STATE OF MICHIGAN

COURT OF APPEALS

RODGER BARTLES,

Plaintiff-Appellant,

V

BEVERLY DUQUETTE,

Defendant-Appellee.

UNPUBLISHED
November 30, 2001

No. 223208
Wayne Circuit Court
LC No. 98-839423-NO

CYNTHIA EDWARDS,

Plaintiff-Appellant,

V

BEVERLY DUQUETTE,

Defendant-Appellee.

No. 223209
Wayne Circuit Court
LC No. 98-839424-NO

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition for defendant in this defamation case. We affirm.

Plaintiffs argue that the trial court erred in determining that there was not a question of fact as to whether a letter written by defendant, wherein defendant stated she believed plaintiffs engaged in theft, constituted actionable defamation. We disagree. We review a trial court's 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). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Morales, supra*.

All parties in this case have, at different times, been officers of the Dearborn Federation of School Employees (DFSE) labor union. In December 1998, during an election campaign period, defendant drafted a letter addressed to the members of the DFSE. The following portion is at issue in the instant case:

> When I became President, I was appalled to find that Rodger Bartles consistently released the Recording Secretary, Cyndy Edwards, for her entire shift for every meeting. Besides the monthly General Membership meetings, the Executive Board meets twice a month. In fact, for the last election our dues paid Cyndy's wages for her to campaign for five hours. **This to me, is blatant theft of our dues monies.** All the other candidates who campaigned took personal business time to do so. This is not an allegation – this is fact – I have the release time bill from the Administration to prove this. (Emphasis added.)

Plaintiffs argue that defendant's accusation of theft constituted defamation per se and was a false statement not subject to any privilege. Defendant claims that the letter was solely intended to educate DFSE members prior to an election and was based on accurate information. According to defendant, the phrase: "This to me, is blatant theft of our dues monies," referred to the waste of union resources and was not intended to allege that plaintiffs committed an actual crime.

"A communication is defamatory if it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual." *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998); see *Kevorkian v American Medical Ass'n*, 237 Mich App 1, 5; 602 NW2d 233 (1999).

> [A] plaintiff can establish a defamation claim 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 (defamation per quod). [*Ireland, supra*.]

When addressing a defamation claim, a court must examine the record to ensure against forbidden intrusions into the right of free expression. *Kevorkian, supra* at 5. Not all defamatory statements are actionable. *Id.*; *Ireland, supra*. To be actionable, a defamatory statement must be provable as false, and must state actual facts about the plaintiff. *Kevorkian, supra* at 5-6; *Ireland, supra*. Direct accusations or inferences of criminal conduct are actionable as defamatory. *Kevorkian, supra* at 8. However, opinions are actionable only in the circumstance that the statement asserts an objectively verifiable event. *Id.* at 6. Furthermore, those statements that are capable of defamatory interpretation, but are merely rhetorical hyperbole, are not actionable. *Id.* at 7-8.

In the present case, plaintiffs were former union officers who were again seeking election to officer positions. Thus, we consider plaintiffs limited purpose public figures for purposes of this controversy. *Lins v Evening News Ass'n*, 129 Mich App 419, 432; 342 NW2d 573 (1983). As limited purpose public figures, plaintiffs are required to show by clear and convincing evidence that defendant's statement constituted a defamatory falsehood and that it was made with "actual malice" through knowledge of its falsity or through reckless disregard for the truth.

MCL 600.2911(6); *Kefgen v Davidson*, 241 Mich App 611, 624; 617 NW2d 351 (2000). "General allegations that privileged statements were false and malicious are insufficient to create genuine issue of fact regarding whether a person published a statement with actual malice. *Id*., citing *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13-14; 506 NW2d 231 (1993). A mere inference that a defendant acted with malice is insufficient to prove defamation. *Kefgen, supra* at 631. "[I]ll will, spite or even hatred, standing alone, do not amount to actual malice." *Id*. at 632, quoting *Ireland, supra* at 622. "In determining whether a defendant acted with actual malice, the question is not whether a prudent person would have published or would have investigated before publishing, but instead is whether the publisher entertained serious doubts regarding the truth of the statements published." *Kefgen, supra* at 627.

We conclude that the trial court properly granted summary disposition on the basis that plaintiffs have not shown defendant acted with actual malice. It is undisputed that plaintiffs used the release-time system that defendant referred to in her letter. Thus, the general basis of the challenged paragraph of the letter was true. Moreover, defendant's use of the phrase: "This to me" prior to her reference to plaintiffs' "blatant theft" indicates an expression of personal opinion, rather than fact. When the challenged statement is read in context with the entire letter, see *Ireland, supra* at 617, it is evident that defendant was expressing her subjective opinion that plaintiff Edwards did not need to attend every union meeting or, at least, did not deserve to be released from her shift during the meetings and, therefore, plaintiffs' conduct constituted a waste of union dues. Further, because reckless disregard cannot be shown through mere demonstration of ill will, *Kefgen, supra* at 632, the evidence of the phone message defendant allegedly left with plaintiff Edwards is of no consequence.

Plaintiffs last argue that the defamatory statement cannot be protected based on plaintiffs' status as limited purpose public figures because defendant waived any privilege through excessive publication of the letter. See *Timmis v Bennett*, 352 Mich 355, 371-372; 89 NW2d 748 (1958). We disagree. Plaintiffs' evidence of a single instance of the letter being posted where non-union members might see the letter is insufficient to establish a question of fact as to whether the publication was excessive and operated to waive the qualified privilege.

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ William B. Murphy