandon. (*Id.* ¶¶ 18, 26).

Jon Stine and a female BSSD student named Alix Buchanan are "acquaintances," and Wally Stine socializes with Alix's father. (Jon Stine Dep. 10:10-11, 15:21-23). At some point, Brandon left Alix a series of telephone voicemail messages. (Wally Stine Dep. 17:2-19). Wally Stine heard a small part of one of these messages, and he described Brandon's messages as "extremely inappropriate" and of "a sexual nature," but not "threatening." (*Id.* at 17:9-12, 18:11-13). At the time Wally heard the message, he knew Brandon had a crush on Alix. (*Id.* at 18:6-8). Alix then made a series of calls to Brandon's home. (Pls.' Facts ¶ 5). Jon admits he was present during these calls. (Jon Stine Dep. 45:6-18). During these calls, Alix feigned romantic interest in Brandon. (*Id.*). Brandon's stepfather, John Scarlett, said these "prank calls" occurred "repeatedly." (John Scarlett Dep. 29:7-5). When John Scarlett subsequently discussed these prank calls with Wally, Wally denied his son did such things. (*Id.* at 74:7-10).

It is undisputed Brandon called and left a voicemail message at the Stine home, but the substance of Brandon's message is disputed. Wally Stine asserts Brandon indicated he was going to use a gun to shoot up the Stine home. (*Id.* at 20:3-16). John Scarlett stated Brandon spoke of only a non-existent paintball gun. (John Scarlett Dep. 29:7-25). Wally claimed he did not know who Brandon was at the time of the message. (*Id.* at 20:20-24). However, John Scarlett stated Wally called his home and was "irate," "angry," and "ranting and raving" about

Brandon's message. (*Id.* at 29:5-25). During this conversation, John brought up the prank calls Brandon had received but got the impression that Wally "just didn't care." (*Id.* at 74:11-22). John stated Wally did not calm down during their conversation, and that Wally ultimately hung up on him. (*Id.* at 73:17-20). In contrast, Wally asserts he discussed Brandon's message with Kimberly Myers, and that they agreed it would be best if the boys no longer socialized. (Wally Stine Dep. 25:15-21). Wally also stated he is not aware of Jon ever prank-calling Brandon. (*Id.* at 14:7-9). It is undisputed Emily was unaware of any prank calls Jon made to Brandon until a later time. (*Id.* ¶ 29-30).

On the evening of February 14, 2007, Jon Stine, Wally Stine, Alix Buchanan, and Alix's father were all riding in a vehicle together, when Jon toilet-papered Brandon's home. (Defs.' Facts ¶ 17; Jon Stine Dep. 10:14-11:2). Jon claimed he did so because he had wanted to go toilet-papering that evening, and that he picked Brandon's home for "no particular reason." (Jon Stine Dep. 14:15-22). Jon stated that Wally did not assist in the toilet-papering, but that Wally did exit the vehicle and ring the home's doorbell. (*Id.* at 11:20-24, 16:1-15). Wally asserts Jon asked if he could toilet-paper "a friend's house." (*Id.* at 22:10-12). Wally gave Jon his permission, but contends he did not know Jon was toilet-papering Brandon's house. (*Id.* at 23:23-25). It is undisputed Emily Stine had no role in these events. (Defs.' Facts ¶¶ 27-28). This evening was the only time Brandon's home was toilet-papered. (Kimberly Myers Dep. 172:4-10). Kimberly Myers never observed toilet-papering at any other house in the neighborhood. (*Id.*).

Eight days later, on February 22, 2007, Brandon committed suicide. (Defs.' Facts ¶ 10, 43). At a BSSD meeting held one day after Brandon's death, Wally Stine spoke with Randall Myers. (Randall Myers Dep. 125-127:14.). During that conversation, Randall states that Wally

denied having any role in the toilet-papering incident. (*Id.* at 125:11-128:23). Wally disputes this statement, asserting he was never even asked about the matter. (Wally Stine Dep. 26:3-11). At a subsequent BSSD board meeting, Wally publicly announced that Brandon was a bipolar schizophrenic who “was messed up” and “had issues.” (Kimberly Myers Dep. 161:10-22).

In their Complaint, Plaintiffs allege “Wally and Emily’s conduct towards Brandon, including the condoning of regular hurtful and harassing phone calls; financing, driving, and actively participating in the vandalizing of Brandon’s home and property; and falsely accusing Brandon of unprovoked threats to their property, amount to outrageous conduct[.]” (Compl. ¶ 134, ECF No.1-2).

II. SUMMARY JUDGMENT STANDARD

A party to a lawsuit may move for summary judgment on any claim. Fed. R. Civ. P. 56(a). When a party moves for summary judgment, the court’s role is to determine whether the evidentiary record contains genuine issues of material fact. *Connolly v. Clark*, 457 F.3d 872, 876 (8th Cir. 2006). The court makes this determination by both viewing the facts and drawing all reasonable inferences in favor of the nonmoving party. *Heacker v. Safeco Ins. Co. of Am.*, 676 F.3d 724, 726-27 (8th Cir. 2012). A fact is material when its resolution affects the outcome of a claim under the governing law, and an issue of material fact is genuine when a reasonable fact finder could review the evidence and find in favor of either party. *Rademacher v. HBE Corp.*, 645 F.3d 1005, 1010 (8th Cir. 2011).

Summary judgment should be granted only if the record shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Heacker*, 676 F.3d at 726-27. Accordingly, summary judgment should be granted when the nonmoving party fails to make a showing of an essential element of its claim. *Vaughn v.*

Wallace, 496 F.3d 908, 910-11 (8th Cir. 2007). Summary judgment should also be granted when a reasonable fact finder could not find for the nonmoving party. *Quinn v. St. Louis Cnty.*, 653 F.3d 745, 750 (8th Cir. 2011). In contrast, summary judgment must be denied if the record contains evidence sufficient for a reasonable fact finder to find in favor of the nonmoving party. *Young-Losee v. Graphic Packaging Int'l, Inc.*, 631 F.3d 909, 911 (8th Cir. 2011).

III. MISSOURI TORT LAW

Missouri tort law governs Counts V and XI. *Walker v. Barrett*, 650 F.3d 1198, 1203 (8th Cir. 2011). The Missouri wrongful death statute provides that:

Whenever the death of a person results from any act, conduct, occurrence, transaction, or circumstance which, if death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who, or the corporation which, would have been liable if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured[.] ...

Mo. Rev. Stat. § 537.080.1. “Although death is the necessary final event in a wrongful death claim, the cause of action is derivative of the underlying tortious acts that caused the fatal injury.” *State ex rel. Burns v. Whittington*, 219 S.W.3d 224, 225 (Mo. 2007). Therefore, to prevail on Count V, Plaintiffs must satisfy the elements of an intentional infliction of emotional distress claim and show those actions caused or contributed to Brandon’s death by suicide. *Super v. White*, 18 S.W.3d 511, 515-16 (Mo. Ct. App. 2000).

Missouri law on intentional infliction of emotional distress is based on the Restatement (Second) of Torts § 46. *Pretsky v. Sw. Bell Tel. Co.*, 396 S.W.2d 566 (Mo. 1965); *e.g.*, *Hyatt v. Trans World Airlines, Inc.*, 943 S.W.2d 292, 297-98 (Mo. Ct. App. 1997). Under Missouri law, intentional infliction of emotional distress action has the following elements: (1) the defendant’s conduct was intentional or reckless; (2) the defendant’s conduct was extreme and outrageous; and (3) the defendant’s conduct caused severe emotional distress that results in bodily harm.

Gibson v. Brewer, 952 S.W.2d 239, 249 (Mo. 1997). For a plaintiff to prevail, the “sole purpose” of the defendant’s conduct must have been “to cause extreme emotional distress to the victim.” *Id.* In addition, “[t]he conduct must have 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.*

“Missouri case law recognizes the difficulty in defining acts that are ‘extreme and outrageous,’ and thus, each case must turn on its individual facts.” *Thornburg v. Fed. Express Corp.*, 62 S.W.3d 421, 427-28 (Mo. Ct. App. 2001). Conduct can be extreme and outrageous if it exploits a disparity in power or authority between the defendant and the victim. *Warrem v. Parrish*, 436 S.W.2d 670 (Mo. 1969); Restatement § 46 cmt. e. Conduct can also be extreme and outrageous if the defendant acts with knowledge that the victim is particularly susceptible to emotional distress, especially if by reason of a physical or mental condition. *LaBrier v. Anheuser Ford, Inc.*, 612 S.W.2d 790, 793-94 (Mo. Ct. App. 1981); Restatement § 46 cmt. f.

“It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery.” *Thornburg*, 62 S.W.3d at 428 (quotation omitted). To do so, the court decides whether an average member of the community would exclaim “Outrageous!” upon learning the facts of the case. *Id.* The Missouri courts have found a defendant’s conduct to be sufficiently extreme and outrageous in few factual situations. *See Gibson v. Hummel*, 688 S.W.2d 4, 7 -8 (Mo. Ct. App. 1985) (compiling and reviewing cases). However, “[i]f in the favorable view of plaintiff's evidence, giving plaintiff all the benefit of favorable inferences to be drawn therefrom, the question is reasonably debatable, then the issue should go to the jury.” *LaBrier*, 612 S.W.2d at 793; *accord*

Boes v. Deschu, 768 S.W.2d 205, 208 (Mo. Ct. App. 1989); *Frye v. CBS Inc.*, 671 S.W.2d 316, 319 (Mo. Ct. App. 1984); Restatement § 46 cmt. h.

In addition to satisfying the elements of an action for intentional infliction of emotional distress, Plaintiffs must also present evidence that each Defendant's conduct caused Brandon's suicide. *Kivland v. Columbia Orthopaedic Grp., LLP*, 331 S.W.3d 299, 306, 309-10 (Mo. 2011). To do so, Plaintiffs must offer evidence of both proximate causation and factual causation. *Id.* at 309-10. As the Missouri Supreme Court recently clarified, the same causation principles apply to all wrongful death claims. *Id.* at 306-10. Thus, causation in a wrongful death claim based on a suicide is analyzed no differently than causation in any other wrongful death claim. *Id.*

Proximate causation is a question of law for the court. *Id.* at 309. The court's inquiry is whether the injury suffered is "the natural and probable consequence" of the defendant's conduct. *Id.* at 309 (citation omitted). This test does not require a defendant to have anticipated the precise manner, nature, or extent of the injury suffered. *Alcorn v. Union Pac. R.R. Co.*, 50 S.W.3d 226, 239 (Mo. 2001). Instead, all that is required is that the defendant either knew or should have known there was an appreciable chance some injury would result. *Id.* Accordingly, if a plaintiff fails to present evidence showing a suicide was the "natural and probable consequence" of a defendant's conduct, then the suicide is an intervening cause of death and the wrongful death claims fails. *Kivland*, 331 S.W.3d at 309-10. In contrast, if the plaintiff does present this evidence, then the claim can be submitted to the jury to decide the question of factual causation. *Id.* at 310. That question is whether "the suicide is a direct result of the defendant's [conduct]." *Id.* at 310. The plaintiff meets this burden by presenting evidence showing the defendant "directly caused or directly contributed to cause" the suicide. *Id.* at 306.

A plea for punitive damages is not a separate claim, but instead must be brought in conjunction with an underlying claim seeking damages. *Pittman v. Ripley Cnty. Mem. Hosp.*, 318 S.W.3d 289, 295 (Mo. Ct. App. 2010). In order to recover punitive damages, a plaintiff must first prevail and be awarded damages on the underlying claim. *Id.*

IV. DISCUSSION

a. Emily Stine's Motion for Summary Judgment

Emily Stine argues she is entitled to summary judgment because Plaintiffs have failed to present evidence her conduct was extreme and outrageous conduct. Plaintiffs apparently concede this point, as they do not respond to this argument. Indeed, the undisputed facts show Emily Stine was not involved in toilet-papering Brandon's home, and the record contains no other evidence she engaged in conduct that can be considered extreme and outrageous. Accordingly, Plaintiffs have failed to make a showing of an essential element of their claim, and Emily Stine is entitled to judgment as a matter of law on both Counts V and XI.

b. Wally Stine's Motion for Summary Judgment

Wally Stine argues he is entitled to summary judgment because Plaintiffs have failed to show his conduct was extreme and outrageous. The Court must review the record in the light most favorable to Plaintiffs. After doing so, the Court concludes the record contains numerous genuine issues of material fact. These issues include whether Wally knew of Brandon's personal difficulties, what Wally knew of and how he participated in the toilet-papering of Brandon's home, and whether Wally harbored personal animosity towards Brandon. In addition, considering the facts in the light most favorable to the plaintiff, the Court concludes it is reasonably debatable whether Wally's conduct is extreme and outrageous. Accordingly,

Missouri law requires this question to be decided by the jury, and he is not entitled to judgment as a matter of law on this basis.

Next, Wally argues Plaintiffs have failed to show the sole motivation of his conduct was to cause Brandon emotional distress. The genuine issues of material fact identified above preclude summary judgment on this basis. Finally, Wally argues Plaintiffs have failed to show his conduct was the proximate cause of Brandon's death. This argument confuses proximate causation with factual causation. The record shows Wally knew of Brandon and his personal difficulties, knew of the prank calls Brandon received, and was involved in the toilet-papering of Brandon's home. A reasonable person in Wally's situation either knows or should know there is an appreciable risk this conduct will cause injury to a young person who is susceptible to emotional distress. Accordingly, Plaintiffs' evidence is sufficient to establish proximate causation. Wally Stine is not entitled to summary judgment on either Counts V or XI.

V. CONCLUSION

Accordingly, it is hereby **ORDERED** that

Defendant Emily Stine's Motion for Summary Judgment, (Doc. # 163), is **GRANTED**. The Court hereby grants summary judgment in favor of Defendant Emily Stine on the claims alleged in Counts V and XI of Plaintiffs' Complaint.

Defendant Wally Stine's Motion for Summary Judgment, (Doc. #163), is **DENIED**.

/s/ Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT

DATED: June 5, 2012