STATE OF MICHIGAN

COURT OF APPEALS

GEOFFREY M. HARRISON,

Plaintiff-Appellant,

V

GREAT LAKES BEVERAGE COMPANY, a/k/a THE WOLPIN COMPANY, and KEN WALTON,

Defendants-Appellees.

UNPUBLISHED
November 6, 2001

No. 224626
Wayne Circuit Court
LC No. 98-833097-NZ

Before: Bandstra, C.J., and Doctoroff and White, JJ.

PER CURIAM.

In this defamation case, plaintiff appeals as of right from an order granting defendants' motion for summary disposition. We affirm.

Plaintiff, a former truck driver for defendant Great Lakes Beverage Company, filed this defamation action after a statement appeared in the December 1997 edition of Great Lakes' publication, the "Scuttle Bud." The statement reported that, "[t]he Enquirer has named Jeff Harrison as the Serial Stalker of Great Lakes Beverage Drivers." During the course of his employment with Great Lakes, plaintiff had been disciplined for several minor infractions and had been hospitalized several times for alcoholism and depression. He was disciplined in 1991 for drinking on the job and was required to sign a "last chance agreement" in order to be reinstated. Plaintiff was ultimately discharged from Great Lakes in 1994, following a complaint of sexual harassment.[1] Plaintiff subsequently worked for a short period of time for Leaseway Transportation as a driver, but was terminated for unsatisfactory work. He has not worked since.

After his termination from Great Lakes, from 1995 until 1997, plaintiff routinely stopped other drivers on their routes and conversed with them. The drivers began to joke and grumble amongst themselves about plaintiff's habit of stopping and gossiping with them while they were working.

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[1] After he was terminated, plaintiff filed a wrongful discharge lawsuit against Great Lakes. The circuit court granted Great Lakes' motion for summary disposition and dismissed the action. That decision was affirmed by this Court on appeal. *Harrison v Great Lakes Beverage Co*, unpublished opinion per curiam of the Court of Appeals, issued 8/31/99 (Docket No. 205494).

The "Scuttle Bud" is a paper published by Great Lakes at the holiday season. It contains seasons' greetings, and comments and some humorous statements about employees from the department heads. Defendant Walton, who wrote the statement in question,[2] intended it as a merely humorous reflection of the joking and complaining by drivers concerning the fact that plaintiff often stopped them on their routes and slowed them down in their work.

Plaintiff subsequently commenced this action, alleging that the statement as it appeared in the "Scuttle Bud" constituted defamation per se because it falsely accused him of criminal behavior. The circuit court granted defendants' motion for summary disposition, concluding that it was rhetorical hyperbole and that no reasonable reader could conclude that the company was actually accusing plaintiff of a crime.

We review a grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra; Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court must consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party in deciding whether a genuine issue of material fact exists. *Ritchie-Gamester v Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A trial court may decide as a matter of law whether a statement is actually capable of defamatory meaning. *Ireland v Edwards*, 230 Mich App 607, 619; 584 NW2d 632 (1998). Where no such meaning is possible, summary disposition is appropriate. *Id*.

A communication is defamatory if, under all the circumstances, it tends to so harm the reputation of an individual that it lowers the individual's reputation in the community or deters others from associating or dealing with the individual. *Kefgen, supra* at 617. Generally, a plaintiff may establish a claim of defamation by showing:

> (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod). [*Kefgen, supra* at 617, quoting *Kevorkian v AMA*, 237 Mich App 1, 8-9; 602 NW2d 233 (1999).]

"At common law, words charging the commission of a crime are defamatory per se, and hence, injury to the reputation of the person defamed is presumed to the extent that the failure to prove damages is not a ground for dismissal." *Burden v Elias Brothers Big Boy Restaurants*, 240 Mich App 723, 728; 613 NW2d 378 (2000), citing *Sias v General Motors Corp*, 372 Mich 542,

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[2] Walton denied that the statement as it appeared in the Scuttle Bud was a verbatim quote of the statement he actually submitted.

551; 127 NW2d 357 (1964), and *Peoples v Detroit Post & Tribune Co*, 54 Mich 457; 20 NW 528 (1884). See also *Kevorkian, supra* at 15.

In *Sanders v Evening News Assoc*, 313 Mich 334, 340; 21 NW2d 152 (1946), the Court held:

> In determining whether the portion of the article . . . upon which plaintiff relies was libelous in character, it must be read in connection with the subject matter of the articles as a whole and fairly and reasonably construed as to the purpose and meaning of the alleged libelous portion of the publication.

See also *Gustin v Evening Press Co*, 172 Mich 311; 137 NW 674 (1912) (to test its libelous quality, a publication is to be considered as a whole, including the character of the display of its headlines when the article is published in a newspaper and the language employed therein); *Morganroth v Whitall*, 161 Mich App 785, 790; 411 NW2d 859 (1987).

Not all defamatory statements are actionable, however. "If a statement cannot be reasonably interpreted as stating actual facts about the plaintiff, it is protected by the First Amendment." *Ireland, supra* at 614, citing *Milkovich v Lorain Journal Co*, 497 US 1, 20; 110 S Ct 2695; 111 L Ed 2d 1 (1990), and *Garvelink v Detroit News*, 206 Mich App 604, 608-609; 522 NW2d 883 (1994). Parodies, political cartoons, and satires are generally entitled to protection. *Ireland, supra* at 617, citing *Garvelink, supra* at 610. Where the words are no more than rhetorical hyperbole or "a vigorous epithet" they are not considered actionable. *Ireland, supra* at 618, citing *Greenbelt Cooperative Publishing Ass'n, Inc v Bresler*, 398 US 6, 13-14; 90 S Ct 1537; 26 L Ed 2d 6 (1970).

The Court in *Ireland* explained:

> Thus, statements must be viewed in context to determine whether they can reasonably be understood as stating actual facts about the plaintiff.
>
> Here, many of the alleged defamatory statements, read or heard in context, could not reasonably be understood as stating actual facts about plaintiff . . . . . [A]ny reasonable person hearing these remarks in context would have clearly understood what was intended. Under these circumstances, these statements are not actionable. [*Ireland, supra* at 618-619. Footnote omitted.]

Viewed in context, we agree with the circuit court that the statement in question could not reasonably be understood as stating actual facts about plaintiff. Anyone who did not know plaintiff personally would understand, by the context and tenor of the publication and the surrounding statements, that the statement in question amounted to "rhetorical hyperbole." Further, those who did know plaintiff personally would understand the statement as an amusing or satirical way of referring to his habit of stopping and conversing with drivers along their routes. A person could not reasonably interpret the statement as stating actual facts about plaintiff, i.e., that he was being accused of criminal stalking.

Plaintiff's reliance on *Milkovich, supra*, is also misplaced, because the statement in question, although factual on its face and provable as false, cannot be reasonably interpreted as

stating actual facts about plaintiff. See *Kevorkian, supra* at 6. The context and tenor of the publication negates the impression that the writer was seriously maintaining that plaintiff was actually a serial stalker.

Although we agree with plaintiff that the statement was not privileged as a statement of a dangerous action or violent tendency to a prospective employer, see *Murdock v Higgins*, 454 Mich 46, 56; 559 NW2d 639 (1997), because the statement was not defamatory in the first instance, the question of qualified privilege is immaterial. We also agree with plaintiff that the substantial truth doctrine is not applicable in this case. See *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 259; 487 NW2d 205 (1992), citing *Masson v New Yorker Magazine, Inc*, 501 US 496; 111 S Ct 2419; 115 L Ed 2d 447 (1991); *Koniak v Heritage Newspapers, Inc (On Remand)*, 198 Mich App 577; 499 NW2d 346 (1993). However, the substantial truth doctrine is a defense that is applicable only where a statement is initially determined to be defamatory. Where, as here, the statement is not defamatory, no defense is required.

Accordingly, we conclude that the circuit court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Richard A. Bandstra
/s/ Martin M. Doctoroff
/s/ Helene N. White