COURT OF APPEALS
DECISION
DATED AND FILED

August 30, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP466 **Cir. Ct. No. 2012CV410**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JAMES KROEGER AND BETH A. KROEGER,

PLAINTIFFS-APPELLANTS,

V.

ROBERT BRAUTIGAM, SUE BRAUTIGAM, TIM CLARK, ANN CLARK, JIM KROEGER AND CAROLE KROEGER,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Oneida County: MICHAEL H. BLOOM, Judge. *Affirmed in part; reversed in part and cause remanded for further proceedings.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. James and Beth Kroeger appeal an order dismissing their claims against Sue Brautigam, Tim and Ann Clark, and Jim and Carole Kroeger (collectively with Robert Brautigam, the "Respondents"). James

and Beth alleged the Respondents had engaged in a conspiracy to intentionally inflict emotional distress and had achieved their goal to Beth's detriment. The circuit court denied the Respondents' motion to dismiss for failure to state a claim, but later, on its own motion, required Beth to file an affidavit setting forth all conduct she believed to be "extreme and outrageous." Upon receiving this affidavit, the court deemed the averments sufficient to support a cause of action against Robert Brautigam, but it dismissed the remaining Respondents.

¶2 We agree with the circuit court that James and Beth's allegations and averments are, as a matter of law, insufficient to support a direct cause of action for intentional infliction of emotional distress against the dismissed Respondents. However, the circuit court improperly concluded the allegations were insufficient to support a cause of action for civil conspiracy to commit intentional infliction of emotional distress against the dismissed Respondents, where a direct cause of action remains viable against Robert Brautigam. Accordingly, we reverse and remand for further proceedings against the dismissed Respondents on Beth's civil conspiracy claim and James's loss of consortium claim.[1]

[1] The Respondents have filed a motion seeking costs against James and Beth for filing a frivolous appeal. Although they contend such costs are warranted under WIS. STAT. § 895.044, the controlling statute is, in fact, WIS. STAT. RULE 809.25(3), under which costs, fees and attorney fees may be assessed if the appeal was "filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another." Because we conclude James and Beth's appeal is meritorious, at least in part, we deny the Respondents' motion for costs.

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

BACKGROUND

¶3 On October 17, 2012, James and Beth filed a complaint alleging the Respondents had conspired to intentionally inflict emotional distress upon Beth. The complaint also asserted a loss of consortium claim on James's behalf. The Respondents denied these allegations, and the parties agreed to delay court proceedings and attempt mediation.

¶4 The mediation was unsuccessful, and on May 29, 2014, James and Beth filed an amended complaint. Attached as exhibits were several documents, apparently authored by the couple, containing a history of the alleged "extreme and outrageous" conduct to which Beth had been exposed. According to these exhibits, the Respondents, at various times in 2010 and 2011, had undertaken such activities as staring at Beth, directing harsh or insulting language at her, stealing her mail, and laughing at her.[2] Beth also asserted that on December 10, 2010, Robert Brautigam was operating his vehicle on the wrong side of the road, drove behind Beth while she was walking, and nearly struck her.

¶5 The Respondents answered the amended complaint. They specifically denied they committed any act that could be considered "extreme and outrageous." The answer was soon followed by a motion to dismiss the complaint for failure to state a claim, on the ground that none of the acts alleged qualified as "extreme and outrageous" conduct, as a matter of law. The motion included the form jury instruction for intentional infliction of emotional distress, which states that extreme and outrageous conduct consists of actions "that the average member

[2] The Respondents all live in close proximity to James and Beth.

of the community would find [to be] a complete denial of the individual's dignity as a person. The conduct must be gross and extreme and not merely in the field of carelessness or bad manners." *See* WIS JI—CIVIL 2725 (2014).

¶6 The circuit court held a motion hearing on June 26, 2014. The court concluded the complaint was minimally sufficient because James and Beth had affirmatively alleged that the Respondents engaged in a conspiracy to cause emotional distress by extreme and outrageous conduct. However, the court stated its belief that the conduct alleged in the amended complaint's exhibits did not meet the legal threshold of "extreme and outrageous," as a matter of law. The court also expressed skepticism that discovery would yield "undisclosed juicier allegations" that could satisfy the operative legal standard. The court was dissatisfied that the case had been pending for nearly two years without any significant discovery, but it remarked that "technical application of the law … prohibits me from cutting this off at the knees right now as opposed to … at a later stage such as summary judgment."

¶7 The court had a change of heart in the week that followed. On July 3, 2014, the circuit court, on its own motion, issued an order vacating the decision announced at the June 26 hearing. The court determined it would be unfair to subject the defendants to the time and expense of discovery when a "threshold question has already come into specific relief in this case: Can [James and Beth], even if all of their factual allegations are proven, establish that the defendants engaged in 'extreme and outrageous' conduct?" The court also remarked that, given the nature of an intentional infliction of emotional distress claim, Beth would necessarily have to know about all conduct she believed to be "extreme and outrageous." Accordingly, the court suspended discovery and ordered Beth to, within thirty days, file "a sworn affidavit setting forth all factual

allegations in regard to any and all conduct by the defendants which the plaintiffs intend to assert in support of their claim in this case." The sole matter James and Beth were permitted to address was whether there was sufficient factual support that the Respondents engaged in "extreme and outrageous" conduct. The court stated that once the affidavit was received, it would treat the Respondents' motion as one for summary judgment pursuant to WIS. STAT. § 802.06(3).

¶8 Beth filed the affidavit as directed. She chronicled the Respondents' alleged history of "derogatory and demeaning comments" and numerous situations that made her feel uncomfortable, such as the Respondents watching her from outside her home and yelling at her from their yards. Beth further averred that Robert Brautigam "drove his vehicle at her on March 27, 2012 and was laying on his horn while she was at her mailbox[. S]he was very startled and concerned for her life, and he turned away at the last second to avoid striking your affiant." This near-miss was apparently in addition to the one Beth had recounted in the amended complaint, which occurred on December 10, 2010.

¶9 The circuit court held another hearing on October 24, 2014. After thoroughly recounting the more significant of all the incidents described in the amended complaint and Beth's affidavit, the court remarked that the majority of the allegations constituted "boorish behavior" by the Respondents, consisting of "insults, indignities, threats, annoyances, petty oppressions or other trivialities" that could not rise to the level of "extreme and outrageous" conduct. However, the court stated it was troubled by the conduct involving the motor vehicle. Robert Brautigam's conduct in twice driving his vehicle at Beth constituted a factual allegation sufficient to support a claim for intentional infliction of emotional distress against him. The remaining defendants were dismissed from the action.

¶10 Beth and James filed a reconsideration motion, arguing the circuit court had ignored their allegation that the Respondents engaged in a civil conspiracy to intentionally cause emotional distress. Beth and James requested further discovery on this issue, noting Beth's belief that Sue Brautigam was in the car with Robert during both vehicle incidents and that Sue had once said she and the other Respondents would not be satisfied until James and Beth were incarcerated or forced to move.[3]

¶11 The circuit court denied the reconsideration motion at a hearing in December 2014. Although the court determined there was

> plenty of evidence in the amended complaint and in [Beth's] affidavit … to infer that all six defendants got together and decided that they were going to, you know, put the heat on [Beth], there is not sufficient information alleged … for me to find that it's reasonable to infer that any of the five dismissed defendants ever agreed that … unlawful activity would be directed at [Beth].

The court then entered a written order formally dismissing James and Beth's claims against Sue Brautigam, the Clarks, and Jim and Carole Kroeger.

DISCUSSION

¶12 James and Beth's first argument broadly takes issue with the circuit court's decisions: (1) to vacate its "order" denying the Respondents' motion to dismiss;[4] (2) to convert the motion to dismiss to one for summary judgment; and (3) to require Beth to file an affidavit regarding all conduct she believed to be

[3] According to the allegation in the amended complaint, it was actually Robert Brautigam who said this. *See infra* ¶26.

[4] Technically speaking, it does not appear the circuit court entered a formal order encapsulating its oral decision denying the motion.

"extreme and outrageous." Although James and Beth's intent to challenge these aspects of the circuit court's procedure is evident from a main heading in their brief, the substance of their argument does not address these matters. Rather, their argument is directed only to whether the complaint's allegations were sufficient to survive a motion to dismiss for failure to state a claim. We do not address any of James and Beth's perceived procedural irregularities in this case because they have not developed any argument in that regard, *see* ***Herder Hallmark Consultants, Inc. v. Regnier Consulting Grp., Inc.***, 2004 WI App 134, ¶16, 275 Wis. 2d 349, 685 N.W.2d 564 (undeveloped arguments will not be considered), and we will not abandon our neutrality to develop one for them, *see* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

¶13 Before we address the merits of this appeal, James and Beth also make the odd argument that the circuit court "should not have examined the pleadings at this stage of the lawsuit to determine if they were going to factually satisfy the elements [sic] that it was extreme and outrageous conduct." To the extent James and Beth are asserting the court should not have reviewed the complaint's allegations, including whether there were sufficient facts alleged to support a claim, they are wrong. Such a review was necessary, regardless of whether the Respondents' motion was treated as one to dismiss for failure to state a claim or one for summary judgment. *See* ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693 ("A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." (quoted source omitted)); ***Preloznik v. City of Madison***, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983) (first step in summary judgment methodology is to examine the complaint to determine whether claims have been stated). To the

extent James and Beth are arguing the circuit court improperly made findings of fact on summary judgment, we also reject that (unexplained) assertion; the court made a legal determination that the Respondents' activities, assuming they occurred, could not meet the legal standard of "extreme and outrageous" conduct, with the exception of Robert Brautigam's twice driving a car at Beth and nearly striking her.

¶14 The circuit court ultimately granted summary judgment as to five of the Respondents after considering matters outside the pleadings. James and Beth also challenge the dismissal of those Respondents. We review a grant of summary judgment de novo, applying the same methodology employed by the circuit court. *See* ***Roberts v. T.H.E. Ins. Co.***, 2016 WI 20, ¶18, 367 Wis. 2d 386, 879 N.W.2d 492. Summary judgment is appropriate if "there is no genuine issue as to any material fact and … the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2).

¶15 "One who by extreme and outrageous conduct intentionally causes severe emotional distress to another is subject to liability for such emotional distress and for bodily harm resulting from it." ***Alsteen v. Gehl***, 21 Wis. 2d 349, 358, 124 N.W.2d 312 (1963) (formatting altered). Such a claim requires that the plaintiff demonstrate four elements: "(1) the defendant intended to cause emotional distress by his or her conduct; (2) that the conduct was extreme and outrageous; (3) that the 'conduct was a cause-in-fact of the plaintiff's emotional distress; and (4) that the plaintiff suffered an extreme disabling response to the defendant's conduct.'" ***Terry v. Journal Broad. Corp.***, 2013 WI App 130, ¶42, 351 Wis. 2d 479, 840 N.W.2d 255 (quoting ***Rabideau v. City of Racine***, 2001 WI 57, ¶33, 243 Wis. 2d 486, 627 N.W.2d 795).

¶16 Here, James and Beth challenge the circuit court's conclusion that the activities of the five dismissed Respondents did not constitute "extreme and outrageous" conduct.[5] The "extreme and outrageous" requirement sets a high bar for actionable conduct, reflecting our supreme court's concerns "with the difficulties surrounding proof of the existence of severe emotional harm, and proof of a causal relationship between the injury and the defendant's conduct." ***Alsteen***, 21 Wis. 2d at 360. "The average member of the community must regard the defendant's conduct in relation to the plaintiff, as being a complete denial of the plaintiff's dignity as a person." ***Id.*** at 359-60. In ***Alsteen***, for example, a home improvement contractor's verbally abusive conduct, misleading statements, and unprompted alterations to the project's scope were deemed insufficiently egregious to support a cause of action for intentional infliction of emotional distress. *See* ***id.*** at 352-54, 361. Similarly, in ***Garvey v. Buhler***, 146 Wis. 2d 281, 430 N.W.2d 616 (Ct. App. 1988), we concluded that an employee's termination "to make an example … to other store managers" would not support an action for intentional infliction of emotional distress. *See* ***id.*** at 284-85, 290.

¶17 The circuit court correctly concluded the conduct described in the amended complaint's exhibits and in Beth's affidavit, with one exception, does not

[5] The circuit court and the parties rely on RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965), as stating the controlling legal principles regarding "extreme and outrageous conduct." However, while much of the comment's substance is reflected in Wisconsin case law on the topic, it does not appear the comment has been fully adopted as the law in this state. The case on which the parties rely, ***Doersching v. State Funeral Directors & Embalmers Examining Board***, 138 Wis. 2d 312, 405 N.W.2d 781 (Ct. App. 1987), does cite to the comment, but in the dissent. *See* ***id.*** at 335 (Sundby, J., dissenting).

We also note the Respondents improperly cite a 2013 per curiam decision by this court. *See* WIS. STAT. RULE 809.23(3)(a). Even more troublesome, they do not indicate its status as nonbinding authority. We admonish the Respondents' counsel that future violations of the Rules of Appellate Procedure may result in sanctions under WIS. STAT. RULE 809.83(2).

qualify as "extreme and outrageous" conduct and is insufficient, as a matter of law, to support a direct claim for intentional infliction of emotional distress against the dismissed Respondents. As a representative sample of these allegations and averments, Beth describes the following conduct:

- Jim Kroeger was "glaring at her" outside church and called her an idiot;
- Carole Kroeger joked with others about burning Beth's mail;
- Beth, who was the clerk for the Town of Enterprise, was loudly questioned at a town board meeting by Carole and Jim about her purchase of a surety bond for the town;
- James Kroeger "pushed me out of his way with his shoulder and growled at me;"
- Tim Clark threw sticks on top of James and Beth's ice shack and cut weeds in front of their house;
- Tim and Ann Clark were "walking around" in the Clarks' yard and "stopped and stood looking up at [Beth] in the window laughing and waving";
- Tim Clark "extended his middle finger" at Beth and spit gum in Beth's driveway;
- Robert called Beth "slimy" and a "crap head";
- Robert placed a toboggan with sentimental value to James and Beth outside his house to taunt them;
- Robert blew leaves onto James and Beth's property while they had guests over; and
- The Respondents formed a group called the "Enterprise Taxpayers Coalition" in an attempt to prohibit James Kroeger from running his firewood business by having the shorelines of Pelican Lake and Eagle Lake rezoned residential only.

The circuit court accurately described the Respondents' general course of conduct, if true, as "childish nonsense" and remarked that while their conduct might be

sufficient to support a claim for injunctive relief to prevent harassment, it did not meet the legal standard of "extreme and outrageous" conduct necessary to support a tort claim for damages based on the intentional infliction of emotional distress. We concur with the circuit court that the vast majority of the acts alleged do not satisfy the ***Alsteen*** standard. *See* ***Alsteen***, 21 Wis. 2d at 359-60.

¶18 James and Beth argue otherwise. They assert the alleged harassment-type conduct is actionable under ***Alsteen*** as that decision was applied in ***Gianoli v. Pfleiderer***, 209 Wis. 2d 509, 563 N.W.2d 562 (Ct. App. 1997). In ***Gianoli***, the circuit court found as follows:

> The [circuit] court found that the Pfleiderers attempted to derail the Gianolis' refinancing of their home, going so far as to send negative and unflattering information concerning the Gianolis to lenders and others. They also engaged in near constant surveillance and harassment concerning the respondents. The court also found that John Pfleiderer stalked and followed the respondents without justification and that the Pfleiderers' explanation for their behavior was totally incredible and unworthy of belief.

Id. at 524. We concluded these facts were "sufficient to support the trial court's conclusion that the Pfleiderers' conduct was extreme and outrageous." ***Id.***

¶19 We do not regard the Respondents' conduct alleged in this case to be of similar quantity or quality to the Pfleiderers in ***Gianoli***. As the circuit court recognized, the criticisms of Beth in the performance of her duties as town clerk

are not actionable.[6] What remains generally consists of allegations of occasionally harsh words, rude gestures, dirty looks, and conduct that could perhaps support a trespass claim or injunctive relief for harassment, but is insufficiently "extreme and outrageous" so as to support a claim for intentional infliction of emotional distress. Although Beth no doubt feels targeted and harmed by this conduct, we cannot say, as a legal matter, that a reasonable factfinder could conclude the conduct is of sufficient quantity or quality to constitute "a complete denial of the plaintiff's dignity as a person." ***Alsteen***, 21 Wis. 2d at 359-60. Rather, most of the alleged conduct constitutes "relatively minor annoyances [that are] better … dealt with by instruments of social control other than law." ***Id.*** at 360 (quoting Calvert Magruder, *Mental & Emotional Disturbance in the Law of Torts*, 49 HARV. L. REV. 1033, 1035 (1936)).

¶20 The notable exception to the above analysis is Robert Brautigam's alleged conduct in twice driving his vehicle at Beth and nearly striking her. We agree with the circuit court that such conduct is extremely dangerous and has no place in civilized society. If true, it could be sufficient to support a damages award for intentional infliction of emotional distress. The Respondents have not argued otherwise, and Robert has not sought leave to take an interlocutory

[6] The Respondents argue this case is "remarkably similar" to ***Dumas v. Koebel***, 2013 WI App 152, 352 Wis. 2d 13, 841 N.W.2d 319. While we agree certain aspects of ***Dumas*** support the Respondents' arguments, that case does not completely resolve this matter. In ***Dumas***, a bus driver whose prior conviction for prostitution was the focus of news media coverage brought suit against the broadcasters for, *inter alia*, intentional infliction of emotional distress. ***Id.***, ¶¶2-7. We rejected this claim, reasoning that the information exposed by the media broadcasts was a matter of public concern protected by the First Amendment, establishing a complete defense to the bus driver's claim. ***Id.***, ¶¶26-31. While some of the allegedly "extreme and outrageous" conduct in this case occurred in the context of town board meetings on matters of public concern, other such conduct was clearly directed at Beth outside of that context.

cross-appeal from the circuit court's decision declining to dismiss the claims against him.

¶21 The continuing vitality of James and Beth's claims against Robert matters a great deal to the disposition of this appeal. James and Beth did not allege direct intentional infliction claims against the Respondents; rather, they asserted the Respondents have "conspired to enter into a scheme to cause the intentional infliction of emotional distress to the plaintiffs." The Respondents contend this bald allegation is insufficient to state a claim for civil conspiracy. However, our review of the record in this case reveals that James and Beth's civil conspiracy claim is supported by much more than a bald legal conclusion. Indeed, the factual allegations are sufficient to allow the cause of action to proceed against each of the dismissed Respondents.

¶22 As an initial matter, we decline to review the civil conspiracy issue using the summary judgment methodology. The parties have not engaged in any discovery on this issue. The only "discovery" that has even arguably occurred was Beth filing her affidavit, but that was done pursuant to the circuit court's order requiring her to set forth all facts supporting her claim that the Respondents' conduct was "extreme and outrageous." While, as the circuit court correctly noted, Beth would certainly know what conduct caused her emotional distress, she (and James, for that matter) may well be oblivious to certain facts that would support her civil conspiracy claim. Without the benefit of discovery or notice to Beth that her affidavit was expected to address matters beyond what conduct was alleged to be "extreme and outrageous," it would be unfair to James and Beth to review the circuit court's dismissal as one based on a conversion of the Respondents' motion to dismiss to one for summary judgment. *See* ***CTI of Ne. Wis., LLC v. Herrell***, 2003 WI App 19, ¶9, 259 Wis. 2d 756, 656 N.W.2d 794

(conversion without notice deprives the parties of the opportunity to be heard by submitting pertinent information, which violates due process).

¶23 A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint. ***Doe v. Archdiocese of Milwaukee***, 2005 WI 123, ¶19, 284 Wis. 2d 307, 700 N.W.2d 180. We accept the facts pled in the complaint as true for purposes of our review, but we need not accept legal conclusions. ***Id.*** We liberally construe the complaint's allegations. ***Id.***, ¶20. However, we will not add facts, nor will we draw unreasonable inferences from the pleadings. ***Id.***, ¶¶19-20. "In order to satisfy WIS. STAT. § 802.02(1)(a), a complaint must plead facts, which if true, would entitle the plaintiff to relief." ***Data Key Partners***, 356 Wis. 2d 665, ¶21.

¶24 A civil conspiracy is a combination of two or more people, by some concerted action, to accomplish some unlawful purpose or some lawful purpose by unlawful means. ***Onderdonk v. Lamb***, 79 Wis. 2d 241, 246, 255 N.W.2d 507 (1977) (quoting ***Radue v. Dill***, 74 Wis. 2d 239, 241, 246 N.W.2d 507 (1976)). There is no independent cause of action for civil conspiracy; rather, the cause of action lies for damages caused by acts pursuant to the conspiracy. ***Id.*** "The gravamen of a civil action for damages resulting from an alleged conspiracy is thus not the conspiracy itself but rather the civil wrong which has been committed pursuant to the conspiracy and which results in damages to the plaintiff." ***Id.***

¶25 "To state a cause of action for civil conspiracy, the complaint must allege: (1) The formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting from such act or acts." ***Id.*** at 247. The facts alleged must "show some agreement, explicit or otherwise, between the alleged conspirators on the common end sought and some cooperation

toward the attainment of that end." ***Bartley v. Thompson***, 198 Wis. 2d 323, 342, 542 N.W.2d 227 (Ct. App. 1995) (quoting ***Augustine v. Anti-Defamation League of B'nai B'rith***, 75 Wis. 2d 207, 216, 249 N.W.2d 547 (1977)). The complaint also must "state what was done in the execution of the conspiracy and that the purpose of the combination was accomplished." ***Onderdonk***, 79 Wis. 2d at 247.

¶26 Here, the circuit court recognized that there was "plenty of evidence in the amended complaint and in [Beth's] affidavit … to infer that all six defendants got together and decided that they were going to … put the heat on [Beth]." We agree with this assessment. The amended complaint describes James and Beth's estrangement from Jim and Carole. It also describes the Respondents' dissatisfaction with a conditional use permit (CUP) that had been granted to James and allowed him to cut firewood on his property.[7] In March 2011, Jim and Carole allegedly told James and Beth they, along with the Clarks and the Brautigams, would "stop harassing" James and Beth if they "stopped pursuing the CUP …." Jim and Carole allegedly said that if James and Beth "continue with the CUP … the harassment will continue." Robert Brautigam was alleged to have said the Respondents would force James and Beth to move or "they will be wearing orange," an apparent reference to jail or prison.

¶27 Although the circuit court properly concluded these allegations were sufficient to support the inference of an agreement among the Respondents to harass James and Beth, it nonetheless denied James and Beth's reconsideration motion on the ground that it was unreasonable to infer that the Respondents agreed

[7] The conditional use permit was the subject of an earlier appeal regarding James Kroeger's defamation suit against a county supervisor. *See generally* ***Kroeger v. Mott***, No. 2015AP556, unpublished slip op. (WI App June 14, 2016).

to direct unlawful activity at Beth. Here we part ways with the circuit court. James and Beth plainly alleged unlawful activity on the part of Robert Brautigam that, if true, could support a damages award for intentional infliction of emotional distress. *See supra* ¶20; ***Modern Materials, Inc. v. Advanced Tooling Specialists, Inc.***, 206 Wis. 2d 435, 447, 557 N.W.2d 835 (Ct. App. 1996) ("The 'unlawful' act need not be a criminal act because any willful, actionable violation of a civil right is sufficient."). As a result of Robert's conduct, Beth was alleged to have suffered "extreme and disabling" stress and anxiety that aggravated her breast cancer. James allegedly suffered damages due to loss of consortium. The amended complaint satisfies the ***Onderdonk*** requirements in that it alleges facts regarding the "formation and operation of the conspiracy," specifies the wrongful acts done, and indicates what damages those acts caused. *See* ***Onderdonk***, 79 Wis. 2d at 247.

¶28 Accordingly, we conclude all the Respondents must remain defendants in this action. Jim and Carole Kroeger, the Clarks, and Sue Brautigam were improperly dismissed, and there remains a valid claim for civil conspiracy to commit intentional infliction of emotional distress against all the Respondents. We remand the matter to the circuit court so the parties may engage in discovery and the litigation process may move forward. However, we stress that the issue, now properly framed, is quite narrow. Each of the dismissed Respondents is liable for Robert Brautigam's alleged intentional infliction of emotional distress only if there is sufficient evidence presented at trial to establish the elements of civil conspiracy as to Robert's alleged, unlawful conduct.

¶29 No WIS. STAT. RULE 809.25 costs allowed to the parties.

By the Court.—Order affirmed in part; reversed in part and cause remanded for further proceedings.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.