

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Tyler Shives,

Appellant-Plaintiff/Counterclaim Defendant

v.

Aaron Mitchell, a/k/a Aaron Phillips, and Capture Hour
Productions,

Appellees-Defendants/Counterclaim Plaintiffs

April 15, 2024

Court of Appeals Case No.
23A-SC-1370

Appeal from the Marion Small Claims Court, Decatur Township
Division

The Honorable Jonathan P. Sturgill, Judge

Trial Court Cause No.
49K02-2209-SC-1119

Memorandum Decision by Judge Crone

Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] Tyler Shives appeals the small claims court’s judgment in favor of Aaron Mitchell and Capture Hour Productions (collectively Mitchell). We affirm.

Facts and Procedural History

- [2] In November 2021, Mitchell hired Shives, a freelance videographer, as a subcontractor to record a wedding ceremony. Shives failed to capture the shot of the bride coming down the aisle and offered to refund a portion of his subcontractor fee due to his error. Shives admitted to Mitchell that he “w[a]sn’t holding the camera, a guest up front offered to hold it wh[i]le I manned Cody’s camera.” Appealed Order at 2. Shives also admitted to Mitchell, “I’ll take the fault/blame” for the missed shot of the bride coming down the aisle. *Id.*
- [3] Following the wedding, Mitchell and the wedding couple entered into a mutual release and settlement agreement (the Agreement). In addition to a mutual release of claims and covenant not to sue, the Agreement provided for Mitchell to pay the couple \$1,000 and further contained a “non-disparagement” clause, which provided in relevant part that neither “party shall communicate any disparaging or defamatory statements concerning any other party on social media web sites[.]” Appellant’s App. Vol. 2 at 59. “[D]isparage” in this context

means “any negative, false statement, whether written or oral, about the Released Parties.” *Id.* At some point thereafter, Mitchell took to social media and stated that Shives had filmed a wedding for him but failed to capture the shot of the bride coming down the aisle because he had given his camera to a wedding guest to capture the shot. Mitchell admitted that his stated intent was to discourage others from hiring Shives.

[4] Shives then posted untrue comments about Mitchell on Facebook. He stated in relevant part that Mitchell “went absolutely postal,” and that Mitchell’s “reputation and actions forced him to change his last name.” *Id.* at 33. He accused Mitchell of being “shady” and “a pathological liar” and stated that Mitchell “clearly has psychological issues and insecurities.” *Id.* Shives also posted on the Indiana Filmmaker’s Network trying to mobilize people into filing a class action lawsuit against Mitchell.

[5] On September 12, 2022, Shives filed a complaint against Mitchell in the Decatur Township Small Claims Court alleging defamation and fraud.¹ Mitchell answered and counterclaimed for defamation per se, defamation per quod, and intentional infliction of emotional distress. Upon Mitchell’s motion, the parties were permitted to conduct limited discovery. As a result, Mitchell dismissed his defamation per se counterclaim. Shives filed an amended

¹ “There are two types of defamatory speech in Indiana: defamation per se and defamation per quod.” *Carson v. Palombo*, 18 N.E.3d 1036, 1042 (Ind. Ct. App. 2014). Shives did not plead his defamation claim with specificity.

complaint in which he maintained his defamation claim, but he alleged breach of contract in place of his prior fraud claim. Regarding both claims, Shives merely alleged that he had “been damaged.” *Id.* at 38.

[6] An evidentiary hearing was held on January 12, 2023. At the conclusion of the hearing, the parties were ordered to submit post-trial briefs. Mitchell filed a brief, but Shives did not. On June 16, 2023, the trial court entered its findings of fact, conclusions thereon, and order, finding against Shives on all of his claims and in favor of Mitchell on one of his counterclaims. Specifically, regarding Shives’s defamation claim, the trial court concluded that Mitchell’s statements about Shives were truthful and thus did not constitute defamation. The trial court further observed that Shives failed to allege or establish any special damages and that, based upon the evidence presented, his claim was frivolous, unreasonable, groundless, and initiated in bad faith. Therefore, the trial court concluded that Mitchell was entitled to attorney’s fees of \$5,000 pursuant to Indiana Code Section 34-52-1-1(b).² Regarding Shives’s breach of contract claim, the trial court determined that Shives was neither a party nor a signatory

² This section reads:

(b) In any civil action, the court may award attorney’s fees as part of the cost to the prevailing party, if the court finds that either party:

(1) brought the action or defense on a claim or defense that is frivolous, unreasonable or groundless;

(2) continued to litigate the action or defense after the party’s claim or defense clearly became frivolous, unreasonable, or groundless; or

(3) litigated the action in bad faith.

to the Agreement, and he was also not a third-party beneficiary to the contract. Therefore, the trial court rejected Shives's breach of contract claim.

- [7] As for Mitchell's intentional infliction of emotional distress counterclaim, the trial court concluded that Mitchell met his burden of proof and awarded him damages in the amount of \$2,500. Accordingly, the trial court found in favor of Mitchell and against Shives and entered a total judgment of \$7,500. This appeal ensued.

Discussion and Decision

- [8] Shives appeals the small claims court's judgment in favor of Mitchell. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). "We review facts from a bench trial under the clearly erroneous standard with due deference paid to the trial court's opportunity to assess witness credibility." *Branham v. Varble*, 952 N.E.2d 744, 746 (Ind. 2011). We review questions of law de novo. *Id.* "This deferential standard of review is particularly important in small claims actions, where trials are informal, 'with the sole objective of dispensing speedy justice' between parties according to the rules of substantive law." *Id.* (quoting *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008)). "The small claims court is the sole judge of the evidence and the credibility of witnesses, and on appeal we neither reweigh the evidence nor assess the credibility of the witnesses." *Heartland Crossing Found., Inc. v. Dotlich*, 976 N.E.2d 760, 762 (Ind. Ct. App. 2012).

Section 1 – The trial court did not clearly err in finding Shives liable for intentional infliction of emotional distress.

- [9] Shives asserts that the trial court clearly erred in finding him liable to Mitchell for intentional infliction of emotional distress. To establish such a claim, a plaintiff must prove by a preponderance of the evidence that the defendant (1) engaged in extreme and outrageous conduct (2) which intentionally or recklessly (3) caused (4) severe emotional distress to another. *State v. Alvarez ex rel. Alvarez*, 150 N.E.3d 206, 218 (Ind. Ct. App. 2020). “It is the intent to harm one emotionally that forms the basis for the tort.” *Id.* “The conduct must be particularly deplorable to meet the extreme and outrageous requirement.” *Id.* (citing *Conwell v. Beatty*, 667 N.E.2d 768, 777 (Ind. Ct. App. 1996)).
- [10] Shives first argues that Mitchell’s counterclaim for intentional infliction of emotional distress should fail because he did not allege or prove an underlying tort. It is well established that intentional infliction of emotional distress is recognized as an independent tort, in that the claim can stand alone with no requirement that the plaintiff prove a host tort. *Conwell*, 667 N.E.2d at 777 (citing *Cullison v. Medley*, 570 N.E.2d 27, 31 (Ind. 1991)). While Shives concedes this point, he nevertheless suggests that this Court should hold that Indiana law “does not support that the elements of [intentional infliction of emotional distress] can be proven absent a predicate tort and, therefore, the Trial Court’s holding is in error.” Appellant’s Br. at 9. We decline to adopt this suggestion in light of the clear and long-standing authority to the contrary.

[11] In the alternative, Shives maintains that his actions were not “atrocious” or “outrageous” enough to support a finding that he committed intentional infliction of emotional distress. *Id.* at 12. The record indicates that Shives made untrue comments about Mitchell on Facebook, which included an outrageous claim that Mitchell had changed his name due to his reputation and actions, a direct attack on Mitchell’s character for truthfulness, and an accusation that Mitchell suffers from psychological issues and insecurities.³ Shives also made an extreme and inflammatory post on the Indiana Filmmaker’s Network trying to mobilize people into filing a class action lawsuit against Mitchell. The trial court further found that Shives sued Mitchell for defamation despite knowing that Mitchell’s comments about him missing the shot of the bride coming down the aisle were truthful. Mitchell testified that Shives’s statements and actions caused him severe emotional distress and that he has been unable to eat or sleep and is constantly worried about money. Mitchell’s testimony regarding his severe emotional distress was corroborated by the testimony of two other witnesses.

[12] We decline Shives’s request to second-guess the trial court’s assessment that his actions were sufficiently outrageous to support a finding that he committed intentional infliction of emotional distress. His assertions on appeal amount to a request for this Court to reweigh the evidence and reassess witness credibility in

³ Shives also posted that Mitchell suffers from bipolar disorder. Mitchell testified that although this statement about him is true, using his mental illness “against him” on social media “was very uncalled for” and caused him extreme distress. Tr. Vol. 2 at 78.

his favor, which we may not do. *Heartland Crossing*, 976 N.E.2d at 762. Based upon the evidence presented, we cannot say that the trial court's judgment in favor of Mitchell on his intentional infliction of emotional distress counterclaim was clearly erroneous.

Section 2 – The trial court did not clearly err in concluding that Shives is not an intended third-party beneficiary to the Agreement and is not entitled to enforce its terms against Mitchell.

[13] Shives next contends that the trial court clearly erred in concluding that he was not an intended third-party beneficiary to the Agreement and therefore he is not entitled to enforce the Agreement against Mitchell. We disagree.

[14] It is undisputed that the Agreement was executed between Mitchell and the wedding couple. Shives concedes that he is neither a named party nor a signatory to the Agreement. Rather, Shives claims that he is a third-party beneficiary to the Agreement. To enforce a contract as a third-party beneficiary, the third party must show a clear intent by the actual parties to the contract to benefit the third party, a duty imposed on one of the contracting parties in favor of the third party, and performance of the contract terms is necessary to render the third party a direct benefit intended by the parties to the contract. *Eckman v. Green*, 869 N.E.2d 493, 496 (Ind. Ct. App. 2007) (citing *Luhnnow v. Horn*, 760 N.E.2d 621, 628 (Ind. Ct. App. 2001)), *trans. denied*. None of these three requirements are satisfied here.

[15] First, there is no evidence that the actual parties to the Agreement clearly intended to benefit Shives. Shives was mentioned by name in the Agreement in the recitals section only to identify him as a subcontractor of Mitchell. Regarding the non-disparagement clause specifically that Shives attempts to enforce, it provides in relevant part that “‘disparage’ shall mean any negative, false statement, whether written or oral, about the Released Parties.” Appellant’s App. Vol. 2 at 59. As stated above, Shives was not a party to the Agreement, and therefore he cannot be considered a released party. Moreover, Mitchell, an actual party to the Agreement, testified that the parties had no intent for the Agreement to benefit Shives. Shives’s third-party beneficiary claim fails on this first element.

[16] Second, the Agreement imposed no duty on one of the contracting parties in favor of Shives. The Agreement provided in pertinent part that “no party shall communicate any disparaging or defamatory statements concerning any other party on any social media websites[.]” *Id.* The Agreement did not impose any duty on one of the contracting parties to not communicate any disparaging or defamatory statements concerning Shives. Accordingly, his claim fails on this second element.

[17] Finally, performance of the Agreement terms did not necessarily render to Shives a direct benefit intended by the parties to the contract. Neither Mitchell’s nor the wedding couple’s performance of the Agreement, namely their agreement to not disparage one another on social media, necessarily rendered a direct benefit to Shives. Indeed, Mitchell testified that the “whole point of this

anti-disparagement contract was to stop [the wedding couple] from bad mouthing myself and my company online.” Tr. Vol. 2 at 23. Mitchell emphasized that the Agreement was not meant to protect Shives in any manner. As noted by the trial court, in addition to Mitchell’s direct testimony, “[e]vidence admitted at trial demonstrated that [the wedding couple] did not intend for [Shives] to benefit” from the Agreement. Appealed Order at 8. Shives’s claim fails on this element as well.

[18] In sum, the Agreement does not express a clear intent to benefit Shives or clearly impose an obligation on one of the contracting parties in favor of Shives, nor does performance of the contract terms necessarily render him a direct benefit that was intended by the parties to the contract. The trial court did not err in denying Shives’s breach of contract claim. We affirm the trial court’s judgment in all respects.⁴

[19] Affirmed.

Bailey, J., and Pyle, J., concur.

⁴ Shives does not challenge the trial court’s award of attorney’s fees to Mitchell pursuant to Indiana Code Section 34-52-1-1(b). Accordingly, we do not address it.

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