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Insights

A More Considerate Court: The Sixth District Expands Emotional Distress Damages

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Florida's Sixth District Court of Appeal recently issued an opinion that held that a plaintiff may recover emotional distress damages for another party's tortious interference with a business relationship. The court's findings provide further insight into the scope of availability of emotional distress damages in tort claims. The key distinction lies between two types of torts: intentional torts and negligence. Intentional torts focus on deliberate actions intended to cause harm such as assault and battery. Negligence occurs through a failure to act reasonably such as running a red light.

In *Florida BC Holdings, LLC v. Reese*, a former employee made a claim for lost wages and emotional distress against his former employer for attempting to enforce an alleged non-compete agreement against the employee's new employer. 376 So.3d 109, 111 (Fla. 6th DCA 2023). The employee had accepted a job with a competitor of the former employer, despite allegedly signing a non-compete agreement. As such, the former employer informed the employee's new employer that it planned to enforce the non-compete. The new employer fired the employee after receiving the letter from the former employer.

In its defense, the former employer argued that the "impact rule" would preclude the employee from claiming emotional distress damages against the former employer. Generally, the impact rule requires that a plaintiff must suffer physical harm before recovering for emotional distress caused by another's *negligence*. In this case, the trial court ruled that the impact rule does not apply to *intentional torts*, allowing the jury to find that the former employer's improper behavior caused damages of $86,643.50, in which $50,000 compensated the former employee for emotional distress.

On appeal, the Sixth District affirmed. The Florida Supreme Court has never applied the impact rule to bar a plaintiff from recovery in intentional tort claims. In *Rowell v. Holt*, the Supreme Court held the impact rule inapplicable to intentional torts that result in predominantly emotional

damages, *e.g.*, defamation or invasion of privacy. 850 So.2d 474, 478–79 (Fla. 2003). The Supreme Court later held the impact rule inapplicable where emotional damages result from a "freestanding tort," regardless of what emotional damages may have occurred. Florida Dept. of Corr. v. Abril. 969 So.2d 201, 207–08 (Fla. 2007).

Ultimately, the Sixth District made two findings expanding the ability to recover emotional distress damages. First, such recovery may come by way of intentional torts committed with "actual malice." Meaning, an act so purposefully harmful or reckless as to warrant punitive damages. Applied here, actual malice would manifest if the former employer knew it did not have an enforceable non-compete agreement with the employee, yet informed the employee's new employer it planned to enforce one anyway. Second, the court generally concluded that "the impact rule does not apply to intentional torts." This directly contradicts *Reid v. Daley*, where the First District applied the impact rule to a plaintiff's intentional tort claims but the plaintiff failed to allege any physical impact, barring the recovery of emotional distress damages.

Consequently, the Sixth District certified two questions to be of great public importance:

(1) Subject to exceptions previously recognized by the Supreme Court of Florida, does the impact rule generally apply to intentional torts?

(2) Does the impact rule apply to the tort of tortious interference with an advantageous business relationship and, if so, does the impact rule apply when such tort is committed with actual malice?

The Supreme Court of Florida has accepted jurisdiction of this case, requesting that the petitioning employer serve its initial brief by March 10, 2025. The respondent-employee's answer is due 30 days after service of the initial brief and any reply must come 30 days after the answer. As such, this case is will likely be set for oral argument before Florida's Supreme Court in the Fall of 2025.