

STATE OF MINNESOTA
COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT
BUFFALO, MINNESOTA 55313

In Re: DONALD OBRIEN et al.
vs. MINNESOTA RECOVERY BUREAU, A MINNESOTA CORPORATION
Case Number: 86-C8-99-000470

THOMAS JOHN LYONS JR
1560 BEAM AVE STE A
MAPLEWOOD MN 55109

NOTICE OF FILING OF ORDER

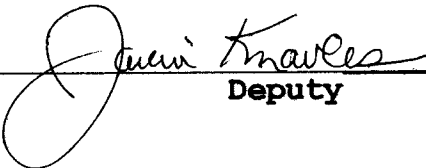
You are hereby notified on November 16, 1999 a
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was filed in
this matter. A copy is attached.

A true and correct copy of this notice has been served by mail upon the
parties named herein at the last known address of each, pursuant to the
Minnesota Rules of Civil Procedure.

LaVonn Nordeen, Court Administrator

Dated: November 16, 1999

By


Deputy

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT

Donald O'Brien and
Stephanie O'Brien,
Plaintiffs,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

vs.

Court File No. C8-99-0470

Minnesota Recovery Bureau,
Defendant.

This matter came on before the undersigned Judge of District Court on October 1, 1999 pursuant to Defendant's motion for summary judgment and Plaintiffs' cross motion for summary judgement.

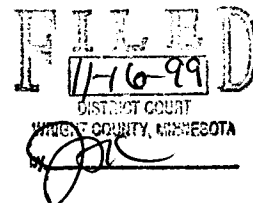
Thomas J. Lyons, Esq., appeared on behalf of the Plaintiffs (hereinafter referred to collectively as Plaintiffs or individually as "Mr. O'Brien" or "Mrs. O'Brien"). Michael P. North, Esq., appeared on behalf of Defendant, Minnesota Recovery Bureau (hereinafter referred to as "MRB").

Based upon all the files, records, proceedings herein, and having been duly informed in the premises, the Court makes the following:

FINDINGS OF FACT

1. On October 1, 1997, an agent for MRB, Quentin Carlson, went to the Plaintiffs' home to attempt to repossess a 1997 Ford F-150 pickup truck which Plaintiffs had leased from Ford Motor Credit via Tousley Ford.

2. Carlson informed Plaintiffs that he was there to repossess the truck. Mrs. O'Brien informed Carlson that they were



in the process of filing for bankruptcy and had been instructed by their bankruptcy attorney to secure the truck in a locked area and not release it to anyone.

3. Plaintiffs allege that Carlson became upset at the end of the conversation and told Mrs. O'Brien that he would return with the local police to retrieve the truck. Mrs. Carlson was afraid that she might be arrested for not releasing the truck.

4. MRB, approximately three weeks later, sent another agent, Mark Miller (hereafter "Miller"), to the Plaintiffs' home. Miller arrived at approximately 10:30 p.m.; he knocked on the kitchen door of Plaintiffs' home; Mr. O'Brien answered the door. Mrs. O'Brien stated in her deposition that she was alarmed given the late hour; she moved to where the kitchen and living room meet, in a direct line to the door, so that she could observe what was happening.

5. After opening the door an exchange occurred between Miller and Mr. O'Brien, Miller saying that he needed the truck and Mr. O'Brien saying that he was not going to turn the truck over. Mr. O'Brien states that he became upset as the exchange proceeded; he told Miller that he was not going to get the truck and that was the end of it. Mr. O'Brien proceeded to close the door.

6. As Mr. O'Brien closed the door, Miller put his foot in the door and pushed it back open. Miller's body was positioned over the threshold of the door such that the right half of his body was inside the home while the left half of his body remained outside. Mr. O'Brien stated that Miller was upset and again asked for the truck. Mr. O'Brien stated that Miller "badgered" him for a

bit longer about needing the truck and also about how they were going to end up getting the truck sooner or later. Mr. O'Brien finally shoved the door closed, and Miller did not resist Mr. O'Brien when he closed the door.

7. Mr. O'Brien stated in his deposition that he was afraid and worried because he did not know what Miller's plan was and thought that he might return later.

8. Mrs. O'Brien stated in her deposition that at the time of the exchange between her husband and Miller they were being very loud. They were loud enough that she was concerned it might wake their children sleeping upstairs. Mrs. O'Brien further stated that she was fearful of whether a physical altercation would develop between Miller and her husband.

9. After Miller left, Mr. O'Brien went to the store to purchase cigarettes. On his way to the store Mr. O'Brien passed Miller who was in the turn lane waiting to enter onto Interstate 94. Miller observed Mr. O'Brien pass and proceeded to follow Mr. O'Brien to the store.

10. Mr. O'Brien parked in front of the store and was talking with two female acquaintances when Miller pulled in and parked his truck, blocking Mr. O'Brien's car. Miller yelled to Mr. O'Brien from his truck asking Mr. O'Brien if he wished to speak with him. Mr. O'Brien entered the store without responding to Miller.

11. Mr. O'Brien stated that when he came out of the store Miller again asked where the truck was and that Mr. O'Brien could save some trouble by revealing the location of the truck. Mr. O'Brien again said he would not tell Miller where the truck was and

told Miller to move his truck. Miller moved the truck forward. Mr. O'Brien stated that he had to drive over part of the curb because Miller's truck was still blocking his exit.

Based upon the foregoing the Court makes the following:

CONCLUSIONS OF LAW

1. Genuine issues of material fact exist with respect to Plaintiff's assault claim. This Court cannot find as a matter of law that based on the assertions of fact by Mr. and Mrs. O'Brien, no assault occurred. Neither Plaintiffs nor Defendant MRB are entitled to summary judgment as a matter of law on said claim.

2. This Court cannot find as a matter of law that Plaintiffs' right to privacy and interest in seclusion was not intruded upon by MRB or its agents. Contrarily, this Court cannot find as a matter of law that Plaintiffs' privacy rights and interest in seclusion were intruded upon by MRB or its agents. Thus, summary judgment is inappropriate for both MRB and Plaintiffs on Plaintiffs' intrusion upon seclusion claim.

NOW THEREFORE IT IS HEREBY ORDERED:

1. Defendant's motion for summary judgment on both the assault and invasion of privacy (intrusion upon seclusion) claim is denied.

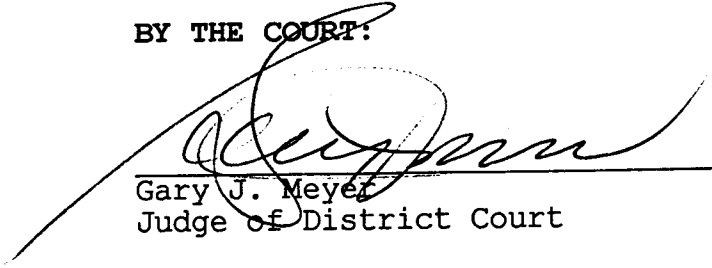
2. Plaintiff's cross motion for summary judgment on both the assault and invasion of privacy (intrusion upon seclusion) claim is denied.

The attached memorandum is incorporated herein by reference.

BY THE COURT:

Dated:

11/15/99



A handwritten signature in cursive script, appearing to read "Gary J. Meyer", is written over a horizontal line.

Gary J. Meyer
Judge of District Court

MEMORANDUM

Defendants moved this Court for summary judgment on both of Plaintiffs' claims, assault and the recently recognized invasion of privacy cause of action, intrusion upon seclusion. Plaintiffs cross-moved for summary judgment.

Assault Claim

This Court has denied Defendant's motion for summary judgment on the assault claim because viewing the facts in a light most favorable to Plaintiffs, the facts before this Court may support a cause of action for assault. There are genuine factual issues which preclude this Court from granting summary judgment for either party as a matter of law.

Minnesota recognizes the intentional tort of civil assault and the Minnesota Supreme Court summarized the cause of action in Dahlin v. Fraser, 206 Minn. 476, 478, 288 N.W. 851, 852 (1939).

The Court stated:

[a]n assault is an unlawful threat to do bodily harm to another with the present ability to carry the threat into effect. Mere words or threats alone do not constitute assault. When the words or threats are accompanied by a threat of physical violence under conditions indicating present ability to carry out the threat, they cease to be mere words or threats.

(Citing Johnson v. Sampson, 167 Minn. 203, 208 N.W. 814, 46 A.L.R. 772). Additionally, the force displayed must be such as to cause the Plaintiff reasonable apprehension of immediate bodily harm.

Dahlin, 288 N.W. at 852. A factual dispute exists as to whether Miller's actions caused Plaintiffs to reasonably fear immediate harmful contact; the evidence before this Court, including the inferences that can be drawn in favor of Plaintiffs therefrom, can support a cause of action for civil assault.

A jury could reasonably find that Miller's actions constituted a threat of immediate harmful contact. Plaintiffs had informed MRB that they were not going to give MRB the truck. Despite this information MRB sent Miller to Plaintiffs' house. Miller arrived unannounced at Plaintiffs late at night, knocked on the door and demanded the truck. Mr. O'Brien became upset and attempted to close the door to his home. As he did so Miller put his foot in the door to prevent it from closing and then pushed the door back open. The yelling and arguing of Miller and Mr. O'Brien were so loud that Mrs. O'Brien was concerned that they would wake their children sleeping upstairs. Viewing the totality of the circumstances a jury could reasonably find that when Miller pushed the door back open after preventing it from closing his actions caused a reasonable apprehension of immediate harmful contact to Plaintiffs. As such summary judgment in favor of Defendant is inappropriate.

As a jury could also reasonably find that Miller's actions did not cause Plaintiffs to fear an immediate harmful contact, summary judgment in favor of Plaintiffs is inappropriate.

Intrusion Upon Seclusion Claim

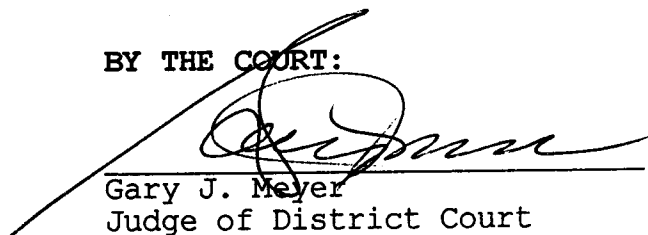
Both parties similarly moved this Court for summary judgment on the issue of whether MRB's actions amounted to an invasion of

privacy, namely an intentional intrusion upon Plaintiffs' seclusion. Prior to the Minnesota Supreme Court ruling in Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231 (Minn. 1998) such a cause of action was not recognized in Minnesota.

In Lake the Court recognized a cause of action for intrusion upon seclusion where one "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns [. . .] if the intrusion would be highly offensive to a reasonable person." Lake, 582 N.W.2d at 233 (citing Restatement (Second) of Torts, §652B (1977)). As a genuine factual dispute exists, both with respect to whether Defendant intentionally intruded upon Plaintiffs' seclusion and whether the actions of MRB and its agents would be highly offensive to a reasonable person, summary judgment for Defendants is inappropriate. Contrarily, as this Court cannot find as a matter of law that MRB intentionally intruded upon Plaintiffs' seclusion or that the actions of MRB or its agents were highly offensive to a reasonable person, summary judgment for Plaintiffs on this claim is likewise inappropriate.

BY THE COURT:

Dated: 11/15/99



Gary J. Meyer
Judge of District Court