

STATE OF MICHIGAN
COURT OF APPEALS

L. FALLASHA ERWIN,

Plaintiff-Appellant,

v

THE DETROIT NEWS, INC., GANNETT CO.,
INC., DETROIT NEWSPAPER AGENCY, and
CHRIS McCOSKY,

Defendants-Appellees.

UNPUBLISHED

February 6, 2001

No. 217687

Wayne Circuit Court

LC No. 98-802776-NO

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition. We affirm.

On appeal, the trial court's ruling on a motion for summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 188; 597 NW2d 817 (1999). The trial court did not specify under which subsection of MCR 2.116 defendants were entitled to summary disposition. However, because the trial court relied on facts outside the pleadings and because plaintiff relies on facts outside the pleadings in his brief on appeal, this Court will treat all issues on appeal as brought pursuant to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). When reviewing a motion brought under MCR 2.116(C)(10), this Court reviews the documentary evidence to determine whether a party is entitled to judgment as a matter of law or whether a genuine issue of material fact exists. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff is an attorney and agent for professional basketball player Chris Webber. On February 2, 1997, *The Detroit News* published an article written by defendant Chris McCosky concerning the fact that Webber was not selected for the NBA's Eastern Conference All-Star Team. In that article, McCosky characterized plaintiff as being angry about the "apparent snub of Webber." It is this characterization that formed the basis for the present suit. Defendant McCosky relied upon an article written by Frank Hughes of *The Washington Times* for information contained in his article for *The Detroit News*. Hughes' article also discussed the fact that Webber was not selected for the all-star team and was the source of quotations contained in

McCosky's article. Plaintiff does not claim that the quotations attributed to him in either of the articles constitute grounds for defamation.

The article about which plaintiff complains contains the following commentary from McCosky and quotations from plaintiff:

Chris Webber is being smart. He isn't saying anything, at least not for the record, about being left off the All-Star team.

Now if he could just keep his agent quiet.

Fallasha Erwin, so angered by the apparent snub of Webber, called the NBA offices in New York to see if they would tell him how the Eastern Conference coaches voted. He wanted to see if there was a certain circle of coaches who blackballed him and if Webber was even the next player to be named to the team if there was another spot.

The league, of course, doesn't divulge such data.

"I've had all kinds of explanations, I still can't see it," Erwin said from his Detroit office. "What basis could they have used to not put Chris on the team?"

* * *

Of course, Erwin has other theories. Such as, Webber split votes with teammate Juwan Howard. Or, Webber is still feeling the effects of the run-in he had with Don Nelson when the two were at Golden State.

* * *

"People have this image of Chris as this troublemaker," Erwin said. "But why? He doesn't get in trouble with the coaches. He doesn't miss any practices or games. He's not late to practices or games. I just hope this isn't a backlash from (the Nelson episode)."

Plaintiff does not contest the fact that he did call the NBA office in an attempt to determine how close Webber was to being selected by the NBA coaches for a position on the all-star team and whether Webber would be selected as an alternate if a position became available. Instead, he asserts that the insinuation by defendants that he was angry with the NBA or the coaches over a snub of his client is false and defamatory.

In Michigan, the elements of a defamation action are: (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication of that statement to a third party, (3) fault amounting to at least negligence by the publisher, and (4) either special harm or actionability regardless of special harm. *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 726; 613 NW2d 378 (2000). Regarding the first element, this Court has stated that "[a] communication is defamatory if, considering all the circumstances, it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons

from associating or dealing with him.” See *Ireland v Edwards*, 230 Mich App 607, 619; 584 NW2d 632 (1998). Plaintiff’s claim centers on the theory that the characterization of plaintiff as angry at the time he made the telephone call caused plaintiff to be viewed as an unstable agent incapable of handling his emotions. Plaintiff argues that this alleged perception lowers plaintiff’s reputation in the community and, thus, was defamatory. We do not agree.

Both parties approach this issue as a factual dispute concerning whether plaintiff was “angry” or merely “disappointed.” Nevertheless, plaintiff must preliminarily show that the statements of which he complains are provable as false in order to support his claim of defamation. See *Milkovich v Lorain Journal Co*, 497 US 1, 20; 110 S Ct 2695, 111 L Ed 1 (1990). Therefore, defendants’ opinion that plaintiff was angry when he called the NBA offices about the composition of the all-star team must be objectively verifiable as false in order to support a claim for defamation. We discern no objective events which could verify either plaintiff’s anger or disappointment. Because whether plaintiff was angry was not objectively verifiable as false, the statement cannot support a claim of defamation. See *Ireland, supra*. Thus, the trial court correctly granted defendants’ summary disposition albeit for the wrong reason. This Court will not disturb the trial court’s order when the right result was reached for the wrong reason. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 640; 534 NW2d 217 (1995).

Because we find that plaintiff failed to allege statements capable of being proved false, plaintiff’s claim that a genuine issue of material fact exists regarding his defamation claim need not be addressed. Likewise, we decline to review plaintiff’s false light invasion of privacy claim because plaintiff only raised the issue in his reply brief and thus did not properly raise the issue on appeal. *Miller v Allied Signal, Inc*, 235 Mich App 710, 716; 599 NW2d 110 (1999).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter