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KERLLY BOBOWICZ and ERIC BOBOWICZ, Plaintiffs, v. HOLY NAME MEDICAL CENTER, INC., ALEXANDER HESQUIJAROSA, M.D., in his individual and official capacity, MANNY GONZALEZ, in his individual and official capacity, JOHN DOES (1-10), XYZ CORP., INC. (1-10), Defendants.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION – BERGEN COUNTY DOCKET NO. **BER-L-5844-18** Civil Action **OPINION**

Argued: **January 8, 2021**
Decided: **January 28, 2021**

HONORABLE ROBERT C. WILSON, J.S.C.

Jason A. Rindosh, Esq., appearing on behalf of Plaintiffs Kerlly Bobowicz and Eric Bobowicz (from Bedi Rindosh)

Rodman E. Honecker, Esq., appearing on behalf of Defendant Holy Name Medical Center, Inc. (from Windels Marx Lane & Mittendorf, LLP)

Iram P. Valintin, Esq., and David J. Gittines, Esq., appearing on behalf of Defendant Alexander Hesquijarosa, M.D. (from Kaufman Dolowich & Voluck, LLP)

PROCEDURAL HISTORY

THIS MATER initially began on August 10, 2018, when Plaintiffs Kerlly Bobowicz ("Kerlly") and Eric Bobowicz ("Eric") filed their Complaint alleging hostile work environment and retaliatory termination claims in violation of New Jersey's Law Against Discrimination ("LAD") based upon alleged harassment by Dr. Hesquijarosa. The Holy Name Medical Center ("Holy Name") and Manny Gonzalez ("Gonzalez") filed their answer on March 21, 2019. Gonzalez was dismissed as a party-defendant on February 14, 2020. On June 3, 2020, the Court

denied Plaintiffs' motion to amend their complaint to add Excelcare Medical Associates, P.A. and Health Partner Services, Inc. as party-defendants. Discovery closed on August 4, 2020.

FACTUAL BACKGROUND

THE FACTS OF THIS CASE arise out Kerlly and Dr. Hesquijarosa's consensual relations from April 2016 to August 2016. In 2016, Dr. Hesquijarosa was employed by Excelcare Medical Associates, PA ("Excelcare") as a physician. Excelcare is an affiliate of Holy Name, but a distinct legal entity. Kerlly was also employed by Excelcare and assumed the position of office manager for Dr. Rosenbluth and Dr. Hesquijarosa in January of 2016. Kerlly worked directly with Defendant Dr. Hesquijarosa, but did not report to him—instead, Jill Hurley of Holy Name was Kerlly's supervisor and direct report.

Kerlly received sexual harassment training while she was working with Dr. Hesquijarosa, and received a handbook including policies and procedures concerning sexual harassment. Kerlly never reported any issues relating to sexual harassment, and during her time working for Dr. Hesquijarosa, no one ever reported any issues to Kerlly regarding sexual harassment in the workplace.

According to Kerlly, at the start of 2016 Plaintiffs' marriage was troubled. Kerlly eventually developed an entirely consensual relationship with Dr. Hesquijarosa that lasted three to four months. Plaintiff Eric Bobowicz had suspicions about Kerlly's fidelity and took investigating it into his own hands. Eric called Holy Name Human Resources Department as a disguised caller and disparaged his wife, placed a tracking device on Kerlly's car, and hired a private investigator to conduct surveillance on Kerlly.

Dr. Hesquijarosa signed his employment contract with Excelcare on July 28, 2011 and began working with Kerlly in February 2016 when she was promoted to Office Manager at Excelcare. On July 20, 2016, Kerlly and Dr. Hesquijarosa planned to meet outside the office at a

reserved hotel room at The Comfort Inn in Edgewater, New Jersey. The encounter was entirely voluntary and consensual. Eric learned of the hotel incident from his private investigator and contacted Gonzalez demanding that Kerlly be transferred from her department, away from Dr. Hesquijarosa. In response, Gonzalez spoke with Dr. Hesquijarosa who readily admitted to Gonzalez that he had a consensual relationship with Kerlly. Kerlly did not complain of any sexual harassment to Gonzalez. In fact, Kerlly admitted at her deposition that despite being discovered, she was interested in continuing her relationship with Dr. Hesquijarosa. After the hotel incident, Dr. Hesquijarosa made a comment to Eric about him not being able to "get it up." Eric contact Gonzalez because he believed Holy Name had an obligation to address Dr. Hesquijarosa's conduct.

Gonzalez treated the affair as a "personal matter that bled into the workplace," but eventually relocated Kerlly away from Dr. Hesquijarosa and Excelcare, to a different affiliate of Holy Name, HPS. Kerlly did not want to be relocated, but her salary did not change, and the transfer was not a demotion.

On September 9, 2016, Kerlly was terminated from her position as Office Manager of HPS for failing to make timely deposits of patient copays in the form of cash, checks, and credit cards (38 separate deposits, over the course of several months) in the aggregate amount of $3,770.00. Dr. Hesquijarosa had no role or input into Holy Name's decision to terminate Kerlly's employment.

Eric Bobowicz had a heart attack in October of 2017, over a year after Kerlly departed from Holy Name Medical Center and over a year since he last spoke with Dr. Hesquijarosa. Plaintiff's filed this lawsuit on August 10, 2018, 23 months from Kerlly's departure from employment at Holy Name. Plaintiff's now assert claims under NJLAD for sexual harassment,

sexual discrimination, hostile work environment, aiding and abetting sexual harassment, and intentional infliction of emotional distress against Dr. Hesquijarosa.

For the reasons set forth below, Defendants Holy Name and Dr. Hesquijarosa's Motions for Summary Judgment are **GRANTED**, and Plaintiffs Eric and Kerlly Bobowicz's Cross-Motions for Summary Judgment against Holy Name and Dr. Hesquijarosa are **DENIED**.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill v. Guardian Life Insurance Co., the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. 142 N.J. 520 (1995). Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. at 540.

RULES OF LAW AND DECISION

Defendant Holy Name's Motion for Summary Judgment is granted because: (1) Plaintiffs lack standing to sue Holy Name under LAD, and cannot establish a LAD claim for hostile work environment or sexual harassment, (2) Plaintiffs negligent hiring claim is barred by the statute of limitations and has no basis, (3) Plaintiff Kerlly Bobowicz was terminated for legitimate

nondiscriminatory reasons, and (4) Plaintiffs have not established Kerlly or Dr. Hesquijarosa were employees of Holy Name. Defendant Dr. Hesquijarosa's Motion for Summary Judgment is granted because: (1) Plaintiff cannot sustain a claim or sexual harassment under the NJLAD, and (2) Plaintiff Eric Bobowicz's claims against Dr. Hesquijarosa are barred and must be dismissed.

I. Defendant Holy Name's Motion for Summary Judgment is Granted

Defendant Holy Name's motion for summary judgment must be granted because Plaintiffs lack standing to sue under NJLAD, Plaintiffs' negligent hiring claim is barred by the statute of limitations, Plaintiffs' hostile work environment claim cannot be established, and because Plaintiff Kerlly Bobowicz was terminated for legitimate non-discriminatory reasons.

a. Plaintiffs Lack Standing to Sue Under NJLAD

The New Jersey Law Against Discrimination ("LAD") protects individuals seeking employment or already employed. See N.J.S.A. 10:15-12,-3,-4.1. Neither Plaintiff was an employee of Holy Name, and "only employees are entitled to pursue an action against an employer under the LAD." Liebeskind v. Colgate-Palmolive Co., 2010 WL 2557765, *2 (App. Div. June 11, 2010) cert. denied, 213 N.J. 44 (2013) (citing Pukowsky v. Carauso, 312 N.J. Super. 71, 182-83 (App. Div. 1998).

Plaintiffs argue that Kerlly and Dr. Hesquijarosa were both employees of Holy Name by citing to a line of cases where the employer sought to evade application of the LAD by classifying the Plaintiff as an independent contractor, and not an employee. See Pukowsky v. Caruso, 312 N.J. Super. 171, 184 (App. Div. 1988). In this case Holy Name is not alleging that Kerlly was an independent contractor, but rather an employee of Excelcare and HPS. Thus, unlike the independent contractor cases, there was never any risk of Plaintiffs being wrongfully deprived of the protection of the LAD—Plaintiffs simply needed to sue the correct employer. Plaintiffs were advised as early as October of 2019 that they had sued the wrong party. See Holy

Name's Interrogatory response, dated October 15, 2019, at No. 26. Plaintiffs then belatedly sought to amend their pleading to add Excelcare and HPS as party-defendants, but their motion was denied as the statute of limitations had run on all claims brought against those entities.

Plaintiffs then argue, in the alternative, that the "Joint Employer Doctrine" applies. This is incorrect as both Excelcare and HPS are distinct entities from Holy Name, as required by regulations governing the practice of medicine. Under existing law, Holy Name is prohibited from holding an ownership interest in Excelcare. See N.J.A.C. 13:35-6.16. Kerlly received W-2s from Excelcare and HPS, not Holy Name, and Plaintiffs fail to establish the operational and fiscal control necessary for application of the Joint Employer Doctrine. See In re Enter. Rent-A-Car Wage & Hour Empl. Practices Litig., 683 F.3d 462 (3d Cir. 2012). In any event, Plaintiff's argument that Kerlly and Dr. Hesquijarosa are employees under the Joint Employer Doctrine is of no moment because Plaintiffs' claims also fail on their merits.

b. Plaintiff's Negligent Hiring Claim is Barred by the Statute of Limitations

As this Court held that the statute of limitations barred the addition of claims against Excelcare and HPS in the Plaintiffs previous motion to amend, it so too finds that Plaintiffs' negligent hiring claim against Holy Name is barred and without merit. Holy Name never hired Dr. Hesquijarosa. He was hired by Excelcare in 2011 and remained an employee of Excelcare throughout his tenure. Since Holy Name never hired Dr. Hesquijarosa it cannot be held liable under negligent hiring theory. In any event there is no evidence suggesting that Excelcare was negligent when it hired Dr. Hesquijarosa. An employer will only be held responsible for the torts of its employees beyond the scope of the employment (1) "where it knew or had reason to know of the particular unfitness, incompetence, or dangerous attributes of the employee and could reasonably have foreseen such qualities created a risk of harm to other persons," and (2) where "through the negligence of the employer in hiring the employee, the latter's incompetence,

unfitness or dangerous characteristics proximately caused the injury." Di Cosala v. Kay, 91 N.J. 159, 173-74 (1982) (recognizing the tort of negligent hiring of an incompetent, unfit or dangerous employee). Plaintiffs have failed to identify that Dr. Hesquijarosa was hired by Holy Name and failed to identify what it should have learned during the hiring process in 2011 that would have raised flags about Dr. Hesquijarosa.

Even if there was a valid basis for negligent hiring against Holy Name, the statute of limitations for a negligent hiring claim is two years. See Montells v. Haynes, 133 N.J. 282, 291-93 (1993). The Complaint was not filed until August 10, 2018, long after the two-year limitation period expired in 2013. Plaintiffs argue that the two-year limitation period does not bar their claim because the claim did not begin to accrue until Kerlly was terminated in September 2016. A tort claim generally arises "when a person is injured due to another person's fault." Dunn v. Borough of Mountainside, 301 N.J. 262, 273 (App. Div. 1997). Plaintiffs' theory is that Dr. Hesquijarosa's "negligent hiring" led to Kerlly's alleged sexual harassment which in turn led to a hostile work environment. Dr. Hesquijarosa's alleged harassment of Kerlly, and Kerlly's knowledge of Holy Name's alleged adverse employment action, must have taken place no later than August 2, 2016. On that date, two weeks after the hotel incident, Gonzalez informed Kerlly that she would be transferred and relocated to a different office from Dr. Hesquijarosa. Plaintiffs claim this was an adverse employment action, but the complaint still wasn't filed until August 10, 2018, after the two-year limitations period expired.

In the alternative, Plaintiffs argue that the "discovery rule" should apply to salvage Plaintiffs' negligent hiring claim—that the Plaintiff could not have known of a right to file the claim until certain information was discovered some time after the incident. This argument fails because Kerlly must have known she was subject to sexual harassment when the harassment allegedly occurred and certainly no later than being informed she would be transferred away

from Dr. Hesquijarosa—more than two-years prior to the date the Complaint was filed. See Dunn, 301 N.J. at 274 (discovery rule not available to plaintiff where plaintiff knew she was assaulted but failed to file her complaint within the limitations period). Accordingly, Plaintiffs' negligent hiring claim should be dismissed.

c. Plaintiffs' Hostile Work Environment Claim Cannot be Established

The LAD prohibits discrimination based on gender and provides that it is unlawful discrimination "for an employer, because of … sex … of any individual … to refuse to hire or employ or to bar or to discharge … from employment such individual in compensation or in terms, conditions or privileges of employment …." N.J.S.A. 10:5-12. Under the LAD, sexual harassment is considered a form of gender discrimination. See Lehman v. Toys R Us, Inc., 132 N.J. 587, 601 (1993). A hostile work environment constituting sexual harassment, "occurs when an employer or fellow employees harass an employee because of her sex to the point at which the working environment becomes hostile." Id. at 601. To prevail on a hostile work environment sexual harassment claim, an employee must establish that "the complained-of conduct (1) would not have occurred but for the employee's gender; and it was (2) severe or pervasive enough to make a (3) reasonable woman believe that (4) the conditions of employment are altered and the working environment is hostile or abusive." Id. at 603-04.

In determining whether conduct satisfies the "severe or pervasive" element, relevant factors include the frequency of the conduct, its severity, whether the conduct is physically threatening or only verbally offensive, and whether the conduct unreasonably interferes with Plaintiff's ability to perform her job. See Anastasia v. Cushman Wakefield, 455 F. App'x 236, 239 (3d Cir. 2011); see also Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 196 (2008). The assessment of the severity or pervasiveness of the conduct must be based on "the totality of the relevant circumstances." Godfrey, 196 N.J. at 196.

Moreover, the alleged harassing conduct must be coercive and unwelcomed, as opposed to consensual. See Erickson v. Marsh & McLennan Co., 117 N.J. 539, 556-57 (1990). Where such conduct is not unwelcomed, it does not constitute sexual harassment. See Matter of Brenner, 147 N.J. 314, 318 (1997) (finding that a judge's conduct did not constitute sexual harassment where his advances were not unwelcomed). Absent additional evidence of sexual hostility, a consensual relationship between co-workers does not support a hostile work environment sexual harassment claim. See Erickson, 117 N.J. at 559.

In the present case, Dr. Hesquijarosa's conduct was not severe or pervasive, and it was not unwelcomed. Kerlly never complained to Holy Name about Dr. Hesquijarosa, sexual harassment, intimidation, or a hostile work environment. Indeed, even after being transferred to a different department, Kerlly expressed her desire to continue working with Dr. Hesquijarosa. It was only years after Kerlly's termination for her failure to timely deposit thousands of dollars of co-payments that Plaintiffs alleged sexual harassment. Beyond reference to sexual innuendos made or allegations that Dr. Hesquijarosa would occasionally get in Kerlly's "space," Plaintiff's have produced no additional evidence of sexual hostility that would give rise to a hostile work environment or sexual harassment claim amid an admittedly consensual relationship. Furthermore, the LAD does not mandate that the workplace be free of all vulgarity or sexual innuendo—generally, remarks or conduct which are occasional, isolated, or simple teasing are insufficient to establish "severe or pervasive" standard, particularly in cases where the Plaintiff herself participated in similar conduct. See Martinez v. Rapidigm, Inc., 290 F. App'x 521, 524 (3d. Cir. 2008) (affirming summary judgment in favor of employer on Title VII and wrongful discharge claims where scattered sexual harassment incidents were not severe or pervasive as to create a hostile work environment and Plaintiff herself participated in similar conduct).

Irrespective of whether or not Dr. Hesquijarosa's conduct amounted to supervisory sexual harassment that created a hostile work environment, Holy Name cannot be held liable because neither Dr. Hesquijarosa or Kerlly were employees of Holy Name, and because Dr. Hesquijarosa was not Plaintiff's supervisor. To establish an employer's liability under the LAD, the employee must prove that (1) her employer (2) "failed to exercise due care with respect to sexual harassment in the workplace"; (3) "breach of the duty of due care caused the Plaintiff's harm"; and (4) that Plaintiff sustained damages as a result of employers breach. See Aguas v. State, 220 N.J. 494, 512 (2015). Here, Plaintiffs have alleged supervisory sexual harassment which requires the Court to analyze the particular facts of the case to determine whether an employer may be held liable for the alleged supervisory misconduct. See Lehmann, 132 N.J. 624. An employer may be liable for a supervisor's conduct if the supervisor acted within the scope of his employment. Id. at 624. In the absence of a showing that the employee was acting within the scope of his employment, or that the employer was negligent, or had intentional conduct, an employer cannot be held liable for a LAD sexual harassment claim. See Herman, 348 N.J. Super. at 24 (citing Lehmann, 132 N.J. at 619-21); see also Barrosa v. Lidestri Foods, Inc., 937 F. Supp. 2d 620, 632 (D.N.J. 2013).

Kerlly and Dr. Hesquijarosa are not employees of Holy Name, thus Holy Name cannot be held responsible for Dr. Hesquijarosa's behavior. Therefore, Kerlly does not have standing to sue Holy Name. In addition, Holy Name cannot be liable for Dr. Hesquijarosa's behavior because he was not Kerlly's supervisor. See Herman, 348 N.J. Super. at 28 ("a supervisor has the authority to hire, fire, discipline, control employees' wages or control employees' schedules"); see also Entrot v. BASF Corp., 359 N.J. Super. 162, 181 (App. Div. 2003) (stating when courts consider whether an employee qualifies as a supervisor courts should look to " whether the power the offending employee possessed was reasonably perceived by the victim, accurately or not, as

giving that employee the power to adversely affect the victim's working life"). The record demonstrates that Dr. Hesquijarosa was not Kerlly's supervisor, and there is no evidence that Kerlly perceived Dr. Hesquijarosa to have power over her such that it impeded her ability to respond to or ignore Dr. Hesquijarosa's conduct. Furthermore, Plaintiffs have the burden to establish that Holy Name was negligent and failed to take remedial action to stop Dr. Hesquijarosa's alleged harassment. Since neither of these can be proved based on the undisputed material facts, Mr. Gonzalez correctly treated this situation as "a personal matter that bled over to the workplace." Holy Name cannot be held liable to Plaintiffs because Plaintiffs cannot establish that Holy Name was negligent or failed to take remedial action to stop their voluntary sexual relationship.

d. Plaintiff Kerlly Bobowicz was Terminated for a Legitimate Non-Discriminatory Reason

The LAD does not "prevent the termination … of any person who in the opinion of the employer, reasonably arrived at, is unable to perform adequately the duties of employment, nor to preclude discrimination among individuals on the basis of competence, performance, conduct, or any other reasonable standards …." N.J.S.A. 10:5-2.1. The LAD was and is intended "as a shield to protect employees from the wrongful acts of their employers, and not as a sword to be wielded by a savvy employee against [her] employer." Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 373 (2007). Where an employee alleges employer retaliation under the LAD, the employee must prove that "her original complaint—the one that originally triggered [ ] her employer's retaliation—was made reasonably with good faith." Id. at 373. The inverse is also true: an unreasonable, frivolous, bad faith, or unfounded complaint cannot satisfy the statutory prerequisite necessary to establish liability for retaliation under the LAD. Id.

Here, Kerlly never made a complaint. Kerlly's termination, which was entirely unrelated to her affair with Dr. Hesquijarosa, was for entirely legitimate business reasons. Kerlly, as an office manager, was responsible for timely depositing patients' copays in the form of cash, checks, and credit cards, that came in as payment for medical services. Kerlly admits that she failed in the task, and that several undeposited copays were months old. Deposits were meant to be made on a weekly basis. Due to Kerlly's oversight a total of $3,770.00 was never deposited as it was meant to be.

Kerlly does not dispute the underlying facts of her termination but instead alleges that other employees were treated more leniently or that Kerlly should have been subjected to "progressive discipline." But Kerlly was an employee-at-will and therefore was subject to termination for any reason or no reason, so long as she was not terminated for an improper reason. See Woolley v. Hoffman-La Roche, Inc., 99 N.J. 284, 297, mod 101 N.J. 10 (1985). Holy Name's policy did not require "progressive discipline," and Kerlly admitted to mishandling thousands of dollars. This was reasonably deemed a firing offense. See House v. Carter-Wallace, Inc., 232 N.J. Super. 42, 54 (App. Div. 1989) (plaintiff terminated because he was not doing a proper job); see also Galante v. Sandoz, Inc., 192 N.J. Super. 403 (Law Div. 1983) (plaintiff properly terminated for excessive absenteeism), aff'd, 196 N.J. Super. 568 (App. Div. 1984), appeal dismissed, 103 N.J. 492 (1986). Plaintiffs' retaliatory termination claim must be dismissed with prejudice.

II. Defendant Dr. Hesquijarosa's Motion for Summary Judgment is Granted

Defendant Dr. Hesquijarosa's motion for summary judgment must be granted because Plaintiff Kerlly Bobowicz cannot sustain a claim against him for sexual harassment, and Plaintiff Eric Bobowicz's claims against Dr. Hesquijarosa are all either barred or fail as a matter of law.

a. Plaintiff Kerlly Bobowicz Cannot Sustain a Claim for Sexual Harassment

Plaintiff Kerlly Bobowicz cannot sustain her claim against Dr. Hesquijarosa for sexual harassment under the NJLAD. Hostile work environment for sexual harassment, occurs when an employer or employee harasses and employee because of his or her sex to the point where the working environment becomes hostile. Lehmann v. Toys R Us, Inc., 132 N.J. 587, 601 (1993). As stated previously, to demonstrate a claim of hostile work environment based on sex under the NJLAD, an employee must demonstrate that the defendant's conduct (1) would not have occurred but for the employee's sex; (2) the conduct was severe or pervasive enough to make; (3) a reasonable person of the same sex believe that; (4) the conditions of employment are altered and the working environment is hostile or abusive. Taylor v. Metzger, 152 N.J. 490 (1998).

Kerlly admitted that she entered into a consensual sexual relationship with Dr. Hesquijarosa. The Appellate Division has held that, "[v]arious cases recognize that a consensual relationship between employees negates the elements of a hostile environment sexual harassment claim." J.M.L. ex rel. T.G. v. A.M.P., 379 N.J. Super. 142, 148 (App. Div. 2005); See also Erickson v. Marsh & McLennan Co., 117 N.J. 539, 557 (1990); Mandel v. UBS/PaineWebber, Inc., 373 N.J. Super. 55, 78 (App. Div. 2004). Here, both Kerlly and Dr. Hesquijarosa were consenting adults who willingly entered into a relationship. Plaintiff never made any sexual harassment complaints against Dr. Hesquijarosa to management while employed by Excelcare or HPS. Dr. Hesquijarosa's conduct was not severe or pervasive, and it was not unwelcomed, therefore the Court must grant Dr. Hesquijarosa's motion for summary judgment as to the sexual harassment claim.

b. Plaintiff Eric Bobowicz's Claims Against Dr. Hesquijarosa are barred and Fail as a Matter of Law.

Plaintiff Eric Bobowicz's claims against Dr. Hesquijarosa are without merit and fail as a matter of law. New Jersey does not recognize "heart balm" claims since the passage of the Heart Balm Act, N.J.S.A. 2A:23-1, in 1935. The Heart Balm Act formally abolished the rights of action formerly existing to recover sums of money as damage for the alienation of affection, criminal conversion (adultery), seduction or breach of contract to marry. See Segal v. Lynch, 413 N.J. Super. 171, 181-82 (App. Div. 2010). Eric Bobowicz files his complaint against Dr. Hesquijarosa as a claim for intentional infliction for emotional distress, but the compliant echoes the abolished forms of action known as "heart balm" claims. Regardless, Eric Bobowicz's claim of intentional infliction of emotional distress must be dismissed.

In order to prevail on a claim for intentional infliction of emotional distress, the conduct complained of must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency; be regarded as atrocious, and utterly intolerable in a civilized community. Taylor v. Metzger, 152 N.J. 490, 509 (1997). While New Jersey courts permit recover for intentional infliction of emotional distress, there is an elevated threshold for liability and damages that is only satisfied in very extreme cases. Griffen v. Tops Appliance City, Inc., 337 N.J. Super. 15, 23 (2001). The plaintiff must demonstrate a "severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so. Id. at 26. Aggravation, embarrassment, headaches, and loss of sleep are insufficient as a matter of law. Buckley v. Trenton Saving Fund, 111 N.J. 355, 368 (1988).

In the present case, Plaintiffs do not have a medical expert to speak to Plaintiff Eric Bobowicz's alleged "severe and disabling emotional or mental condition." Plaintiffs have failed to point to conduct that "was so outrageous in character, and so extreme in degree, as to go

beyond all possible bounds of decency" and be regarded as atrocious, and utterly intolerable in a civilized community. Though the affair was undoubtedly upsetting to Eric Bobowicz, it is not actionable under New Jersey law as a claim for intentional infliction of emotional distress. Lastly, Plaintiff's attempt to attribute Mr. Bobowicz's heart attack to Dr. Hesquijarosa, while failing to present any medical expert testimony to support his claim, is without merit. At Eric Bobowicz's deposition he explained that his father died from a heart attack, the heart attack occurred a year after his wife was terminated and after he last spoke to Dr. Hesquijarosa, he had three stents inserted subsequent to his wife's affair, and he was prescribed medication for treatment of his heart disease. Plaintiff's own "net opinion" that his heart attack was caused by Dr. Hesquijarosa is void as a matter of law. Eric Bobowicz's claim of intentional infliction of emotional distress is without merit and therefore must be dismissed.

CONCLUSION

For the aforementioned reasons, Defendants Holy Name and Dr. Hesquijarosa's Motions for Summary Judgment are **GRANTED**, and Plaintiffs Eric and Kerlly Bobowicz's Cross-Motions for Summary Judgment against Holy Name and Dr. Hesquijarosa are **DENIED**.