



SCOKY Holds “Gap-Filler” IIED Claim Does Not Lie If Facts Fit Traditional Tort

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The Kentucky Supreme Court, in *Childers v. Geile*, --- S.W.3d ---, 2009-SC-000790-DG (6/21/12), discussed whether a claim for intentional infliction of emotional distress can be maintained when the same facts also support a traditional tort claim.

In *Childers*, a pregnant woman was told by an ER physician that she was having a miscarriage. The physician then prescribed medication to stop the bleeding. After visiting her obstetrician, the woman learned that she had not had a miscarriage. However, the medication she had been given resulted in delivery of the fetus at approximately 15 weeks, at which point it was unable to survive. The woman filed suit for medical negligence and intentional infliction of emotional distress (IIED), before amending her complaint to assert only the IIED claim. The physician then filed two motions for summary judgment, one arguing that the elements of IIED were not met, and the other arguing that the emotional distress claim was not proper, as the underlying facts would support a medical negligence claim. The trial court granted the physician’s second motion for summary judgment, which the Court of Appeals affirmed.

The Supreme Court granted discretionary review in order to determine when a claim for IIED is appropriate. An IIED requires that outrageous conduct be done with the intent to cause severe emotional distress, such that the ensuing emotional distress is a direct result of that conduct. No physical impact or personal injury is required for a plaintiff to recover.

The Court explained that a negligent act cannot give rise to an IIED claim because the requisite intent is not present. Thus, an injured party cannot maintain an IIED claim and a negligence claim based on the same set of facts. The Court also recognized an IIED claim as a “gap-filler” tort in that it allows for recovery when no other remedy is available because of the lack of injury to one’s person or reputation. In a personal injury action, the emotional distress of the injured party will be used to support the damages element, precluding the injured party from using that same emotional distress as the basis for its own tort. It follows then, that where a claim can be brought under a traditional tort, an IIED claim will not be allowed.

The Court held that the first summary judgment motion should have been granted because the physician’s conduct did not meet all of the elements required for the tort of intentional infliction of emotional distress. The Court further held that the physician was negligent in prescribing the medication that resulted in the miscarriage and emotional distress. Therefore, the physician’s second motion for summary judgment was properly granted because her conduct, and the resulting emotional distress, could have been subject to a medical negligence claim.

The *Childers* decision is not yet final but was designated for publication in the South Western Reporter. Decisions that are not final should not be cited as authority in a Kentucky court.