STATE OF MICHIGAN

COURT OF APPEALS

SUSAN GOLDFADEN, Plaintiff-Appellee,	UNPUBLISHED June 14, 2011
v	No. 297416 Oakland Circuit Court
SEAN CLEVELAND, Defendant-Appellant.	LC No. 2009-098756-NO

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this action for tortious interference with a business relationship, plaintiff Susan Goldfaden claims that defendant Sean Cleveland improperly interfered with her business relationship with her employer, Wyeth, by falsely accusing her of mistreatment and violations of her employer's policies. Plaintiff was defendant's supervisor on a sales team. The trial court denied defendant's motion for summary disposition. We affirm.

Company policy ("Policy 511") forbade either party to discuss internal studies or new drugs not yet approved by the Food and Drug Administration (FDA). They were apparently allowed to allude to the company doing a study if no details were given. During a field visit in which plaintiff accompanied defendant, defendant discussed details of a "STAR*D Study" and provided details of a new drug that had not yet been approved by the FDA. Plaintiff did not interfere during the discussion, but she reported defendant to the company afterwards. Defendant then reported plaintiff, contending that he thought he had been allowed to carry on the discussion because he had observed plaintiff doing so previously; he also accused her of various additional improprieties. Wyeth found that plaintiff had violated guidelines on the basis of defendant's allegations, despite other employees testifying that plaintiff had never violated the policies and had, indeed, actively cautioned against them doing so. Plaintiff received a warning letter in her file. Warning letters at Wyeth financially impact employees by preventing them from receiving bonuses, raises, stock, and professional advancements.

We review a trial court's summary disposition ruling de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion brought under MCR 2.116(C)(10), we consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion

for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Human Servs Dep't*, 286 Mich App 230, 235; 780 NW2d 586 (2009).

We find that plaintiff has established a prima facie case of tortious interference, which requires (1) the existence of a valid business relationship or expectancy; (2) the defendant knew of the relationship or expectancy; (3) an intentional interference by the defendant that induced or caused a breach or termination of the relationship or expectancy; and (4) damage to the plaintiff. *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 323; 788 NW2d 679 (2010). The first two elements are undisputed, and the warning letter preventing plaintiff from receiving certain compensation was induced by defendant's accusations and caused plaintiff harm. The third element requires proof that defendant acted intentionally and pursuant to an improper motive instead of legitimate business reasons. *Id*. There is evidence that defendant had a motive to improperly interfere with plaintiff's business relationship: he was unhappy that plaintiff had reported him, and he stated that plaintiff had given him negative performance reviews in the past and was a threat to his wife's employment. Plaintiff contends that defendant falsely accused her of mistreating him and violating Wyeth policy.

Significantly, we find a specific genuine issue of material fact as to whether Policy 511 required plaintiff to stop defendant's discussion of STAR*D as it occurred during a field visit with a physician. Contrary to the conclusion of Wyeth investigators, plaintiff testified that Policy 511 did not require her to stop defendant's STAR*D discussion as it occurred. We find no evidence in the record showing that the policy explicitly addressed that issue, and there was testimony that there are "grey areas" in that policy. A genuine issue of material fact also exists as to whether defendant made false allegations against plaintiff. Defendant alleged that plaintiff encouraged him to discuss STAR*D with customers and knew of his plan to do so, and plaintiff denied that defendant had previously discussed it with her. Plaintiff testified that defendant told her that he would say that the National Institute of Health was "looking at" unresolved depression, which could be treated with Effexor XR. Plaintiff specifically denied knowing that plaintiff planned to even mention STAR*D, much less discuss the parameters of the STAR*D study. Finally, plaintiff denied defendant's allegations that she threatened or mistreated him. Importantly, the evidence clearly showed that defendant reported no misconduct by plaintiff until she reported his violation of Policy 511.

Whether defendant intentionally interfered with plaintiff's relationship with Wyeth is a question to be decided by the trier of fact.

Defendant also contends that plaintiff's claim fails because he was not a third party to plaintiff's business relationship. Officers and agents of a corporation are not liable for tortious interference with the corporation's contracts unless the officer or agent acted solely for his own benefit and with no benefit to the corporation. *Reed v Mich Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993); *Dzierwa v Mich Oil Co*, 152 Mich App 281, 287-288; 393 NW2d 610 (1986). Defendant was not an officer of Wyeth, but as a sales representative he was an agent. See 1 Restatement Agency, 3d, § 1.01, p 17. However, in light of the factual dispute as to the truth of defendant's allegations and of the suspicious timing of his complaints, we agree with the trial court that a genuine issue of material fact exists regarding whether defendant made the report solely for his own benefit.

Defendant next contends that he is protected by a "shared interest" qualified privilege. This privilege does not extend to acts that were performed in the absence of good faith or with actual malice, i.e., with knowledge of the falsity of his allegations or with reckless disregard of their truth. *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995); *Gonyea v Motor Parts Fed Credit Union*, 192 Mich App 74, 79; 480 NW2d 297 (1991). As discussed, whether defendant knowingly made false accusations of fact against plaintiff is a genuine issue of material fact. If he did, then his statements were not privileged because he acted with actual malice and not in good faith. *Gonyea*, 192 Mich App at 79.

We decline to discuss defendant's claims of collateral estoppel and violation of state and federal law and public policy. The former was not included in defendant's statement of questions presented, and in any event, *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 632; 673 NW2d 111 (2003), plaintiff is not required to establish constructive discharge or adverse employment action. *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004); *Dalley*, 287 Mich App at 323. Defendant has made no argument in his brief as to the latter. *DeGeorge v Warheit*, 276 Mich App 587, 600-601; 741 NW2d 384 (2007) (stating that an issue is abandoned where the party fails to brief the merits his argument).

Affirmed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause