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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

REBECCA BEASLEY, individually as the
surviving spouse of ORVILLE THOMAS)
BEASLEY III, and as personal representative)
of the ESTATE OF ORVILLE THOMAS)
BEASLEY III; and ORVILLE THOMAS)
II and ANNA ELIZABETH BEASLEY,
husband and wife, and parents of ORVILLE)
THOMAS BEASLEY III.)

Plaintiffs,)

v.)

JOHN C. STUART and JANE DOE)
STUART, a married couple; JOHN and)
JANE DOES I-V; BLACK & WHITE)
CORPORATIONS VI-X; and ABC)
PARTNERSHIPS XI-XV;)

Defendants.)

CASE NO. CV2010-050624

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
RE: DEFENDANT'S NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS**

(Tort: Non-Motor Vehicle)

(Assigned to the Honorable Linda Miles)

Plaintiff Rebecca Beasley by and through undersigned counsel, file this Motion for Partial Summary Judgment pursuant to Arizona Rules of Civil Procedure, Rule 56, regarding Plaintiff's claim for negligent infliction of emotional distress. Plaintiff is entitled to judgment as there is no genuine issue of material fact concerning Plaintiff's claim for negligent infliction of emotional distress which requires Plaintiff to: (1) witness the injury of a closely related person; (2) suffer mental anguish which manifests as a physical injury, and; (3) be in the zone of danger subjecting claimant to an unreasonable risk of bodily harm created by Defendant.

On January 29, 2008, Rebecca Beasley witnessed Mr. Stuart shoot and kill her husband, Thomas Beasley, in the middle of an intersection, only a few feet in front of her, after Mr. Stuart

1 had subjected the Beasleys to threats and violent aggression while driving on a Scottsdale road.
2 Defendant caused the death of Rebecca Beasley's husband which, in turn, resulted in Mrs.
3 Beasley's mental anguish manifested as extreme shock, pain, prolonged grief, loss of sleep,
4 emotional agitation, disturbance, anger and fear stemming not only from the her husband's death,
5 but also from the fear for her own safety which she experienced from Mr. Stuart's actions.

6 This Motion is supported by the following Memorandum of Points and Authorities, the
7 evidentiary record before this Court, and the pleadings, deposition testimony, and responses which
8 have been exchanged to date.

9 MEMORANDUM OF POINTS AND AUTHORITIES

10 **I. Summary Judgment Standard of Review**

11 Summary judgment should be granted if the facts produced in support of the claim or
12 defense have so little probative value, given the quantum of evidence required, that reasonable
13 people could not agree with the conclusion advanced by the proponent of the claim or defense.
14 *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990); *Andrews v. Blake*, 205
15 Ariz. 2326, 69 P.3d 7 (2003). The inquiry in summary judgment cases, as in directed verdict cases,
16 is whether reasonable jurors applying the law to the facts could reach but one conclusion. *Hill-*
17 *Schafer Partnership v. Chilson Family Trust*, 165 Ariz. 469, 472, 799 P.2d 810, 813 (1990).

18 **II. Relevant Background Facts**

19 On the evening of January 29, 2008, Thomas and Rebecca Beasley traveled west on
20 Pinnacle Peak Road in Scottsdale, Arizona. (SOF 1). At the same time on that day, John Stuart,
21 speeding and passing several cars, passed and cut off the Beasley's vehicle. (SOF 2). The cars
22 then came to a stop at a red light at the intersection of Tatum Road and Pinnacle Peak Road. (SOF
23 3). Thomas Beasley stopped at the left-hand turning lane, preparing to head south on Tatum, and
24 John Stuart stopped his vehicle at the right side of the Beasley's car. (SOF 4).

25 Stuart then began shouting insults out his window at the Beasleys. (SOF 5). He made
26 vulgar comments and hand gestures to the Beasley's. *Id.* Stuart then turned his vehicle into the
intersection in front of the Beasley's car, preventing them from exiting the turning lane or moving

1 in any direction to get away from Stuart's vehicle. (SOF 6). At this time, Thomas Beasley got out
2 of the car and started toward Stuart's vehicle. (SOF 7). Stuart maneuvered his vehicle back and
3 forth three times toward Thomas Beasley, as if threatening to strike Mr. Beasley or his car. (SOF
4 8). Mr. Beasley continued walking toward Stuart's vehicle when Stuart reached for his handgun.
5 (SOF 9). Upon seeing the gun, Mr. Beasley raised his hands in the air and began to walk
6 backwards slowly, attempting to return to his car and his wife. (SOF10). John Stuart then fired a
7 fatal shot at the un-armed Thomas Beasley and raced away, leaving Rebecca Beasley with her
8 dying husband. (SOF 11, 12). At the time of the incident, Rebecca Beasley experienced many
9 emotions including fear, extreme shock, pain, grief, emotional agitation, and anger. (SOF 13).
10 Since the shooting, she has experienced the same emotions as well as prolonged grief, loss of sleep,
11 and other disturbances. (SOF 14).

12 **III. Legal Argument**

13 **a. There is No Genuine Issue of Material Fact Regarding Plaintiff's Claim of** 14 **Negligent Infliction of Emotional Distress.**

15 A claim for negligent infliction of emotional distress requires the plaintiff "(1) witness an
16 injury to a closely related person, (2) suffer mental anguish manifested as physical injury, and (3) be
17 within the zone of danger so as to be subject to an unreasonable risk of bodily harm created by the
18 defendant." *Keck v. Jackson*, 122 Ariz. 114, 116, 593 P.2d 668, 670 (1979); *Pierce v. Casas Adobes*
19 *Baptist Church*, 162 Ariz. 269, 272, 782 P.2d 1162, 1165 (1989) (In their claim for negligent infliction
20 of emotional distress after the injury of their son, plaintiffs experienced emotional distress after finding
21 out about the accident and watching their son cope with injuries).

22 Here, because Rebecca Beasley watched her husband die at the hands of John Stuart, she
23 experienced and continues to experience great emotional distress caused by being a couple of feet from
24 the shooting, and by her own involvement in the altercation which lead to Thomas Beasley's death.

25 Defendant's conduct toward Rebecca Beasley resulted in her fear, extreme shock, pain,
26 grief, emotional agitation, and anger as well as prolonged grief, loss of sleep, and other
disturbances. For these reasons, and because Mrs. Beasley meets the requirements for the claim of

1 negligent infliction of emotional distress under Arizona law, this Motion for Summary Judgment
2 should be granted.

3 **i. Plaintiff Rebecca Beasley Witnessed an Injury to a Close Relative**

4 A claimant who witnesses the injury of another must be a close relative of the
5 injured/deceased. *Keck v. Jackson*, 122 Ariz. at 116, 593 P.2d at 670. John Stuart shot Thomas
6 Beasley while Mrs. Beasley watched from their car. She was only a few feet behind Thomas when
7 he was shot by John Stuart. (Exhibit. 5, John C. Stuart Dep. at 41). Mrs. Beasley, wife of Thomas
8 Beasley, watched the shooting of her husband as it happened a few feet from her view. Therefore,
9 she witnessed an injury to a close relative which satisfies this element of her claim.

10 **ii. Plaintiff Rebecca Beasley Suffered Mental Anguish Manifested as Physical Injury**

11 In holding that injury does not have to be the direct result of the impact which caused the
12 mental anguish, the *Keck* court expanded the principle that mental anguish must be manifested as
13 physical injury to be compensable. *Id.* Further, mental anguish manifested as physical injury can be
14 temporary fright, nervous shock, nausea, grief, rage, and humiliation. *Monaco v. Health Partners of*
15 *Southern Arizona*, 196 Ariz. 299, 302, 995 P.2d 735, 739 (Ariz. App. 1999). In *Monaco*, a case of
16 medical malpractice resulting in a patient's increased risk for leukemia, the Court of Appeals of
17 Arizona held "Arizona cases and the Restatement make it clear that a physical injury, as well as a long-
18 term physical illness or mental disturbance, constitutes sufficient bodily harm to support a claim of
19 negligent infliction of emotional distress." 196 Ariz. at 303, 995 P.2d at 740. The Court of Appeals of
20 Arizona reasoned that a physical manifestation does not need to be an injury such as an ulcer, but can
21 include any of the following: temporary fright, nervous shock, nausea, grief, rage, and humiliation. *Id.*
22 at 302, 739 (citing to Restatement §436A comment (c)).

23 Rebecca Beasley has suffered fear, extreme shock, pain, grief, emotional agitation, and
24 anger as well as prolonged grief, loss of sleep, and other disturbances. (SOF 13, 14). Because this
25 mental anguish has manifested itself in the form of lack of sleep and feelings of physical pain from
26 her loss, these experiences are the type considered manifestations of physical injury in *Monaco*.

1 Therefore, Mrs. Beasley’s mental anguish is the requisite manifested physical injury under
2 *Monaco*.

3 John Stuart also admits to her emotional distress in his answers to Mrs. Beasley’s
4 complaint. Stuart admits that Rebecca Beasley experienced shock, mental anguish, emotional
5 distress, and physical illness. (Exhibit. 6), Defendant’s Answer at 31-32, ¶ 34, 36, 37 (hereinafter
6 “Answer”).

7 34. Denied. Plaintiff’s criminal acts caused Plaintiff to experience, hangover, shock
8 and mental anguish.

9 36. Denied. Plaintiff’s criminal acts caused Plaintiff’s emotional distress, and
10 Plaintiff’s continued disavowing of the truth is destroying Plaintiff’s body, as doing evil
11 things to innocent people often does. Plaintiff would be better served by telling the truth
12 and facing what she has done to her own life and how her issues with alcohol eventually
13 led to her husband’s death.

14 37. Denied. All of Plaintiff’s emotional distress and physical illnesses are a direct result
15 of Plaintiff’s heinous and criminal activity and Plaintiff’s unwillingness to face the truth
16 and face the consequences of her heinous acts. Plaintiff should consider telling the truth, if
17 she can remember anything from that night, as the “soul cleansing” may heal her.

18 Plaintiff’s ongoing life built on lies to conceal her guilt will probably continue to erode her
19 health.

20 In his deposition, Defendant also did not deny that his actions caused either accidental or
21 intentional fright in Mrs. Beasley. Exhibit. 7. John C. Stuart Dep. at 20-21. Therefore, Defendant
22 has admitted Rebecca Beasley meets the requisite level of mental anguish manifested as physical
23 injury and the issue is not in dispute to create a genuine issue of material fact.

24 **iii. Plaintiff Rebecca Beasley was within the zone of danger which subjected her to an
unreasonable risk of bodily harm created by the defendant.**

25 In *Keck*, witnessing a car crash was enough to place the Plaintiff in the zone of danger
26 which subjects a person to unreasonable risk of bodily harm included suffering caused while in the
presence of the injury or harm which was directly created by the defendant. 122 Ariz. at 116, 593

1 P.2d at 670. In a more recent case, *State Farm Mutual Auto Insurance Co. v. Connolly*, a woman
2 was “nearby and witnessed the accident” when her sister was fatally injured after being struck by a
3 pickup truck and the “zone of danger” requirement of the *Keck* test was not disputed. *State Farm*
4 *Mut. Auto. Ins. Co. v. Connolly*, 212 Ariz. 417, 418, 132 P.3d 1197, 1198 (Ariz.App. 2006).

5 Because Rebecca Beasley’s witnessing of her husband’s shooting is in line with *Keck* and
6 *State Farm*, she was in the zone of danger such that she was subject to the unreasonable risk of
7 bodily harm created by John Stuart. Additionally, the nature of Stuart’s actions – wielding a gun in
8 public, shooting an unarmed man while he retreats with his arms in the air, and lunging his vehicle
9 to threaten people – are the type of actions that naturally create an unreasonable risk of bodily
10 harm. Thus, Defendant’s actions created an unreasonable risk of bodily harm to Plaintiff, Mrs.
11 Beasley as she was a part of the altercation which incited John Stuart to violence and could
12 reasonably have been targeted for such an unprovoked attack. Mrs. Beasley was in the zone of
13 danger such that she would be subject to an unreasonable risk of bodily harm created by the
14 Defendant because she experienced fear for her own safety in the presence of a man with a
15 handgun. The shooting of her husband caused her to fear that she could also be shot by Defendant,
16 a man who shoots and kills without provocation.

17 Additionally, Mrs. Beasley was in the zone of danger and was subjected to an unreasonable
18 risk of bodily harm created by Defendant. In his deposition and his Answer to Mrs. Beasley’s
19 complaint, Stuart does not dispute Mrs. Beasley’s presence in the zone of danger. Exhibit. 7. John
20 C. Stuart Dep. at 20-21, Exhibit. 6. at ¶ 33-37. Defendant also failed to deny in his deposition that
21 he intended subject Mrs. Beasley to any risk of harm or that Mrs. Beasley suffered harm from his
22 actions. *Id.* at 21. Therefore, there is no genuine issue of material fact regarding whether Rebecca
23 Beasley was in the zone of danger at the time John Stuart caused her emotional distress and no
24 disputed issue as to whether Defendant subjected Mrs. Beasley to unreasonable risk of bodily harm
25 which he created.

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IV. Conclusion

Plaintiff's negligent infliction of emotional distress claim should be granted summary judgment. There is no genuine issue of material fact for the court to adjudicate. And, because Mrs. Beasley meets all the criteria for each of the elements required by Arizona law in her claim for negligent infliction of emotional distress, Plaintiff, Rebecca Beasley respectfully requests that this Court grant this motion for summary judgment.

RESPECTFULLY SUBMITTED this 8th day of October, 2010

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ORIGINAL of the foregoing electronically filed this 8th day of October, 2010 with:

Clerk of Court
Maricopa Superior Court
Northeast Regional Center
18380 N. 40th Street
Phoenix, AZ 85032

COPY of the foregoing distributed by electronic filing this 8th day of October, 2010 to:

The Honorable Linda Miles
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1 COPY of the foregoing emailed
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