STATE OF MICHIGAN

COURT OF APPEALS

KHRUSO PARVEZ and MARBIL MACHINING, COMPANY,

Plaintiffs/Counter Defendants-Appellants/Cross Appellees,

and

ZUBIA PARVEZ,

Plaintiff-Appellant/Cross Appellee,

v

JERROLD M. BIGELMAN, GUTMAN & BIGELMAN, P.C., and MARTHA SORRENTINO,

Defendants,

and

GREGORY SORRENTINO and AUTO TECH ENGINEERING, INC.,

Defendants/Counter Plaintiffs,

and

MARTIN L. FRIED and GOLDSTEIN, BERSHAD, FRIED & LIEBERMAN, P.C.,

Defendants/Counter Plaintiffs-Appellees/Cross Appellants.

UNPUBLISHED
December 20, 2005

No. 255437
Oakland Circuit Court
LC No. 01-035806-NM

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

In this action alleging defamation and tortious interference with a business relationship or expectancy, plaintiffs appeal by right from the trial court's order granting the motion of defendants Martin L. Fried and Goldstein, Bershad, Fried & Lieberman, P.C.,[1] for summary disposition. Defendants cross appeal by right from the trial court's order denying their motion for sanctions for the filing of a frivolous lawsuit. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs' various claims arise from a transaction in which plaintiff Khruso Parvez purchased the stock of plaintiff Marbil Machining Company from the company's previous owner, Gregory Sorrentino. Parvez's indebtedness to Sorrentino from the sale was secured by all of Marbil's accounts receivable pursuant to a recorded UCC financing statement. Parvez apparently defaulted on his obligations to Sorrentino, who then retained Fried for the purpose of collecting Marbil's accounts receivable. Fried, acting on behalf of Sorrentino, distributed letters to Marbil's customers indicating that Sorrentino had a perfected security interest in all of Marbil's receivables and that, "[o]n account of a default in that debt, and pursuant to Michigan Compiled Laws § 440.9502(1)[2]," Marbil's customers were to pay Sorrentino any amounts owing to Marbil.

Plaintiffs' amended complaint included claims of "business defamation" against Fried; respondeat superior liability against Fried's law firm, Goldstein, Bershad, Fried & Lieberman, P.C.; and tortious interference with a contractual or business relationship or expectancy against both defendants. Plaintiffs alleged that the statements in the notices distributed to Marbil's customers were false and that, as a result of the notices, Marbil's customers ceased conducting business with Marbil and Khruso Parvez, believing that Marbil was going bankrupt. Plaintiffs contended that Fried acted in bad faith when he sent the statutory notices to Marbil's customers without investigating whether a default had truly occurred and without first obtaining a judgment of default against plaintiffs.

The trial court granted summary disposition in favor of defendants, holding that plaintiffs' assertions of bad faith failed because, under *Friedman v Dozorc*, 412 Mich 1; 312 NW2d 585 (1981), an attorney owed no duty to an adverse party, and Fried therefore owed plaintiffs no duty to investigate before sending out the statutory notices. Accordingly, the trial court held that the allegedly libelous communications were subject to a qualified privilege, and

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[1] The other named defendants below were dismissed from the action, either by stipulation of the parties or by a judgment confirming an arbitration award, and are not parties to this appeal. Unless otherwise indicated, the term "defendants" as used in this opinion refers only to Fried and Goldstein, Bershad, Fried & Lieberman, P.C.

[2] Former MCL 440.9502(1), repealed and recodified as MCL 440.9607(1), 2000 PA 348, effective July 1, 2001, provided:

> When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9306.

plaintiffs had failed to overcome the presumption of good faith that accompanied privileged communications. The trial court denied defendants' motion for sanctions.

Following entry of the order granting summary disposition and denying sanctions, defendants again sought frivolous-action sanctions under MCR 2.114, MCR 2.625(A)(2), and MCL 600.2591. Defendants noted that, prior to the initiation of the lawsuit, they had apprised plaintiffs that the *Friedman* case precluded liability; accordingly, defendants argued, plaintiffs had no reasonable basis to believe that the facts underlying their legal position were true, and it was evident that the lawsuit was brought for the purpose of harassing defendants. The trial court once again denied the motion for sanctions without comment.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.[3] *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). "The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind, supra* at 238; *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); see also MCR 2.116(G)(6).

We first address plaintiffs' defamation and attendant respondeat superior liability claims. At issue on appeal are the trial court's holdings that the notices sent by Fried to Marbil's customers were protected by a qualified privilege and that plaintiffs had failed to overcome the presumption of good faith that attached to that privilege. "The determination of whether a qualified privilege exists is properly for the court to decide as a matter of law." *Nuyen v Slater*, 372 Mich 654, 659; 127 NW2d 369 (1964); see also *Couch v Schultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992). 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. *Nuyen, supra* at 659; *Bufalino v Maxon Bros, Inc*, 368 Mich 140, 153; 117 NW2d 150 (1962); *Prysak v RL Polk Co*, 193 Mich App 1, 15; 483 NW2d 629 (1992). "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." *Prysak, supra* at 15. "General allegations of malice are insufficient to establish a genuine issue of material fact." *Id.*, citing *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 79; 480 NW2d 297 (1991).

We first note that the trial court erred to the extent that it relied on *Friedman, supra*, in determining that Fried acted in good faith in distributing the statutory notices. The *Friedman*

[3] It is unclear whether MCR 2.116(C)(8) or MCR 2.116(C)(10) formed the basis for defendants' motion or for the trial court's ruling. Nevertheless, because the parties submitted documentary evidence and because the trial court apparently relied on that evidence, this Court will treat the motion as having been granted pursuant to MCR 2.116(C)(10) and will examine the pleadings and the documentary evidence. See *Mino v Clio School Dist*, 255 Mich App 60, 63; 661 NW2d 586 (2003); *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Court's refusal, in the context of a *negligence* action, to "recognize a duty of due care to the adverse party" in litigation, *id*. at 27, is inapposite. Plaintiffs in the case at bar raise no negligence claim against defendants; therefore, *Friedman* simply has no application to plaintiffs' claims of defamation and tortious interference.

Nevertheless, this Court will affirm when a trial court reaches the correct result for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001). Former MCL 440.9502(1), on which Fried relied in sending the notices, provided that, upon default, "the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral." Plaintiffs have cited absolutely no authority for the proposition that Fried acted in bad faith in relying on this Uniform Commercial Code provision without first obtaining a judgment of default. A party may not leave it to this Court to search for authority in support of its position by giving "issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Furthermore, the notices, which were sent only to Marbil's customers, were narrow in scope and were sent only to proper parties on a proper occasion, i.e., the alleged default of Parvez's obligations to Sorrentino. Plaintiffs' generalized and unfounded allegations that Fried and his client acted with malice in making these communications are insufficient to establish a genuine issue of fact. See *Prysak, supra* at 15; *Gonyea, supra* at 79. Accordingly, because plaintiffs failed to present a genuine issue of material fact concerning the existence of a qualified privilege, we affirm the trial court's grant of summary disposition.

For similar reasons, we hold that the grant of summary disposition with respect to the tortious interference claim was properly granted. A plaintiff alleging tortious interference must establish that a lawful act was done with malice and without justification by demonstrating, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 699; 552 NW2d 919 (1996). "Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *Id.* Tortious interference with business relations may be caused by defamatory statements. *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995). "As with defamation actions, where the conduct allegedly causing the business interference is a defendant's utterance of negative statements concerning a plaintiff, privileged speech is a defense." *Id*. at 401-402, citing *NAACP v Claiborne Hardware Co*, 458 US 886; 102 S Ct 3409; 73 L Ed 2d 1215 (1982).

For the reasons stated above, we hold that the trial court properly, albeit for the wrong reason, found that a qualified privilege applied to plaintiffs' tortious interference claim. We note additionally that plaintiffs have supplied no evidence of any specific, affirmative acts on the part of defendants corroborating an improper motive to interfere. See *BPS Clinical Laboratories, supra* at 699. Furthermore, plaintiffs have come forward with no evidence contravening defendants' assertions that they had only legitimate business purposes in mind when they distributed the statutory notices. See *id*.

We turn finally to defendants' cross appeal from the trial court's order denying sanctions. A trial court's decision that a claim is not frivolous is reviewed for clear error. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 203; 650 NW2d 364 (2002); *Szymanski v Brown*, 221 Mich

App 423, 436; 562 NW2d 212 (1997); see also *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A decision is "clearly erroneous" if the reviewing court is left "'with a definite and firm conviction that a mistake has been made.'" *Evans & Luptak, PLC, supra* at 203, quoting *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 91; 592 NW2d 112 (1999).

We hold that the trial court did not clearly err in denying defendants' repeated motions for frivolous-action sanctions. In seeking such sanctions, defendants relied heavily on the *Friedman* case and the fact that they had brought this case to plaintiffs' attention prior to the initiation of the lawsuit. However, for the reasons indicated previously, *Friedman* is inapposite to the case at bar, and plaintiffs were fully justified in their belief that it did not aid defendants. That plaintiffs erred in their legal analysis and that their claims were ultimately unsuccessful does not necessarily warrant a determination of frivolity. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). Although plaintiffs' case is, in our view, extraordinarily weak at best, and although we may have ruled differently, we are not left with a definite and firm conviction that the trial court made a mistake. *Evans & Luptak, PLC, supra* at 203.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood