

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Judith M. Schmidt,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-565 (C.C. No. 2010-05234)
Northcoast Behavioral Healthcare,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on February 22, 2011

Judith M. Schmidt, pro se.

Michael DeWine, Attorney General, and *Jennifer Anne Adair*,
for appellee.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶1} Plaintiff-appellant, Judith M. Schmidt, appeals from a judgment of the Court of Claims of Ohio dismissing her complaint against defendant-appellee, Northcoast Behavioral Healthcare (hereinafter referred to as "Northcoast"). For the following reasons, we affirm that judgment.

{¶2} On March 24, 2010, Schmidt filed a complaint in the trial court in which she asserted libel, slander, and malicious prosecution claims against Northcoast. Schmidt alleged that the Northcoast staff "defaced and abused" her while she visited her husband

during his stay there.¹ Northcoast filed a motion to dismiss Schmidt's complaint pursuant to Civ.R. 12(B)(1) and (B)(6). Northcoast argued that Schmidt's complaint failed to state claims for libel, slander, or malicious prosecution. The trial court granted Northcoast's motion, concluding that Schmidt could not prove any set of facts in support of her claims that would entitle her to relief. Accordingly, the trial court dismissed Schmidt's complaint.

{¶3} Schmidt appeals and assigns the following errors:

[1.] Should staff members of Northcoast Behavioral Healthcare be able to scene [sic] at guests[.]

[2.] [I]s Northcoast Behavioral Healthcare owned completely by the State of Ohio?

{¶4} Schmidt's assignments of error address the merits of her claims, not the merits of the trial court's decision to dismiss her complaint. In the interests of justice, however, we will review that decision.

{¶5} The trial court dismissed Schmidt's complaint pursuant to Civ.R. 12(B)(6). "In order to sustain dismissal of a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief may be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, ¶14. Appellate review of motions to dismiss for failure to state a claim under Civ.R. 12(B)(6) is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5; *Ritchie v. Ohio Adult Parole Auth.*, 10th Dist. No. 05AP-1019, 2006-Ohio-1210, ¶16.

¹ Schmidt's husband had been admitted to Northcoast for a competency evaluation after being charged with an assault.

{¶6} In deciding whether to dismiss a complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, the trial court must presume all factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of plaintiff. *Rankin v. Ohio Reformatory for Women*, 10th Dist. No. 09AP-524, 2009-Ohio-6575, ¶13 (citing *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192). While the factual allegations of the complaint are taken as true, "[u]nsupported conclusions of a complaint are not considered admitted * * * and are not sufficient to withstand a motion to dismiss." *Chapman v. S. Pointe Hosp.*, 186 Ohio App.3d 430, 2010-Ohio-152, ¶8 (quoting *State ex rel. Hickman v. Capots* (1989), 45 Ohio St.3d 324); *Wildi v. Hondros College*, 10th Dist. No. 09AP-346, 2009-Ohio-5205, ¶10.

{¶7} The trial court dismissed Schmidt's claims for defamation and malicious prosecution. We will address each claim individually.

{¶8} Defamation, which includes both slander and libel, is the publication of a false statement " 'made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in his or her trade, business or profession.' " *Jackson v. Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, ¶9 (quoting *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 7, 1995-Ohio-66). "Slander" refers to spoken defamatory words, while "libel" refers to written or printed defamatory words. *Matikas v. Univ. of Dayton*, 152 Ohio App.3d 514, 2003-Ohio-1852, ¶27. To prevail on a defamation claim, whether libel or slander, a plaintiff must prove the following elements: (1) a false statement, (2) about the plaintiff, (3) was published

without privilege to a third party, (4) with fault of at least negligence on the part of the defendant, and (5) the statement was either defamatory per se or caused special harm to the plaintiff. *McPeck v. Leetonia Italian-Am. Club*, 174 Ohio App.3d 380, 2007-Ohio-7218, ¶8.

{¶9} Schmidt's complaint does not contain factual allegations that support her defamation claim. The complaint merely concludes that Northcoast's staff "defaced and abused" her.² Although Civ.R. 8(A) only requires a complaint to provide "a short and plain statement of the claim showing that the party is entitled to relief," the complaint must still set forth operative facts showing the basis for the claim. *Wright v. Schwebel Baking Co.*, 7th Dist. No. 04-MA-62, 2005-Ohio-4475, ¶11; *Vagas v. City of Hudson*, 9th Dist. No. 24713, 2009-Ohio-6794, ¶13 (focus of Civ.R. 12(B)(6) inquiry must be on the facts alleged in the complaint). Unsupported conclusions such as Schmidt's are insufficient to survive a Civ.R. 12(B)(6) motion to dismiss. *Ferron v. Fifth Third Bank*, 10th Dist. No. 08AP-473, 2008-Ohio-6967, ¶12. Absent any factual allegations to support this cause of action, the trial court did not err by dismissing Schmidt's defamation claim.

{¶10} The elements of a cause of action for malicious civil prosecution are: (1) malicious institution of prior proceedings against the plaintiff by the defendant; (2) lack of probable cause for the filing of the prior lawsuit; (3) termination of the prior proceedings in plaintiff's favor; and (4) seizure of the plaintiff's person or property during the course of the prior proceedings. *Robb v. Chagrin Lagoons Yacht Club, Inc.*, 75 Ohio St.3d 264, 1996-Ohio-189, syllabus. Similarly, the elements of the tort of malicious criminal prosecution are: (1) malice in instituting or continuing a criminal prosecution; (2) lack of probable

² For purposes of this decision, we assume that "defaced" is meant to be "defamed."

cause to support that prosecution; and (3) termination of the prosecution in favor of the accused. *Froehlich v. Ohio Dept. of Mental Health*, 114 Ohio St.3d 286, 2007-Ohio-4161, ¶10 (citing *Trussell v. Gen. Motors Corp.* (1990), 53 Ohio St.3d 142, 146).

{¶11} It is not clear whether Schmidt sought to file a cause of action based on malicious civil or criminal prosecution. Regardless, Schmidt's complaint did not contain any factual allegations to support either cause of action. Accordingly, the trial court did not err in dismissing this cause of action.

{¶12} The trial court did not err by dismissing Schmidt's complaint pursuant to Civ.R. 12(B)(6). Accordingly, we overrule Schmidt's two assignments of error and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.
