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Minn. Stat. § 480A.08, subd. 3 (2002).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
C9-02-1205**

Randy Jones, et al.,  
Appellants,

vs.

Independent School District No. 720,  
Defendant,

Rick Alex, et al.,  
Respondents.

**Filed April 1, 2003  
Affirmed  
Klaphake, Judge**

Scott County District Court  
File No. 2001-09958

Mark A. Greenman, Ruth Y. Ostrom, Greenman & Ostrom, 301 Fourth Avenue South,  
Suite 270, Minneapolis, MN 55415 (for appellants)

Scott Ballou, Brownson & Ballou, P.L.L.P., 225 South Sixth Street, Suite 4800,  
Minneapolis, MN 55402 (for respondents)

Considered and decided by Lansing, Presiding Judge, Klaphake, Judge, and  
Stoneburner, Judge.

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

Appellant Randy Jones, a former high school football coach, challenges the  
district court's grant of summary judgment and dismissal of his intentional infliction of

emotional distress claim against respondents Rick Alex and Reed Boltmann.<sup>1</sup> Jones alleged that between 1995 and 2000, Alex and Boltmann “played active roles” in a series of “extreme and outrageous” acts that were intended to harass him and that caused him extreme emotional distress. These acts included sending a letter in 1995 to a local newspaper that Jones claims falsely accused him of “embezzling money, promoting drinking among his athletes, promoting poor sportsmanship, [and] verbally abusing his players.” Other acts Jones attributed to Alex and Boltmann included placing death threats in his school mailbox, stuffing garbage bags with derogatory comments, erasing data from his school computer, urinating on football uniforms, and breaking into his storage cabinets.

In Jones’s memorandum in opposition to summary judgment, he also raised a claim of negligent infliction of emotional distress. The district court granted summary judgment, concluding that (1) Jones failed to properly plead negligent infliction of emotional distress in his complaint; and (2) although some of the alleged actions were extreme and outrageous and although Jones presented evidence that he had suffered

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<sup>1</sup> Randy Jones and his wife, Renita Jones, originally sued Independent School District No. 720 (ISD No. 720) and three of its teachers, Jason Trelstad, Rick Alex, and Reed Boltmann, for intentional infliction of emotional distress, failure to supervise/negligent supervision, assault, and tortious interference of contract. ISD No. 720 and Trelstad were dismissed as defendants in this action, and Randy Jones dismissed the claims of tortious interference of contract against Alex and Boltmann. Because the defendants involved in Renita Jones’s claims have been dismissed, this appeal involves only Randy Jones’s claim against Alex and Boltmann.

severe emotional distress as a result, he failed to produce sufficiently probative evidence to show that Alex or Boltmann was responsible for the acts.

Because the district court did not err in concluding that Jones failed to produce sufficient evidence that Alex or Boltmann was responsible for the acts, with the exception of the 1995 letter that Boltmann admitted disclosing to the newspaper, and because the statute of limitations has run on any cause of action that might be based on this letter, we affirm the grant of summary judgment to Alex and Boltmann.

### DECISION

Summary judgment is properly granted when no genuine issues of material fact exist and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. A reviewing court “must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.

*DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). “[T]he party resisting summary judgment must do more than rest on mere averments.” *Id.* A genuine issue for trial must be established by substantial evidence. *Id.* at 69-70.

1. *Intentional Infliction of Emotional Distress*

In his complaint, Jones alleged that Alex and Boltmann “participated, conspired and directed others to destroy [his] reputation, threaten and intimidate [him], retaliate against [him] \* \* \*, and engaged in other extreme and outrageous behavior.” He alleged that for more than five years, Alex and Boltmann “played active roles” in a series of events and actions because they were upset that, when Alex retired as head football coach, the school district decided to hire Jones as Alex’s replacement, rather than Boltmann. Jones alleged that he “repeatedly complained” to the school district about the incidents and alleged that the “Superintendent told [him] that \* \* \* Alex and Boltmann admitted to the acts \* \* \* and declared that they would not stop until [he] was gone.”

In opposition to summary judgment, however, Jones was unable to produce sufficiently probative evidence to support the allegations he made in his complaint. During his own deposition, Jones stated several times that he “assumed” Alex and Boltmann were responsible for various acts. Jones further admitted that no one from the school district specifically stated that Alex or Boltmann was involved in any of the acts. He explained that he was led to believe that Alex and Boltmann admitted to the acts based on the school district’s statement to him that the two would not stop until Jones was gone.

A review of the depositions of several school district employees, including the superintendent, further fails to support the allegations. These employees testified that each of the complaints made by Jones was investigated at the time he made them and that the investigations failed to show that Alex or Boltmann was responsible. Each employee

claimed that he or she ~~never~~ made any statements or representations to Jones regarding Alex's or Boltmann's ~~desire~~ to get rid of Jones, and each employee testified that Alex and Boltmann did not ~~admit to~~ committing any of the acts. Jones failed to produce any evidence, whether ~~statements~~ by other witnesses or any physical evidence, to corroborate his claims or link Alex ~~or~~ Boltmann to the acts. We therefore conclude that, with the exception of the 1995 letter ~~that~~ Boltmann admitted sending to the local newspaper, Jones has failed to produce sufficiently probative evidence to show that Alex or Boltmann was responsible for the series ~~of~~ acts or played an active role in those acts.

Claims of intentional ~~infliction~~ infliction of emotional distress are governed by the two-year statute of limitations. Minn. Stat. § 541.07(1) (2000). Because Jones's intentional infliction of emotional ~~distress~~ claim is now limited solely to the 1995 letter, and is not based on a series of acts, ~~we~~ conclude that it is barred by the statute of limitations.<sup>2</sup> See *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 595 (Minn. App. 1994) (stating that to establish continuing violation, plaintiff must show at least one incident occurred within applicable statute of limitations period). We therefore affirm the district court's grant of summary judgment on this ~~claim~~.

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<sup>2</sup> Alex and Boltmann ~~properly~~ raised the statute of limitations as an affirmative defense in their answer and as a ~~basis~~ for granting summary judgment. Although not specifically ruled on by the district ~~court~~, both parties have adequately briefed the issue on appeal. "We may rule on an ~~issue~~ not decided by the district court when the question is determinative of the ~~entire~~ controversy and when neither party is advantaged or disadvantaged by not ~~having~~ a prior ruling on the question." *Diez v. Minn. Mining & Mfg.*, 564 N.W.2d 575, 578 (Minn. App. 1997) (citation omitted), *review denied* (Minn. Aug. 21, 1997).

2. *Negligent Infliction of Emotional Distress*

Jones did not specifically plead negligent infliction of emotional distress as a separate cause of action in his complaint, but attempted to raise it in his memorandum in opposition to summary judgment. The district court refused to read his complaint to include this claim.

Even if we read Jones's complaint to have put Alex and Boltmann on notice of a negligent infliction of emotional distress claim, summary judgment still would have been properly granted on this claim. By specifically alleging that the 1995 letter falsely accused Jones of various acts, such as embezzling money and promoting drinking among the athletes, Alex and Boltmann were put on notice for defamation, given the nature of the accusations. *See Stuemppes v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980) (defamation per se to make disparaging, false statements about person's profession). Defamation can provide the basis for an exception to the "zone of danger" requirement in a claim for negligent infliction of emotional distress. *Bohdan v. Alltool Mfg. Co.*, 411 N.W.2d 902, 907 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987).

While a two-year statute of limitations also applies to defamation actions, negligent infliction of emotional distress claims are governed by a six-year statute of limitations. Minn. Stat. §§ 541.05, subd. 1(10), 541.07(1) (2000). But there is at least one published case suggests the underlying or predicate tort must be viable on its own: if the predicate tort is barred by the statute of limitations or by qualified immunity, the

negligent infliction of emotional distress claim cannot survive. *Wallin v. Minn. Dep't of Corrections*, 598 N.W.2d 393, 406 (Minn. App. 1999) (dismissing negligent infliction of emotional distress based on defamation claims that are either time-barred or barred by qualified privilege), *review denied* (Minn. Oct. 21, 1999). We therefore conclude that even if the complaint were read to include a claim for negligent infliction of emotional distress, it would not survive summary judgment.

The district court's grant of summary judgment is affirmed.

**Affirmed.**

A handwritten signature in black ink, appearing to be "M. J. G.", written in a cursive style.

3-25-03