

STATE OF MICHIGAN
COURT OF APPEALS

OAK GROVE CREMATION CENTER, INC.,

Plaintiff-Appellant,

v

DANIEL PETERSON and RONALD
KULLGREN,

Defendants,

and

RANDALL S. WYMAN and ROSS C.
MEYERING,

Defendants-Appellees.

UNPUBLISHED

May17, 2007

No. 273391

Wexford Circuit Court

LC No. 05-018840-CZ

Before: Schuette, P.J., O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant Ross C. Meyering, pursuant to MCR 2.116(C)(10). We affirm.

This case arises out of a presentation plaintiff gave to the residents of Kirtland Terrace, a home for the aged and disabled located in Cadillac, on the services it provides. After learning of the presentation, defendant Meyering, the owner of a funeral home in Cadillac, contacted defendant Peterson, the manager of Kirtland Terrace. Meyering informed Peterson that, contrary to statements made during the presentation, the types of funeral services provided by plaintiff were available through other local providers. He also informed Peterson that plaintiff was involved with a number of “questionable ethical and legal issues,” explaining that plaintiff was a party to a lawsuit that involved changes in fees after funeral prearrangements had been made, and that plaintiff was denied membership in the Michigan Funeral Home Association because of its questionable ownership status and a Michigan law that prohibited joint ownership of a cemetery and funeral establishment. Plaintiff contends that Meyering’s statements were defamatory. The trial court disagreed, as do we.

A trial court’s decision on a motion for summary disposition is reviewed de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Under MCR 2.116(C)(10),

the courts review all evidence submitted by the parties, and summary disposition should be granted to the moving party only where the evidence and all legitimate inferences, when viewed in the light most favorable to the nonmoving party, fails to establish a genuine issue regarding any material fact. *Id.*, 567-568. A communication is defamatory if, under all of the circumstances, it tends to so harm the reputation of an individual that it lowers the individual's reputation in the community or it deters others from associating or dealing with the individual. *Mino v Clio School Dist*, 255 Mich App 60, 72; 661 NW2d 586 (2003). However, truth is an absolute defense to a defamation claim, *Porter v Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995). Slight inaccuracies in expression are not relevant "if the literal truth produced the same effect" on the reader. *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 258-259; 487 NW2d 205 (1992).

We conclude that Meyering's statement regarding the type of services offered by plaintiff was merely an attempt to clarify what was available locally, and it would not have a tendency to lower plaintiff's reputation in the community or deter others from associating with it. Moreover, Meyering presented evidence that his funeral home could provide the same services offered by plaintiff. Plaintiff failed to show a genuine issue of material fact that this particular statement was either defamatory or false.

Regarding Meyering's statements that plaintiff was involved with "questionable ethical and legal issues," evidence was presented that plaintiff was owned by Ron Kieszkowski, but that Ron's father, James Kieszkowski, who also owned a cemetery, financed plaintiff's purchase and actively managed plaintiff's affairs. Additionally, plaintiff's application for membership to the Michigan Funeral Director's Association was denied because there were questions regarding who was operating the funeral home, and Michigan law prohibits an owner of a cemetery from owning or managing a funeral establishment, either directly or indirectly. MCL 339.1812. Evidence was also submitted that Oak Grove International, an affiliated company, was being sued for violating the Michigan Prepaid Funeral Contract Funding Act, MCL 328.211 *et seq.* In light of this evidence, we conclude that there was no genuine issue of material fact that Meyering's statements to Peterson were substantially true and, accordingly, were not actionable.

The trial court also correctly determined that Meyering's statements were subject to a qualified duty/interest privilege. The elements of this qualified privilege are (1) good faith; (2) an interest to be upheld; (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Prysak v R L Polk Co*, 193 Mich App 1, 15; 483 NW2d 629 (1992). A plaintiff may overcome this qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth. *Id.* General allegations of malice are insufficient to establish a genuine issue of material fact. *Id.*¹

¹ Plaintiff's reliance on *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 402; 538 NW2d 24 (1995), to argue that the qualified privilege may be overcome by a showing of negligence, not actual malice, is misplaced, because that case involves the qualified public-interest privilege, which is an entirely different privilege than the qualified duty/interest privilege
(continued...)

In *Bufalino v Maxon Bros, Inc*, 368 Mich 140, 153; 117 NW2d 150 (1962), our Supreme Court explained:

A publication is conditionally or qualifiedly privileged where circumstances exist, or are reasonably believed by the defendant to exist, which cast on him the duty of making a communication to a certain other person to whom he makes such communication in the performance of such duty, or where the person is so situated that it becomes right in the interests of society that he should tell third persons certain facts, which he in good faith proceeds to do. This general idea has been otherwise expressed as follows: A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation. The essential elements of a conditionally privileged communication may accordingly be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits. [Citations and quotations omitted.]

Here, Meyering, a local funeral director, heard that plaintiff had falsely stated to residents of Kirtland Terrace that no one else locally could provide the services it was offering. Therefore Meyering informed Peterson, the manager of Kirtland Terrace, that the same services offered by plaintiff were available locally. The circumstances show that Meyering's statements were made in good faith, involved a subject in which he had an interest, were in furtherance of trade and competition in the marketplace, were limited to this purpose, and were made to a proper party. Furthermore, Meyering had at least a moral duty to inform Peterson of questionable activities of which he was aware from a credible source, in order to protect the interests of the nursing home residents who had heard the presentation. Again, there is no indication that Meyering did not act in good faith, and his statements were limited to this purpose, and made to a proper party. The trial court properly determined that the statements were subject to the qualified privilege.

For these reasons, the trial court properly dismissed plaintiff's defamation claim.

Plaintiff also argues that the trial court erred in dismissing its remaining claims for injurious falsehood and tortious interference with a business relationship. We disagree. Plaintiff's claims of injurious falsehood and tortious interference with a business relationship or expectancy were premised on defendant's utterance of negative statements. Privileged speech is also a defense to these claims. *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995). Because Meyering's statements were subject to a qualified privilege and therefore not actionable, these claims were properly dismissed.

(...continued)

asserted here. *Rouch v Enquirer & News of Battle Creek*, 427 Mich 157, 176; 398 NW2d 245 (1986).

Affirmed.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis