

STATE OF MICHIGAN
COURT OF APPEALS

CARRIE MURRAY MCGUIRK,

Plaintiff-Appellee,

v

RONALD W. SABO and
RONALD W. SABO, P.C.,

Defendants-Appellants.

UNPUBLISHED

April 7, 1998

No. 196437

Genesee Circuit Court

LC No. 95-037923 CL

Before: Fitzgerald, P.J., and Markey and J.B. Sullivan*, JJ.

PER CURIAM.

Defendants appeal by delayed leave granted from the trial court's order denying their motion for partial summary disposition. Defendants appeal only that part of the order denying the dismissal of plaintiff's intentional infliction of emotional distress and self-defamation claims, and allowing plaintiff to rely on certain affidavit testimony. We reverse.

Plaintiff was employed as an associate attorney for defendant law firm. At some point, defendant¹ approached plaintiff about becoming a 40% shareholder. Plaintiff rejected the shareholder offer and the employment relationship eventually terminated. During plaintiff's tenure at the firm, she drove a leased BMW that was held in the name of the firm. After her employment terminated, plaintiff agreed to assume the lease payments. Plaintiff was to pay the first month's payment directly to the firm because the paperwork for the assumption would not be completed before the payment's due date. When defendant did not receive the payment, he contacted the Grand Blanc Township Police Department, inquiring whether police officers could act as observers in the event defendant used self-help to retrieve the vehicle from plaintiff. Although this conversation ended inconclusively, three police cars eventually went to plaintiff's home. Defendant did not retrieve the vehicle and plaintiff eventually purchased it from BMW.

Plaintiff brought suit against defendants, alleging, among other claims, misrepresentation, defamation/invasion of privacy, and intentional infliction of emotional distress.² Defendants moved for

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

partial summary disposition on those claims. The trial court dismissed plaintiff's misrepresentation claim and subparts of the defamation claim, including that part relating to defendant's statements made to the police in regard to the leased vehicle. The court concluded that those statements were absolutely privileged. The trial court denied defendants' motion for summary disposition on the intentional infliction of emotional distress claim and the self-defamation part of plaintiff's defamation claim.

Defendants first argue that the trial court erred in failing to dismiss plaintiff's claim of intentional infliction of emotional distress. Defendants contend that because the trial court agreed that his statements to the police were absolutely privileged, the court should have concluded that plaintiff cannot claim intentional infliction of emotional distress based on the events that those statements caused, i.e., the appearance of police cars at her home. We agree.

We review the trial court's decision on a motion for summary disposition de novo. A motion under MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the party opposing the motion. The court must review the record evidence, and all reasonable inferences drawn from it, and decide whether a genuine issue regarding any material fact exists to warrant a trial. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

Defendants correctly assert that information given to police officers regarding criminal activity is absolutely privileged. *Shinglemeyer v Wright*, 124 Mich 230, 239-240; 82 NW 887 (1900); *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619; 396 NW2d 809 (1986). Because the trial court determined that defendant's statements were absolutely privileged, it should have dismissed plaintiff's claim of intentional infliction of emotional distress based on the events that arose from those statements.

Even if defendant's statements were not absolutely privileged because they were not reports of criminal activity, a qualified privilege extends to "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." *Hall, supra*.

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. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 79; 480 NW2d 297 (1991). 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. *Id.*, 79-80.

In this case, defendant made statements to the police department dispatcher in regard to a vehicle that was in the firm's name. Although plaintiff had agreed to assume the lease on the vehicle, she failed to timely tender that month's lease payment. In addition, she failed to respond to defendant's letter concerning the late payment. Moreover, even though defendant called the police department,

there is no evidence that he requested or controlled the action taken by police. Finally, we note that, viewing the evidence in a light most favorable to plaintiff, the evidence does not show that defendant acted in bad faith or with actual malice. We therefore conclude that the trial court erred in denying defendants' motion for summary disposition on plaintiff's claim of intentional infliction of emotional distress because defendant's statements to the police enjoyed at least a qualified privilege.

We also note that, under the circumstances of this case, defendant's conduct of calling the police department was not sufficiently "extreme and outrageous" to support a claim for intentional infliction of emotional distress. *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). Liability for such a claim has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 603; 374 NW2d 905 (1985); *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d 585 (1993). No reasonable jurors would conclude that the conduct in this case rises to that level.

Next, defendants argue that the trial court erred in denying summary disposition on plaintiff's claim of self-defamation based on the fact that plaintiff was forced to publish the fact that she was fired. Again, we agree.

The elements of a claim of defamation are (1) a false and 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 statements irrespective of special harm, or the existence of special harm caused by the publication. *Gonyea, supra* at 76-77. See also SJI2d 118.05. These elements must be specifically pleaded, including the allegations with respect to the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words. *Gonyea, supra* at 77.

We note that in *Grist v The Upjohn Co*, 16 Mich App 452, 483-484; 168 NW2d 389 (1969), this Court upheld a trial court instruction that the jury could find publication of defamatory matter even though statements were made only to the plaintiff. This Court noted the general rule that publication of defamatory matter must be made to someone other than the person defamed. However, this Court stated that an exception is made when the speaker of the defamatory matter intends or has reason to know that in the ordinary course of events the matter will come to the knowledge of a third person. *Id.*, 484.

In this case, even if defendants could be liable for the alleged indirect publication, we conclude that plaintiff cannot establish the necessary elements of defamation. Specifically, defamation requires the unprivileged publication of a *false* and defamatory statement. In her appellate brief, plaintiff concedes that it is "technically true" that she was fired. As such, plaintiff failed to meet the first element. Plaintiff maintains that "the requirement of falsity is met by the innuendo surrounding" the fact that she was fired. Plaintiff, however, has failed to cite any legal authority to support her argument. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). This Court will not search for authority to support a party's position. *Id.* Moreover, plaintiff

failed to establish that there was a publication. Although plaintiff contended that she could identify prospective employers to whom she made the publication that she was fired, she failed to do so. We therefore conclude that the trial court erred in denying defendants' motion for summary disposition on plaintiff's self-defamation claim.

Finally, defendants argue that the trial court erred by allowing plaintiff to contradict her deposition testimony with a subsequent affidavit of her therapist to support her intentional infliction of emotional distress claim. This issue is moot in light of our previous conclusion that the trial court erred in failing to dismiss plaintiff's intentional infliction of emotional distress claim.

Reversed.³

/s/ E. Thomas Fitzgerald

/s/ Joseph B. Sullivan

¹ "Defendant" refers to Sabo, individually, unless otherwise indicated.

² Plaintiff also alleged two counts involving wrongful discharge that are not at issue in this appeal.

³ Plaintiff's request that this Court reverse that part of the trial court's order finding that defendant's statements made to the police were privileged is not properly before this Court. MCR 7.205(D)(4).