STATE OF MICHIGAN

COURT OF APPEALS

KENNETH MITAN,

Plaintiff-Appellant,

v

MAURA CAMPBELL,

Defendant-Appellee.

UNPUBLISHED
May 20, 2004

No. 242486
Ingham Circuit Court
LC No. 01-094411-NZ

Before: Jansen, P.J., and Markey and Gage, JJ.

PER CURIAM.

In this defamation action, plaintiff appeals by right from an order of the lower court granting summary disposition under MCR 2.116(C)(7) in favor of defendant on the basis that plaintiff's complaint was filed after the statute of limitations had expired. This case stems from an interview defendant gave to a television news reporter, and the subsequent airing of statements made during that interview. We reverse and remand.

On February 22, 2000, defendant was interviewed by a television reporter for WXYZ-TV regarding wage and hour claims being made by plaintiff's employees. The Department of Consumer and Industry Services (CIS) was handling these claims and at all times relevant to this appeal, defendant was CIS's Public Relations Director. Statements made during the interview were broadcast on WXYZ-TV on February 25, 2000. Plaintiff filed his complaint alleging defamation on February 26, 2001.

Plaintiff argues that the trial court erred in dismissing his claim. We agree. A trial court's decision on whether to grant summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201(1998). This Court reviews the record in the same manner as the trial court to determine whether the moving party was entitled to judgment as a matter of law. *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999); *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995).

The elements of defamation are: (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting to at least negligence on the part of the publisher, and (4) actionability of the statement (defamation per se or the existence of special harm). *Ledl v Quick Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984). The period of limitations for an alleged act of defamation is one year after the action accrues. MCL 600.5805. Resolution of this appeal centers on the issue of when

publication occurred.[1] A defamation claim accrues at the time of publication, regardless of whether the defamed individual is aware of the publication. *Grist v Upjohn Co*, 1 Mich App 72, 81; 134 NW2d 358 (1965). Plaintiff claims publication occurred when the statements were broadcast on February 25, but defendant contends that publication was made at the time of the interview, February 22, 2000.

In *Tumbarella v Kroger Co*, 85 Mich App 482, 496; 271 NW2d 284 (1978), this Court observed that the "general rule is that one who publishes a defamatory statement is liable for the injurious consequences of its repetition where the repetition is the natural and probable result of the original publication." *Tumbarella* involved the circulation of a letter which stated "that plaintiff had been discharged for stealing from defendant, Kroger Company." *Id.* at 495. The plaintiff's testimony supported an inference that the charges in the letter were republished to employees in several different Kroger stores. *Id.* at 496. The *Tumbarella* Court reversed the grant of summary judgment to the defendants, concluding, "the republication at other stores could be found by the trier of fact as a natural and probable consequence of Kroger's original publication of the letter." *Id.* Because this case was decided before 1990, we are not required to follow it. MCR 7.215(J)(1). Nonetheless, we do because we believe it sets forth the best-reasoned approach to this issue.

In this case, an issue of fact exists regarding whether the republication of the allegedly defamatory statements in the February 25, 2000 broadcast was the natural and probable result of the original publication to the reporter on February 22, 2000.[2] While a reporter need not publish the information received during an interview, one could plausibly argue that publication of the interview or portions of it is a natural and, indeed, the intended result of the interview being conducted in the first place. See *Burke v Greene*, 963 P2d 1119, 1122 (Colo Ct App, 1998) (observing that the "plaintiff could potentially recover if he could demonstrate that the newspaper's repetition of the statement was either expressly or impliedly authorized by [the] defendant, or was a natural consequence of the defendant's original publication of the statements to the police"). Under the facts of this case, plaintiff's allegations were sufficient to defeat a motion for summary disposition pursuant to MCR 2.116(C)(7).

"Statutes of limitations are intended to 'compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend'; 'to relieve a court system from dealing with "stale" claims, where the facts in dispute occurred so long ago that evidence was either forgotten or manufactured'; and to protect 'potential defendants from protracted fear of litigation.'" *Bigelow v Walraven*, 392 Mich 566, 576; 221 NW2d 328 (1974), quoting 51 Am Jur 2d, Limitations of Actions, § 17, pp 602-603. Allowing plaintiff's claim to proceed does not violate any of these principles.

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[1] The parties agree that if publication occurred on February 25, 2000, plaintiff's complaint was timely filed on February 26, 2001 because February 25, 2001 was a Sunday. See MCR 1.108, and *Dunlap v Sheffield*, 442 Mich 195; 500 NW2d 195 (1993).

[2] Clearly the allegedly slanderous material was published originally during the February 22, 2000 interview, then was republished on the day it was broadcast, February 25.

Our decision on this basis obviates the need to address plaintiff's other arguments. We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Hilda R. Gage