STATE OF MICHIGAN

COURT OF APPEALS

JUDITH J. FRIDAY,

Plaintiff-Appellant,

v

FIROZA B. VANHORN, PSY D and QUALIFIED MEDICAL EXAMINERS, INC,

Defendants-Appellees.

UNPUBLISHED
May 11, 2004

No. 244784
Oakland Circuit Court
LC No. 2002-037622-CZ

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants summary disposition in this case alleging libel and intentional interference with contractual relations. We affirm.

Plaintiff first argues on appeal that the trial court erred in granting defendants' motion for summary disposition because plaintiff presented sufficient evidence to show that Dr. Van Horn's report contained false and grossly mischaracterized recitations of plaintiff's interview statements and because other doctors found that plaintiff was not capable of working. We disagree. We review de novo a trial court's ruling on a motion for summary disposition brought under MCR 2.116(C)(10). *UAW-GM Human Resources Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998). Under MCR 2.116(C)(10), a party may move for dismissal of a claim based on the assertion that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id*.

The following elements must be proven to sustain a claim of defamation:

> (a) a false and defamatory statement concerning plaintiff; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) 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*). [*Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984), citing Restatement of Torts 2d, § 558.]

A statement is defamatory if it harms a person's reputation in a way that lowers the community's opinion of the person or deters others from associating with the person. *Sawabini v Desenberg*, 143 Mich App 373, 379; 372 NW2d 559 (1985). The Court determines as a matter of law whether the words at issue are capable of defamatory meaning, and if the words are not capable of defamatory meaning as a matter of law, then summary disposition is appropriate. *Id.*

Despite plaintiff's initial claim that Dr. Van Horn's report included nearly twenty allegedly false and defamatory statements, plaintiff has effectively conceded their lack of merit on appeal. Plaintiff has chosen instead to narrow the scope of her argument to the statement that allegedly actually inflicted injury on plaintiff: that she was capable of returning to work. Plaintiff argues that this statement was a false conclusion based on false underlying facts primarily because an independent examiner disagreed with Dr. Van Horn's conclusion. In other words, because the independent examiner reached a contrary conclusion, the true fact was that plaintiff was not capable of returning to work. Defendant argues that Dr. Van Horn's conclusion was merely her professional opinion, and a statement of opinion is only actionable for libel if it implies undisclosed, underlying defamatory facts as the basis for the opinion. *Fisher v Detroit Free Press*, 158 Mich App 409, 413; 404 NW2d 765 (1987).

The conclusion that plaintiff was capable of working was not false; rather it was Dr. Van Horn's opinion based on the underlying fact that plaintiff had a psychological disorder. Although a later examiner did not agree with Dr. Van Horn that plaintiff suffered from anxiety disorder and somatization disorder, he did agree that plaintiff suffered from paranoid personality disorder. Both doctors were, thus, relying on the same underlying fact – that plaintiff suffered from paranoid personality disorder – when they rendered their ultimate conclusions. However, one doctor concluded that this was a sufficient disability to keep plaintiff from working, and the other concluded that it was not. The fact that the two doctors reached different conclusions merely reflect different *opinions*. Therefore, the statement that plaintiff was capable of working was not a defamatory statement as a matter of law.

Plaintiff next argues that even though Dr. Van Horn's report was protected by qualified privilege, Dr. Van Horn's alterations of plaintiff's statements demonstrate a disregard for the truth. We disagree. In general, a qualified privilege extends to all communications made bona fide on any subject matter in which the party communicating has an interest, or in reference to which he has a duty, to a person having a corresponding interest or duty. *Swenson-Davis v Martel*, 135 Mich App 632, 636; 354 NW2d 288 (1984). The only way plaintiff may overcome a qualified privilege is if she shows actual malice, but a general allegation of malice is insufficient to establish the required showing. *Prysak*, *supra* at 15; *Swenson-Davis*, *supra* at 637. Actual malice is shown where the statement is made with knowledge that it is false or with a reckless disregard with respect to whether it is false. *Prysak*, *supra* at 15. Although plaintiff takes issue with whether she was required to show actual malice to overcome the privilege because this is not a "First Amendment case," this Court has applied the actual malice test in cases that only involved private parties and matters of private concern. *Id.*

Rather than presenting any evidence of actual malice, or even general malice for that matter, plaintiff argues that Dr. Van Horn could not have seriously believed that plaintiff was capable of returning to work in light of her diagnosis that plaintiff suffered from several severe psychological disorders. Moreover, plaintiff maintains that the numerous discrepancies in Dr. Van Horn's report demonstrated a "cavalier" attitude toward the truth. However, allegations of a

lack of seriousness or a cavalier attitude do not rise to the level of actual malice required to overcome a qualified privilege. There was no evidence presented that Dr. Van Horn acted with ill will or with the desire and intention to injure plaintiff. *Bufalino v Maxon Bros, Inc*, 368 Mich 140, 154; 117 NW2d 150 (1962). The trial court properly granted defendants summary disposition because plaintiff failed to present allegations rising to the level of actual malice, which is required to overcome a qualified privilege.

Last, plaintiff argues that defamation is a "per se wrongful act" for the purposes of proving that a defendant intentionally interfered in a business relationship to induce a breach or termination of that relationship. We disagree.

The elements of a claim of tortious interference with business relations are: (1) the existence of a valid business relationship; (2) knowledge of the relationship on the part of the interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship; and (4) resultant damage to the party whose relationship has been disrupted. *Lakeshore Community Hospital, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995).

Here, there appears to be no dispute that the first two elements are met; Dr. Van Horn knew that plaintiff had an insurance contract with Aetna. The dispute arises on the third element, which requires allegations of the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's business relationship. *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). A plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the unlawful purpose of the interference. *Id.* at 369-370.

In support of her claim, plaintiff alleges that defamation satisfies the third element because it is a per se wrongful act. However, in the cases cited by plaintiff, the alleged defamatory statements were defamatory per se because they made accusations of criminal conduct or were injurious to a person in his or her business. See *Heritage Optical Center, Inc v Levine*, 137 Mich App 793, 797; 359 NW2d 210 (1984); *Wilkerson v Carlo*, 101 Mich App 629, 632; 300 NW2d 658 (1980). Here, the allegedly defamatory statements were not defamatory per se because they did not involve accusations of criminal activity, did not defame plaintiff in her professional capacity, and did not question her chastity. See *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 728; 613 NW2d 378 (2000); MCL 600.2911(1). Moreover, as discussed previously, plaintiff has not met her burden of showing that Dr. Van Horn acted with malice. Therefore, plaintiff has failed as a matter of law to meet the third element necessary to sustain a claim of intentional interference with contractual relations.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello