AFFIRMED and Opinion Filed December 27, 2024

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00130-CV

FRANCIS PALARDY, Appellant
V.
AT&T SERVICES INC. AND INTERNATIONAL BUSINESS MACHINES CORPORATION, Appellees

On Appeal from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-06348-2022

MEMORANDUM OPINION

Before Justices Partida-Kipness, Carlyle, and Garcia
Opinion by Justice Carlyle

Appellant Francis Palardy sued appellees AT&T Services Inc. and International Business Machines Corporation for defamation. Via a staffing firm, Experis, Palardy worked as an IBM contractor on an AT&T project. The project required him to perform technical work on a computer, but when AT&T became aware Palardy appeared to lack even basic computer skills, such as logging on to a laptop, it informed IBM and Experis that Palardy was to be terminated. We affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

The trial court properly denied summary judgment

The trial court granted appellees' no evidence and traditional motions for summary judgment and denied Palardy's motion for summary judgment, which appears to be a traditional motion. When both sides move for summary judgment and the trial court grants one and denies the other, we review both sides' summary judgment evidence and determine all questions presented, rendering the judgment the trial court should have rendered. *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 972 (Tex. 2000).

"The common law provides a qualified privilege against defamation liability when 'communication is made in good faith and the author, the recipient or a third person, or one of their family members, has an interest that is sufficiently affected by the communication.'" *Burbage v. Burbage*, 447 S.W.3d 249, 254 (Tex. 2014) (quoting *Cain v. Hearst Corp.*, 878 S.W.2d 577, 582 (Tex. 1994)). This can be "between people having a common business interest in employment-related matters or in reference to matters that the speaker has a duty to communicate to the other." *See Durant v. Anderson*, No. 02-14-00283-CV, 2020 WL 1295058, at *25 (Tex. App.—Fort Worth Mar. 19, 2020, pet. denied) (mem. op.). To prevail on summary judgment, the defendant must conclusively establish a lack of actual malice in making the allegedly defamatory statement. *Randall's Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 646 (Tex. 1995) (citing *Jackson v. Cheatwood*, 445

S.W.2d 513 (Tex. 1969)).[1] Actual malice means a statement was made with knowledge of its falsity or with reckless disregard for its truth. *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (orig. proceeding). Whether the privilege applies is a question of law. *Holloway v. Texas Medical Ass'n,* 757 S.W.2d 810, 813 (Tex. App.—Houston [1st Dist.] 1988, writ denied).

First, some background: Palardy relocated to North Texas to start this job on November 26, 2018, having previously coordinated with IBM to have a laptop sent to his prior residence on the West Coast. Without informing Experis, IBM, or AT&T, Palardy left for Texas without having received the laptop. Palardy did not show up for work on the 26th, and appeared the next day but without the laptop. He waited until midday this first day to inform IBM that he did not have a computer, and was seen looking at his phone and reading books on his tablet in a corner the rest of the day.

The next day, AT&T provided a temporary laptop for Palardy, and he admitted receiving the password for it but that it took him over an hour to log in with that password. Others tried to help and referred Palardy to an 800 number to help, but Palardy claimed he didn't like calling 800 numbers and that if he did, "it would just be confusing." Someone else eventually logged on for Palardy, but he did no substantive work that second day. The third day, McEnroe, whose computer Palardy

[1] Were the matter to proceed to trial, if the defamation defendant proves qualified privilege, the plaintiff must prove the statement was made with malice in order to prevail. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 646.

was using, instructed Palardy to change the password but Palardy struggled to do so. Palardy admitted he missed a morning meeting trying to perform this basic function. Palardy did no substantive work this third and final day, despite having all he needed to do so.

First, Palardy alleges AT&T project manager Martin McEnroe "sent emails to IBM management" seeking Palardy's dismissal and stating "I don't think he has any idea of whether a computer is working or not. He seems not to understand the most basic things about computers." McEnroe also said: "He has two computers. They are both working" and "I don't need people who will sit in a corner and not do anything." McEnroe's statement concerned an employee's performance and he made it to someone who had an interest therein. Therefore, it is subject to a qualified privilege. *See Burbage*, 447 S.W.3d at 254.

Appellants establish lack of malice by conclusively proving that McEnroe and those who reported their interactions with and observations of Palardy had reasonable grounds to believe that their statements were true. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647; *Huckabee v. Time Warner Entm't Co.*, 19 S.W.3d 413, 420 (Tex. 2000). They have shown more than some self-serving protestation of sincerity. *See Bentley v. Bunton*, 94 S.W.3d 561, 597 (Tex. 2002). Even assuming the statements were false, appellants have proved McEnroe exhibited no actual malice by way of reckless disregard—either by having "entertained serious doubts as to the truth" of the statement or by having had a "high degree of awareness of [the

statement's] probable falsity." *See Bentley*, 94 S.W.3d at 591. Thus, the trial court did not err when it granted appellees' motion for summary judgment concerning McEnroe's email to IBM management seeking Palardy's dismissal.

Second, Palardy alleged McEnroe's statements to police were defamatory. McEnroe filed a police report in response to both an email Palardy sent him approximately a week after being fired and a text Palardy sent to another employee. Palardy's email covered a range of topics, from alleging a conspiracy against him during the three days he worked on this job to discussions of other large companies and references to other discrimination and retaliation complaints he had filed in the past. In a move that understandably troubled McEnroe, Palardy ended his email by saying "I also predicted MGM would be hit by a massive terrorist attack, which the FBI didn't like. Last year someone shot five hundred people at an MGM concert. I even predicted it would be at a concert. Maybe that was coincidence. I added that so you can't ignore this email. All of this info has already been given to Experis." Palardy's text to the other employee said, "Tell Marty I'm gunning for his job. If he's called away to hr you'll know why. I could be back soon."

Palardy alleges defamation when "McEnroe claimed he felt threatened" and told police he "did not know how to log onto the Windows computer, [sic] when he was hired as a computer programmer." Appellants have conclusively shown McEnroe's report that he felt threatened was his opinion. No reasonable reader would be misled to think this statement concerned anything but McEnroe's genuine

reaction to Palardy's email. *See Lilith Fund for Reproductive Equity v. Dickson*, 662 S.W.3d 355, 369 & n.76 (Tex. 2023) (discussing opinion statements).

Also, a person has a qualified privilege to make statements to authorities in good faith and without malice. *See Vista Chevrolet, Inc. v. Barron*, 698 S.W.2d 435, 437–40 (Tex. App.—Corpus Christi 1985, no writ). McEnroe's statement about Palardy's inability to log on to the computer sought to contextualize his relationship to Palardy and was an expression of his belief based on observation and consultation with others. Palardy admitted to having trouble with passwords and that resetting a password was harder for him than for someone else. McEnroe's statement, arguably attributable only to AT&T, is also subject to the qualified privilege because it was made to an entity with a duty to investigate. *See id.*; *Randall's Food Markets, Inc.*, 891 S.W.2d at 647. For the same reasons we expressed in regard to the first statement, appellants have proved McEnroe made it without malice. *See Bentley*, 94 S.W.3d at 591. Finally, Palardy seems overly focused on the fact that police declined to initiate criminal proceedings against him based on the report. The law enforcement conclusion not to refer the matter for criminal prosecution bears no relevance to this defamation claim and in no way vitiates the qualified privilege. The trial court did not err when it granted summary judgment concerning McEnroe's police statements.

Third, Palardy alleges appellees are liable for McEnroe's email to a manager at Luxoft stating, "I believe this individual is mentally ill." Luxsoft is another

company involved in the project. McEnroe made the statement in response to a situation where an employee at Luxsoft—who had some contact with Palardy during his short stint—saw Palardy at her hotel two weeks after he had been terminated. She said seeing him at her hotel made her feel uneasy. Here too, McEnroe reported his opinion on the situation to another entity staffing the project having an interest or duty in the matter to which the communication relates and has established a lack of malice in his sincere belief in the truth. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647; *Burbage*, 447 S.W.3d at 254. By the same token, appellants have conclusively proven McEnroe did not recklessly disregard the truth in making the statement. *See Bentley*, 94 S.W.3d at 591. The qualified privilege applies and the trial court did not err in granting summary judgment.

Fourth, Palardy alleged McEnroe

> wrote a longer two-page email about his decision to dismiss plaintiff. This email contradicts McEnroe's earlier claims that Plaintiff could not tell if a computer was working and he could not log in. In his email McEnroe makes several false statements related to computer security that intend to make Plaintiff look incompetent. In this email McEnroe also references Plaintiff as a "deaf mute".

McEnroe sent this email to an IBM employee. In it, he exhaustively detailed Palardy's contacts with McEnroe and the team, including Palardy's many failures at basic tasks and missteps indicating, at least to McEnroe, his lack of fitness for the job. Again, McEnroe was sending his comments to another entity staffing the project having an interest or duty in the matter to which the communication relates and thus

his statements are subject to the qualified privilege. *See Burbage*, 447 S.W.3d at 254. And it is clear McEnroe believed in the truth of what he relayed to his team member in discussing Palardy's employee performance, conclusively demonstrating a lack of malice. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647.

Palardy makes much of McEnroe's use of the phrase "deaf-mute" in the email. McEnroe described instructing Palardy to "go to the stand-up and pick up tasks. That's how you'll get work. In the meantime, read the web pages for our project." The next day, having observed Palardy at the "stand-up," McEnroe checked an internal system where employees were instructed to list tasks they had picked up but found Palardy had none.[2] McEnroe confronted Palardy, as he explained in the email:

> "Were you at the stand-up?"
>
> "What? No"
>
> "The sprint, did you go to the sprint? (I know it's really a scrum but it's to talk about the sprint)
>
> "No"
>
> "Frank," I said, point at the meeting room three feet away," I looked in the window during the sprint and saw you sitting there looking at the monitor and you had your laptop. Why are you telling me you weren't there?"
>
> He looked confused and then said "Oh, the meeting?"

[2] McEnroe explains later in the email: "I suspected that Frank had no experience with Agile development, that he had shown no recognition of the words Sprint and Scrum and Stand-up and he had no idea we were following a specific ceremony of the Agile method at the stand-up."

"Agile" appears to be a software development methodology, "the ability to create and respond to change [in] an uncertain and turbulent environment." *See* "Agile Essentials: Agile 101 What is Agile?," https://www.agilealliance.org/agile101/ (last visited December 17, 2024).

> "Yes, Frank, the meeting. Could you hear what was going on during the meeting?"
>
> "Yes, I can hear. People went over what they are working on"
>
> Now, I asked this because of course he has a cochlear implant. I know what it is, I know what it looks like, I know what it does. Nothing had to be explained to me. If he had said that he trouble hearing then I was ready to explain what he could do in order to participate. From my perspective a deaf-mute (can we still say that?) could fully participate in a sprint (yeah, scrum) since the principle of Agile is to use the JIRA to document what you are doing. I have often thought if we all pretended we couldn't talk then our stand-ups would be better. I was fully prepared to work with the rest of the team privately if Frank had said he had an issue hearing. He did not. I did however, always make sure that he could see my lips when we were talking just in case he was being a little shy about problems, given that it is the first few days. [sic passim]

The most credible interpretation of McEnroe's use of "deaf-mute" is that he suggests a generic person who could neither hear nor speak "could fully participate in a sprint." *See Lilith Fund*, 662 S.W.3d at 363 (review alleged defamatory statements from reasonable person's perspective, given the entirety of the communication). This much is clear because, in the very next sentence he says, "I have often thought if we all pretended we couldn't talk then our stand-ups would be better." McEnroe spends the next two sentences addressing Palardy's hearing and accommodating it. Thus, while using an outdated, offensive term, McEnroe was not applying it to Palardy and the summary judgment record conclusively demonstrates lack of malice in this generic statement. *See Randall's Food Markets, Inc.*, 891

S.W.2d at 647. This portion of the email also falls under the qualified privilege. *See Burbage*, 447 S.W.3d at 254.

A defendant is entitled to summary judgment on an affirmative defense if the defendant conclusively proves all elements of the affirmative defense, as appellants have done here. *See Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). Palardy has failed to produce evidence raising a genuine issue of material fact on the affirmative defense of qualified privilege. *See Nichols v. Smith*, 507 S.W.2d 518, 520–21 (Tex. 1974). The trial court did not err when it granted appellees' motion for summary judgment.[3]

Other issues

In his first issue, Palardy claims appellees mischaracterize the facts and otherwise demonstrates his misunderstanding of the legal basis for a no-evidence motion for summary judgment by suggesting he did provide evidence. Neither is germane to the issues before the court, nor do they raise an appealable issue. Palardy next supposes that the trial court might have "found some small issue" in his evidence presentation, leading the court to "dismiss it all." He builds on this unfounded assumption in the next sentence, stating as fact that the court dismissed

[3] Palardy's live petition does not make any allegations against IBM, and we affirm the summary judgment grant in its favor in all respects. In any event, to the extent Palardy successfully makes a defamation claim against IBM, it fails for the same reasons we have outlined as to his allegations against AT&T.

all of his evidence without appellees requesting it. He concludes that this "is improperly denying evidence" when the court "needed to favor the non-movant."

Palardy makes no further claims, other than to insist the court must indulge every reasonable inference in the non-movant's favor, citing *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005), among others. We generally agree with that basic point of summary judgment law, and would apply it if called upon to resolve factual doubts or inferences. Palardy, however, gains little benefit from this principle in this case because legal principles—not the absence of fact issues—support summary judgment. In any event, Palardy's first issue presents nothing for our review. *See* TEX. R. APP. P. 38.1(i).

In his fifth issue, Palardy argues the trial court wrongly granted appellees' request to prohibit punitive damages on the basis that he did not request an apology within 90 days. *See* TEX. CIV. PRAC. & REM. CODE § 73.055(c) ("If not later than the 90th day after receiving knowledge of the publication, the person does not request a correction, clarification, or retraction, the person may not recover exemplary damages."). The court did so in its order granting special exceptions to his second amended petition, and in reviewing this order, we take all allegations, facts, and inferences in the pleadings as true, viewing them in the lights most favorable to the plaintiff. *See Boales v. Brighton Builders, Inc.*, 29 S.W.3d 159, 163 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Palardy never contends he made the

statutorily required request for "correction, clarification, or retraction" within 90 days. We overrule this issue.

In his sixth and seventh issues, Palardy argues that the forced retirement of the trial court judge improperly affected the outcome of his case and that the trial court was improperly motivated by Palardy's federal lawsuits under the Americans with Disabilities Act. Palardy fails to cite any relevant authority that supports either contention, instead spending his time complaining about the aged, immigrants, and gay people and his perception that they fare better than those in the Deaf community. Issues six and seven present nothing for our review. *See* TEX. R. APP. P. 38.1(i).

We affirm the trial court's judgment.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

FRANCIS PALARDY, Appellant	On Appeal from the 401st Judicial District Court, Collin County, Texas
No. 05-24-00130-CV V.	Trial Court Cause No. 401-06348-2022.
AT&T SERVICES INC. AND INTERNATIONAL BUSINESS MACHINES CORPORATION, Appellees	Opinion delivered by Justice Carlyle. Justices Partida-Kipness and Garcia participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees AT&T SERVICES INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION recover their costs of this appeal from appellant FRANCIS PALARDY.

Judgment entered this 27th day of December 2024.