

STATE OF MICHIGAN
COURT OF APPEALS

A.O.A., INC. a/k/a OUTLAWS MOTORCYCLE
CLUB,

UNPUBLISHED
December 29, 1998

Plaintiff-Appellant,

v

NEW WORLD COMMUNICATIONS OF
DETROIT, INC. d/b/a WJBK-TV2,

No. 204497
Wayne Circuit Court
LC No. 96-639357 NO

Defendant-Appellee.

Before: Kelly, P.J., and Hood and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant. We affirm.

Plaintiff is the non-profit incorporated Detroit chapter of a national organization known as the "Outlaws Motorcycle Club." John "The Bandit" Schomaker was a member of the Outlaws from 1969 through 1992. In 1996, he became the prime suspect in a murder investigation. On April 23, 1996, defendant aired a taped segment during its 5:00 p.m. news broadcast. In this segment, part of which was recorded from the front of plaintiff's Detroit clubhouse, the reporter stated that Schomaker was a member of the Outlaws. Plaintiff claims that its vice president telephoned defendant that same evening to inform defendant that Schomaker was no longer a member of the organization. Nevertheless, defendant included the taped segment in its 6:00 a.m. and 7:00 a.m. news broadcasts on April 24, 1996. Defendant received a retraction demand from plaintiff, dated June 25, 1996, but declined to make the retraction. Plaintiff then filed this defamation action.

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendant and in denying summary disposition in favor of plaintiff. This Court reviews de novo decisions on motions for summary disposition to determine if the moving party was entitled to judgment as a matter of law. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998). When reviewing a motion for summary disposition based on MCR 2.116(C)(10), this Court must determine whether any genuine issue of material

fact exists that would preclude judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). All pleadings, affidavits, depositions, admissions, and other documents are considered in favor of the party opposing the motion. *Id.* Giving the benefit of the doubt to the non-movant, this Court must determine whether a record might be developed that will leave open an issue upon which reasonable minds could differ. *Michigan National Bank v Laskowski*, 228 Mich App 710, 712; 580 NW2d 8 (1998).

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 to at least 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 publication.” *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 251; 487 NW2d 205 (1992); *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 443-444; 566 NW2d 661 (1997). We will presume, without deciding, that plaintiff is a private plaintiff. In a case involving a private plaintiff, a media defendant, and a publication regarding an area of public concern, the plaintiff bears the burden of proving falsity and of establishing that the defendant’s publication of the communication at issue was negligent. *Rouch, supra* at 252.

A communication is defamatory if it tends to harm the reputation of another so as to lower that person in the estimation of the community or to deter third persons from associating or dealing with that person. *Id.* at 251; *Glazer v Lamkin*, 201 Mich App 432, 438; 506 NW2d 570 (1993). In a defamation claim brought by a non-profit corporation, plaintiff must establish that “it depends upon financial support from the public, and [that] the matter tends to interfere with its activities by prejudicing it in public estimation.” *Michigan Microtech, Inc v Federated Publications, Inc*, 187 Mich App 178, 183; 466 NW2d 717 (1991), quoting 3 Restatement Torts, 2d, § 561, p 159.

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Here, defendant argued that plaintiff could not prove that the statement regarding Schomaker’s membership in the Outlaws was defamatory. In support of this proposition, defendant provided the lower court with several newspaper articles and court opinions tending to show the notoriety of the Outlaws and its members’ extensive involvement in criminal activities and evidence that Schomaker had been convicted of two violent felonies while he was an active member of the Outlaws. Defendant also argued that the Outlaws could not establish defamation based on its non-profit status because it had failed to provide any evidence (1) that it depends upon financial support from the public, and (2) regarding how the statement lowered plaintiff’s reputation to such an extent that it interfered with plaintiff’s activities. *Michigan Microtech, Inc., supra*.

We agree that plaintiff failed to provide an adequate response to defendant’s arguments favoring summary disposition. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual

dispute, the motion is properly granted. MCR 2.116(G)(4); *Quinto, supra* at 362-363. In the instant case, plaintiff did not present any evidence establishing the existence of a genuine issue of material fact regarding the statement's defamatory nature. Rather, plaintiff simply reiterated the allegations contained in its complaint and stated that "even a non-profit corporation has a business reputation that can be defamed." Because plaintiff failed to go beyond the pleadings to set forth specific facts establishing the existence of a material factual dispute, the trial court properly granted defendant's motion for summary disposition.

Additionally, this Court may decide as a matter of law whether a statement is capable of defamatory meaning. *Sawabini v Desenberg*, 143 Mich App 373, 379; 372 NW2d 559 (1985). "Where the words are, as a matter of law, not capable of carrying a defamatory meaning, summary judgment . . . is appropriate." *Id.* Defendant did not state or imply that plaintiff had any connection to the murders. See *Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 328; 539 NW2d 774 (1995). Additionally, Schomaker had been a member of the Outlaws for twenty-three years and was convicted of two violent felonies during his membership. Moreover, plaintiff admitted that three individuals in addition to Schomaker, while active members of the Detroit chapter of the Outlaws, had been formally charged in a criminal action involving the death of a human being. For all of these reasons, defendants' statement that Schomaker was a member of plaintiff Outlaws cannot reasonably be understood as carrying a defamatory meaning—that is, as "tend[ing] to interfere with [plaintiff's] activities by prejudicing it in public estimation." *Michigan Microtech, Inc, supra* at 183.

Finally, plaintiff argues that it was entitled to summary disposition in its favor. We disagree. In light of our foregoing analysis, we conclude that plaintiff was not entitled to judgment as a matter of law against defendant. Therefore, summary disposition in favor of plaintiff was inappropriate.

We affirm.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ Jane E. Markey