STATE OF MICHIGAN

COURT OF APPEALS

JOAN L. TUCKER and LINDA O'DONNELL,

Plaintiffs-Appellants,

v

HARPER WOODS BOARD OF EDUCATION, HARPER WOODS PUBLIC SCHOOL DISTRICT, CHRISTINE CICOTTE, RONALD GREVE, AMY HOUGHTALIN, NANCY WRUBEL, and FORREST BOYLES,

Defendants-Appellees.

UNPUBLISHED
April 5, 2002

No. 229685
Wayne Circuit Court
LC No. 98-831083-CK

JOAN L. TUCKER,

Plaintiff-Appellant,

v

CHRISTINE CICOTTE, RONALD GREVE, AMY HOUGHTALIN, NANCY WRUBEL, AND FORREST BOYLES,

Defendants-Appellees.

No. 229731
Wayne Circuit Court
LC No. 99-914623-NZ

JOAN L. TUCKER,

Plaintiff-Appellant,

v

RONALD H. GREVE, HARPER WOODS BOARD OF EDUCATION, and HARPER WOODS SCHOOL DISTRICT,

Defendants-Appellees.

No. 229732
Wayne Circuit Court
LC No. 99-910166-NZ

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiffs[1] appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiff was employed as the superintendent for defendant Harper Woods School District pursuant to an employment contract. During plaintiff's employment, the composition of the school board changed. Two members of the school board, defendants Christine Cicotte and Nancy Wrubel, expressed concern regarding plaintiff's contractual accounting requirements that necessitated their approval. Defendant Cicotte also became concerned when she discussed a matter with counsel for the district, and plaintiff was apprised of the substance of the conversation. Defendant Cicotte consulted with fellow board member and defendant Ronald Greve, an attorney, regarding the problems. These three defendants met with an attorney. Ultimately, an independent investigator interviewed relevant parties regarding plaintiff's accounting of her mileage usage and vacation time. Based on the investigator's conclusions that plaintiff had inappropriately received mileage and vacation reimbursements and had inappropriately utilized vacation time, a majority of the board voted to terminate plaintiff. Following the termination, all five board members who had voted for the termination were recalled. In response to the recall, each member submitted a statement of explanation. Plaintiff alleged that she was defamed as a result of the recall statements and a television interview given by defendant Greve. Despite the filing of numerous complaints, the parties agreed to maintain three claims, breach of contract, defamation, and violation of the Open Meetings Act. The trial court granted defendants' motion for summary disposition.

Plaintiff first alleges that the trial court erred by granting summary disposition of her breach of contract claim. We disagree. Construction and interpretation of a contract presents a question of law that an appellate court reviews de novo. *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). Contractual terms are interpreted in accordance with their commonly used meaning if the terms are not defined, and the omission of a definition of a term does not create an ambiguity. See *Vanguard Insurance Co v Racine*, 224 Mich App 229, 232; 568 NW2d 156 (1997). Whether the terms of a contract are ambiguous presents a question for the court. *Id*. at 233. A contract may be inartfully worded or clumsily arranged, but if it fairly admits of one interpretation, it is not ambiguous. *Meagher v Wayne State University*, 222 Mich App 700, 722; 565 NW2d 401 (1997). When parties enter into a written contract and express the intention that the writing constitutes the complete integration of the contract, evidence, parol or otherwise, will not be admitted to vary or contradict the writing. *Michigan National Bank v Laskowski*, 228 Mich App 710, 714-715; 580 NW2d 8 (1998).

---

[1] The breach of contract and defamation claims apply to plaintiff Joan L. Tucker only. The violation of the Open Meetings Act is raised by plaintiff Tucker and Linda O'Donnell, resident and registered voter within the school district. Accordingly, the singular "plaintiff" will refer to Tucker only.

Plaintiff's employment contract contained an integration clause that provided that the employment contract "shall not be modified, waived, altered or changed except in writing signed by both parties." The employment contract also contained the following provisions regarding automobile expenses and discharge for cause:

> The Superintendent shall furnish her own automobile for use during the course of employment as Superintendent. The Superintendent shall maintain an accurate log in which she shall record monthly at or near the time of automobile usage the following information: (1) net mileage; (2) date of travel; and (3) purpose of travel. The Board of Education shall reimburse the Superintendent for properly documented automobile expenses approved in writing monthly by the Treasurer and President of the Board at the standard mileage rate established by United States Internal Revenue Service Policy.
>
> * * *
>
> During the term of this Agreement, the Superintendent is subject to discharge for cause, provided, however, that the Board of Education may not arbitrarily or capriciously discharge the Superintendent. Discharge for cause shall constitute conduct which is seriously prejudicial to the District, including but not limited to neglect of duty or breach of contract.

During the investigation, plaintiff acknowledged that she did not comply with the requirement that she maintain accurate logs of her monthly mileage at or near the time of use. Plaintiff further acknowledged that she sought reimbursement for mileage usage on days when she was on vacation. Upon questioning by the investigator, she admitted that she did not utilize the odometer or other resources to calculate mileage, but estimated and asked others to approximate the mileage for a given trip. Thus, plaintiff admitted that her "sloppy bookkeeping" did not comport with the terms of her contract. The employment agreement provided that breach of contract was a basis for discharge for cause. Accordingly, the trial court properly granted defendants' motion for summary disposition.

Plaintiff alleges that summary disposition was inappropriate because the intended definition of the terms "arbitrary," "capricious," and "seriously prejudicial" presents a question for the trier of fact. However, the question of ambiguity presents a question for the court. *Vanguard, supra*. We conclude that the failure to define the terms at issue fails to create an ambiguity for resolution by the trier of fact. Furthermore, the employment agreement expressly provided that a breach of contract was an example of conduct that would result in discharge for cause. Plaintiff also alleges that the procedure for "approval" of expenses varied from the terms of her contract. In support of this allegation, plaintiff presents various affidavits from board members regarding "approval" of her expenses.[2] However, the employment agreement contains

---

[2] While plaintiff utilizes the term "approval," plaintiff told the investigator that expenses were submitted to the bookkeeper, the bookkeeper prepared a check, and the check was approved by the board. While various affidavits conclude that the board "approved" all of plaintiff's requests for reimbursements, there is no indication that the president and treasurer performed a review to ensure that the expenses were properly documented in accordance with the contract. Mere

(continued…)

an integration clause that precludes consideration of parol evidence to vary the terms of the agreement. *Laskowski, supra*. Accordingly, plaintiff's contention, that the interpretation of the contract is for the trier of fact, is without merit.

Plaintiff next alleges that the trial court erred in dismissing her defamation claim.[3] We disagree. When addressing defamation claims involving First Amendment freedoms, appellate courts independently examine the record to protect against forbidden intrusions into the field of free expression. *Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 322; 539 NW2d 774 (1995). A communication is defamatory if, considering all the circumstances, it tends to harm the reputation of an individual as to lower that individual's reputation in the community or deter third persons from associating or dealing with that individual. *Kevorkian v American Medical Ass'n*, 237 Mich App 1, 5; 602 NW2d 233 (1999). To establish a defamation claim, the plaintiff must show: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). When the plaintiff involved is a public official or public figure, the plaintiff must prove, by clear and convincing evidence, that the publication was false and a result of actual malice.[4] *Faxon v Michigan Republican State Central Committee*, 244 Mich App 468, 474; 624 NW2d 509 (2001). Actual malice occurs when the injurious falsehood was made knowing that it was false or with reckless disregard of the truth. *Id*. Ill will, spite, or hatred, without more, will not meet the requirement of actual malice. *Id*. Rather, reckless disregard occurs when the publisher, in fact, entertained serious doubts regarding the truth of the statements published. *Id*.

In *Faxon, supra*, the plaintiff, at the time of publication a state legislator, was the subject of a brochure published by the defendant. The brochure alleged that the plaintiff misused legislative immunity when he sold a fake vase represented as a "Ming vase." The plaintiff established that the information contained in the brochure was false. However, the executive director for the defendant denied knowing that the information was false at the time of publication. Furthermore, a consultant involved in the publication of the brochure conceded that the information was false, but denied having that knowledge at the time of publication. This Court held that the plaintiff failed to meet, with clear and convincing evidence, the requirement

(…continued)

conclusory allegations in an affidavit that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 371; 547 NW2d 314 (1996).

[3] Plaintiff alleges that defamation occurred when defendant Greve gave an interview to a television news station after plaintiff's discharge and when board members provided statements in response to their recall. While plaintiff allegedly submitted the videotape of the television interview in response to defendants' motion for summary disposition, it was not attached to the response and is not contained in the record on appeal. "We limit our review to what is presented on appeal and will not consider any alleged evidence or testimony proffered by the parties where there is no record support." *Band v Livonia Associates*, 176 Mich App 95, 104; 439 NW2d 285 (1989). Accordingly, our review of this issue is limited to the extent defendant Greve could recall his statement to the media during his deposition.

[4] Plaintiff does not dispute her status as a public figure.

that the defendant had knowledge that the information was false at the time of publication. *Id*. at 475. Likewise, in the present case, plaintiff has failed to meet the burden of demonstrating actual malice by clear and convincing evidence. *Faxon, supra*. While plaintiff alleged that defendant board members colluded to remove her as superintendent, this allegation of ill will is insufficient to meet the burden. Plaintiff must demonstrate that defendants knew that the information was false at the time of the statements. *Id*. However, the foundation for the published information was the report issued by the independent investigator that found improper reimbursement of mileage and vacation hours to plaintiff. There is no indication that defendants knew that the statements were false or made with reckless disregard of the truth. Accordingly, the trial court properly dismissed plaintiff's defamation claim.

Lastly, plaintiffs allege that the trial court erred in dismissing the claim alleging violation of Michigan's Open Meetings Act (OMA), MCL 15.261 *et seq*. We disagree. The OMA requires that meetings of public bodies be open to the public, and a "meeting" is defined as "the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy." MCL 15.262(b). Plaintiffs concede that a quorum of the school board did not attend the conference with the attorney, but assert that the gathering nonetheless violated the OMA because the board members designed the meeting to avoid application of the act. MCL 15.263(10). However, plaintiffs offer no evidence, only argument, to indicate that the board members intentionally avoided having a quorum present or otherwise acted to avoid the OMA's requirements.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ Christopher M. Murray