

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000493-MR

BILLY LEE GRIGSBY

APPELLANT

v. APPEAL FROM HENRY CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 03-CI-00096

RUSSELL WINN

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

VANMETER, JUDGE: The issue we must resolve is whether the Henry Circuit Court erred by finding that no genuine issue of material fact existed as to whether a sufficient relationship existed between Billy Lee Grigsby and Russell Winn to support Grigsby's claim for the tort of outrage, and by granting summary judgment in favor of Winn. We find the circuit court did not err. Thus, we affirm.

---

<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

The material facts in this case essentially are undisputed. Grigsby was married to Faith Grigsby when Winn became the pastor of their church in January 2001. Faith and Winn attended a church mission trip during July 2002 and returned to Campbellsburg on August 2. On August 3, Faith and the children moved out of the marital home. Winn and Faith began a clandestine, two-month long sexual relationship the following week. Faith subsequently filed for divorce on August 28, and Winn resigned from his position as pastor of the church in October 2002. Winn initially denied Grigsby's accusations about his relationship with Faith. However, prior to giving his deposition, Winn finally admitted that he and Faith in fact had an affair.

In April 2003, Grigsby filed the underlying action which raised claims of outrage and alienation of affection. The circuit court dismissed the alienation of affection claim in July 2004, and that matter is not raised on appeal. In February 2006 the court granted Winn's motion for summary judgment as to the claim of outrage. Grigsby appeals.

Grigsby asserts on appeal that the circuit court abused its discretion by granting summary judgment. We disagree.

In order for a court to grant summary judgment, there must be no genuine issue as to any material fact, and the moving party must be entitled to a judgment as a matter of law. CR<sup>2</sup> 56.03. In Kentucky, summary judgment may be granted when "it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Steelvest, Inc v. Scansteel*

<sup>2</sup> Kentucky Rules of Civil Procedure.

*Serv. Ctr., Inc.*, 807 S.W.2d 476, 483 (Ky. 1991) (quoting *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985)). In the present case, there is no genuine issue as to any material fact because the undisputed facts demonstrate that Winn's conduct was not sufficiently outrageous to support a claim of outrage.

Although many kinds of conduct may be deemed morally or socially outrageous, the tort of outrage has a very limited application.

As noted in *Kroger Company v. Willgruber*, Ky., 920 S.W.2d 61 (1996), the tort is not available for "petty insults, unkind words and minor indignities." Nor is it to compensate for behavior that is "cold, callous and lacking sensitivity." *Humana of Ky., Inc. v. Seitz*, Ky., 796 S.W.2d 1 (1990). Rather, it is intended to redress behavior that is truly outrageous, intolerable and which results in bringing one to his knees.

*Osborne v. Payne*, 31 S.W.3d 911, 914 (Ky. 2000). In the interest of judicial economy, courts must avoid "opening the door to 'litigation in the field of trivialities and mere bad manners.'" *Kroger*, 920 S.W.2d at 65 (quoting *Prosser and Keeton on the Law of Torts*, 56 (5<sup>th</sup> Ed., Lawyer's Ed., 1984)). Instead, the following elements must be established to support a legal claim of outrage:

The wrongdoer's conduct must be intentional or reckless; the conduct must be outrageous and intolerable in that it offends against the generally accepted standards of decency and morality; there must be a causal connection between the wrongdoer's conduct and the emotional distress and the distress suffered must be severe.

*Osborne*, 31 S.W.3d at 913-14 (citing *Craft v. Rice*, 671 S.W.2d 247 (Ky. 1984)). In *Hoye v. Hoye*, 824 S.W.2d 422 (Ky. 1992), our supreme court abolished a legal cause of

action for adultery; therefore, some sort of “special relationship” between the alleged tortfeasor and plaintiff must exist in order for the offensive conduct to rise to the level of outrage necessary for this tort. *Osborne*, 31 S.W.3d at 914. In *Arlinghaus v. Gallenstein*, 115 S.W.3d 351, 352 (Ky.App. 2003), it was noted

that this tort provides a potential exception to the general rule . . . that consensual sex does not provide grounds for a civil action. The exception arises when the defendant, through a special relationship with the plaintiff, owes the plaintiff an independent duty of care, the breach of which is both outrageous and severely distressing.

*See also Craft*, 671 S.W.2d 247.

In *Osborne*, the Supreme Court of Kentucky reversed a summary judgment in favor of a defendant priest who had an adulterous relationship with a married woman while acting as a marriage counselor for the woman and her husband. The court found error in the lower court’s grant of summary judgment because genuine issues of material fact existed regarding whether the priest had a special relationship with the husband, which then was “violated in an outrageous fashion so as to cause him severe emotional distress.” 31 S.W.3d at 914. Focusing on the special relationship as one of counseling, the court concluded it could not uphold the summary judgment because “it [was] evident that the former priest used his relationship with the husband and the wife to obtain a sexual affair with the wife.” *Id.* at 914. Here, in contrast, there was no probative evidence to suggest that Winn had a special relationship with Grigsby, based on marriage counseling or some other facet of their minister-congregant relationship, which he then

exploited in order to “obtain a sexual affair” with Faith. Grigsby clearly stated in his deposition that he never went to Winn for advice or talked to Winn about his marriage.

In *Arlinghaus*, this court upheld the lower court’s summary judgment in favor of a priest who was alleged to have had an affair with the plaintiff’s wife, resulting in her pregnancy. This court concluded that “the mere fact that a person is a priest or other clergyman does not make him legally liable to his parishioners for personal liaisons.” 115 S.W.3d at 353. As in the matter now before us, the relationship between the husband and the priest in *Arlinghaus* did not go beyond the standard minister-congregant religious context or mere friendship. Indeed, in the instant proceeding Grigsby acknowledged that he generally only went to church two or three Sundays per month. Further, Grigsby’s testimony confirmed that he did not rely upon or trust Winn in any way to keep his marriage intact. Both Grigsby and Winn indicated in their depositions that Grigsby did not seek marriage counseling from Winn at any time.

It follows, as in *Arlinghaus*, that there was no genuine issue of material fact as to whether Grigsby and Winn had a special relationship which created in Winn an independent duty of care. *Id.* at 352. That being so, Winn’s conduct could not give rise to a claim for outrage, and the circuit court did not err by granting summary judgment for Winn.

The Henry Circuit Court’s summary judgment is affirmed.

PAISLEY, SENIOR JUDGE, CONCURS.

STUMBO, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

STUMBO, JUDGE, DISSENTING: Respectfully, I must dissent from the result reached by the majority. While it is true that Grigsby's testimony is not as explicit as it could be about the nature of communications he had with Winn, it is my opinion that the testimony of Kim Smith is sufficient to establish that a special relationship existed between the two. Ms. Smith testified that through conversations with Winn and exchanges between Grigsby and Winn that she witnessed, she learned that Winn was using his position as pastor to Grigsby to monitor and manipulate him. She specifically testified as follows:

He (Winn) told me that one way he could keep tabs on whether or not Buzz (Grigsby) would figure out for sure what was going on is if he stayed in contact with Buzz and got information from Buzz as far as where Buzz's head was, what he was thinking. He also said that he felt like he could control Buzz by counseling him, as far as if Buzz continued to question Russell's (Winn's) involvement with Faith he could steer him in a different direction.

I do not read *Osborne v. Payne*, 31 S.W.3d 911 (Ky. 2000), as narrowly as the majority. While the quoted material to the affect that the relationship in that case was used to *obtain* a sexual affair is accurate, I do not believe that the Supreme Court intended to limit its opinion to the instigation of such a relationship. The court was, at that point in the opinion, discussing the specifics of the case before it. As Justice Wintersheimer noted, it is the "use of a confidential relationship between Payne and his priest counselor [that] is at the heart of his lawsuit." *Osborne* at 914. Here, it is Grigsby's allegation that Winn used his relationship as pastor to a member of his congregation to *conceal* his relationship with Grigsby's wife. "The relationship itself

cannot be used to give rise to a presumption of outrageousness, rather the relationship between parties, is an aid in determining whether the conduct itself is outrageous.” *Id.*, at 914.

Just as in *Osborne*, a genuine issue of material fact exists herein on the question of whether a special relationship existed between Winn and Grigsby. Ms. Smith’s testimony seems to answer that question in the affirmative, and at a minimum it supports the claim that Winn sought to foster such a relationship. In examining a motion for summary judgment, all doubts are to be resolved in favor of the non-movant. *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). By stating that Winn “could control Buzz by counseling him.”, Ms. Smith’s testimony raises precisely the kind of doubt which entitles Grigsby to prevail on Winn’s motion for summary judgment. I would reverse.

BRIEF FOR APPELLANT:

Courtney T. Baxter  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Robert E. Stopher  
Robert D. Bobrow  
Louisville, Kentucky