

STATE OF MICHIGAN
COURT OF APPEALS

SHAWN-CREATHA LEFTWICH,

Plaintiff-Appellant,

v

LULA BELLE STEWART CENTERS,
EDNA WALKER, JENNIFER DOUGHTY,
and EVERGREEN CHILDREN SERVICES,

Defendants-Appellees,

and

PATRICIA SNYDER, BRENDA JOHNSON,
and DANIELLE REMOND,

Defendants.

UNPUBLISHED
November 14, 2006

No. 270089
Wayne Circuit Court
LC No. 04-423813-CZ

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right the trial court's grant of defendants' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Lula Belle Stewart Centers is a child placement organization which licenses private foster care homes and places children in the homes pursuant to the Child Care Licensing Act, MCL 722.111 *et seq.*¹ In 2001, plaintiff was licensed as a foster parent, and Lula Belle supervised plaintiff's license. Lula Belle placed a number of children in plaintiff's home. However, in July 2002, allegations of abuse surfaced against plaintiff by two girls placed in plaintiff's home. As a result, Lula Belle prepared a number of evaluation reports concerning the allegations and the investigator's conclusions. In September 2002, Lula Belle placed plaintiff on

¹ At the time of the relevant events, defendants Edna Walker and Jennifer Doughty were employees at the center. The center and its employees are collectively referenced as Lula Belle.

a provisional license status, and formulated a “corrective action plan” requiring plaintiff to take classes in parenting and anger management. According to defendants, plaintiff decided to voluntarily close her license in October of 2002.

Plaintiff sought to become certified as an adoptive parent through defendant Evergreen Children’s Services (Evergreen).² She apparently completed an adoption class in May 2002. However, as part of the certification process, Evergreen became aware of Lula Belle’s concerns with plaintiff’s previous level of care, and denied plaintiff’s request to become an adoptive parent. According to Lula Belle, Evergreen received Lula Belle’s reports and other information after plaintiff presented its Director of Foster Care and Adoptive Services with a signed release. Evergreen subsequently decided not to pursue plaintiff’s application.

Plaintiff sued defendants asserting claims of defamation, copyright and trademark infringement, and intentional infliction of emotional distress. Lula Belle moved for summary disposition pursuant to MCR 2.116(C)(10). Evergreen separately moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff responded, but did not counter defendants’ specific claims or attend the hearing on defendants’ motions. The trial court granted defendants’ motion for summary disposition.

On appeal, plaintiff seeks only to challenge the dismissal of her defamation claim. She argues that defendants’ failure to investigate the truth of the allegations against her, “along with its receipt of communication challenging this case in the past, amounted to actual malice, of whether the allegations were true or not.” In addition to relief for her mental distress, plaintiff also requests that her record with Lula Belle Stewart Center be expunged from bearing any negative language or content.

We review de novo a motion for summary disposition under MCR 2.116(C)(10), which tests the factual support of a claim. *Oade v Jackson Nat’l Life Ins Co*, 465 Mich 244, 250-251; 632 NW2d 126 (2001); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). When seeking summary disposition under MCR 2.116(C)(10), the moving party must specifically identify the matters which have no disputed factual issues, *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence. *Smith, supra* at 455. The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Id.* If the evidence submitted demonstrates that there is no genuine issue of material fact for trial, summary disposition of the matter is appropriate. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337-338; 572 NW2d 201 (1998); MCR 2.116(G)(4).

“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 at least to negligence on the part of the publisher, and (4) either actionability of the statement

² According to defendants’ pleadings, defendant Danielle Remond was an employee of Evergreen Children’s Services. These defendants are collectively referenced as Evergreen. The role of the remaining defendants is not discussed. They are not parties to this appeal.

irrespective of special harm (defamation per se) or the existence of special harm caused by publication.” *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005). Certain statements are absolutely privileged. *Couch v Schultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992). “An absolutely privileged communication is one for which no remedy is provided for damages in a defamation action because of the occasion on which the communication is made.” *Id.*

A communication regarding a person is absolutely privileged if the person consents to the communication. *Hollowell v Career Decisions, Inc.*, 100 Mich App 561, 575; 298 NW2d 915 (1980); *Schechet v Kesten*, 3 Mich App 126, 133-134; 141 NW2d 641 (1966). Here, Lula Belle presented evidence that it made the allegedly defamatory statements to Evergreen with the consent of plaintiff. Plaintiff has presented no evidence to dispute this assertion, nor does she argue that she did not consent to the communication. She argues only that the foster children falsely accused her of misconduct. Accordingly, because plaintiff has presented no evidence to rebut the evidence that the communication was made with her consent, we hold that the trial court properly dismissed plaintiff’s defamation claim. Plaintiff has failed to create a question of fact as to whether the alleged defamatory statement was an unprivileged publication to a third party.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio