



By Marnie Shiels, Esq.

Civil Causes of Action for Stalking Victims

Eight percent of women and two percent of men are stalked in their lifetimes.¹ About half of the victims who report stalking to the police are dissatisfied with the police response.² Further, only nine to thirteen percent of the perpetrators are prosecuted.³ Of those who are prosecuted, only fifty-three to sixty percent are convicted.⁴ While civil lawsuits are an important option for crime victims regardless of the outcome of a criminal case, they are a particularly important option for stalking victims because the criminal justice system has such an inadequate track record in dealing with stalking.

Most states do not have statutes specifically allowing stalking victims to sue their stalkers or other responsible parties in civil court. (For information about states which do have such statutes, see "*Civil Stalking Statutes: Alternative Justice for Stalking Victims*.") However, in every state, there are other causes of action which could apply to a stalking case. For example, a stalking victim might sue for intentional infliction of emotional distress, invasion of privacy, sexual harassment, trespass, assault, or negligent security. As this article will demonstrate, some of these causes of action are more applicable to stalking cases than others.

Intentional Infliction of Emotional Distress

"One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm."⁵ Intentional infliction of emotional distress is an especially appropriate cause of action in stalking cases because a component of stalking is often the intent to place the victim in fear.⁶ The basic elements of an intentional infliction of emotional distress claim are intent to cause emotional

distress, outrageousness, and severe emotional distress.

To succeed with an intentional infliction of emotional distress claim, a victim must show that the stalker acted "intentionally or recklessly." The victim does not need to show that the stalker specifically intended to cause emotional distress. It is enough to show that the stalker behaved recklessly. In *Homan v. Goyal*, the District of Columbia Court of Appeals held that liability for intentional

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infliction of emotional distress extends to situations where "there is no certainty, but merely a high degree of probability that the mental distress will follow, and the defendant goes ahead in conscious disregard of it."⁷ The distinction between needing to show actual intent to cause emotional distress and merely needing to show that the stalker should have known that emotional distress was a likely result of the stalking behavior is important because, in many states, specific intent to cause fear is required in a criminal stalking case.⁸ Therefore, in such states, it would be easier to prevail in a civil stalking case than a criminal one.

The next element in an intentional infliction of emotional distress case is outrageousness. The conduct of the defendant must be "so outrageous in character and extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society."⁹

It must be so extreme that an average member of the community would find it to be a complete denial of "dignity as a person."¹⁰ Mere carelessness or bad manners is not extreme enough.¹¹ However, repeated harassment may compound the outrageousness of an incident which by itself might not be sufficiently extreme.¹²

For example, in *Haverbush v. Powelson*, Helen Powelson was a nurse who worked in the same hospital as Dr. Thomas Haverbush.¹³ Powelson never had a romantic relationship with Haverbush, yet she sent him several "love" letters. She also left lingerie on his car and at his house several times. Then, she began to send letters threatening Haverbush and his fiancée, and left an axe and a hatchet on his car. Haverbush successfully sued Powelson. The Court of Appeals of Michigan affirmed the verdict, holding that Powelson's conduct was sufficiently extreme and outrageous. The Court of Appeals opined that the trial court had applied the correct standard for outrageousness because the trial court specifically held that the plaintiff had proven the type of conduct which "would cause a reasonable person upon seeing or hearing that conduct to shout, 'outrageous, unbelievable!'"¹⁴

The final element of an intentional infliction of emotional distress claim is the severity of the emotional distress. The law intervenes only where the distress inflicted is so severe that no reasonable person could be expected to endure it. Such severe distress must be proven, but often the extreme character of the defendant's conduct is in itself important evidence of the level of distress.¹⁵ In addition, it is not necessary that the plaintiff seek medical treatment¹⁶ or show that any physical harm resulted from the distress.¹⁷

The case of *Brower v. Ackerley* is an example of an intentional infliction claim involving stalking where the

court found the distress to be sufficiently severe.¹⁸ The Ackerley brothers, Christopher and Theodore, owned a communications company which erected billboards. Brower was a community activist who saw billboards as a "visual blight." He discovered that the Ackerleys did not have the proper permits for their billboards and filed suit against them and the City of Seattle to enforce the billboard regulations. Within two days of Brower filing suit, an anonymous male caller began a campaign of phone harassment against Brower. The calls continued over a period of twenty months and included yelling, insults, and profanity. During one call, the person threatened Brower, "I'm going to kick your ass." Brower called the police who installed a call trapping service which tracked the calls to Christopher Ackerley's residence. Brower sued the Ackerleys for assault and intentional infliction of emotional distress. The trial court granted summary judgment to the defendants. The Court of Appeals of Washington, Division One, reversed the summary judgment on the intentional infliction of emotional distress claim.¹⁹ The court held that an intentional infliction case should go to the jury as long as the damages are more than "mere annoyance, inconvenience or normal embarrassment that is an ordinary fact of life."²⁰ Taking into account the threatening nature of the calls, a jury could find from Brower's description of his acute and enduring anxiety that he experienced more emotional distress than "a person should ordinarily be expected to put up with as a part of the price of living among people."²¹

A victim may also bring an intentional infliction of emotional distress

claim against a third party who facilitated the stalking. For example, in *Homan v. Goyal*, Gabriel DaSilva made a series of threatening telephone calls to Robert Homan.²² DaSilva called Homan as often as twenty times a night, claiming that Homan was with DaSilva's wife and demanding to speak with her. This pattern

of Appeals held that Goyal could be liable for intentional infliction of emotional distress because his conduct, in giving Homan's phone number and address to a man with a history of harassing behavior, was sufficiently outrageous because he should have known that DaSilva was likely to threaten and harass Homan.²⁴

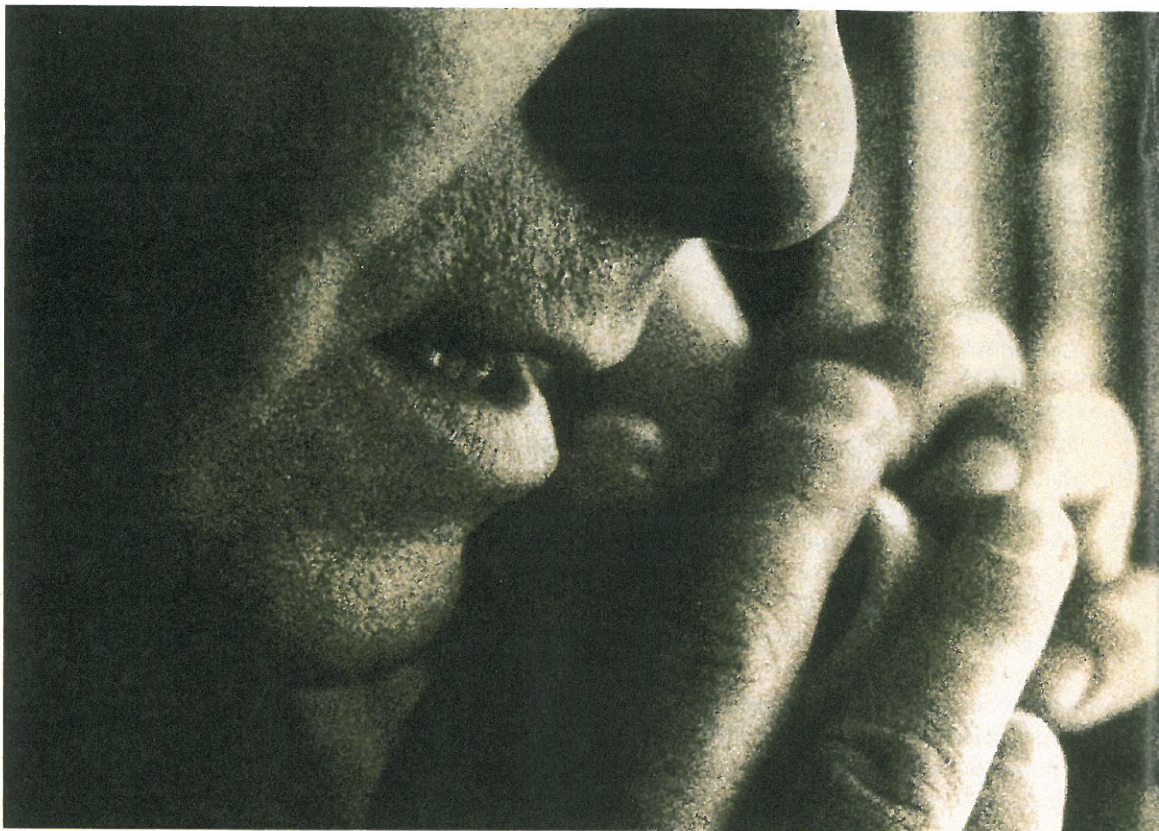


PHOTO: STONE

of harassment lasted for several days, with the calls getting progressively more hostile. Homan discovered that a man named Devinder Goyal had given Homan's phone number to DaSilva. Homan spoke to Goyal, who confirmed that he had given DaSilva the number. Goyal agreed to tell DaSilva that it was the wrong number. However, not only did the calls continue, but DaSilva showed up at Homan's house and banged on the door for twenty minutes. Shortly after this encounter, DaSilva telephoned again and threatened to kill Homan. Homan later found out that Goyal had also given DaSilva Homan's address. Homan eventually had to relocate and change his phone number to escape from DaSilva. Homan sued Goyal for giving DaSilva his address and phone number.²³ The District of Columbia Court

A stalking victim might also consider suing law enforcement and other government agencies who are responsible for failing to respond to stalking complaints, but this course of action could be difficult due to immunity and other protections for government agencies.²⁵

Invasion of Privacy

"One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."²⁶ Stalking often involves such intrusions, some that are more immediately apparent, such as entering the victim's house or sending threatening letters, and others that are

more insidious, such as following or surveilling the victim. While watching or observing a person in a public place generally may not be seen as an intrusion of privacy, some courts have held that such observance, if it aims to frighten or torment a person, is an unreasonable intrusion.²⁷

showed up at Jones's house and banged on the door.²⁹ The Court of Appeals of Georgia held that all of Troncalli's actions were unwanted, uninvited, and unwarranted intrusions upon Jones's seclusion and solitude, and as such created an actionable case of invasion of privacy.³⁰

whether the conduct was sufficiently pervasive, courts evaluate the conduct's frequency and severity, whether any physical threats or humiliation occurred, and whether the conduct amounted to an unreasonable interference with the victim's job performance.³²

In *Minor v. Ivy Tech State College*, the plaintiff, Anne Minor, was a guidance counselor employed by Ivy Tech.³³ Darnell Cole was the chancellor of several of the college's campuses, and Minor's boss. Cole called Minor almost every day, but rarely discussed work. He talked in a "sexy" way with overtones which were sexual although he never directly said anything erotic. He also told her that he had been watching her through a window and knew what she was doing. Cole's secretary told Minor that Cole had "cased" the secretary's house and had told her that he knew where every female employee lived. The United States Court of Appeals for the Seventh Circuit held that Cole's actions were not sufficiently severe or pervasive to constitute

sexual harassment. The court did note that stalking a female employee would constitute sexual harassment, but that this was not stalking.³⁴

Trespass

"One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally (a) enters land in the possession of the other, or causes a thing or a third person to do so, or (b) remains on the land, . . ."³⁵ Trespass may be a useful claim for stalking victims in cases where the stalkers have broken into their homes, or otherwise intruded on their property. In addition, if an actor intentionally causes a third party to enter the victim's property, the

In *Troncalli v. Jones*, Tom Troncalli intentionally brushed up against Regina Jones's breasts at a party.²⁸ She went into another room to get away from him and he followed her and again touched her breasts. She then left the party to try to escape him. She noticed in her rearview mirror that he was following her. She ran a stop sign and drove through a convenience store parking lot and he continued to follow. After driving about three more miles, Jones saw two police cars and asked the officers for help. They told Troncalli to leave, and Jones waited five minutes after he did so. The next night, Troncalli approached Jones at a meeting, put his mouth on her neck, and told her that she better be careful because someone might be watching her. A week later, Troncalli

Sexual Harassment

Hostile environment sexual harassment consists of harassment which is gender-based and sexual in nature and is sufficiently severe "to alter the conditions of the victim's employment and create an abusive working environment."³¹ In a situation where a victim is stalked at work and the stalking behavior includes elements which could be considered sexual, such as rubbing the victim's breasts, the victim could consider a suit for sexual harassment. This tort has both a subjective and an objective component. The employee must subjectively perceive that the conduct was severe and pervasive enough to alter the terms of employment, and the employee's perception must be objectively reasonable. In analyzing



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actor may be liable for trespass.³⁶ For example, a cyberstalker might send e-mail using the name of the victim and saying something like "for a good time come to [the address of the victim]." Another example is the case of *Wooldridge v. Simon*, discussed in the article "The Tale From the Tape: Decedent's Statements Help Stalking Victims Secure Civil Justice," in which Timothy Simon hired a third party to vandalize the Wooldridge's home and the Wooldridges successfully sued Simon for trespass.


A victim might also have a claim for trespass to the victim's personal property, also known as "trespass to chattel." This tort "may be committed by intentionally (a) dispossessing another of the chattel, or (b) using or intermeddling with a chattel in the possession of another."³⁷ "Intermeddling" means "intentionally bringing about contact with the chattel."³⁸ Examples include a stalker who leaves a letter on a victim's windshield, slashes a victim's tires, or steals a victim's mail. If a stalker breaks into a victim's residence to steal a prized possession, this could be both trespass to land and trespass to chattel.

Assault

"An actor is subject to liability for assault if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) the other is thereby put in such imminent apprehension."³⁹ Most stalking victims suffer from fear of imminent harmful contact; an element of stalking is such fear. However, the difficulty is in showing that the stalker intended to cause imminent fear. In the *Brower* case described above, the Court of Appeals of Washington, Division One, held that words alone are not enough to make an actor liable for assault, unless together with acts or circumstances

they put the plaintiff in reasonable apprehension of imminent harm. The physical harm threatened to Brower was not imminent because Ackerley did not specify any particular time that he would harm Brower.⁴⁰

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proving a criminal stalking case, such as the higher burden of proof and the need to prove that the stalker specifically intended to cause fear, these civil remedies can be crucial to finding justice for a stalking victim. Civil suits can also provide additional options for compensation and help a victim to put an end to the stalking. 

Negligent Security

Victims who are harmed by stalkers might claim that the security at the places they were harmed, such as apartment buildings or retail stores, was insufficient to protect them. A difficulty may arise in showing that the stalking was foreseeable and preventable. In *Pamela W. v. Millsom*, an intruder broke into Pamela's apartment and raped her.⁴¹ The intruder told Pamela that he had been watching her. Pamela sued her landlord for negligent security. The Court of Appeal of California, Fourth Appellate District, Division One, held that the assault was not sufficiently foreseeable to impose a duty upon the landlord to prevent it. In addition, the court held that because the attack involved stalking, it was unclear what level of security could have prevented it short of armed guards.⁴² In order to successfully prove a negligent security case, a stalking victim must show that the injury was both foreseeable and preventable. For example, if Pamela had previously notified her landlord that she saw someone watching her, the court might have found that the assault was foreseeable.

There are many causes of action that a stalking victim could use to sue the stalker or a responsible third party. Some of the most likely torts include: intentional infliction of emotional distress, invasion of privacy, sexual harassment, trespass, assault, and negligent security. Due to difficulties in

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1. Patricia Tjaden & Nancy Thoennes, U.S. Dept't of Justice & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the Violence Against Women Survey 1* (1998).

2. *Id.* at 10.

3. *Id.*

4. *Id.*

5. Restatement (Second) of Torts § 46 (1965).

6. See, e.g., Cal. Penal Code § 646.9 (West 1999).

7. *Homan v. Goyal*, 711 A.2d 812, 820 (D.C. 1998).

8. See, e.g., Cal. Penal Code § 646.9 (West 1999).

9. *Woodley v. City of Jemison*, 1999 Ala. Civ. App. LEXIS 419, 7 (Ala.Civ.App. 1999), citing Restatement (Second) of Torts § 46 cmt. d (1965).

10. *Gianoli v. Pfleiderer*, 563 N.W.2d 562, 567 (Wisc.App. 1997).

11. *Id.*

12. *Homan*, 711 A.2d at 820.

13. *Haverbush v. Pewelson*, 551 N.W.2d 206, 207 (Mich.App. 1996).

14. *Id.* at 210.

15. *Id.* at 209, citing Restatement (Second) of Torts § 46 cmt. j (1965).

16. *Haverbush*, 551 N.W.2d at 209.

17. *Homan*, 711 A.2d at 821.

18. *Brower v. Ackerley*, 943 P.2d 1141 (Wash.App. 1997).

19. *Id.* at 1143-1144.

20. *Id.* at 1149.

21. *Id.*

22. *Homan*, 711 A.2d at 813.

23. *Id.* at 814-816.

24. *Id.* at 819.

25. See, e.g., *Collins v. Chicago Transit Authority*, 677 N.E.2d 449 (Ill.App. 1997); *Hill on behalf of Hill v. Joseph*, 655 So.2d 486 (La.App. 1995); or *Fiese v. Cherokee County*, 434 S.E.2d 551 (Ga.App. 1993); see also Marnie Shiels, *Crime Victim Suits Against the Government and the Public Duty Doctrine*, Victim Advocate, Summer 2000, at 15 (explaining various exceptions to the public duty doctrine).

26. Restatement (Second) of Torts § 652B (1965).

27. *Summers v. Bailey*, 55 F.3d 1564, 1566 (11th Cir. 1995).

28. *Troncalli v. Jones*, 514 S.E.2d 478, 479 (Ga.App. 1999).

29. *Id.* at 479-481.

30. *Id.* at 482.

31. *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1245-1246 (11th Cir. 1999).

32. *Id.*

33. *Minor v. Ivy Tech*, 174 F.3d 855, 856 (7th Cir. 1999).

34. *Id.* at 857.

35. Restatement (Second) of Torts § 158 (1965).

36. Restatement (Second) of Torts § 158 cmt. j (1965).

37. Restatement (Second) of Torts § 217 (1965).

38. Restatement (Second) of Torts § 217 cmt. e (1965).

39. Restatement (Second) of Torts § 21 (1965).

40. *Brower*, *supra* at 1145.

41. *Pamela W. v. Millsom*, 25 Cal.App. 4th 950, 953 (Cal.App. 1994), cert. denied, 1994 Cal. LEXIS 4286 (Cal. 1994).

42. *Id.* at 959.