STATE OF MICHIGAN

COURT OF APPEALS

RUPERT A. SMITH,

Plaintiff/Counter-Defendant-Appellant,

v

WILLIAM H. MORRIS and LYLE CURL,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
November 27, 2001

No. 224320
Alcona Circuit Court
LC No. 99-010087-NZ

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by right the lower court's dismissal of his defamation claim by a grant of summary disposition under MCR 2.116(C)(8) for defendants. Plaintiff subsequently moved the court for reconsideration and leave to amend, both of which were denied. Plaintiff claims on appeal that these orders were erroneous. We affirm.

Plaintiff first asserts that the trial court erred in granting summary disposition under MCR 2.116(C)(8), because he sufficiently pleaded the elements of actual malice. A trial court's grant or denial of summary disposition is reviewed de novo. *Garvelink v The Detroit News*, 206 Mich App 604, 607; 522 NW2d 883 (1994). Although we find that plaintiff pleaded defamation with sufficient specificity, the allegations in the complaint, accepted as true, do not state any actionable claims; therefore, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(8).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint, *ABB Paint Finishing Co v National Union Fire Ins Co*, 223 Mich App 559, 561; 567 NW2d 456 (1997), and determines whether the plaintiff's pleadings have alleged a prima facie case. *Garvelink, supra* at 607. A court may only grant an MCR 2.116(C)(8) motion where the claim is so clearly unenforceable as a matter of law that no factual development could possible justify recovery. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995); *ABB Paint, supra* at 561; *Garvelink, supra* at 608. The motion is reviewed on the pleadings alone and all factual allegations contained in the complaint must be accepted as true. *Simko, supra* at 654; *Dampier v Wayne Co*, 233 Mich App 714, 721; 592 NW2d 809 (1999).

The trial court ruled that plaintiff had not pleaded actual malice with sufficient specificity, contrary to *Royal Palace Homes v Channel 7 of Detroit, Inc*, 197 Mich App 48, 52; 495 NW2d 392 (1992). General allegations that privileged statements were false or malicious are insufficient. *Kefgen, supra* at 624. However, we find that plaintiff did include the allegedly defamatory statements within his pleading. Thus, insofar as the grounds for granting summary disposition were based on an insufficient pleading of actual malice, the trial court was incorrect, particularly where the amended complaint pleaded actual malice with great particularity.

The trial court also based its grant of summary disposition on the grounds that plaintiff was a public figure and all statements concerning a public figure have a qualified privilege. A court reviewing a defamation claim must make an independent examination of the record to avoid intrusions into the field of free expression protected by the First Amendment. *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000); *Ireland v Edwards*, 230 Mich App 607, 613; 584 NW2d 632 (1998). The reviewing court must specifically determine whether a privilege exists that protects the communication. Absolute privilege does not apply in the present case because none of the narrow situations it is applicable to, communications made during legislative and judicial proceedings and communications among military officers, are present. *Kefgen, supra* at 618.

A communication can also have a qualified privilege. This applies when a defamatory communication is made concerning a public figure or official. *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 32; 627 NW2d 5 (2001); *Kefgen, supra* at 623. A public figure or official alleging defamation must prove by clear and convincing evidence that it was made with actual malice, and actual malice exists where the communication was known by the publisher to be false or was made with reckless disregard for the truth. *Collins, supra* at 32; *Kefgen, supra* at 623. As an elected township trustee, plaintiff is a public official. Therefore, defendant's communications about plaintiff have a qualified privilege and actual malice is a necessary element of this action. Because a motion for summary disposition under MCR 2.116(C)(8) is reviewed on the pleadings alone, *Simko, supra* at 648, the inquiry focuses on the allegations in the pleading rather than the evidence.

Accepting all the allegations in the complaint as true, we must determine whether the statements are actionable. *Ireland, supra* at 616. To be actionable, the statement must be provable as false. *Id*. None of the allegedly defamatory statements published by defendants here are actionable. In *Greenbelt Cooperative Publishing Ass'n, Inc v Bresler*, 398 US 6; 90 S Ct 1537; 26 L Ed 2d 6 (1970), the Supreme Court recognized that some statements, read in context, are not capable of defamatory interpretation: " 'The word "blackmail" in these circumstances was not slander when spoken, and not libel when reported . . . . [E]ven the most careless reader must have perceived that the word was no more than rhetorical hyperbole.' " *Id.* at 13-14. None of the allegedly defamatory statements contained in the instant complaint or amended complaint are actionable under the *Greenbelt* standard. Each of statements either fails to state actual facts about plaintiff or is mere "rhetorical hyperbole." *Id*.

This Court has held that all claims relating to defamation of a public figure, such as injurious falsehood and invasion of privacy/false light, involve the element of actual malice.

Collins, supra at 30, 37; *Ireland, supra* at 624. Therefore, plaintiff's remaining claims fail on similar grounds. *Collins, supra* at 30, 37; *Ireland, supra* at 624.

Plaintiff also appeals the trial court's denial of the injunction he sought. There are three prerequisites to injunctive relief in Michigan: (1) justice must require the court to grant the injunction, (2) there must not be an adequate remedy at law, and (3) there must be a real and imminent danger of immediate injury. *Peninsula Sanitation, Inc v Manistique*, 208 Mich App 34, 43; 526 NW2d 607 (1994). In the present case, the speech in question was clothed in a qualified privilege. *Collins, supra* at 32. Plaintiff is therefore not entitled to an injunction in this case absent a showing of independent economic injury. *McFadden, supra* at 558. Plaintiff has alleged no independent economic injury and, therefore, the trial court committed no error in dismissing plaintiff's request for injunctive relief under MCR 2.116(C)(8).

Plaintiff next argues that the trial court's refusal to grant his motions for reconsideration and rehearing constituted an abuse of discretion warranting reversal. A trial court's denial of a motion for reconsideration or rehearing is reviewed for an abuse of discretion. *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 709; 609 NW2d 607 (2000). We disagree with plaintiff and affirm the ruling of the trial court.

To demonstrate that the trial court abused its discretion, plaintiff must show that the trial court made a palpable error that misled the parties and the court, or that the summary disposition motion would have been denied if the error were corrected. *American Transmission, supra* at 709; *Charbeneau v Wayne Co Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Plaintiff claims that defendants misled the trial court into erroneously interpreting *Royal Palace Homes, supra*, and *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74; 480 NW2d 297 (1991), to require a conclusion that plaintiff had not pleaded actual malice with sufficient specificity. As discussed previously, the trial court was incorrect in ruling that plaintiff did not plead actual malice with sufficient specificity, but the trial court properly dismissed plaintiff's case on other grounds.

Plaintiff also claims that the trial court's denial of an oral argument on the summary disposition motion was error, the correction of which would result in a different outcome. There is no abuse of discretion where a motion for reconsideration is based on facts or theories that could have been pleaded or argued before the court's original order. *Charbeneau, supra* at 733. Movants must show that any additional information could have been presented to the trial court at the time of its original order of dismissal, and that the information was not available to him at that time. *American Transmission, supra* at 710. Plaintiff makes no showing. The trial court's decision is affirmed, because there was no abuse of discretion in denying plaintiff's motion for reconsideration or rehearing.

Plaintiff next contends that the trial court abused its discretion in refusing to grant plaintiff leave to amend his pleadings, because such leave should be freely granted and is a legal right under *Midura v Lincoln Consolidated Schools*, 111 Mich App 558; 314 NW2d 691 (1981). A trial court's decision to grant or deny a motion for leave to amend a complaint pursuant to MCR 2.118(A)(2) will not be reversed absent an abuse of discretion. *Dampier, supra* at 721; *Price v Long Realty, Inc*, 199 Mich App 461, 469; 502 NW2d 337 (1993). As previously held,

none of the statements alleged by plaintiff were actionable, and the record discloses that the other statements that plaintiff could have alleged were likewise not actionable under the *Greenbelt*, *supra* at 13-14, standard. Accordingly, we find that the trial court correctly denied plaintiff's motion to file a second amended complaint, because any additional amendment would have resulted in a similar failure to cure the defects in the pleadings.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael R. Smolenski