STATE OF MICHIGAN

COURT OF APPEALS

IONIA M. RICHARD,

Plaintiff/Counterdefendant-Appellant,

v

FLAGSTAR BANK FSB, KELLY SERVICES, INC., and BRENDA BARNETT,

Defendants-Appellees,

and

MOLLY ZALUSKY,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
August 9, 2005

No. 260987
Oakland Circuit Court
LC No. 2003-052614-CZ

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's orders granting defendants summary disposition and denying her motion for reconsideration in this defamation action. We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition to defendants when there was a genuine issue of fact regarding malice in the defamation claim. We disagree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Ensink v Mecosta County Gen Hosp*, 262 Mich App 518, 523; 687 NW2d 143 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Mino v Clio School District*, 255 Mich App 60, 67; 661 NW2d 586 (2003). In deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ensink, supra* at 523. This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998); *Michigan Educational Employees*

Mutual Ins Co v Turow, 242 Mich App 112, 114-115; 617 NW2d 725 (2000). Review is limited solely to the evidence that had been presented to the trial court at the time the motion was decided. *Peña v Ingham County Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

In order to establish a claim of defamation, a plaintiff must show: (1) a false or 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) either actionability of the statement irrespective of special harm for defamation per se or the existence of special harm caused by publication for defamation per quod. *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000).

The defense of privilege exists as a matter of public policy because some communications are so necessary that, even if defamatory, they should be made. *Postill v Booth Newspapers, Inc*, 118 Mich App 608, 619; 325 NW2d 511 (1982). "Privileged communications may be either absolutely privileged or qualifiedly privileged." *Id.* at 619-620. In *Prysak v R L Polk Co*, 193 Mich App 1, 14-15; 483 NW2d 629 (1992), this Court addressed the issue of a qualified privilege in a defamation action:

> The determination whether a privilege exists is one of law for the court. 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. 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 or reckless disregard of the truth. General allegations of malice are insufficient to establish a genuine issue of material fact. [Internal citations omitted.]

Regarding a "shared interest" basis for a qualified privilege, this Court stated:

> Michigan law recognizes a qualified privilege as applying to communications on matters of "shared interest" between parties. In *Harrison v Arrow Metal Products*, [sic] *Corp*, [20 Mich App 590, 611-612; 174 NW2d 875 (1969)], we defined the "shared interest" privilege and held that it extends to all bona fide communications concerning any subject matter in which a party has an interest or a duty owed to a person sharing a corresponding interest or duty. The privilege embraces not only legal duties but also moral and social obligations. [*Rosenboom v Vanek*, 182 Mich App 113, 117; 451 NW2d 520 (1989).]

Generally, a qualified privilege encompasses "all communications made bona fide upon 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, and embraces cases where the duty is not a legal one but is of a moral or social character of imperfect obligation." *Timmis v Bennett*, 352 Mich 355, 366; 89 NW2d 748 (1958).

In this case, plaintiff argues that there was a question of fact for the jury regarding whether Barnett's communications regarding plaintiff were made with knowledge of their falsity or with reckless disregard for the truth such that the qualified privilege stemming from the

communications between employees and employers regarding workplace violence would be overcome. To support her position that the statements were made with actual malice, plaintiff cites to what she characterizes as discrepancies in the record. Although there are slight discrepancies in the record, these discrepancies do not support that the statements about plaintiff were made with knowledge of their falsity or with reckless disregard for the truth; rather, they depict a slight procedural difference in the timing and path of the statements to Kelly Services, Inc. Thus, on review de novo, we find that plaintiff has not presented evidence sufficient to raise a question of fact with regard to whether the challenged communications were made with knowledge of their falsity or with reckless disregard for the truth. Further, the evidence plaintiff cites to support her position was not in the lower court record. Expansions of the record may not be considered on appeal. MCR 7.210(A)(1); *Miller v Purcell*, 246 Mich App 244, 248 n 1; 631 NW2d 760 (2001). Thus, plaintiff's argument fails.

Plaintiff next argues that the trial court abused its discretion in denying plaintiff's motion for reconsideration. We disagree.

A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Ensink*, *supra* at 540. "The movant must show that the trial court made a palpable error and that a different disposition would result from correction of the error." *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003); see also MCR 2.119(F)(3). With regard to a motion for reconsideration, MCR 2.119(F)(1) provides:

> Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604(A), 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion.

The trial court stated that the Court rules do not provide for a delayed motion for reconsideration, citing *Ramsey v City Pontiac*, 164 Mich App 527, 538; 417 NW2d 489 (1987). Because the motion was untimely filed on November 19, 2004, well after the orders granting summary disposition had been entered on August 26, 2004, and September 15, 2004, the trial court did not abuse its discretion in denying the untimely motion for reconsideration.

Affirmed.

/s/ Helene N. White
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder