

STATE OF MICHIGAN
COURT OF APPEALS

GARY MORALES,

Plaintiff-Appellant,

v

KENNETH E. STAWASZ,

Defendant-Appellee.

UNPUBLISHED

July 13, 2001

No. 221048

Wayne Circuit Court

LC No. 98-822489-NZ

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this defamation action. We affirm.

After a confrontation at defendant's home, defendant filed a police report asserting that plaintiff had thrown a brick through his window, entered defendant's home and physically assaulted him. Plaintiff was charged with malicious destruction of a building, breaking and entering and assault and battery. Plaintiff pleaded guilty to trespassing, and the felony charges were dismissed.

Plaintiff brought this defamation action, alleging that defendant made defamatory statements to the police and in court. The trial court granted summary disposition to defendant, finding that plaintiff failed to establish the actual malice necessary to overcome qualified immunity.

The determination whether a qualified privilege exists is a question of law for the court. *Stablein v Schuster*, 183 Mich App 477; 455 NW2d 315. The elements of a qualified privilege are (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Prysak v R L Polk Co*, 193 Mich App 1, 15; 483 NW2d 629 (1992). A plaintiff may overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity. *Id.* General allegations of malice are insufficient to establish a genuine issue of material fact. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74; 480 NW2d 297 (1991).

Plaintiff failed to establish a genuine issue of fact as to defendant's malice sufficient to defeat the motion for summary disposition. Plaintiff did not contest that a crime was committed. Defendant's front picture window was broken when a brick was thrown through it. Plaintiff admitted being present at the time of the incident, and pleaded guilty to trespassing. There is no showing of falsity or reckless disregard for the truth sufficient to defeat the defense of qualified immunity.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy