IN THE COURT OF APPEALS OF IOWA

No. 3-581 / 12-1782
Filed October 23, 2013

AMY M. BERKEY,
Plaintiff-Appellant,

vs.

THE CITY OF MINGO, JASPER COUNTY, DEPUTY SHERIFF BRADY LEWIS and RICHARD E.H. PHELPS II,
Defendants-Appellees.

Appeal from the Iowa District Court for Jasper County, Randy V. Hefner, Judge.

A plaintiff appeals from summary judgment on three tort claims. **AFFIRMED.**

Bruce H. Stoltze of Stoltze & Updegraff, P.C., Des Moines, for appellant.

Jason C. Palmer and Thomas M. Boes of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee City of Mingo.

Harry Perkins III and Jason W. Miller of Patterson Law Firm, L.L.P., Des Moines, for appellees Jasper County and Sheriff Lewis.

Kevin J. Driscoll and Jeffrey A. Craig of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee Phelps.

Heard by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

Amy Berkey appeals the grant of summary judgment on her three tort claims—malicious prosecution, false arrest, and defamation—against four defendants: Jasper County, Jasper County Deputy Sheriff Brady Lewis, the City of Mingo, and Mingo city attorney Richard Phelps. Berkey claims there are genuine issues of material fact that should have precluded summary judgment, and the district court erred as a matter of law. We affirm.

I. Background Facts and Proceedings

Amy Berkey served as city clerk for the City of Mingo from October 2002 until her resignation in April 2006. As city clerk, Berkey was responsible for maintaining the city's financial records and exercised control over the city's bank accounts. Sometime in 2005, Harley Steenhoek of the Mingo fire department noted some discrepancies between his accounting of the fire department's account and Berkey's records kept as city clerk. Berkey and the city council requested an audit from the Office of the Auditor of State. While conducting their investigation, the auditors learned that even after she had resigned from her position as city clerk, records and documents needed to complete the audit were located at Berkey's home, as well as on Berkey's personal computer. On July 20, 2006, the auditors sent a letter to Berkey requesting the documents but she did not return them. On August 10, 2006, the Jasper County Sheriff's Office applied for and executed a search warrant for Berkey's residence to retrieve any City of Mingo property needed for the audit. During the execution of the search warrant, Jasper County Sheriff's Detective Dennis Stevenson recovered a

cardboard box full of City of Mingo records. However, Berkey informed Stevenson her personal computer containing more City of Mingo records had crashed two weeks earlier and the hard drive was destroyed, including all the City of Mingo records. Because so many records were destroyed, the auditors were unable to conduct a full audit. Instead they completed an audit they termed a special investigation (hereinafter "audit").

The auditors released the audit report on March 21, 2008. The audit report detailed a number of concerns with Berkey's record-keeping, including errors in reports submitted to the State of Iowa and unaccounted-for cash deposits, disbursements, and utility payments. The audit report concluded, among other discrepancies, the following:

(1) The cumulative amount of utilities collections deposited in the City of Mingo bank account was $13,752.06 less than the amount expected for fiscal years 2004, 2005, and 2006.

(2) Utility collection reports included $746.03 of cash collections that were not deposited in the bank.

(3) Bank documentation for deposits into the City's bank account showed Berkey made only two deposits from cash utilities collections totaling $136.48 between September 1, 2002, and June 30, 2006, the entire time of her employment with the City.

(4) A number of warrants the State of Iowa issued to the City were not deposited in a timely manner; however, Berkey recorded the collections as though they had been deposited. As a result, financial reports provided to the

city council during their meetings did not accurately reflect the balances in the city bank accounts. Also, annual financial reports prepared by Berkey and filed with the Office of Auditor of State did not accurately reflect the city's account balances at the end of fiscal years 2003, 2004, and 2005.

(5) There were $3,362.45 of improper disbursements.

(6) Payments totaling $32,849.52 were not supported by appropriate documentation. In addition, $583.01 of reimbursements to Berkey and $646.55 of credit card purchases were not supported by appropriate documentation.

Berkey subsequently admitted that she made mistakes and took actions that were incorrect or inconsistent with her duties as city clerk. She does not dispute the findings of the audit report. On June 27, 2008, Berkey's successor as city clerk filed a proof of loss under bond document with the City of Mingo's insurer, claiming the losses detailed in the auditor's report. This document was notarized by Mingo city attorney, Richard Phelps.

As a result of the audit report, Jasper County officials began investigating the situation. Sheriff Deputy Brady Lewis led the investigation, which included conducting an interview with Berkey in July 2008. The Jasper County Attorney at the time, Steve Johnson, and Assistant Jasper County Attorney Michael Jacobsen also were involved in the investigation. Jacobsen reviewed the audit report and met with Lewis and auditors Annette Campbell and Tamera Kusian to discuss the investigation. Jacobsen also met and discussed the case with Phelps, Johnson, Stevenson, and Lewis. In depositions, Jacobsen testified that he and Johnson believed there was probable cause to file criminal charges, but

that Johnson made the final decision.[1] The decision was based on the information produced in the investigation, the conclusions of the audit report, and the fact that as city clerk, Berkey was responsible for maintaining records and handling the City of Mingo's finances. Phelps testified in depositions that he supported the decision to prosecute.

Berkey alleges the City of Mingo and Phelps were "intimately intertwined" with the Jasper County sheriff's department and county attorney's opffice, and exerted pressure and influence on Jasper County to file charges against Berkey. In support of this assertion, Berkey cites the meeting with the county attorney's office at which Phelps was present. However, Berkey does not produce any actual statement Phelps or a city employee made at the meeting or at any other time constituting undue pressure or influence in the prosecution, and in depositions acknowledged she had no knowledge of any such statements.

Berkey also alleges Mingo and Phelps knowingly gave false information to the state auditor's office stating that Berkey used city funds to purchase a basketball hoop for her personal residence.[2] She alleges because of these statements, this claim appeared in three documents: the auditor's report; the search warrant for her residence; and the release and subrogation receipt dated August 27, 2008, signed by Mingo's mayor acknowledging receipt of a payment on the insurance claim. Berkey does not produce any statement Phelps or any

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[1] Johnson passed away during the pendency of this case and before Jacobsen gave his deposition.

[2] Berkey later produced a personal receipt for the purchase.

city employee actually made to the auditors regarding the purchase of the basketball hoop.

On November 14, 2008, the county charged Berkey with two counts of felonious misconduct in office (in violation of Iowa Code section 721.1 (2008)) and theft in the first degree (in violation of Iowa Code section 714.1(2)). On November 17, 2008, the Jasper County sheriff's office issued a media release stating the charges against Berkey, and giving details of the investigation and auditor's report. Sometime after Jasper County filed charges, a conflict arose with the county attorney's office, and the prosecution was transferred to the office of the Iowa Attorney General Area Prosecutions Division and subsequently assigned to an assistant attorney general who determined the state had insufficient evidence to prosecute. The district court dismissed the charges against Berkey on September 1, 2009.

On April 22, 2010, Berkey filed her petition, naming as defendants the City of Mingo, Jasper County, Stevenson, Lewis, Steenhoek, and Phelps. The petition included various claims against different defendants, including malicious prosecution, false imprisonment, slander, slander per se, intentional infliction of emotional distress, negligent infliction of emotional distress, and abuse of process. The district court dismissed the claim for intentional infliction of emotional distress and all claims against Stevensen and Steenhoek. Berkey withdrew the claim for abuse of process. Berkey subsequently recast her slander and slander per se claims as defamation. The defendants each moved for summary judgment on the remaining claims: malicious prosecution, false

imprisonment, and defamation. The district court granted all motions. Berkey appeals, claiming there are genuine issues of material fact as to each of the three claims that preclude summary judgment and the district court erred as a matter of law in granting summary judgment.

II. Standard of Review

Appellate review of a summary judgment ruling is for correction of errors of law. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 400 (Iowa 1988). Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* The burden is upon the moving party to show the nonexistence of material facts and to prove the party is entitled to judgment as a matter of law. *Knapp v. Simmons*, 345 N.W.2d 118, 121 (Iowa 1984). A genuine issue of material fact exists if evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). To uphold the district court's summary judgment rulings, we must confirm that no disputed issues of material fact existed to render summary judgment inappropriate, and the district court correctly applied the law to those undisputed facts. *Royce v. Hoening*, 423 N.W.2d 198, 200(Iowa 1988). We "view the facts in the light most favorable to the party opposing the motion for summary judgment." *Shriver*, 567 N.W.2d at 400. Every legitimate inference that reasonably can be deduced from the evidence is afforded the nonmoving party. *Northup v. Farmland Indus., Inc.*, 372 N.W.2d 193, 195 (Iowa 1985). In ruling on a motion for summary judgment,

the court considers the record as it then exists. *Prior v. Rathjen*, 199 N.W.2d 327, 331 (Iowa 1972).

III. Summary Judgment for Malicious Prosecution

Berkey argues the district court erred in granting the defendants' motions for summary judgment on the claim of malicious prosecution. To succeed in a claim for malicious prosecution, the plaintiff must show (1) a previous prosecution, (2) instigation or procurement thereof by defendant, (3) termination of the prosecution by an acquittal or discharge of plaintiff, (4) want of probable cause, (5) malice in bringing the prosecution on the part of the defendant, and (6) damage to the plaintiff. *Sarvold v. Dodson*, 237 N.W.2d 447, 448 (Iowa 1976). At issue here are the probable cause and malice elements of the malicious prosecution claim.

A. Want of Probable Cause

"Probable cause exists where the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (citation and internal quotation marks omitted). In the context of a civil action for malicious prosecution, the existence of probable cause is determined under the following standard:

> "One who initiates or continues criminal proceedings against another has probable cause for doing so if [the accuser] correctly or reasonably believes
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> (a) That the person [accused] has acted or failed to act in a particular manner, and

> (b) That those acts or omissions constitute the offense that [the accuser] charges against the accused, and
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> (c) That [the accuser] is sufficiently informed as to the law and the facts to justify [the accuser] in initiating or continuing the prosecution."

Sisler v. City of Centerville, 372 N.W.2d 248, 251 (Iowa 1985) (quoting *Restatement (Second) of Torts* § 662 at 423 (1977)).

Berkey argues the district court erred in finding "[t]he evidence law enforcement relied upon was documented and essentially not disputed," and there was probable cause as a matter of law. The record discloses, and Berkey does not seriously dispute, that the auditor's special investigation revealed significant shortfalls and improprieties in the city's finances and financial records, for which Berkey bore responsibility. The investigation also disclosed Berkey's failure to properly document payments and disbursements, co-mingling of Mingo money with Berkey's personal accounts, untimely deposits of cash and other funds, and filing of inaccurate financial records with the state and the city council. Berkey retained and failed to return official city records after her resignation, despite a request from the auditors; a warrant had to be obtained and executed to retrieve them. After the commencement of the audit and just two weeks before Jasper County executed the search warrant, a hard drive containing more city records was destroyed while in Berkey's possession. Jasper County officials conducted an investigation, including interviews with Berkey and the auditors. Jacobsen and Lewis testified in depositions they considered all this information, and Berkey's position as city clerk, to draw the conclusion that Berkey committed

acts constituting the crimes of felonious misconduct in office[3] and first degree theft.[4]

1. Prosecutor Dismissal

Berkey argues that the prosecutor's dismissal of the charges against her, before trial on the merits, is evidence that there was no probable cause for the charges. In support of this proposition, Berkey cites *Yoch v. City of Cedar Rapids*, 353 N.W.2d 95 (Iowa Ct. App. 1984). *Yoch* referred to *Ashland v. Lapiner Motor Company*, 75 N.W.2d 357, 360 (Iowa 1956), wherein the Iowa Supreme Court stated that "[s]atisfactory termination of the original proceedings [underlying a malicious prosecution claim] creates a prima facie showing of want

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[3] Any public officer or employee, who knowingly does any of the following, commits a class "D" felony:

> 1. Makes or gives any false entry, false return, false certificate, or false receipt, where such entries, returns, certificates, or receipts are authorized by law.
> 2. Falsifies any public record, or issues any document falsely purporting to be a public document.
> 3. Falsifies a writing, or knowingly delivers a falsified writing, with the knowledge that the writing is falsified and that the writing will become a public record of a government body.
> 4. For purposes of this section, "government body" and "public record" mean the same as defined in section 22.1.

Iowa Code § 721.1.

[4] A person commits theft when the person does any of the following:

> 1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.
> 2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.

Iowa Code § 714.1(2).

of probable cause . . . ."[5] This rule has been somewhat limited, particularly in *Yoch*.

Satisfactory termination of the underlying prosecution may occur in three ways: acquittal following trial, dismissal before trial by the prosecuting attorney, or refusal of the grand jury to indict the plaintiff. *See* Iowa Civil Jury Instructions 2200.7 (2012). *Yoch* dealt with a malicious-prosecution claimant who was tried and acquitted of an underlying criminal offense. In *Yoch*, this court limited *Ashland* by concluding that acquittal after trial on a prior criminal prosecution is not evidence of a want of probable cause for that action in a subsequent malicious prosecution action. *Yoch*, 353 N.W.2d at 102; *see also Philpot v. Lucas*, 70 N.W. 625 (Iowa 1897). *Yoch* also cited approvingly *Schnathorst v. Williams*, 36 N.W.2d 739, 746 (Iowa 1949), wherein the Iowa Supreme court ruled that refusal by a grand jury to indict and dismissal by the prosecutor is a prima facie showing of a want of probable cause.[6] Thus, *Yoch* leaves intact *Ashland's* application to the situation where a prosecution is terminated in a malicious-prosecution claimant's favor through dismissal by the prosecuting attorney before trial on the merits.[7] The district court's ruling on the motion for

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[5] *Ashland* involved a criminal prosecution that was dismissed when the parties reached a civil settlement. 75 N.W.2d 357 (Iowa 1956). The court held that settlement did not constitute a termination of the case satisfactory to a malicious-prosecution claimant. *Id.*

[6] In *Hidy v. Murray*, 69 N.W. 1138 (Iowa 1897), the Iowa Supreme court concluded that a dismissal by a judicial magistrate after an initial hearing also is a prima facie showing of lack of probable cause.

[7] State courts within the Eighth Circuit have reached similar conclusions implying that dismissal by a prosecutor before trial on the merits may be evidence, though not conclusive evidence, of a want of probable cause for the prosecution. *See Sundeen v. Kroger*, 133 S.W.3d 393, 396 (Ark. 2003) ("While it is true that the entry of a *nolle prosequi* is a sufficiently favorable termination of a proceeding in favor of the accused, it

summary judgment cites *Philpot* as controlling. There, the court held "[i]t is well settled that the discharge of a defendant in a criminal prosecution does not raise even a presumption of want of probable cause," however, *Philpot* involved an acquittal following trial. 70 N.W.2d at 626. Here, the prosecutor dismissed the charges against Berkey without proceeding to trial. Berkey thus established a prima facie showing of a want of probable cause. However, this showing may be overcome by evidence in the record supporting a finding of probable cause. The existence of probable cause does not "depend upon the guilt of the accused party in fact, but upon the honest and reasonable belief of the party commencing the prosecution." *Id.* Despite the prima facie showing and based on the record developed here and recited above, there is no genuine issue of material fact raised that Jacobsen, Johnson, and Lewis were not honest and reasonable in their belief that there was probable cause to charge Berkey. The district court correctly concluded probable cause existed at the time of charging, despite the subsequent dismissal.[8]

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is not, standing alone, evidence that probable cause was lacking." (internal citations omitted)); *Polk v. Missouri-Kansas-Texas R. Co.*, 111 S.W.2d 138, 146 (Mo. 1937) ("In a malicious prosecution suit, the plaintiff must affirmatively show want of probable cause. The dismissal of the prosecution herein did not conclusively establish such fact as against defendant."). *But see Anton v. Police Retirement System of St. Louis*, 925 S.W.2d 900, 907 (Mo. Ct. App. 1996) ("The general rule is that no inference of want of probable cause arises from the dismissal of a criminal complaint without a trial on the merits.").

[8] A decision by a prosecutor to dismiss may be based on a post-probable-cause determination that the evidence is insufficient to establish guilt beyond a reasonable doubt.

2. Intent

Berkey also asserts that there could not have been probable cause where there was no evidence that she acted knowingly or willingly in filing the inaccurate reports. The district court noted that a criminal defendant's state of mind is rarely subject to direct evidence. However, a determination of probable cause may be based on the information present and all reasonable, common sense inferences that flow from the information. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). The law enforcement officers and county officials were able to make inferences as to Berkey's intent from the information gleaned from their investigation. The district court was correct in concluding that Berkey failed to generate a genuine issue of material fact.

3. Responsibility for Mingo Finances

Berkey next argues the district court's finding of probable cause was incorrect because she was not ultimately responsible for the city's finances and records. Rather, she claims, "It is the City Mayor and City Council who is [sic] responsible for the city finances." The mayor and city council are not parties to this appeal. Probable cause must be determined as to Berkey. The inference that Berkey is responsible for the missing funds and the false reports is based in part on Berkey's position as city clerk. Berkey insists she was only responsible for financial record keeping, preparing financial reports, and maintaining financial records. This, she argues, undermines the inference that she had sufficient control over the city's finances to affect a theft or to file false reports knowingly. However, the record, including Berkey's own testimony, indicates her access to

and control of the city's finances was significant. While she was city clerk, Berkey had access to the city's bank accounts; collected utilities payments; made deposits, disbursements, and payments; wrote checks on behalf of the city; and charged items to a city-issued credit card. She also testified she deposited cash utilities collections into her personal bank account and wrote checks to the city to transfer the money into the city's accounts. The inference that Berkey exercised enough control over the accounts to commit theft and file false records was not unreasonable based on this record.

The record establishes that Berkey has failed to raise any genuine issue of material fact as to the want of probable cause to prosecute, and the district court was correct when it found that there was probable cause as a matter of law.[9]

B. Malice

Berkey argues the district court erred when it determined there was no genuine issue of material fact supporting the element of malice. The relevant standard of malice in a malicious prosecution claim depends upon the status of the defendant. *Vander Linden v. Crews*, 231 N.W.2d 904, 906 (Iowa 1975). If the defendant is a public official, as all the defendants in this case are, the claimant must show that the instigation of criminal proceedings was primarily

[9] In addition, the City of Mingo and Phelps argue they cannot be held accountable for procuring or instigating a malicious prosecution when Jasper County and Lewis made the decision and filed the charges, not the City. In deposition testimony Berkey admits this fact. Because we dispose of the malicious prosecution claim on other grounds, we need not decide this issue.

inspired by ill-will, hatred, or other wrongful motives. *Id.*[10] In contrast, in the context of a defamation claim, malice requires a showing that the defendant made the statement knowing that it was false or with reckless disregard for its truth. *McCarney v. Des Moines Register & Tribune Co.*, 239 N.W.2d 152, 156 (Iowa 1976). Berkey urges this court to change Iowa law and substitute the current malicious prosecution standard requiring ill-will, hatred, or wrongful motive with what she calls the "modern and appropriate" defamation standard of reckless disregard. Adopting the reckless-disregard standard in place of the current standard would lower the burden of proof for malicious-prosecution claimants. However, Berkey provides no authority and no compelling justification for such a change, and we find none.[11] Consequently, we will apply existing law, which requires that she raise a genuine issue of material fact that the prosecution was primarily inspired by ill-will, hatred, or another wrongful motive.

Berkey asserts that Phelps harbored ill-will against her in relation to various work disputes.[12] She alleges, in effect, Phelps's ill-will toward her was a primary motivation for the prosecution. However, when asked in deposition what their relationship was like, she testified, "It wasn't hostile but it wasn't friendly." She also acknowledged that Phelps, as city attorney, did not charge her or have

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[10] If the defendant is not a public official, malice may be inferred from a lack of probable cause. *Vander Linden*, 231 N.W.2d at 906.

[11] Further, "[w]e are not at liberty to overturn Iowa Supreme Court precedent." *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990); *see also State v. Eichler*, 83 N.W.2d 576, 578 (1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.").

[12] According to Berkey's deposition testimony, Phelps insisted Berkey only speak to a particular person at the bank regarding the city's outstanding loan balances. Phelps was named on the search warrant for Berkey's personal residence as a "concerned citizen." Berkey objected to Phelps initiating loans without the council directing him to do so.

her arrested. Berkey claimed Phelps was influential in the decision to prosecute; however, she could not identify any statement Phelps or any city official made to the county attorney that influenced the decision to prosecute.

On this record, the district court correctly held that Berkey has raised no genuine issue of material fact supporting the claim the prosecution was primarily motivated by malice toward her. The district court correctly concluded there were no remaining genuine issues of material fact to sustain the malicious prosecution claim. The district court also correctly concluded the defendants were entitled to judgment as a matter of law.

IV. Summary Judgment for False Arrest

The essential elements of false arrest are detention or restraint against one's will and unlawfulness in the detention or restraint. *Children v. Burton*, 331 N.W.2d 673, 678-79 (Iowa 1983). Once a plaintiff shows a warrantless arrest, the burden of proof shifts to the defendant to show justification for the arrest. *Id.* at 679.

Because we find there was probable cause to charge Berkey with a crime, the ensuing detention or restraint was lawful. Consequently, there is no genuine issue of material fact to support a claim of false arrest, and the district court correctly granted summary judgment.

V. Summary Judgment for Defamation

Berkey's final claim is that the district court erred in granting summary judgment on the defamation claim. Defamation is the invasion of another person's interest in his or her reputation or good name. *Taggart v. Drake Univ.*,

549 N.W.2d 796, 802 (Iowa 1996). "Defamation is composed of the twin torts of libel and slander. Libel involves written statements, while slander involves oral statements." *Kiesau v. Bantz*, 686 N.W.2d 164, 174 (Iowa 2004). To recover for defamation, a plaintiff must show that the defendant (1) published a statement that was (2) defamatory, and (3) the statement was of and concerning the plaintiff. *Taggart*, 549 N.W.2d at 802. When the allegedly defamed person is a public official, proof that the statement was made with actual malice is required for the public official to recover. *McCarney*, 239 N.W.2d at 156. A qualified privilege exists with regard to some statements. The qualified privilege may be lost through abuse.

Berkey asserts that genuine issues of material fact exist as to whether the statements were qualifiedly privileged, and whether the defendants abused the privilege. We deal with whether the privilege existed, then whether the privilege was abused, addressing each defendant in turn.

A. Existence of a Qualified Privilege.

A qualified privilege exists with regard to claims of defamation where (1) the statement is made in good faith, (2) the defendant had an interest to uphold, (3) the scope of the statement was limited to the identified interest, and (4) the statement was published on the proper occasion, in a proper manner, and to proper parties. *Barreca v. Nickolas*, 683 N.W.2d 111, 118 (Iowa 2004).

1. City of Mingo and Phelps.

Berkey's defamation claims against City of Mingo and Phelps stem from statements Phelps and agents of Mingo allegedly made to Mingo's insurance

company through the proof of loss under bond document, and to the city council and county prosecutors asserting that Berkey had stolen city money and falsified records. Berkey alleges these communications were the motivation behind her prosecution and damaged her reputation. Mingo and Phelps assert a qualified privilege, which Berkey claims they lost through abuse. The district court found that Mingo and Phelps had a qualified privilege.

Berkey was unable to produce in depositions or briefs any statement that Phelps or any city official made to the city council or county prosecutors asserting that Berkey stole city money or falsified records. If such statements were made, they were made by Phelps as city attorney in pursuit of the city's interest in reconciling the city's loss and determining its source, and nothing indicates they were made in bad faith. Berkey has alleged no facts to support a claim the statements were not limited by that interest. The statements, if made, were made upon the proper occasion, in the proper manner, and to the appropriate parties—during the investigation of possible wrongdoing by Berkey, to city and county officials responsible for investigating, and addressing the possible wrongdoing.

The proof of loss under bond was prepared by Berkey's successor as city clerk and merely repeats the major findings of the auditor's report as a basis for the insurance claim. The document was qualifiedly privileged as a good faith attempt by the city to recover its losses, a legitimate city interest. The statements within the document are limited to the interest of recovering the city's losses, were communicated on the proper occasion (based on the auditor's report), in

the proper manner (a claim form), and to the proper party (the city's insurance company). Accordingly, the district court was correct to conclude that Phelps's and the city's statements were protected by a qualified privilege.

2. Jasper County and Lewis

Berkey's defamation claims against Jasper County and Lewis stem from a Jasper County sheriff's office media release naming Berkey and detailing the criminal charges against her. Jasper County and Lewis assert a qualified privilege, which Berkey claims they abused. The district court held that they were protected by qualified privilege.

Berkey's petition characterizes the release as "alleging the Plaintiff [Berkey] falsified city records, stole money and city council minutes." In fact, the release makes no such accusations. It simply states the charges and recounts factual details of the investigation. The release was authored and signed by Jasper County Sheriff Michael Palmer. Berkey admits the county upheld an interest in issuing the press release, and the release was limited by that interest. The county issued the release at the proper time, following the completion of the investigation and charging, in the proper manner, and properly to members of the public who have an interest in such information. Berkey disputes that the release was made in good faith because it concludes that she "stole[]" money without a proper basis. As discussed above, the county attorney properly charged Berkey based on probable cause. The release simply stated the charges filed and details of the investigation. There is no showing of bad faith, and Berkey has raised no genuine issue of material fact as to that element of the privilege.

Therefore, the district court correctly held that Jasper County and Lewis were protected by qualified privilege.

B. Abuse Of The Qualified Privilege By All Defendants.

"A qualified privilege is lost when it is abused." *Barecca*, 683 N.W.2d at 117. Abuse occurs when a defamatory statement is published with actual malice. *Id.* at 118. Actual malice that defeats a qualified privilege occurs when a statement is made with knowledge that it is false or with reckless disregard for its truth or falsity. *Id.* at 121; *see also Taggart*, 549 N.W.2d at 804 (Iowa 1996).

Berkey asserts that if they successfully invoked the qualified privilege, each defendant lost that privilege through abuse. The district court held that no defendant abused the privilege. Berkey claims, in essence, that each defendant made statements accusing her of stealing money or falsifying financial records with a reckless disregard for the truth or falsity of the statements. The Jasper County press release merely stated the charges filed based upon the county attorney's probable cause determination. The City of Mingo and Phelps allegedly encouraged the prosecution and submitted an insurance claim repeating the losses detailed in the auditor's report. Nothing in the record indicates that any defendant made the alleged statements with knowledge that they were false or with reckless disregard for their truth or falsity. There are no genuine issues of material fact to sustain Berkey's claim. Therefore, the district court correctly determined the defendants did not abuse the privilege and properly granted summary judgment on the defamation claim against all defendants.

VI. Conclusion

The district court properly determined there was probable cause for the arrest, foreclosing the malicious prosecution and false arrest claims. The allegedly defamatory statements were qualifiedly privileged and there was no abuse of the privilege. The district court correctly determined there were no genuine issues of material fact regarding any of the three tort claims and entered judgment as a matter of law. The district court was correct in granting summary judgment and we affirm on all grounds.

AFFIRMED.