DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

W. BRETT REID, Plaintiff/Appellant, v. SWIFT TRANSPORTATION COMPANY, INC., Defendant/Appellee.	)	1 CA-CV 09-0258 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-000514

The Honorable Larry Grant, Judge

AFFIRMED

W. Brett Reid — Prescott
In Propria Persona

Coppersmith Schermer & Brockelman PLC — Phoenix
By Kent Brockelman
Attorneys for Swift Transportation Company, Inc.

H A L L, Judge

¶1 W. Brett Reid (Reid) appeals from the trial court's grant of summary judgment in favor of Swift Transportation Company, Inc. (Swift). For the reasons that follow, we affirm the trial court's judgment.

FACTS AND PROCEDURAL HISTORY

¶2 The facts relevant to the issue on appeal are as follows. In December 2005, Reid began training with the Swift Driving Academy. He completed his training in March 2006 and obtained his commercial driver license on March 10, 2006. On March 15, 2006, Reid began driving for Swift.

¶3 On the morning of March 24, 2006, as Reid was making a delivery, he backed his truck into a parked truck owned by another company and dented that vehicle's roll-up door. Because the company that owned the other truck was able to replace the damaged door at no cost, it declined to make a claim against Swift.

¶4 Later that day, Reid hit a parked truck when he returned to Swift's terminal. The damaged truck was repaired by Swift at a cost of $2,643.54.

¶5 On April 3, 2006, Reid hit a concrete wall as he drove his truck onto a scale to be weighed. The impact of the collision caused minor damage to the truck and the facility where Reid was making the delivery made no claim against Swift.

¶6 On April 10, 2006, Swift terminated Reid's employment. In late April or early May, as part of his application for other driving positions, Reid prepared a written description of the incidents.

¶7 The United States Department of Transportation (DOT) requires motor carriers, such as Swift, to provide information about former employees' driving records, including any accidents.

As set forth in DOT regulations, an accident is narrowly defined as:

> [A]n occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in: (i) A fatality; (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

49 C.F.R. § 390.5. Under 49 C.F.R. § 391.23(d)(2)(ii), however, a previous employer may also report "pursuant to the employer's internal policies for retaining more detailed minor accident information." Swift reported Reid's three incidents with a third-party company, DriverFACTS, which "serve[s] as [a] repositor[y] for the information that must be sought and provided pursuant to the DOT Regulations." In its report, Swift designated the "accidents" as not "DOT Reportable."

¶8 On January 4, 2008, Reid filed a complaint alleging Swift committed libel by falsely reporting his accident history. As set forth more thoroughly in his motion for summary judgment, Reid acknowledged that the three minor accidents occurred, but he argued that they did not "meet [the DOT's] definition of an accident" and claimed that Swift reported the incidents "without qualifying them as [internally defined accidents] . . . [leaving] the net impression that [he] had in fact had 3 DOT accidents."

¶9 On November 13, 2008, Swift also filed a motion for summary judgment. After considering both motions, the trial court

denied Reid's motion and granted summary judgment in favor of Swift.

¶10 Reid timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(B) (2003).

DISCUSSION

¶11 The sole issue before us is whether the trial court erred by granting summary judgment in favor of Swift.

¶12 Summary judgment shall be granted when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). In reviewing a decision granting summary judgment, we review de novo whether any genuine issues of material fact exist. *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, ¶ 4, 7 P.3d 136, 139 (App. 2000). "A 'genuine' issue is one that a reasonable trier of fact could decide in favor of the party adverse to summary judgment on the available evidentiary record." *Martin v. Schroeder*, 209 Ariz. 531, 534, ¶ 12, 105 P.3d 557, 580 (App. 2005). Although we view the evidence and reasonable inferences in favor of the nonmoving party, summary judgment may nonetheless be granted when the facts produced in response to a summary judgment motion have "so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). We review de novo the trial court's application of the law. *State Comp. Fund v. Yellow Cab Co.*, 197 Ariz. 120, 122, ¶ 5,

3 P.3d 1040, 1042 (App. 1999). We will affirm the trial court's judgment "even if the [] court has reached the right result for the wrong reason." *City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985).

¶13 To survive Swift's motion for summary judgment, Reid was required to produce some evidence that Swift expressed a "malicious falsehood" that "tend[ed] to impeach" his reputation. *Berg v. Hohenstein*, 13 Ariz.App. 583, 584, 479 P.2d 730, 731 (1971) (quoting *Cent. Ariz. Light and Power Co. v. Akers*, 45 Ariz. 526, 535, 46 P.2d 126, 131 (1935)). He failed to do so.

¶14 In his deposition, Reid acknowledged that each of the incidents occurred and that each met Swift's internal definition of "accident." The sole basis for Reid's libel claim was that Swift improperly characterized the three incidents as accidents with DriverFACTS.[1] The record reflects, however, that the DriverFACTS report prepared for Swift regarding Reid specifically identified the three incidents at issue as not "DOT Reportable" and noted that none of the incidents involved injuries or damages in excess of $5000.00. Because there is no evidence to support Reid's claim that Swift falsely reported that the three incidents qualified as DOT accidents, the trial court properly granted summary judgment in favor of Swift.

[1] In his deposition, Reid also stated that Swift inaccurately reported that the second incident on March 24, 2006 involved a left turn, but he admitted that the "state" of the truck at the time of the incident (i.e., backing up, pulling forward, etc.), was immaterial.

CONCLUSION

¶15 For the foregoing reasons, we affirm the trial court's judgment.

PHILIP HALL, Judge

CONCURRING:

SHELDON H. WEISBERG, Presiding Judge

JOHN C. GEMMILL, Judge