STATE OF MICHIGAN

COURT OF APPEALS

B.A. TYLER,

Plaintiff-Appellant,

v

KALLIE A. ROESNER and JAMES YUZWALK,

Defendants-Appellees.

UNPUBLISHED
June 8, 2010

No. 286918
Oakland Circuit Court
LC No. 2007-082987-NO

WILBERT HUTCHINGS,

Plaintiff-Appellant,

v

KALLIE ROESNER,

Defendant-Appellee.

No. 287401
Oakland Circuit Court
LC No. 2007-082988-NO

WILBERT HUTCHINGS,

Plaintiff-Appellee,

v

KALLIE ROESNER,

Defendant-Appellant.

No. 288239
Oakland Circuit Court
LC No. 2007-082988-NO

B.A. TYLER,

Plaintiff-Appellee,

v

No. 288240
Oakland Circuit Court
LC No. 2007-082987-NO

KALLIE ROESNER and JAMES YUZWALK,

Defendants-Appellants.

Before: METER, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 286918, plaintiff Tyler appeals as of right from an order granting summary disposition to defendant.[1] In Docket No. 288240, defendant appeals as of right from an order denying a motion for attorney fees and costs. In Docket No. 287401, plaintiff Hutchings appeals as of right from an order granting defendant's motion for summary disposition. In Docket No. 288239, defendant appeals as of right from an order denying another motion for attorney fees and costs. We affirm in all four cases.

These appeals arose from disputes among neighbors. Plaintiffs B.A. Tyler and Wilbert Hutchings contended that defendant, apparently upset over losing a property-damage suit, engaged in an ongoing campaign to damage their reputations and otherwise harm them. They filed the instant lawsuits in an attempt to redress the alleged damages, but the suits were summarily dismissed.

DOCKET NO. 286918

Plaintiff Tyler argues that the trial court erred in granting defendant's motion for summary disposition of his defamation claims. We disagree.

On appeal, this Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Defendants moved for summary disposition pursuant to MCR 2.116(C)(8). "A motion under MCR 2.116(C)(8) is properly granted if the complaint fails to state a claim on which relief can be granted . . . ." *A & E Parking v Detroit Metropolitan Wayne County Airport Authority*, 271 Mich App 641, 643; 723 NW2d 223 (2006) (internal citation and quotation marks omitted).

[1] The majority of allegations in this case are directed against defendant Kallie Roesner; for ease of reference, she will be referred to individually as the singular "defendant" in this opinion.

> The pleadings alone are considered in testing the legal sufficiency of a claim under a MCR 2.116(C)(8) motion. It is well established that for purposes of a motion under MCR 2.116(C)(8) all factual allegations in support of the claim are accepted as true and viewed in the light most favorable to the nonmoving party. The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. [*Capitol Properties Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 425; 770 NW2d 105 (2009) (internal citations omitted).]

In his first amended complaint, plaintiff Tyler cited the following instances of defamation: (1) on July 25, 2004, defendant said that she incurred injury by way of plaintiff Tyler's actions in asking her to remove herself from his property; (2) on August 24, 2004, defendant used her position with Oxford Township to file a complaint against plaintiff Tyler, which resulted in an outdoor lighting ordinance violation that was later dismissed; (3) on August 1, 2005, defendant filed a false report with the Oakland County Sheriff's Department, knowing it would be republished in the Oxford Leader; it claimed that plaintiff Tyler damaged windows at her home on July 22, 2005; (4) on March 4, 2006, defendant filed a false report with the sheriff's department, knowing it would be republished in other forums such as the Oxford Leader; it claimed that plaintiff Tyler threatened to punch her and her father a few months earlier; (5) on May 3, 2006, defendant filed a sworn ex parte petition for a personal protection order (PPO), alleging numerous false allegations against plaintiff Tyler; (6) on May 23, 2006, defendant filed a request for investigation of plaintiff Tyler with the Attorney Grievance Commission,[2] and it contained numerous false and defamatory statements that the commission found insufficient to warrant review; (7) on July 28, 2006, defendant filed a report with Oakland County Animal Control that contained false and defamatory statements regarding an alleged attack by plaintiff Tyler's dogs; (8) on July 31, 2006, defendant filed a complaint and sworn affidavit with Oxford Township alleging a second attack by plaintiff Tyler's dogs; (9) defendant repeated these false allegations at a township board of trustees meeting on August 23, 2006, but the township chose not to proceed; (10) on October 13, 2006, defendant filed an ex parte petition for a PPO in the Lapeer Circuit Court containing many false and defamatory statements; (11) on January 2, 2007, defendant filed a report with the sheriff's department alleging that plaintiff Tyler drove by her barn and acted as though he was shooting her; (11) on January 13, 2007, defendant filed a report with the sheriff's department alleging that plaintiff Tyler poisoned and killed her chickens; (12) defendant filed two additional reports with the sheriff's department alleging that plaintiffs Tyler and Hutchings acted together to harm her; and (13) defendant made false and defamatory statements in court proceedings that she was physically injured by plaintiff Tyler or his dogs.

> The elements of a defamation claim are: (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication 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 (defamation

[2] Plaintiff Tyler is an attorney.

> per se) or the existence of special harm caused by publication. [*Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005).]

Additionally,

> [a] communication is defamatory if, considering all the circumstances, it tends to so 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 Association*, 237 Mich App 1, 5; 602 NW2d 233 (1999).]

As stated in *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984):

> [A] claim for defamation must be specifically pled:[3]
>
> The essentials of a cause of action for libel or slander must be stated in the complaint, including allegations as to the particular defamatory words complained of, the connection of the defamatory words with the plaintiff where such words are not clear or are ambiguous, and the publication of the alleged defamatory words. [Internal citations and quotation marks omitted.]

As noted by the trial court and defendant on appeal, five of plaintiff Tyler's claims of defamation (statements 1 through 5 as listed above) took place before May 17, 2006 – a year before he filed his original complaint – and, therefore, they are time-barred. MCL 600.5805 states, in pertinent part:

> (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.
>
> * * *
>
> (9) The period of limitations is 1 year for an action charging libel or slander.

Further, MCL 600.5827 provides that a defamation claim accrues when "the wrong upon which the claim is based was done regardless of the time when damage results." Thus,

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[3] Plaintiffs Tyler and Hutchings assert that there is no need for specificity in a "false light" defamation claim. The tort they are evidently referring to is called "false light invasion of privacy," and the case law plaintiffs cite for the proposition that it need not be pleaded with specificity – see *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 58; 495 NW2d 392 (1992) (KELLY, J., concurring) – does not in fact set forth this proposition. Moreover, plaintiffs cite to a concurring opinion by Judge Kelly that does not constitute binding authority.

> a defamation claim must be filed within one year from the date the claim *first* accrued . . . . The statute does not contemplate extending the accrual of the claim on the basis of republication, regardless of whether the republication was intended by the speaker. [*Mitan*, 474 Mich at 24-25 (emphasis added).]

Therefore, the trial court did not err in granting summary disposition to defendants on these claims.

The remainder of the alleged defamatory statements (except for statements 8 and 9, which will be discussed below), were statements made in police reports or court proceedings, alleging wrongdoing on the part of plaintiff Tyler.

> At common law, words charging the commission of a crime are defamatory per se, and hence, injury to the reputation of the person defamed is presumed to the extent that the failure to prove damages is not a ground for dismissal. Where defamation per se has occurred, the person defamed is entitled to recover general damages in at least a nominal amount. [*Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 727-728; 613 NW2d 378 (2000) (internal citations omitted).]

Nevertheless,

> [c]ertain statements are absolutely privileged. An absolutely privileged communication is one for which no remedy is provided for damages in a defamation action because of the occasion on which the communication is made. A privileged occasion is an occasion where the public good requires that a person be freed from liability for the publication of a statement that would otherwise be defamatory. If a statement is absolutely privileged, it is not actionable even if it was false and maliciously published. However, absolute privilege against a defamation action is limited to narrowly defined areas. [*Oesterle v Wallace*, 272 Mich App 260, 264; 725 NW2d 470 (2006) (internal citations and quotation marks omitted).]

"The initial determination of whether a privilege exists is one of law for the court." *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619; 396 NW2d 809 (1986).

"Statements made by judges, attorneys, and witnesses during the course of judicial proceedings are absolutely privileged if they are relevant, material, or pertinent to the issue being tried." *Oesterle*, 272 Mich App at 264.

> Judicial proceedings may include *any hearing before a tribunal or administrative board that performs a judicial function*. Further, immunity extends to every step in the proceeding and covers anything that may be said in relation to the matter at issue, including pleadings and affidavits. [*Id*. at 265 (internal citations and quotation marks omitted; emphasis added).]

"[T]he judicial proceedings privilege should be liberally construed so that participants in judicial proceedings are free to express themselves without fear of retaliation." *Id*. (internal citation and quotation marks omitted). Further, "information given to police officers regarding criminal

activity is absolutely privileged." *Hall*, 153 Mich App at 619. Regarding the complaint to the Attorney Grievance Commission specifically, MCR 9.125 provides: "*A person is absolutely immune from suit for statements and communications transmitted solely to the administrator, the commission, or the commission staff*, or given in an investigation or proceeding on alleged misconduct or reinstatement" (emphasis added). Thus, we conclude that defendants' statements to the sheriff's department and to Oakland County Animal Control; during the PPO and other court proceedings; and in the complaint to the Attorney Grievance Commission were all privileged and the trial court properly granted summary disposition to defendants on these claims.

The remaining two statements were made to Oxford Township and the Oxford Township Board of Trustees regarding an alleged attack by plaintiff Tyler's dogs. The trial court considered these to fall under the same rule as complaints to the police or statements made in judicial proceedings. We need not decide whether the rules concerning privilege apply to these statements because we conclude that defendant's statements that she was attacked by plaintiff Tyler's dogs were not defamatory statements. While they may have impugned the character of the dogs, they did not tend to harm the reputation of plaintiff Tyler so as to lower his reputation in the community or deter third persons from associating or dealing with him. *Kevorkian*, 237 Mich App at 5. Thus, the trial court properly granted summary disposition to defendant on these claims as well.

In his first amended complaint, plaintiff Tyler repeated the allegations made in his defamation count and concluded that defendant made the statements so that there would be proceedings against him. On appeal, plaintiff Tyler argues that summary disposition was improper because defendant should be held liable for malicious prosecution for each report filed with the sheriff's department that did not result in any affirmative action against him. He further asserts that defendant's repeated complaints to authorities resulted in an injury to his liberty because his ability to engage in normal activities, such as working on his property or driving down the road, was adversely impacted. We disagree.

> In maintaining a claim of malicious prosecution, a plaintiff bears the burden of proving that (1) the defendant has initiated a criminal prosecution against him, (2) the criminal proceedings terminated in his favor, (3) the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice. [*Walsh v Taylor*, 263 Mich App 618, 632-633; 689 NW2d 506 (2004).]

Michigan law also recognizes a cause of action for malicious prosecution of civil proceedings, where, along with alleging a special injury, the plaintiff must show "(1) prior proceedings terminated in favor of the present plaintiff, (2) absence of probable cause for those proceedings, and (3) 'malice' . . . ." *Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585 (1981).

The trial court correctly determined that there were no criminal proceedings that terminated in favor of plaintiff Tyler. Plaintiff Tyler seems to suggest that the mere fact that the sheriff's department did not act on the complaints filed constituted a favorable termination. However,

> criminal proceedings are terminated in favor of the accused by (1) a discharge by a magistrate at a preliminary hearing, or (2) the refusal of a grand jury to indict, or (3) the formal abandonment of the proceedings by the public prosecutor, or (4) the quashing of an indictment or information, or (5) an acquittal, or (6) a final order in favor of the accused by a trial or appellate court. In accordance with the Restatement, courts of other jurisdictions have generally held that a proceeding is terminated in favor of the accused where its final disposition suggests that the accused is innocent. [*Cox v Williams*, 233 Mich App 388, 391-392; 593 NW2d 173 (1999).]

In short, the general rule is that

> dismissal of criminal charges at the instance of the prosecutor or the complaining witness implies a lack of reasonable ground for prosecution and is a favorable termination of the proceeding for purposes of a malicious prosecution cause of action. [*Id*. at 393.]

In this case, there was no dismissal by the prosecutor, and no criminal proceedings to be dismissed in the first place; therefore, the trial court did not err in granting summary disposition on the claims relating to criminal complaints.

Although the PPO action and complaint with the Attorney Grievance Commission *were* resolved in plaintiff Tyler's favor, in an action for malicious prosecution of civil proceedings, the plaintiff must show a special injury, which plaintiff Tyler failed to do. *Friedman*, 412 Mich at 32.

> Michigan follows the so-called "English rule" with respect to the special injury requirement in a malicious prosecution action. This restrictive rule allows a malicious prosecution action only where one of three types of injury has been sustained, namely, injury to fame, injury to person or liberty, or injury to property. [*Kauffman v Shefman*, 169 Mich App 829, 834; 426 NW2d 819 (1988).]

The injury must be "'*equivalent to a seizure of property* as a result of the defendant's institution of civil proceedings.'" *Id*. at 836, quoting *Friedman*, 412 Mich at 39-41 (emphasis added). Further, special injury "must be some injury which would not necessarily occur in all suits prosecuted for similar causes of action." *Barnard v Hartman*, 130 Mich App 692, 695; 344 NW2d 53 (1983).

In the case at bar, plaintiff Tyler did not plead any special injury in his first amended complaint. Furthermore, in his motion for reconsideration and on appeal, he made and continues to make only vague allegations that his liberty to drive down the street or work in his yard has been compromised, which does not equate with the seizure of property. See *Young v Motor City Apartments Ltd Dividend Housing Asso No 1 & No 2*, 133 Mich App 671, 677-678; 350 NW2d 790 (1984) (holding that the plaintiff attorneys' claims of, among other things, the expense of defending against a lawsuit and injury to public and private reputation "fall short of being equivalent to a seizure of property.") Therefore, the trial court properly granted defendants' motion for summary disposition on plaintiff Tyler's malicious-prosecution claims.

In his amended complaint, plaintiff Tyler included a count for "intentional actions," stating that all the instances of defendant's alleged defamatory statements were done to intentionally cause damage to plaintiff Tyler. The trial court concluded that the count labeled "intentional actions" did not allege a cause of action and dismissed the claim. Plaintiff Tyler argues on appeal that "intentional tort" is a recognized legal theory and liability may be found for "intentional infliction of emotional distress" where conduct is outrageous, such as in the case at bar. We disagree.

Plaintiff Tyler did not plead "intentional torts" in his first amended complaint; rather, he pleaded "intentional actions," which is not a cause of action. Moreover, "intentional torts" are a category of torts and again not a specific cause of action. See, e.g., *Adams v National Bank*, 444 Mich 329, 366; 508 NW2d 464 (1993) ("[t]he defining characteristic of an intentional tort is an awareness that the act is being committed and an intent to invade the interests of another"). Therefore, the trial court properly granted defendants' motion for summary disposition on this claim. Defendant's claim of intentional infliction of emotional distress, which he attempted to argue in his motion for reconsideration, will be addressed below.

Plaintiff Tyler next argues that the trial court erred in denying his motion for reconsideration. We disagree.

This Court reviews a trial court's decision on a motion for reconsideration for an abuse of discretion. *Woods v SLB Property Management, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). "An abuse of discretion occurs when the decision . . . results in an outcome falling outside the principled range of outcomes." *Id*. at 625 (internal citation and quotation marks omitted). Moreover,

> [g]enerally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. [MCR 2.119(F)(3).]

There is no abuse of discretion when a trial court denies "a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court's original order." *Woods*, 277 Mich App at 630 (internal citation and quotation marks omitted). In addition, this Court "will not reverse a trial court's decision to deny leave to amend pleadings unless it constituted an abuse of discretion." *Ormsby v Capital Welding, Inc*, 471 Mich 45, 53; 684 NW2d 320 (2004).

After the trial court granted defendants' motion for summary disposition, plaintiff Tyler filed a motion for reconsideration, arguing that the court (1) relied on unpublished, and thus nonbinding, cases to support its findings; (2) misstated his position on the statute of limitations; and (3) abused its discretion in not allowing an amendment. Plaintiff Tyler also repeated his arguments from his amended complaint regarding the substantive law, and in addition (1) cited MCL 600.2907 in support of his position that filing a police report constitutes malicious prosecution; (2) claimed that he suffered a special injury from defendant's malicious prosecution, in that his "ability to engage in normal activities such as working on his property or driving down the road were adversely impacted;" (3) changed the heading of his "intentional

actions" count to "intentional tort," wherein he listed the elements of intentional infliction of emotional distress and claimed that defendant's repeated complaints constituted outrageous conduct; and (4) stated that the facts of the case supported additional claims for abuse of process and civil stalking. Plaintiff Tyler also filed a motion to amend his complaint in order to plead special damages, abuse of process, and stalking. We find no error in the trial court's denial of plaintiff Tyler's motions for reconsideration and to amend.

To the extent that plaintiff Tyler cited error on the part of the trial court in his motion for reconsideration, he claimed, first, that the trial court relied on unpublished cases when it concluded that there was an absolute privilege when making a complaint to the police. This is simply not true. The court, citing *Hall*, *supra* (a published case, discussed above), stated, "[a]lthough recent cases on this point have been unpublished, the rule is well established that statements made to police officers regarding criminal activity are also absolutely privileged."

Second, regarding the time-barred defamation claims, plaintiff Tyler's motion for reconsideration implied that his position was that defendant (and not, for example, the Oxford Leader) republished her defamations within a year of the initial complaint, but nowhere in the first amended complaint or in his motion for reconsideration does he give the names of people to whom the statements were republished or any dates on which the republications occurred. In fact, he makes statements such as "defendants have repeated the above false and defamatory allegations on repeated occasions to other individuals presently at times and whose identity is not fully known to plaintiff, but is known to defendants." Thus, he fails to plead these claims with the requisite specificity. *Ledl*, 133 Mich App at 589. Regardless, as discussed above, MCL 600.5805 "does not contemplate extending the accrual of the claim on the basis of republication, regardless of whether the republication was intended by the speaker." *Mitan*, 474 Mich at 25.

Third, plaintiff Tyler cites MCL 600.2907 to show that the court erred in not considering a complaint to the sheriff's department that did not result in charges as a favorable termination to proceedings in a malicious prosecution claim. The statute provides:

> Every person who shall, for vexation and trouble or maliciously, cause or procure any other to be arrested, attached, or in any way proceeded against, by any process or civil or criminal action, or in any other manner prescribed by law, to answer to the suit or prosecution of any person, without the consent of such person, or where there is no such person known, shall be liable to the person so arrested, attached or proceeded against, in treble the amount of the damages and expenses which, by any verdict, shall be found to have been sustained and incurred by him; and shall be liable to the person in whose name such arrest or proceeding was had in the sum of $200.00 damages, and shall be deemed guilty of a misdemeanor, punishable on conviction by imprisonment in the county jail for a term not exceeding 6 months. [MCL 600.2907.]

The plain wording of this statute does not support plaintiff Tyler's assertion, nor does he state any applicable case law. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Finally, we find that plaintiff Tyler's remaining claims (abuse of process, civil stalking, and intentional infliction of emotional distress) were not included in the first amended complaint, and were therefore properly dismissed. MCR 2.111(B)(1) states that "[a] complaint, counterclaim, cross-claim, or third-party complaint must contain . . . the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend . . . ." In addition, MCR 2.203(A) states:

> In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

Although a motion to amend ordinarily should be granted, it is not required if any of the following exists:

> [1] undue delay, [2] bad faith or dilatory motive on the part of the movant, [3] *repeated failure to cure deficiencies by amendments previously allowed*, [4] undue prejudice to the opposing party by virtue of allowance of the amendment, [and 5] futility." [*Sands Appliance Servs v Wilson*, 463 Mich 231, 240; 615 NW2d 241 (2000) (internal citation and quotation marks omitted; emphasis added).]

Because plaintiff Tyler had already amended his complaint once, and he waited until summary disposition was granted before he asked to add claims of civil stalking and abuse of process (based on the exact same facts already pleaded), the trial court did not abuse its discretion in denying leave to amend. Moreover, although plaintiff attempted to argue that his initial claim for "intentional actions" was really a claim for "intentional tort," the elements he listed were for intentional infliction of emotional distress. He claimed that defendant's conduct was outrageous, but he still failed to allege that he suffered severe emotional distress.[4] Therefore, that claim was properly dismissed, and the court did not abuse its discretion in denying plaintiff Tyler's motions for reconsideration and to amend.

DOCKET NO. 288240

Defendant argues that plaintiff Tyler's claims were frivolous and the trial court clearly erred in denying her motion for costs and fees pursuant to MCR 2.625 and MCR 2.114.

This Court reviews a trial court's determination regarding whether an action was frivolous for clear error. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 408; 651

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[4] "In order to establish intentional or reckless infliction of emotional distress, a plaintiff must show (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003) (internal citation and quotation marks omitted).

NW2d 756 (2002). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id*. (internal citation and quotation marks omitted).

> MCR 2.625(A)(2) provides that if the court finds that an action or defense is frivolous, it must award costs as provided by MCL 600.2591 . . . . The filing of a signed pleading that is not well-grounded in fact and law subjects the filer to similar sanctions, pursuant to MCR 2.114(E)." [*Yee*, 251 Mich App at 407.]

Pursuant to MCL 600.2591(3)(a),

> "[f]rivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

"The determination whether a claim or defense is frivolous must be based on the circumstances at the time it was asserted. And, [n]ot every error in legal analysis constitutes a frivolous position." *Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 486; 760 NW2d 526 (2008) (internal citations and quotation marks omitted). Further,

> [t]he frivolous claims provisions impose an affirmative duty on each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. The reasonableness of the inquiry is determined by an objective standard. The focus is on the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry depends on the facts and circumstances of the case. The attorney's subjective good faith is irrelevant. [*AG v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003) (internal citations omitted).]

The trial court, in ruling on the motion for sanctions, stated: "After a thorough review of the pleadings and papers filed in this case, the [c]ourt cannot conclude that [the] action was frivolous." We are not left with a definite and firm conviction that the trial court made a mistake with regard to this ruling. *Yee*, 251 Mich App 408. The record provides support for the finding that plaintiff Tyler did not initiate the action primarily "to harass, embarrass, or injure the prevailing party." MCL 600.2591(3)(a)(i).[5] Indeed, it is apparent from the detailed pleadings that plaintiff Tyler was attempting to rectify perceived wrongs. Moreover, there is no basis from

[5] We note that defendant, in her appellate brief, focuses on the definition of a frivolous claim as set forth in MCL 600.2591(3).

which to conclude that plaintiff Tyler "had no reasonable basis to believe that the facts underlying that party's legal position were in fact true." MCL 600.2591(3)(a)(ii).

Whether plaintiff Tyler's "legal position was devoid of arguable legal merit," see MCL 600.2591(3)(a)(iii), is a closer question. However, while the lawsuit has been deemed meritless, the claims did in fact have certain legal authorities and arguments that supported them. As noted in *Louya v William Beaumont Hosp*, 190 Mich App 151, 163; 475 NW2d 434 (1991):

> The statutory scheme is designed to sanction attorneys and litigants who file lawsuits or defenses without reasonable inquiry into the factual basis of a claim or defense, not to discipline those whose cases are complex or face an "uphill fight." The ultimate outcome of the case does not necessarily determine the issue of frivolousness.

Additionally, "[t]he trial court's determination of frivolity will not be reversed merely because this Court would have reached a different conclusion or because the evidence in support of that determination is comparatively weak." *BJ & Sons Construction Co, Inc v Van Sickle*, 266 Mich App 400, 405 n 4; 700 NW2d 432 (2005). The record adequately supported the trial court's ruling, no clear error is apparent, and reversal is unwarranted.

DOCKET NO. 287401

Plaintiff Hutchings first argues that the trial court erred in granting defendant's motion for summary disposition.[6] We disagree.

In his first amended complaint, plaintiff Hutchings alleged that the following wrongful acts by defendant amounted to defamation, malicious prosecution, and "intentional actions": (1) on September 5, 2006, defendant filed a report with the sheriff's department wherein she falsely accused plaintiff Hutchings of road rage and attempting to injure her; (2) on October 12, 2006, defendant filed an ex parte petition for a PPO in Lapeer County where she repeated the same false accusations and further asserted that, on August 31, 2006, plaintiff Hutchings trespassed on her property and acted in a hostile manner; (3) on December 6, 2006, defendant filed a report with the sheriff's department wherein she falsely accused plaintiff Hutchings of threatening her, and referenced the August 31, 2006, incident but stated that it happened on August 29, 2006; (4) defendant contacted the Oakland County Prosecutor's office and repeated the above false statements in an attempt to subject plaintiff Hutchings to prosecution; and (5) defendant repeated and republished the aforementioned false and defamatory statements to others whose identity is presently unknown.

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[6] Although defendant moved for summary disposition pursuant to both MCR 2.116(C)(8) and (C)(10), the court granted the motion pursuant to MCR 2.116(C)(8). The trial court initially granted summary disposition on all plaintiff Hutchings's claims except the claim of malicious prosecution with respect to the PPO proceedings. This claim was dealt with in later proceedings and is discussed *infra*.

Plaintiff Hutchings argues, as did plaintiff Tyler, that (1) an absolute privilege does not exist to bar his claims of defamation, and (2) pursuant to MCL 600.2907, defendant should be held civilly liable for each report to the sheriff's department where there has been no affirmative action against plaintiff. As discussed above, these arguments have no merit.

Complaints to the police are absolutely privileged, and, therefore, four of the five statements cited by plaintiff Hutchings are privileged and cannot constitute the basis of a defamation claim. *Hall*, 153 Mich App at 619. The fifth alleged "statements" to persons unknown was not pleaded with the requisite specificity. *Ledl*, 133 Mich App at 589. Regarding malicious prosecution, in his first amended complaint plaintiff Hutchings did not set forth as part of this claim any proceedings that terminated in his favor, and, therefore, dismissal of this claim on summary disposition was proper. *Cox*, 233 Mich App at 391-393. Although defendant claims that contacting the sheriff's department and alleging the commission of a crime constitutes causing or procuring another to be proceeded against pursuant to MCL 600.2907, as discussed above, the plain wording of the statute does not support plaintiff Hutchings's position. Finally, the trial court properly concluded that there is no recognized cause of action called "intentional actions." Therefore, the trial court properly granted defendant's motion for summary disposition under MCR 2.116(C)(8).

Plaintiff Hutchings next argues that the trial court erred in denying his motion for reconsideration of the order granting defendant's motion for summary disposition. We disagree.

After entry of the order granting defendant's motion for summary disposition, plaintiff Hutchings filed a motion for reconsideration, arguing that (1) in a defamation claim, there is only a qualified privilege when providing information to a police officer, and the court cited unpublished cases when it determined that there was an absolute privilege; (2) defendant should be held liable for malicious prosecution for each report that ended in no affirmative action against plaintiff Hutchings by either the sheriff's department or the prosecutor, pursuant to MCL 600.2907; and (3) the tort of intentional infliction of emotional distress is a separate cause of action from defamation. The court denied the motion, correctly observing that plaintiff Hutchings's motion "merely reargues the issues previously presented."

Plaintiff Hutchings's claim that the trial court relied on unpublished case law in finding that an absolute privilege barred his defamation claims is incorrect; the trial court cited the published case of *Hall*, *supra*, in this case as well. Plaintiff Hutchings again claims that MCL 600.2907 proved that the court erred in not considering the sheriff's department's failure to act on a complaint as a favorable termination to proceedings in a malicious-prosecution claim; however, as discussed above, this statute does not support his position.

Further, although plaintiff Hutchings tried to argue that his claim for "intentional actions" was in fact a claim for intentional infliction of emotional distress (though labeled "intentional tort"), the trial court concluded that "[t]he conduct alleged in this case is not neighborly and somewhat obsessive, but it is not extreme and outrageous." In a claim for intentional infliction of emotional distress,

> [l]iability attaches only when a plaintiff can demonstrate that the defendant's conduct is 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. A defendant is not liable for mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. [*Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003) (internal citations and quotation marks omitted).]

Moreover,

> [i]n reviewing claims of intentional or reckless infliction of emotional distress, it is generally the trial court's duty to determine whether a defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. . . . Where reasonable minds may differ, whether a defendant's conduct is so extreme and outrageous as to impose liability is a question for the jury. [*Id*. at 197.]

Even were we to disagree with the trial court regarding whether the alleged behavior was outrageous (which we do not), plaintiff Hutchings failed to allege that he suffered from severe emotional distress, another necessary element of the tort of intentional infliction of emotional distress. *Id*. at 196. Therefore, the trial court did not abuse its discretion in denying plaintiff Hutchings's motion for reconsideration.

Plaintiff Hutchings next argues that the trial court erred in granting defendant's motion to strike and dismiss his second amended complaint. We disagree

"This Court reviews a trial court's decision regarding a motion to strike a pleading pursuant to MCR 2.115 for an abuse of discretion." *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 469; 666 NW2d 271 (2003).

In its motion granting defendant's motion for summary disposition, the court granted leave to plaintiff Hutchings to file an amended complaint to which he was instructed to attach an order showing that the PPO action had been resolved in his favor. Plaintiff Hutchings's second amended complaint went into excruciating detail, explaining that a PPO was in fact entered in Lapeer Circuit Court, and, in response to plaintiff Hutchings's attempts to terminate it, the Lapeer court transferred the case to Oakland Circuit Court. The Oakland Circuit Court transferred it back to Lapeer, but then took it back again and held it in abeyance. By the time Oakland Circuit Court Judge Leo Bowman held a hearing on plaintiff Hutchings's motion to terminate, the PPO had expired. Plaintiff Hutchings contended in his response to defendant's motion to strike that this was a termination of proceedings in his favor. The trial court disagreed, stating:

> [T]he personal protection order was not denied on the merits. After several delays, the parties stipulated that the personal protection order had expired.
>
> There is no case law interpreting the elements of malicious prosecution in civil proceedings in this context. Clearly, a personal protection order that the parties stipulated had expired is not the same thing as a personal protection order which was denied for lack of merit in the grounds presented. After review of the opinion and the order dismissing the personal protection proceedings, the court

> concludes that an order of this nature does not satisfy the element that the proceedings have terminated in the plaintiff's favor.

On appeal, plaintiff Hutchings's repeats his assertion that the expiration of the PPO was a dismissal in his favor. We are not persuaded that the trial court abused its discretion.

The PPO was entered, held in abeyance, and then expired before plaintiff Hutchings could bring his motion to terminate it. Thus, there was no consideration of the merits. Plaintiff Hutchings cites no case law supporting his position that an expired PPO constitutes a favorable termination of civil proceedings.

> A party may not leave it to this Court to search for authority to sustain or reject its position. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority . . . . An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. [*Peterson Novelties, Inc*, 259 Mich App at 14 (internal citations and quotation marks omitted).]

Plaintiff Hutchings next argues that the trial court erred in denying his second motion for reconsideration. We disagree.

In his second motion for reconsideration, plaintiff Hutchings argued that the trial court misunderstood Judge Leo Bowman's order dismissing the PPO and it had, in fact, been an outcome favorable to him. To support his position, plaintiff Hutchings attached an order from Judge Bowman that was entered after the trial court in the case at bar denied the first motion for reconsideration. The order stated, in pertinent part:

> The court notes that on May 23, 2007, it entered an order which provided that "the order for PPO entered by the Lapeer County Circuit Court on October 12, 2006 is held in abeyance pending a new hearing on said motion."
>
> The court further notes that, thereafter, it entered its own order disposing of the entire action on December 7, 2007. In its order entitled "Order Denying or Dismissing Petition for Personal Protection Order," it indicated . . . "This order is entered after hearing. The court finds: Parties stipulate that the personal protection order has expired in this case, t/f ppo is denied." Therefore, the relief which respondent is seeking has already been addressed, as the court's records reflect (via that order) that the PPO sought in this action was denied.

The trial court in the case at bar concluded that this order did not change the fact that the PPO had never been decided on the merits in plaintiff Hutchings's favor and concluded that plaintiff Hutchings "now seeks to reargue that the prior civil proceedings were terminated in [his] favor. The plaintiff merely seeks to reargue the same matter previously presented." We agree that plaintiff Hutchings presented no new arguments and did not point to any error on the part of the trial court; therefore, the court did not abuse its discretion in denying the motion for reconsideration. MCR 2.119(F)(3).

Defendant argues that plaintiff Hutchings's claims were frivolous and the trial court clearly erred in denying her motion for costs and fees pursuant to MCR 2.625 and 2.114. For the same reasons as set forth in Docket No. 288240, we find that reversal is unwarranted.

Affirmed.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro