

The warden of a state prison prohibits the photographing of the face of any prisoner without the prisoner's consent. A news photographer wanted to photograph a notorious mobster incarcerated at the prison. To circumvent the warden's prohibition, the photographer flew over the prison exercise yard and photographed the mobster. A prisoner, who was imprisoned for a technical violation of a regulatory statute, happened to be standing next to the mobster when the photograph was taken.

When the picture appeared in the press, the prisoner suffered severe emotional distress because he believed that his business associates and friends would think he was consorting with gangsters. The prisoner suffered no physical harm as the result of his emotional distress. The prisoner brought an action against the photographer for intentional or reckless infliction of emotional distress.

What is the best argument that the photographer can make in support of a motion for summary judgment?

- A. As a news photographer, he was privileged to take photographs that others could not.
- B. No reasonable person could conclude that the photographer intended to photograph the prisoner.
- C. No reasonable person could conclude that the photographer's conduct was extreme and outrageous as to the prisoner.
- D. The prisoner did not suffer any physical injury arising from the emotional distress.

Explanation:

A defendant's **motion for summary judgment** will be granted when there is **no genuine issue of material fact** (ie, no reasonable jury could find in the plaintiff's favor) and the defendant is entitled to **judgment as a matter of law** (eg, at least one element of the plaintiff's claim lacks legally sufficient evidence). For **intentional or reckless infliction of emotional distress** (IIED), the defendant's motion should be granted if it disproves one or more of the following elements:

The defendant **intended** to cause the plaintiff severe emotional distress (or acted **recklessly** as to the risk of causing such distress).

The defendant's conduct was **extreme** and **outrageous**.

The defendant caused the plaintiff **severe emotional distress**.

Accordingly, the photographer's best argument is that no reasonable person could find that his conduct was extreme and outrageous.

(Choice A) News photographers are not immune from liability for IIED, so the photographer could be liable—like any other person—if all the elements of this claim are met.

(Choice B) IIED requires the specific intent to cause severe emotional distress—not intent to do the act that caused the distress. Therefore, even if no reasonable person could find that the photographer intended to photograph the prisoner, the photographer's summary judgment motion would fail if a reasonable person could still find that he intended to cause the prisoner severe emotional distress (or recklessly caused that distress).

(Choice D) Although most tort claims require proof of bodily harm before plaintiffs can recover for emotional harm, IIED claims allow plaintiffs to recover for stand-alone emotional harm (ie, emotional harm that does not result from bodily harm). Therefore, the prisoner's lack of physical injury does not support the photographer's motion for summary judgment.

Educational objective:

For intentional infliction of emotional distress, the plaintiff must prove that the defendant intentionally or recklessly caused the plaintiff severe emotional distress by acting in an extreme and outrageous manner.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 46 (Am. Law Inst. 2012) (intentional or reckless infliction of emotional distress).

Fed. R. Civ. P. 56(a) (summary judgment).

Defendant's motion for summary judgment

For intentional infliction of emotional distress,
a reasonable jury could find:

Δ *intended* to cause π severe emotional distress
(or was *reckless* as to the risk)

No → Grant motion

Yes ↓

Δ's conduct was *extreme* and *outrageous*

No → Grant motion

Yes ↓

Δ caused π *severe* emotional distress

No → Grant motion

Yes ↓

Deny motion

Δ = defendant; π = plaintiff