Affirmed and Memorandum Opinion filed September 7, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00450-CV

STANLEY HUNT, Appellant

V.

AIRLINE HOUSE, INC. AND KERRY VAN ALLEN, Appellees

On Appeal from the 151st District Court
Harris County, Texas
Trial Court Cause No. 2015-66079

M E M O R A N D U M O P I N I O N

In six issues, appellant Stanley Hunt contends the trial court erred in granting summary judgment in favor of appellees Airline House, Inc., and Kerry Van Allen on his claims for (1) breach of contract; (2) unlawful lockout; (3) retaliation; (4) intentional infliction of emotional distress; (5) defamation; and (6) declaratory judgment. We affirm.

BACKGROUND

Appellant is a registered sex offender. As a condition of his parole, appellant was required to wear an ankle monitor and reside in a transitional housing facility, commonly known as a halfway house.

Kerry Van Allen is the Executive Director of Airline House, Inc., a private halfway house, that contracts with the Pardons and Parole Division of the Texas Department of Criminal Justice (the Department) to provide temporary residential housing for parolees. The record contains a Householder Memorandum of Agreement between Airline House and the Department. Also in the record is a form provided by the Department titled "Sex Offender Caseload Collateral Contact Information." The first paragraph is initialed by Van Allen and states, "I agree I will not withhold information from the parole officer concerning the offender's behavior."

Appellant applied to Airline House. The letter accompanying his application states, "I am seeking the approval of your transitional housing facility for placement in your program upon my release from prison. . . . Please find enclosed my application, along with my payment . . . to cover costs of reserving me a bed." Airline House responded with a letter of acceptance, stating, "We have a bed available for you!" The letter informed appellant of the rules for residents. Letters of residency, from September 25, 2013, to November 15, 2013, provide appellant was a resident beginning on September 20, 2013. The letters stated, "We are a transitional living facility."

Appellant resided at Airline House until December 9, 2013, when he was informed that he was required to vacate the premises by 5:00 p.m. that day. On November 4, 2015, appellant filed suit against Van Allen and Airline House for breach of contract, unlawful lockout, retaliation by a landlord against a residential

tenant, intentional infliction of emotional distress, and defamation. Appellant contended he was asked to vacate Airline House because Van Allen believed that appellant had reported a bed bug infestation to the City of Houston. Appellant pled that on July 3, 2014, appellant provided appellees of a "notice of claim" and Van Allen knowingly then made false allegations to appellant's supervising parole officer that appellant had failed to attend the requisite Alcoholics Anonymous/Narcotics Anonymous ("AA/NA") meetings.

Appellant moved for partial summary judgment on January 4, 2015, seeking a declaration that the agreement to provide him a bed constituted a lease. On February 5, 2016, appellees filed a traditional and no-evidence motion for summary judgment. On April 12, 2016, the trial court denied appellant's motion for partial summary judgment. Subsequently, on May 11, 2016, the trial court granted appellees' motion for final summary judgment and dismissed appellant's claims with prejudice. From that judgment, appellant brings this appeal.

STANDARD OF REVIEW

We review de novo the trial court's order granting summary judgment. *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 644 (Tex. 2009) (per curiam); *Wyly v. Integrity Ins. Sols.*, 502 S.W.3d 901, 904 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Where a trial court's order granting summary judgment does not specify the grounds relied upon, summary judgment will be affirmed if any of the grounds are meritorious. *FM Props. Operating Co., v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000).

We consider the evidence in the light most favorable to the non-movant, and indulge reasonable inferences and resolve all doubts in its favor. *See City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005); *Wyly*, 502 S.W.3d at 904. "We credit evidence favorable to the non-movant if reasonable fact finders could and disregard

contrary evidence unless reasonable fact finders could not." *Wyly*, 502 S.W.3d at 904.

When both no-evidence and traditional grounds for summary judgment are asserted, we first review the trial court's order under the no-evidence standard. *PAS, Inc. v. Engel*, 350 S.W.3d 602, 607 (Tex. App.—Houston [14th Dist.] 2011, no pet.). To prevail on a no-evidence summary judgment, the movant must allege that no evidence exists to support one or more essential elements of a claim for which the non-movant bears the burden of proof at trial. Tex. R. Civ. P. 166a(i); *Kane v. Cameron Int'l Corp.*, 331 S.W.3d 145, 147 (Tex. App.—Houston [14th Dist.] 2011, no pet.). A no-evidence motion may not be conclusory, but must instead give fair notice to the non-movant as to the specific element of the non-movant's claim that is being challenged. *See Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310–11 (Tex. 2009). The non-movant must then present evidence raising a genuine issue of material fact on the challenged elements. *Kane*, 331 S.W.3d at 147. A fact issue exists where there is more than a scintilla of probative evidence. *See Buck v. Palmer*, 381 S.W.3d 525, 527 (Tex. 2012) (per curiam). More than a scintilla of evidence exists if the evidence rises to a level that would allow reasonable and fair-minded people to differ in their conclusions as to the existence of a vital fact. *Dworschak v. Transocean Offshore Deepwater Drilling, Inc.*, 352 S.W.3d 191, 196 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (citing *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004)).

To prevail on a traditional motion for summary judgment, a movant must establish that no genuine issue of material fact exists so that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). Summary

judgment is appropriate if the movant conclusively negates at least one essential element of the plaintiff's claim. *Wyly*, 502 S.W.3d at 905.

ANALYSIS

Breach of Contract

In his first issue, appellant contends the trial court erred in granting summary judgment on his breach of contract claim. As appellant notes, appellees moved for summary judgment on the basis there was no lease agreement. In the absence of any contract, appellees' contended, appellant's breach of contract claim must fail. On appeal, appellant argues (1) appellees' failed to establish there was no lease agreement; and (2) tenants hold an estate in land. For the reasons stated below, we conclude neither of these arguments demonstrate the trial court erred in granting summary judgment.[1]

Airline House contracts with the Department to participate in a halfway house program. The Department uses halfway houses for those "who would benefit from a smoother transition from incarceration to supervised release." Tex. Gov't Code § 508.118(a). A halfway house is a "residential correctional facility operated by or under contract with the department to provide housing, supervision, and programmatic support to individuals released on parole." Tex. Gov't Code § 508.157(a-1). Texas requires the Department to contract with private halfway houses "if an appropriate private halfway house program is contractually available**.**" Tex. Hum. Res. Code § 242.054(a). When the Department contracts for the

[1] Unless the issue is one of fundamental error, we only consider those arguments raised in appellant's brief. *See Fields v. City of Texas City*, 864 S.W.2d 66, 68 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (holding additional arguments in the trial court against the application of limitations were abandoned on appeal when appellants did not raise them in their brief).

development of a halfway house program, "the Department shall select a service provider. . . ." Tex. Hum. Res. Code § 242.054(b).

Here, the Department chose Airline House as their service provider to house appellant as a condition of appellant's parole. In Airline House's rules and regulations, an advance rent payment is required "for TDCJ placement." Thus, the initial payment is a fee which allows appellant to become a program participant. Subsequent rent payments allowed appellant to continue participating in the program.

In *McWilliams v. State*, 719 S.W.2d 380, 381 (Tex. App.—Houston [1st Dist.] 1986), *rev'd on other grounds*, 782 S.W.2d 871 (Tex. Crim. App. 1990), appellant resided in a halfway house "designated as a unit of TDC" and evidence showed that appellant was informed the halfway house was so designated. Here, in his application for transitional housing placement, appellant states, "I am seeking approval . . . for placement in your *program*." Appellant admitted in his affidavit that he believed to be joining a transitional housing *program*. Appellant further stated he was accepted into the *program* after paying all costs. Additionally, the following question was posed in Airline House's admission form: "Do you understand that this is a recovery facility?" Appellant answered, "Yes."

In *Goodwin v. State*, 376 S.W.3d 259, 261 (Tex. App.—Austin 2012, pet. ref'd), the State entered a contract with a halfway house to provide housing for sex offenders receiving treatment by the Council for Sex Offender Treatment (CSOT). Goodwin agreed, as a condition to his supervision and treatment, to abide by all requirements imposed by the CSOT. *Id.* The CSOT required offenders to abide by the halfway house rules. *Id.* If one violated the halfway house rules, they also violated CSOT requirements. *Id.* Here, if appellant violated the halfway house rules,

he also violated the Department's conditions of his parole because residing in a halfway house was a condition of his parole.

In *Jackson v. Johnson*, 475 F.3d 261, 263 (5th Cir. 2007), a supervisee was released from prison under mandatory supervision and resided in a privately operated halfway house as a condition. He was supervised by the Pardons and Paroles Division of the Texas Department of Criminal Justice. *Id.* The *Jackson* court held that the supervisee's confinement at the private halfway house was part of Texas's scheme of imprisoning and reforming felons and then reintegrating them into society. *Id.* at 267. Here, appellant's residency at Airline House, a private halfway house, is part of Texas's scheme to provide housing for parolees. In light of this, we decline to hold that appellant's participation in the Department's halfway house program gave rise to a lease agreement.

A tenant is a person authorized by a lease to occupy a dwelling to the exclusion of others. Tex. Prop. Code 92.001(6). A dwelling is defined as "one or more *rooms* rented for use as a permanent residence. . . ." Tex. Prop. Code § 92.001(1) (emphasis added). A permanent residence is distinguishable from a temporary residence. *See Warehouse Partners v. Gardner*, 910 S.W.2d 19, 23 (Tex. App.—Dallas 1995, writ denied). The property code defines temporary housing as hotels, motels, inns or *similar transient housing*. *Id.* (emphasis added); Tex. Prop. Code. § 92.152(a).

Appellant was provided a bed, not a room, in Airline House, thus he did not lease a "dwelling." The room in which appellant resided was not occupied to the exclusion of others. Tex. Prop. Code § 92.001(1); *see also Mallam v. Trans-Texas Airways*, 227 S.W.2d 344, 346 (Tex. Civ. App.—El Paso 1949, no writ) (holding the right of exclusive possession to be one of the constituting and essential elements of tenancy). Rather, the parolees occupied a bed in a common room. Moreover, the bed

was not a permanent residence, but temporary housing. As noted above, appellant's letter accompanying his "TRANSITIONAL HOUSING APPLICATION" stated that he was "seeking the approval of your transitional housing facility" and that payment was enclosed "to cover costs of reserving [him] a bed." Further, appellant averred in his affidavit that he was trying to obtain temporary housing to increase his chances of being released on parole. *See Olley v. HVM, L.L.C.*, 449 S.W.3d 572, 576 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (holding a hotel registration card that did not include language indicating the hotel guest, a temporary resident, was a tenant was insufficient to create a landlord/tenant contract.) In this case there is no evidence that appellant leased a dwelling as a permanent resident to the exclusion of others. Accordingly, we conclude appellant failed to produce more than a scintilla of evidence that he was a tenant. Having rejected the arguments set forth in appellant's brief, we overrule issue one.

Unlawful Lockout and Retaliation

Appellant's second and third issues claim the trial court erred in granting summary judgment as to appellant's unlawful lockout and retaliation claim. Appellant pled unlawful lockout on the basis that he was a tenant and appellees' unlawfully locked him out of the property. Appellees moved for summary judgment on the grounds appellant was not a tenant. In his brief, appellant asserts the Texas Property Code prohibits a landlord from preventing "a tenant from entering the leased premises except by judicial process" in the absence of one of the enumerated exceptions. *See* Tex. Prop. Code § 92.081(b).

Appellant further pled appellees acted in retaliation for his threat to report a bed-bug infestation. Appellees' motion for summary judgment asserted appellant

lacked standing to bring a retaliation claim. *See* Tex. Labor Code § 21.055.[2] On appeal, appellant argues that as a tenant he is protected by the Texas Property Code from retaliation by a landlord for reporting the landlord's violation of the law. *See* Tex. Prop. Code § 92.331.

Because there is no evidence of a landlord-tenant relationship, appellant's arguments on appeal fail. Issues two and three are overruled.

Intentional Infliction of Emotional Distress

In his fourth issue, appellant contends the trial court erred in granting summary judgment on his claim for intentional infliction of emotional distress ("IIED"). The elements of IIED are: (1) the defendant acted intentionally or recklessly; (2) its conduct was extreme and outrageous; (3) its actions caused the plaintiff emotional distress; and (4) the emotional distress was severe. *See Hoffman–La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 445 (Tex. 2004). In their motion for summary judgment, appellees alleged appellant "cannot possibly show that [appellees'] conduct was extreme and outrageous and therefore [appellant] does not state a claim for which any relief can be granted." Specifically, appellees argued their conduct in facilitating appellant's removal from Airline House for violation of house rules was not extreme or outrageous. In his response to appellees' motion for summary judgment, appellant identified the extreme and outrageous conduct as appellees' initiation of a chain of events which led to him being required to vacate the halfway house. Thus the complained-of conduct is Van Allen's statement to appellant's parole officer that he had falsified documentation of his attendance at

[2] "An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter: (1) opposes a discriminatory practice; (2) makes or files a charge; (3) files a complaint; or (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing." Tex. Labor Code § 21.055.

AA/NA meetings. Taking as true all evidence favorable to appellant and making all reasonable inferences therefrom in his favor, we cannot say this is conduct that 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 society." *Backman v. J.C. Penney Co., Inc.*, No. 14-03-00436-CV, 2004 WL 2283596, at *4 (Tex. App.—Houston [14th Dist.] Oct. 12, 2004, no pet.) (mem. op.) (citing *Tex. Farm Bureau Mut. Ins. Co. v. Sears*, 84 S.W.3d 604, 610 (Tex. 2002)). As a matter of law, appellees' conduct does not rise to the level of conduct so extreme and outrageous as to permit recovery for IIED. Under these circumstances, the trial court did not err in granting summary judgment on appellant's claim for IIED. Issue four is overruled.

Defamation

In his fifth issue, appellant contends the trial court erred in granting appellees' summary judgment motion on his defamation claim. In his pleadings, appellant asserted Van Allen had defamed him by orally stating to his parole officer that appellant had falsified documentation of his attendance at AA/NA meetings, a condition of his parole.[3] Appellant alleged the statements constituted defamation *per se* and *per quod.* As this court explained in *Ford v. Bland*, No. 14-15-00828-CV, 2016 WL 7323309, at *5 (Tex. App.—Houston [14th Dist.] Dec. 15, 2016, no pet.) (mem. op.):

> Defamation is delineated into defamation *per se* and *per quod*. *Hancock v. Variyam*, 400 S.W.3d 59, 63–64 (Tex. 2013). Statements that are defamatory *per quod* are actionable only upon allegation and proof of damages. *See*

[3] Libel is defamation in written or other graphic form that tends to injure a person's reputation, exposing the person to public hatred, contempt, or ridicule. *See* Tex. Civ. Prac. & Rem. Code § 73.001; *Doe v. Mobile Video Tapes, Inc.*, 43 S.W.3d 40, 48 (Tex. App.—Corpus Christi 2001, no pet.). Slander is orally communicated defamation. *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 646 (Tex. 1995); *Doe*, 43 S.W.3d at 48.

> *Texas Disposal Sys. Landfill, Inc. v. Waste Mgmt. Holdings, Inc.*, 219 S.W.3d 563, 580 (Tex. App.—Austin 2007, pet. denied). To recover for defamation *per quod*, a plaintiff must carry his burden of proof as to both the defamatory nature of the statement and the amount of damages caused by its publication. *Id.* (citing *Leyendecker & Assocs., Inc. v. Wechter*, 683 S.W.2d 369, 374 (Tex. 1984)). In cases involving defamation *per se*, damages are presumed to flow from the nature of the defamation itself and, generally, the injured plaintiff is entitled to recover general damages without specific proof of the existence of harm. *Exxon Mobil Corp. v. Hines*, 252 S.W.3d 496, 501 (Tex. App.—Houston [14th Dist.] 2008, pet. denied); *see also Bentley v. Bunton*, 94 S.W.3d 561, 604 (Tex. 2002). ("Our law presumes that statements that are defamatory per se injure the victim's reputation and entitle him to recover general damages, including damages for loss of reputation and mental anguish.").
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> Statements that (1) unambiguously charge a crime, dishonesty, fraud, rascality, or general depravity or (2) are falsehoods that injure one in his office, business, profession, or occupation are defamatory *per se*. *KTRK Television, Inc. v. Robinson*, 409 S.W.3d 682, 690 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (citing *Main v. Royall*, 348 S.W.3d 381, 390 (Tex. App.—Dallas 2011, no pet.)). "Remarks that adversely reflect on a person's fitness to conduct his or her business or trade are also deemed defamatory *per se*. *Lipsky*, 460 S.W.3d at 596 (citing *Hancock*, 400 S.W.3d at 66). Defamation *per se* involves statements that are so obviously hurtful to a person's reputation that the jury may presume general damages. *Hines*, 252 S.W.3d at 501. Generally, it is a question of law whether a statement qualifies as defamation *per se*. *Id*.

To recover for defamation, the plaintiff must prove (1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases. *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (orig. proceeding). Appellees moved for summary judgment on the grounds (1) the statement was not defamation *per se* because appellant's status as a parolee is not an office, profession, or occupation, (2) the statement was not false, and (3) appellant knew appellees owed a duty to report any violations thus he consented to or authorized the publication.

In his brief on appeal, appellant claims only that appellees failed to support their claim the statement was true with any summary judgment proof. No argument is made refuting appellees other grounds for summary judgment. "When, as in the present case, a movant asserts multiple grounds for summary judgment, and the trial court does not specify in the order the ground on which summary judgment was granted, the appellant must negate all grounds on appeal." *Heritage Gulf Coast Prop., Ltd. v. Sandalwood Apartments, Inc.*, 416 S.W.3d 642, 653 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing *Star–Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995); *Lewis v. Adams*, 979 S.W.2d 831, 833 (Tex. App.—Houston [14th Dist.] 1998, no pet.)). Because appellant failed to challenge all grounds on which the judgment may have been granted, we must uphold the summary judgment. *Id.* (citing *Lewis*, 979 S.W.2d at 833; *Fields v. City of Texas City*, 864 S.W.2d 66, 68 (Tex. App.—Houston [14th Dist.] 1993, writ denied)). Accordingly, we overrule appellant's fifth issue.

Declaratory Judgment

In his sixth issue, appellant contends the trial court erred in granting summary judgment motion on his declaratory judgment claim. The extent of appellant's claim is the request in his prayer that the trial court declare "a Landlord-Tenant relationship existed between the parties to this lawsuit." Having already determined appellant was not a tenant, we overrule issue six.

CONCLUSION

Having overruled all of appellant's issues, we affirm the trial court's judgment.

/s/ John Donovan
Justice

Panel consists of Justices Christopher, Jamison and Donovan.