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FIFTH DIVISION
July 29, 2011

No. 2011 IL App (1st) 1103023-U
No. 1-10-3023

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVEN A. MINER II and KATHRYN R. MINER,	)	Appeal from the Circuit Court of Cook County, Illinois.
Plaintiffs-Appellants,	)	
v.	)	No. 09 L 010149
KIMBERLY A. GARRITY,	)	Honorable Kathy M. Flanagan, Judge Presiding.
Defendant-Appellee.	)	

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

ORDER

HELD: Adult children brought suit against mother, raising claims of intentional infliction of emotional distress and negligent infliction of emotional distress as a result of "bad mothering." Dismissal of suit for failure to state a cause of action was affirmed, since plaintiffs failed to allege conduct that was so extreme and outrageous "as to go beyond all possible bounds of decency" under the standard articulated in *Public Finance Corporation v. Davis*, 66 Ill. 2d 85, 90 (1976), and the Restatement (Second) of Torts §46 (1965).

¶ 1 Twenty-one-year-old Steven A. Miner II and 18-year-old Kathryn Miner, the children of Kimberly A. Garrity, brought suit against Garrity for "bad mothering."[1] Both sought damages in excess of $50,000 for intentional infliction of emotional distress and negligent infliction of emotional distress, as well as punitive damages. The trial court dismissed their complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)) for failure to state a cause of action. Plaintiffs now appeal. For the reasons that follow, we affirm.

I. BACKGROUND

¶ 2 Plaintiffs' complaint alleges that on November 17, 1995, when Steven was seven and Kathryn was four, Garrity and their biological father were divorced.[2] The father was granted sole custody of Steven. The parents had joint legal custody over Kathryn, who resided at her father's house and had visitation with her mother.

¶ 3 According to the complaint, ever since the divorce, Garrity has "engaged in a course of conduct which has caused both the intentional and negligent infliction of emotional distress to STEVEN and KATHRYN." The complaint alleges that this conduct is fueled, in part, by Garrity's desire to retaliate against her ex-husband, toward whom she harbors great animosity.

¶ 4 The complaint provides a lengthy list of the many ways in which Garrity allegedly

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[1] This was the trial court's characterization of the allegations in their complaint, and plaintiffs adopt that characterization in their appellate brief.

[2] The father's name is Steven A. Miner. To avoid confusion, we shall refer to him simply as "the plaintiffs' father" or "the father." We note parenthetically that the father is one of the attorneys for the plaintiffs.

inflicted emotional distress upon the plaintiffs, as follows:

¶ 5 • After the divorce, Garrity tried to obtain custody of Kathryn, arguing that the plaintiffs ought to be separated since Steven had been abused by a female adult and therefore might abuse Kathryn. (According to the complaint, this was ironic, since Garrity was the one who abused Steven in the first place. The complaint does not specify what kind of abuse Garrity allegedly committed.) Eventually, the parents agreed to the custody compromise described above.

¶ 6 • Garrity allegedly treated the siblings unequally in an attempt to "pit the siblings against each other." From 1997 to 2007, Kathryn regularly visited Garrity, but Steven did not; Garrity would give clothes and toys to Kathryn during her visits, but she did not give anything to Steven. At other times, according to the complaint, Garrity would favor Steven over Kathryn. Although Kathryn asked Garrity to bring her to an auto show in 2006 and a car race in 1998, Garrity refused and instead brought Steven. When both siblings attended events with Garrity, Garrity would allegedly dote on Steven and ignore Kathryn's requests. Garrity also allegedly favored Steven in financial matters. When Steven asked for college financial assistance, Garrity willingly contributed, but when Kathryn asked for the same, Garrity allegedly refused. Likewise, Garrity willingly contributed to Steven's purchase of an all-terrain vehicle, but when Kathryn asked for money for homecoming, for disco dances in 2006 and 2007, and for her graduation dress in 2009, Garrity allegedly "engaged in bartering and haggling."

¶ 7 • Under the terms of the divorce, Garrity is responsible for paying half of the plaintiffs' medical expenses that are not covered by insurance. However, according to the complaint, Garrity does not trust the plaintiffs to accurately report their medical expenses but requires that

they provide her with receipts.

¶ 8 • Garrity allegedly told Steven that she did not want to be "financially drained" by the plaintiffs.

¶ 9 • Garrity allegedly failed to send Christmas and birthday presents to Steven from 1996 to 2005 and failed to send presents to Kathryn in 2007. Moreover, according to the complaint, when she sends cards to them, she often "forgets that STEVEN and KATHRYN are children, failing to include any type of gift in the card."

¶ 10 • Garrity allegedly refers to the plaintiffs' father as the "Disneyland" parent.

¶ 11 • Since the divorce, Garrity allegedly has not taken Steven to a health or mental health care provider, and she has only taken Kathryn on two occasions.

¶ 12 • Prior to Garrity's remarriage, Garrity allegedly lived together with a man. (It is not clear from the complaint whether this man is the man that she eventually married.) Garrity told Kathryn during visitation that this behavior was appropriate because they were engaged. The complaint states that Kathryn "was so stressed that she gained significant weight as a result."

¶ 13 • Both Steven and Kathryn had a close relationship with their paternal grandmother and with a man whom they called "Pops." When Garrity learned of this, she allegedly sought to destroy their relationship by refusing to allow them to be looked after by their paternal grandmother and "Pops."

¶ 14 With regard to Steven in particular, the complaint alleges:

¶ 15 • In 1989, prior to the divorce, while Steven's father was at work, Steven's right arm was fractured. Garrity allegedly told different people different stories about what happened: she told

the father that it occurred while Steven was at daycare (while refusing to place a claim with the daycare's medical insurance provider), she told Steven's paternal grandmother that it occurred while Steven was with a friend, and she later told Steven that it occurred while he was with a babysitter.

¶ 16 • In December 1994, Garrity asked Steven a question, and Steven replied. (The complaint does not elaborate upon what they said.) Garrity then allegedly "smacked him to the head." Steven subsequently told his father that he hated Garrity and wanted to run away from home.

¶ 17 • In May 1995, also prior to the divorce, Steven gave Garrity a popsicle stick jewelry box for Mother's Day. He subsequently asked her to give the box back. When Garrity refused, Steven took the box anyway. Garrity allegedly claimed that she had a diamond necklace in that box and called the police to report that Steven had stolen it.

¶ 18 • In August 1995, during a car ride, Garrity told Steven that if he did not buckle his seatbelt, she would drive to the police station and tell the police that he would not put his seatbelt on.

¶ 19 • When Steven was seven years old, he asked Garrity to leave him alone. From that time until the time that Steven was emancipated, Garrity had no contact with him.

¶ 20 • In 1996, Garrity filed an emergency motion with the circuit court seeking to have the plaintiffs' father held in contempt of court. In that motion, she alleged that the father allowed eight-year-old Steven to "brain wash" Kathryn so that Kathryn refused to go to visitation with Garrity.

¶ 21 • When Steven was at college, Garrity did not send Steven any care packages until his 6th semester when she was prompted to do so by his father.

¶ 22 • Although Steven has sought an apology from Garrity for her actions toward him, Garrity has allegedly refused to apologize and, in fact, has frequently refused even to acknowledge that the actions in question occurred.

With regard to Kathryn in particular, the complaint alleges:

¶ 23 • After the divorce, Garrity remarried and changed her surname, thus "causing attention" whenever she attended events at Kathryn's school because of their different surnames.

¶ 24 • From 1997 to 2007, Kathryn visited Garrity's house on weekends. Garrity did not keep allergy medications in her house, so Kathryn was, in the words of the complaint, "forced" to bring her own medications. In addition, when Garrity would pick Kathryn up after school on Fridays, she would not drive Kathryn to her father's house so that Kathryn could pick up her weekend bag. As a result, Kathryn was "forced" to bring her weekend bag to school with her on Fridays.

¶ 25 • In late 1996 and/or early 1997, Kathryn wished to speak with a female mental health care professional. Garrity allegedly insisted on interviewing each of the three candidates, but took "an extraordinary amount of time" to do so. Consequently, Kathryn went back to seeing her previous mental health care professional.

¶ 26 • Garrity refused to purchase Kathryn a dress for homecoming in 2007. She provided an automobile, but at midnight, when Kathryn was with her friends, Garrity allegedly contacted Kathryn and made her return the automobile. Moreover, Garrity allegedly related this incident to

a female priest at a church where Kathryn worked as a lay assistant. The priest then spoke with Kathryn regarding the incident. As a result, according to the complaint, Kathryn believed that God was angry with her and was unable to set foot in that church for several months because she believed that "everyone was looking at her with disfavor."

¶ 27 • Despite the fact that Garrity is required to pay half of the plaintiffs' medical expenses as described above, Garrity refused to pay half of the cost of an over-the-counter skin medication purchased by Kathryn in 2007, because it was not a prescription medication.

¶ 28 • Upon graduating from high school in 2009, Kathryn asked Garrity to give her certain savings bonds that Garrity "maintained dominion and control over as the secondary joint tenant or the paid on death ('P.O.D.') beneficiary." Garrity sent Kathryn a text telling her that she could pick up her bonds the next day and also telling her to bring a car large enough to pick up all of her belongings. When Kathryn arrived at Garrity's house, Garrity had packed all of Kathryn's belongings that were at her house.

¶ 29 • In May 2009, Garrity asked Kathryn to attend an event at her church to bless new students who would be attending college in the fall. Kathryn attended that event, although she did not want to. However, Garrity did not attend the event.

¶ 30 The complaint seeks relief in four counts. Count I seeks relief for Steven's injuries on a theory of intentional infliction of emotional distress. It contends that Garrity's actions toward Steven were extreme and outrageous. It further alleges that, in committing these acts, Garrity intended to cause severe emotional distress to Steven and also acted in reckless disregard knowing that such distress would result from her actions. It further claims that due to Garrity's

actions, Steven has suffered actual damages, both physical and emotional. With regard to physical damages, it alleges that Steven has experienced recurring headaches as a result of Garrity smacking him on the head. With regard to his emotional damages, it states that he is seeking help from a mental health care professional and a religious care provider who is also a social worker. Count II seeks relief for Steven's injuries on a theory of negligent infliction of emotional distress. It states that, as a parent, Garrity had a duty not to harm or injure Steven, and she breached that duty by her actions toward him, causing damages as described in count I. Steven therefore seeks judgment in excess of $50,000 for intentional infliction of emotional distress and judgment in excess of $50,000 for negligent infliction of emotional distress, plus punitive damages.

¶ 31 Count III, which seeks relief for Kathryn's damages on a theory of intentional infliction of emotional distress, and count IV, which seeks relief for Kathryn's damages on a theory of negligent infliction of emotional distress, largely mirror the first two counts. However, the complaint does not allege that Kathryn has suffered physical damages, but only emotional damages. Specifically, it alleges that Garrity's conduct has made Kathryn "nervous and upset." It further alleges that, like Steven, Kathryn is seeking help from a mental health care professional and a religious care provider who is also a social worker. As with Steven, Kathryn seeks judgment in excess of $50,000 for intentional infliction of emotional distress and judgment in excess of $50,000 for negligent infliction of emotional distress, plus punitive damages.

¶ 32 On October 22, 2009, Garrity moved to dismiss plaintiffs' complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2009); 735 ILCS

5/2-619 (West 2009)). Garrity contended that the complaint warranted dismissal under section 2-615 because it failed to state a cause of action. With regard to plaintiffs' claims of intentional infliction of emotional distress, Garrity argued that plaintiffs had failed to allege extreme and outrageous behavior on her part. With regard to plaintiffs' claims of negligent infliction of emotional distress, Garrity argued that, even if plaintiffs' allegations were taken as true, "the Defendant's exercise of her parental discretion does not breach her duty of care as a parent."[3]

¶ 33 Garrity additionally sought to dismiss counts I and II of the complaint, Steven's claims of intentional and negligent infliction of emotional distress, as time-barred under section 2-619. She argued that the clock would have started running on these claims when Steven reached the age of 18, more than three years ago, thus rendering them untimely under the two-year statute of limitations for personal injury actions.

¶ 34 Plaintiffs filed an answer to Garrity's motion to dismiss. In that answer, they contended that all counts were sufficiently pled and stated a cause of action and that their pleading was not untimely where they had alleged a continuing course of conduct from 1989 until the filing of the complaint in 2009.

¶ 35 In addition, on May 17, 2010, plaintiffs moved to deny Garrity's motion to dismiss based on Garrity's alleged failure to comply with court rules. Plaintiffs noted that the trial court had a standing order requiring movants to present the court with courtesy copies of pleadings and

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[3] Garrity also contended that plaintiffs' claims for negligent infliction of emotional distress were barred by intrafamily immunity. However, the trial court did not rule upon that contention, nor does either party raise it on appeal.

supporting documents. In support, they attached an April 26, 2010, order in which the court set Garrity's motion to dismiss to be heard on June 2, 2010 and stated, "MOTIONS WITH INCOMPLETE COURTESY COPIES WILL BE DENIED." Plaintiffs alleged that Garrity had not complied with this requirement, insofar as she had failed to present the court with copies of plaintiffs' First Request to Admit Facts and Genuineness of Documents (Request to Admit) and her answer to their Request to Admit. Plaintiffs contended that the court needed these documents in order to properly rule upon Garrity's section 2-619 motion to dismiss, since such a motion takes into account not only the pleadings, but also supporting documents filed by the parties. See 735 ILCS 5/2-619 (West 2010).

¶ 36 The trial court granted Garrity's motion to dismiss the complaint with prejudice on June 2, 2010. In doing so, it explicitly only ruled upon her section 2-615 arguments, not her section 2-619 argument (that the counts of the complaint pertaining to Steven were time-barred). The court explained the dismissal as follows:

> "[W]ith respect to all counts, the Plaintiffs have failed to properly allege all elements of the causes of action. With regard to the claims for negligent infliction of emotional distress, the Plaintiffs have failed to properly allege a situation where they were in proximity to danger and in fear for their safety. With respect to the intentional infliction of emotional distress claims, the Plaintiffs have failed to properly allege extreme and outrageous conduct on the part of Defendant. The allegations set forth here amount to a failure to buy dresses, failure to take them to the auto show, failure to provide financial assistance, failure to help with homework, failure to buy presents, and other petty

> grievances of parental attention or inadequacy. In essence, the Plaintiffs are suing their mother for bad mothering. Given the facts and circumstances here, it appears that they will never be able to allege any claims for emotional distress and no amendment can cure the deficiencies here."

In its order, the court did not address plaintiffs' contention that Garrity's motion should be denied because she allegedly failed to provide the court with courtesy copies of plaintiffs' Request to Admit and her answer to their Request to Admit.

¶ 37 On June 28, 2010, plaintiffs filed a motion to reconsider. In this motion, plaintiffs reiterated their argument that Garrity's motion to dismiss should have been denied because of incomplete courtesy copies. Plaintiffs additionally requested, for the first time, that the court allow them leave to amend their complaint. However, they did not attach any proposed amended complaint.

¶ 38 On September 15, 2010, the trial court denied plaintiffs' motion to reconsider. The court explained that it would not grant leave to amend because "[n]either liberal construction nor further amendment would be able to transform the allegations regarding *** petty grievances of parental attention or inadequacy in to [*sic*] a claim which would rise to the level of intentional or negligent infliction of emotional distress." The court additionally rejected plaintiffs' claim that Garrity's motion should have been denied due to incomplete courtesy copies. The court explained that, since it was ruling on a section 2-615 motion, which considers only the four corners of the complaint, the only necessary courtesy copies were the briefs and the complaint at issue, which were provided. "Furthermore," stated the court, "it is the Court that determines

whether a set of courtesy copies is complete for ruling and not the litigants or their attorneys."

¶ 39 Plaintiffs now appeal.

II. ANALYSIS

¶ 40 On appeal, plaintiffs raise both substantive and procedural challenges to the trial court's dismissal of their complaint. Substantively, they argue that the allegations in their complaint do, in fact, state valid causes of action for intentional infliction of emotional distress and negligent infliction of emotional distress. Procedurally, they argue that the trial court should have stricken defendant's motion to dismiss because, contrary to court rules, defendant failed to present courtesy copies of all pleadings to the trial court along with her motion. In the alternative, plaintiffs contend that the trial court abused its discretion by not permitting them to amend their complaint to cure any deficiencies. We consider plaintiffs' contentions in turn.

¶ 41 In doing so, we are mindful that a section 2-615 motion to dismiss challenges only the legal sufficiency of the complaint. *Board of Directors of Bloomfield Club Recreation Ass'n v. Hoffman Group*, 186 Ill. 2d 419, 423 (1999). We accept all well-pleaded facts in the complaint as true and draw all reasonable inferences in favor of the nonmovant. *Evitts v. DaimlerChrysler Motors Corp.*, 359 Ill. App. 3d 504, 508 (2005). The critical inquiry is whether the allegations of the complaint are legally sufficient to state a cause of action upon which relief can be granted. *Bloomfield Club Recreation Ass'n*, 186 Ill. 2d at 423.

A. Whether Plaintiffs' Complaint States a Cause of Action

¶ 42 Plaintiffs contend that dismissal of their complaint was not warranted because their it did,

in fact, state a cause of action for both intentional infliction of emotional distress and negligent infliction of emotional distress.

¶ 43 At the outset, defendant claims that plaintiffs have waived this contention by failing to properly raise it in their brief on appeal. Indeed, in the "Issue" section of their brief, the sole issue listed by plaintiffs is whether the trial court abused its discretion by refusing to allow them to file an amended complaint, in contravention of Supreme Court Rule 341(h)(3), which requires that appellants provide a statement of each issue presented for review. 210 Ill. 2d R. 341(h)(3). However, plaintiffs' violation of Rule 341 does not interfere with or preclude our review, since in their argument section, in addition to raising the foregoing issue, plaintiffs also argue that their complaint properly alleged claims for intentional and negligent infliction of emotional distress. Accordingly, we reach the merits of plaintiffs' arguments in this regard. See *Moomaw v. Mentor H/S, Inc.*, 313 Ill. App. 3d 1031, 1035 (2000) (declining to strike plaintiff's brief for failure to comply with Rule 341 where plaintiff's error did not hinder appellate review).

1. Intentional Infliction of Emotional Distress

¶ 44 Plaintiffs contend that their complaint states a cause of action for intentional infliction of emotional distress. However, defendant contends, and the trial court held, that plaintiffs' complaint fails in this regard because, even when viewed in the light most favorable to plaintiffs, the allegations in plaintiffs' complaint do not amount to extreme and outrageous conduct. We agree.

¶ 45 A plaintiff must allege three elements to set forth a cause of action for intentional infliction of emotional distress. First, the defendant's alleged conduct must be extreme and

outrageous, as measured by the sensibilities of the average member of the community. *McGrath v. Fahey*, 126 Ill. 2d 78, 86 (1989); *Public Finance Corporation v. Davis*, 66 Ill. 2d 85 (1976); Restatement (Second) of Torts §46, comment D (1965). Second, the defendant must either intend that his conduct cause severe emotional distress or know that there is a high probability that her conduct will cause severe emotional distress. *McGrath*, 126 Ill. 2d at 86; Restatement (Second) of Torts §46 (1965). Third, the resulting emotional distress must be "so severe that no reasonable man could be expected to endure it." Restatement (Second) of Torts §46, comment J (1965); see *Public Finance*, 66 Ill. 2d at 90 ("[a]lthough fright, horror, grief, shame, humiliation, worry, etc. may fall within the ambit of the term 'emotional distress,' these mental conditions alone are not actionable").

¶ 46 In the case at hand, the element at issue is the first element. The trial court held, and defendant argues on appeal, that plaintiffs have failed to allege conduct that can be considered extreme and outrageous as a matter of law. Courts have repeatedly emphasized that this standard is a high one:

> "The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions or trivialities. 'It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.' " *Public Finance*,

66 Ill. 2d at 89-90, quoting Restatement (Second) of Torts §46, comment D (1965). See also *Knierim v. Izzo*, 22 Ill. 2d 73, 85 (1961) ("It has not been suggested that every emotional upset should constitute the basis of an action. Indiscriminate allowance of actions for mental anguish would encourage neurotic overreactions to trivial hurts, and the law should aim to toughen the psyche of the citizen rather than pamper it"); *Rudis v. National College of Educ.*, 191 Ill. App. 3d 1009, 1013 (1989) ("Illinois courts have essentially restricted the tort of intentional infliction of emotional distress to those cases in which the defendant's conduct is so abusive and atrocious that it would cause severe emotional distress to a person of ordinary sensibilities").

¶ 47 Plaintiffs, however, argue that the case at hand is special because it involves the accountability of a parent to her children. Plaintiffs thereby imply, without directly stating, that the requirement of "extreme and outrageous" conduct should be lowered where a parent is alleged to have inflicted emotional distress on her children.

¶ 48 It is true that, in certain regards, the law holds parents to higher standards than the public at large where the welfare of their children is concerned. It is well established that a parent has a duty " 'to create a safe and nurturing shelter for his or her children.' " (Internal quotation marks omitted.) *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004), quoting *In re N.B.*, 191 Ill. 2d 338, 343 (2000); see W. LaFave & A. Scott, Criminal Law § 26, at 184 (1972) (common law imposes duty upon parents to aid their small children "to thwart the threatened perils of nature (e.g., to combat sickness, to ward off starvation or the elements); or *** to protect against threatened acts by third persons"). Consequently, where parents violate this duty through abuse[4] or neglect[5] of their

[4] The definition of abused minor, as used in the Juvenile Court Act, includes any minor

children, the state, in its role as *parens patriae*, may intervene to protect their children. The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)) sets forth procedures under which their children may be removed from their home and made wards of the court (see *Arthur H.*, 212 Ill. 2d at 462) and further procedures under which their parental rights may be terminated (see *In re C.W.*, 199 Ill. 2d 198, 210 (2002) (involuntary termination of parental rights under the Juvenile Court Act requires a showing that the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2000)) and then a finding by the court that it is in the best interests of the child that parental rights be terminated)). Moreover, parents may face criminal penalties for failing to fulfill their parental duties. The Neglected Children Offense Act provides that a parent who knowingly or willfully causes, aids, or encourages her child to become a dependent and neglected child is guilty of a misdemeanor. 720 ILCS 130/2 (West 2010). Furthermore, our supreme court has held that, under certain circumstances, a parent who

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upon whom a parent inflicts physical injury which causes "death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function," or creates a substantial risk of such injury, or commits a sex offense or torture. 705 ILCS 405/2-3(a)(2) (West 2010).

[5] "Neglect" is defined generally as the " 'failure to exercise the care that circumstances justly demand.' " *Arthur H.*, 212 Ill. 2d at 463, quoting *N.B.*, 191 Ill. 2d at 346. A neglected minor, within the meaning of the Juvenile Court Act, includes any minor who is not receiving proper support, education, or other care, including adequate food, clothing, and shelter. 705 ILCS 405/2-3(a)(1) (West 2010).

fails to rescue her child from abuse by a third party may be found criminally liable for the acts of the abuser under an accountability theory, even where such liability would not inure to a stranger. See *People v. Stanciel*, 153 Ill. 2d 218, 236-37 (1992) (defendant mothers had affirmative duty to protect their children from abuse by boyfriends and could therefore be found guilty of murder on an accountability theory when defendants allowed the abuse to continue, leading to the children's death).

¶ 49 However, the instant case does not involve proceedings under the Juvenile Court Act. Indeed, both plaintiffs are no longer minors, thus placing them outside the ambit of the Act. Nor does the instant case involve criminal proceedings or any claim of criminal wrongdoing. Rather, plaintiffs have raised claims in tort for intentional and negligent infliction of emotional distress. With regard to such claims, the law of this state has not yet seen fit to impose any greater burden on parents than upon other defendants. Our research has not disclosed any cases holding that the requirement of "extreme and outrageous" conduct does not need to be met where children bring suit against their parents for emotional distress. On the contrary, the case of *Towne v. Cole*, 133 Ill. App. 3d 380 (1985), dealing with the boundaries of parental discretion in the context of a claim for intentional infliction of emotional distress, suggests that the same standard would apply. The plaintiff in *Towne* was a grandmother who claimed that her son and his wife caused her severe emotional distress by denying her any visitation with her two-year-old granddaughter. *Towne*, 133 Ill. App. 3d at 381. The *Towne* court upheld the trial court's dismissal of her claim for intentional infliction of emotional distress, explaining:

> "[T]he rights of the natural parents to regulate their children's lives, absent divorce or

> death or other unusual circumstances, are superior to the rights of others. Although it may be possible that some would view the actions of the parents in the present case as morally reprehensible, their behavior is nevertheless within their legal rights." *Towne*, 133 Ill. App. 3d at 387.

Although *Towne* involves a third-party suit rather than a suit directly between parent and child, it is nevertheless still pertinent, insofar as it expresses the proposition that in order to state a cause of action for intentional infliction of emotional distress against a parent for conduct concerning her children, it is necessary to allege extreme and outrageous behavior, just as with any defendant. More broadly, it stands for the general principle that parents have significant discretion in the upbringing of their children, and even where their conduct may arguably be undesirable or otherwise emotionally detrimental, the law is reluctant to interfere with such parental conduct by means of claims for intentional infliction of emotional distress unless their conduct is actionable under the general standards governing recovery under the common law of intentional infliction of emotional distress. Notably, plaintiffs do not challenge this contention nor attempt to demonstrate that any other standard would be applicable.

¶ 50 Nor have plaintiffs demonstrated that it would necessarily be desirable to lower the threshold in cases where children seek damages for emotional distress that they have allegedly incurred as a result of their parents' actions. Although the state has an interest in the protection of children, that interest must be carefully balanced against parents' interest in the care and upbringing of their children. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the

fundamental liberty interests recognized by this Court"). If extreme and outrageous conduct were no longer required for recovery in intentional infliction of emotional distress actions between parents and children, it could potentially open the floodgates to subject family childrearing to nonconstructive excessive judicial scrutiny and interference. See *Knierim*, 22 Ill. 2d at 85 (requirement of extreme and outrageous conduct needed because "[i]ndiscriminate allowance of actions for mental anguish would encourage neurotic overreactions to trivial hurts"). Moreover, such an expansion of tort liability is arguably unnecessary for the protection of children in light of the protection already provided by existing statutory schemes if properly enforced, namely, the provisions of the Juvenile Court Act which provide for the removal of children from homes in which they are being neglected or abused, as well as the criminal penalties that abusive or neglectful parents may face under the Neglected Children Offense Act or other law.

¶ 51 In any event, as of this time, the standards for recovery for intentional infliction of emotional distress remain the same whether a case involves strangers or parents and children. As has been discussed, the case law is clear that a defendant, regardless of her status as a parent, will not be held legally accountable in tort for every single insult or emotional slight that she might inflict upon others, only those which are " 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.' " *Public Finance*, 66 Ill. 2d at 89-90, quoting Restatement (Second) of Torts §46, comment D (1965).

¶ 52 Plaintiffs next contend that, even with regard to claims for intentional infliction of emotional distress, courts are more likely to find extreme and outrageous conduct in cases where

the defendant occupies a position of authority over the plaintiff. Thus, according to plaintiffs, even if there is no higher standard for parents as a specific group, there is a higher standard for authority figures generally, which would necessarily include parents in cases such as the present one. In support, plaintiffs cite *McGrath*, 126 Ill. 2d at 90. The *McGrath* court held that a customer adequately stated a cause of action for intentional infliction of emotional distress against his bank and its president who allegedly used their position of authority over plaintiff and his assets as part of a extended and coercive scheme to illegitimately obtain millions of dollars from him and his business partner. *McGrath*, 126 Ill. 2d at 90. According to the complaint, defendants initially defrauded the plaintiff and his business partner in connection with a real estate contract, causing them to lose $4 million. *McGrath*, 126 Ill. 2d at 82. Defendants then allegedly "engaged in conduct very much akin to extortion," refusing to allow plaintiff to withdraw funds on certain unrelated certificates of deposit that had matured and were worth over $1 million dollars. *McGrath*, 126 Ill. 2d at 91. Instead, "without any tenable legal justification whatsoever," defendants conditioned release of those funds upon plaintiff's assignment of certain second mortgages to the defendant bank. *McGrath*, 126 Ill. 2d at 91. Defendants threatened to tie up the funds for five years and to financially ruin plaintiff and his medical practice if he did not comply with their demands. *McGrath*, 126 Ill. 2d at 92. Moreover, defendants persisted in this campaign of coercive conduct after being informed that plaintiff was susceptible to heart disease and, in fact, after plaintiff had a severe heart attack; they even telephoned him on several occasions while he was at home recuperating from open-heart surgery as part of their efforts to pressure him into assigning the second mortgages. *McGrath*, 126 Ill. 2d at 92.

¶ 53 The *McGrath* court found that these allegations of extortionary and abusive conduct, if true, were sufficient to permit recovery for intentional infliction of emotional distress. *McGrath*, 126 Ill. 2d at 92. The court stressed the fact that defendants were improperly exerting their power over plaintiff in order to illegitimately extort money from him, explaining, "Threats *** are much more likely to be a part of outrageous conduct when made by someone with the ability to carry them out then [*sic*] when made by someone in a comparatively weak position." *McGrath*, 126 Ill. 2d at 87, citing *Milton v. Illinois Bell Telephone Co.*, 101 Ill. App. 3d 75, 79 (1981) (employee stated cause of action for intentional infliction of emotional distress where he claimed superiors engaged in a course of harassing conduct to coerce him into falsifying work reports). The court further noted that the severity of the defendants' conduct was exacerbated by the fact that they were allegedly aware of plaintiff's peculiar susceptibility to emotional distress due to his heart condition and subsequent heart attack. *McGrath*, 126 Ill. 2d at 93.

¶ 54 The facts of the instant case are not comparable to those of *McGrath* either in quality or in degree. There, the defendants used their economic control over plaintiff's assets in excess of $1 million in an attempt to coerce plaintiff into turning over additional assets to the defendant bank against the plaintiff's desire. Unlike in *McGrath*, the defendant in the instant case is not charged with any illegal use of authority to coerce responses from her children, but only the use of the psychological influence of a parent over the behavior of her offspring. In that sense, *Rudis* is instructive when it states, "Even if we were to accept [plaintiff's] argument that the defendants wielded some position of authority over her, such authority does not transform conduct which otherwise amounts to no more than insults or indignities into extreme and outrageous conduct."

Rudis, 191 Ill. App. 3d at 1014 (holding that plaintiff student failed to state a cause of action for intentional infliction of emotional distress against college and college administrators). Further, even where a defendant in a position of authority causes emotional distress in an attempt to induce action on the part of plaintiff, such conduct is less likely to be extreme and outrageous where the defendant is not attempting to abuse its position of authority for illegitimate gain, unlike the defendants in *McGrath*. For instance, in *Public Finance*, a creditor brought suit against defendant for defaulting on a promissory note, and defendant countersued for emotional distress allegedly caused by the creditor's efforts to collect on the note. *Public Finance*, 66 Ill. 2d at 88. She alleged, among other things, that the creditor's agents called her and visited her several times weekly over a seven-month period, used her phone to call the creditor to describe her household goods, and, on one occasion, refused to leave her home until her son entered. *Public Finance*, 66 Ill. 2d at 91. The *Public Finance* court acknowledged that the extreme and outrageous character of conduct may arise from an actor's abuse of a position of authority to affect its interests. *Public Finance*, 66 Ill. 2d at 90. It further acknowledged that the creditor held a position of authority over defendant, in that it was seeking to collect upon her debt, and that its actions might have caused defendant a certain amount of emotional distress. *Public Finance*, 66 Ill. 2d at 90. Nevertheless, it held that the actions of the creditor in trying to collect upon defendant's legal obligation were not so "extreme or excessive" as to warrant recovery for intentional infliction of emotional distress. *Public Finance*, 66 Ill. 2d at 94. Just as the allegation of illegitimate extortion was absent in *Public Finance*, so, too, is it absent here.

¶ 55 In light of the foregoing discussion, we find that none of the allegations in plaintiffs'

complaint alluding to parental misconduct can be deemed to rise to the level of extreme and outrageous behavior " 'beyond all possible bounds of decency' " as required for recovery under *Public Finance* and the Restatement. *Public Finance*, 66 Ill. 2d at 89-90, quoting Restatement (Second) of Torts §46, comment D (1965). A significant proportion of the allegations deal with defendant's reluctance to incur various expenditures on behalf of her children. Defendant allegedly requires the children to provide her with receipts to document their medical expenses, of which she is court-ordered to pay half; she does not always include gifts in cards she sends to her children; she refused or was reluctant to pay for various things that Kathryn requested, from disco dances to over-the-counter skin medication to her college expenses; she did not send Steven any care packages at college until his sixth semester. Defendant also stated that she did not want to be "financially drained" by the plaintiffs. Yet plaintiffs have not provided a single case suggesting that such behavior can be considered to go beyond all possible bounds of decency.

¶ 56 Nor do the other allegations fare any better when measured against the high standard articulated by the Restatement. The majority of the remaining allegations consist of snide and insulting remarks (*e.g.*, referring to the children's father as the "Disneyland" parent, refusing to apologize to Steven for her actions, and telling Kathryn to pick up all of her belongings when Kathryn asked to pick up certain savings bonds) or actions related to parental discipline (*e.g.*, making Kathryn return at midnight when she was out with friends at her high school homecoming, saying to Steven that she would tell the police if he did not buckle his seatbelt, and actually telling the police when he took a jewelry box belonging to her). Such alleged actions are

unpleasant and perhaps insensitive, and some would arguably fall outside the realm of "good mothering," but they are not so shocking as to form a basis for a claim for intentional infliction of emotional distress. The same is true with regard to plaintiffs' allegations that defendant sought custody of Kathryn after her divorce and that, at various times, she has displayed favoritism for one sibling over the other (*e.g.*, giving toys to Kathryn and not Steven, taking Steven and not Kathryn to an auto show that Kathryn wanted to attend). Fighting a bitter custody battle after a divorce and displaying favoritism among siblings might not be exemplary parental behavior, but neither are such actions beyond all bounds of decency in society.

¶ 57 Plaintiffs also allege that when four-year-old Steven's arm was fractured, defendant told different people different stories about how he received the injury in an apparent attempt to deflect fault without being sensitive to the impact that her fabrications could have on Steven's future emotional well-being. However, they do not allege that Steven's fractured arm was a result of abuse or any deliberate action by defendant, merely that she lied about the incident after the fact. Such alleged untruthfulness is not so "abusive and atrocious" (*Rudis*, 191 Ill. App. 3d at 1013) as to be considered outrageous.

¶ 58 Finally, with regard to plaintiffs' allegation that defendant refused to allow them to see their paternal grandmother and "Pops," such action was explicitly recognized as being within the bounds of parental discretion in *Towne*. *Towne*, 133 Ill. App. 3d at 387.

¶ 59 Accordingly, considering all of the allegations in plaintiffs' complaint as a whole, plaintiffs have failed to state a cause of action for intentional infliction of emotional distress. Even where defendant's alleged behavior is depicted at its worst, it is far from satisfying the

criterion of the Restatement as articulated in *Public Finance*, which, as noted, must be " 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.' " *Public Finance*, 66 Ill. 2d at 89-90, quoting Restatement (Second) of Torts §46, comment D (1965). At its worst, it reflects behavior that is sometimes erratic, sometimes spiteful, sometimes less than fully generous or fully sensitive to the material and emotional needs of her children. But by no means does the nature and quality of this conduct fall outside "all possible bounds of decency."

¶ 60 Plaintiffs contend that the issue of whether the conduct they have alleged is extreme and outrageous should be decided by the jury, not by the court. However, it is well established in intentional infliction of emotional distress cases that the judge must determine in the first instance whether a reasonable jury could consider the defendant's conduct to be so extreme and outrageous as to permit recovery. Restatement (Second) of Torts §46 (1965). Only where reasonable jurors could differ is the matter submitted to the jury. The case law is replete with claims for intentional infliction of emotional distress that were dismissed by the court at the pleadings stage for failure to allege sufficiently extreme and outrageous conduct. See, *e.g.*, *Public Finance*, 66 Ill. 2d at 94 (debtor claimed that agents of creditor called her and visited her several times weekly over a seven-month period, called defendant multiple times at her daughter's hospital bed, and, on one home visit, called the creditor to describe defendant's household goods and refused to leave her home until her son entered); *Rudis*, 191 Ill. App. 3d at 1014 (student brought suit against her former college and its administrators for intentional infliction of emotional distress, claiming that administrators and faculty leveled various rude and

insulting accusations of academic and other misconduct against her); *Tabora v. Gottlieb Memorial Hosp.*, 279 Ill. App. 3d 108, 120 (1996) (plaintiff doctor alleged that defendants engaged in a "five year campaign of harassment and intimidation against him" by falsely claiming that he was incompetent, revoking his privileges, and constantly berating him in front of hospital staff); *Khan v. American Airlines*, 266 Ill. App. 3d 726 (1994) (defendants knowingly sold stolen airline ticket to plaintiff, causing him to be arrested and charged with theft, despite being aware that he was en route to his father's funeral), abrogation on other grounds recognized by *Velez v. Avis Rent A Car System, Inc.*, 308 Ill. App. 3d 923, 928 (1999); *Layne v. Builders Plumbing Supply Co., Inc.*, 210 Ill. App. 3d 966, 973 (1991) (defendant employer knowingly filed false police report against plaintiff employee, claiming that she threatened, harassed, and assaulted a co-worker).

2. Negligent Infliction of Emotional Distress

¶ 61 We therefore turn to consider whether plaintiffs' complaint states a cause of action for negligent infliction of emotional distress.

¶ 62 At the outset, we note that the trial court dismissed plaintiffs' claims for negligent infliction of emotional distress because it found that they "failed to properly allege a situation where they were in proximity to danger and in fear for their safety." However, this statement is based upon a misunderstanding of the court's decision in *Rickey v. Chicago Transit Authority*, 98 Ill. 2d 546, 555 (1983). In *Rickey*, the court held that recovery for physical injury or illness resulting from emotional distress is allowed for "a bystander who is in a zone of physical danger and who, because of the defendant's negligence, has reasonable fear for his own safety." *Rickey*,

98 Ill. 2d at 555. However, the court later clarified in *Corgan v. Muehling*, 143 Ill. 2d 296, 305-06 (1991), that the *Rickey* zone-of-physical-danger test applies only to bystanders – that is, those who observe harm inflicted upon others as a result of alleged negligence – rather than to the direct victims of negligence. In this case, plaintiffs do not allege that they incurred harm as bystanders. Rather, they allege that they are the direct victims of their mother's negligence. That is, Steven claims that he suffered emotional distress due to his mother's actions toward him, not due to watching his mother's actions toward Kathryn; and vice versa for Kathryn. Accordingly, *Rickey* is inapplicable to the instant case.

¶ 63 In order to state a claim for negligence, a plaintiff must allege the existence of a duty owed by the defendant to the plaintiff, a breach of that duty by defendant, and an injury that is proximately caused by that breach. *Corgan v. Muehling*, 143 Ill. 2d 296, 306 (1991) (applying this negligence standard to a plaintiff's claim for negligent infliction of emotional distress). However, a person does not have an absolute duty to avoid causing emotional discomfort to others. In this regard, we reiterate the cautionary words of the *Public Finance* court that "[a]lthough fright, horror, grief, shame, humiliation, worry, etc. may fall within the ambit of the term 'emotional distress,' these mental conditions alone are not actionable." *Public Finance*, 66 Ill. 2d at 90; *cf.* Restatement (Second) of Torts §46, comment D (1965) ("The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt"). Likewise, the *Knierim* court

rejects the proposition that every emotional upset can form the basis of an action, explaining that "slight hurts *** are the price of a complex society." *Knierim*, 22 Ill. 2d at 85. Even though these statements were made in the context of claims for intentional infliction of emotional distress, they are equally applicable in the context of claims for negligent infliction of emotional distress, insofar as they purport to circumscribe the permissible scope of recovery for emotional distress. The parties have not provided, nor has our research disclosed, any cases in which our supreme court purports to overrule this long-standing limitation on emotional distress damages with regard to claims for negligent infliction of emotional distress. Nor would such a ruling make sense, since it would create a regime in which it would be easier to recover for emotional distress caused through negligence than emotional distress caused by intentional actions.

¶ 64 As has been fully discussed above, defendant's alleged actions are not extreme and outrageous under the standard articulated in the Restatement and endorsed in *Public Finance* and in *Knierim*. Nor, as discussed, is a different result urged by the fact that the instant suit is between a mother and her children, since the "extreme and outrageous" standard applies across the board, except where common carriers and public utilities are concerned. See Restatement (Second) of Torts §48 (1965). Accordingly, defendant's actions are not severe enough for her to have violated any duty to avoid causing emotional distress, and plaintiffs have failed to state a cause of action for negligent infliction of emotional distress.

B. Defendant's Alleged Failure to Present Court With Courtesy Copies of Pleadings

¶ 65 Plaintiffs next contend that the trial court should have stricken defendant's motion to dismiss because defendant violated court rules by failing to provide the trial court with courtesy

copies of plaintiffs' Request to Admit and her answer to plaintiffs' Request to Admit. Plaintiffs argue that the trial court's failure to do so constitutes reversible error for two reasons. First, they contend that the court's failure to follow its own rules requires reversal in and of itself. Second, they contend that the information contained in these documents could have been relevant to the court's determination of the sufficiency of their complaint under section 2-615.

¶ 66 At the outset, the parties dispute whether the court was actually presented with plaintiffs' Request to Admit and defendant's answer to that request. The facts relevant to this question are as follows. Plaintiffs apparently filed their Request to Admit on November 6, 2009, although the original filed copy does not appear in the record on appeal. In response, on November 25, 2009, defendant filed an "Emergency Verified Petition for Injunction and Other Relief," contending that plaintiffs' Request to Admit contained information on family and marital therapy in violation of her rights under the Mental Health Confidentiality Act (740 ILCS 110/5(d) (West 2009)). (This petition is not otherwise relevant to this appeal, and, in any event, the trial court did not address it, in light of its dismissal of plaintiffs' complaint.) In addition, on December 21, 2009, defendant filed her answer to plaintiffs' Request to Admit.

¶ 67 The record contains an Index for Clerk's Status of March 17, 2010, listing "Defendant's Emergency Verified Petition for Injunction and Other Relief, Request to Admit Facts (Exhibit X), Norskog and Slomka cases" as one of the pending matters before the court. On that same date, defendant filed a Notice of Filing, stating that on that date, she would file all documents listed on the Index for Clerk's Status.

¶ 68 Meanwhile, defendant also filed her motion to dismiss plaintiffs' complaint. As noted,

on May 17, 2010, plaintiffs moved to deny defendant's motion, arguing that defendant's motion to dismiss should be stricken because she failed to attach courtesy copies of their Request to Admit and her answer to their Request to Admit to her motion. Plaintiffs attached a photocopy of their Request to Admit, which is plainly file-stamped November 6, 2009. However, they stated that they were not attaching a copy of the documents that were originally attached to their Request to Admit "[d]ue to the length." Instead, they stated that they would tender a copy to the court on the date that they presented the motion in open court.

¶ 69 From this record, it would appear that both plaintiffs' Request to Admit and defendant's answer to that document were filed with the court. However, it would appear that defendant did not provide the court with additional courtesy copies of these documents, except for Exhibit X of plaintiffs' Request to Admit, as referenced in defendant's Notice of Filing dated March 17, 2010.

¶ 70 Plaintiffs first contend that the trial court committed reversible error by not striking defendant's motion to dismiss for failure to provide it with courtesy copies of all relevant documents. Yet plaintiffs provide no law to indicate that they have standing on appeal to raise an opposing party's failure to comply with a trial court's standing order on motion procedure. Nor do they provide any law for the novel proposition that a trial court is *required* to deny a motion simply because the movant fails to fully comply with its own procedural order. Accordingly, the argument is waived under Supreme Court Rule 341(h)(7), which requires that arguments in an appellate brief be supported by citation to legal authority or be subject to waiver. 210 Ill. 2d R. 341(h)(7); see *People v. Ward*, 215 Ill. 2d 317, 332 (2005) ("point raised in a brief but not supported by citation to relevant authority *** is therefore forfeited"); *Ferguson v. Bill*

Berger Associates, Inc., 302 Ill. App. 3d 61, 78 (1998) (finding that defendants waived an argument by failing to provide legal support). Moreover, plaintiffs cannot claim any surprise or unfair prejudice from defendant's failure to present courtesy copies of these documents, insofar as they were certainly in possession of their own Request to Admit, and the record indicates that a copy of defendant's answer was duly served upon them.

¶ 71 Plaintiffs next contend that the trial court erred in not striking defendant's motion to dismiss because the contents of the Request to Admit and defendant's answer to that document would have been relevant to the sufficiency of their complaint under section 2-615. However, as noted, the court had access to these documents, insofar as they were filed with the court, even though defendant did not provide the court with additional courtesy copies. Defendant's provision of such copies would, perhaps, have been convenient for the trial court, but it would not have changed the information available to the court and would therefore not have impacted the court's adjudication of the substantive issues involved in this case. Accordingly, plaintiffs' claim in this regard is without merit.

C. Whether the Trial Court Erred by Denying Leave to Amend

¶ 72 Plaintiffs finally contend that, even if their complaint did not state a cause of action, the trial court abused its discretion by denying them leave to file an amended complaint. We disagree. While plaintiffs requested leave to amend for the first time in their motion for reconsideration, it appears that they did not attach any proposed amended complaint or give the trial court any specific indication of how they intended to cure the deficiencies in their original complaint. In light of these facts, denial was appropriate.

¶ 73 Parties do not have an absolute right to amend (*Bank of Northern Illinois*, 223 Ill. App. 3d at 13), and a trial court's decision whether to grant leave to amend a pleading rests within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *Martusciello v. JDS Homes, Inc.*, 361 Ill. App. 3d 568, 569 (2005). It is well established that the trial court's denial of leave to amend will not be considered an abuse of discretion if the movant does not present the proposed amendment or a specific indication of its contents to the trial court. *Loftus v. Mingo*, 158 Ill. App. 3d 733, 746 (1987) (trial court did not abuse discretion in denying leave to amend where plaintiff did not tender a proposed amended complaint to the trial court or make the proposed amendment a part of the record); *Knox College v. Celotex Corp.*, 117 Ill. App. 3d 304, 306-07 (1983) (where plaintiff's complaint was stricken with prejudice, and plaintiff made no attempt to offer an amended complaint or demonstrate to the court how the pleading defects could have been cured, plaintiff could not argue on appeal that he should have been given leave to amend). Moreover, the lack of any proposed amended complaint in the record leaves us with no basis upon which to review the trial court's exercise of discretion. *Lowrey v. Malkowski*, 20 Ill. 2d 280, 285 (1960) (where plaintiffs failed to incorporate proffered amendment in the record on appeal, court was required to assume that the refusal to permit such amendment was not prejudicial to plaintiffs); *Dick v. Gursoy*, 124 Ill. App. 3d 185, 187 (1984) (declining to consider claim that trial court erred in denying him leave to amend answer where proposed amendment was not included in the record on appeal). Consequently, we cannot say that the trial court's refusal to allow amendment was an abuse of discretion in this case.

¶ 74 Therefore, for the foregoing reasons, we affirm the judgment of the trial court.

¶ 75 Affirmed.