

STATE OF MICHIGAN
COURT OF APPEALS

TYLER G. HOLLAND,

Plaintiff-Appellant,

v

WOOD TV 8,

Defendant-Appellee.

UNPUBLISHED

July 30, 2020

No. 349803

Kalamazoo Circuit Court

LC No. 2019-000122-CB

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

In this defamation, tortious interference, and intentional infliction of emotional distress action, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant and denying plaintiff leave to amend his complaint. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On March 20, 2019, plaintiff filed a handwritten complaint, alleging as follows:

Wood TV 8 did a story on my business at 8:00 pm Feb 4th. This caused me millions. It also caused me my home and reputation. I explained to them during both phone calls, text, also in person my business was clean not a scam. This was before the story aired. TV 8 was also told to refrain from using my business and name on the air. I did everything I could to stop them from miss using there influence. I showed up at Wood TV at 5:30 with proof. I even tweeted at them on social media. Only to see my lifes work being put into question. I am a public figure this has hurt me.

This has killed my business. It cost me 1.1 million in sponsors do to fear of lawsuit. More valuable my connections & contracts. I've received threats [petitions] to [check] my mental health, and have been kicked out of where I was staying. Do to Wood TV 8's lie. I'm now jobless & homeless. Even with proof they ran the story. My name & my business is being dragged in the mud. All over the region.

This story has reached 30 million people in the mid west. My business took me 4 almost 5 years to [perfect]. All of my time, money, energy, and college tuition from the past years have gone towards this. I have proof of contract verbal agreements & other damages. I[']m in court suing for 3 counts.

- Tortious Interference (40 million \$)
- Slander & Defamation (40 million \$)
- Emotional Distress (5 million \$)

In the amount of my 1st show \$(40 million), less than my salary.

Wood TV 8 Heather Walker – Text

Her: fell free to sent any contracts or documents that confirm the concerts we are running a story tonight 5&6 (phone call was @ 4:30)

Me: Be sure not to use my name or my site or anything pertaining to me. Also just put an offer down, phone call with the owner. She just needs something saying I can afford it. (4:26 pm)

Went to the station with proof no answer. Public tweet @ 5:53 they deleted it and went with the story anyways.¹

From plaintiff's handwritten complaint, we glean three counts against defendant²: tortious interference, defamation, and emotional distress. Defendant filed a motion for summary disposition under MCR 2.116(C)(8) for failure to state a claim on which relief could be granted. Defendant also argued that plaintiff should not be allowed to amend his complaint because defendant's news story did not contain any statements that could form the basis of a viable defamation claim.

During oral argument on defendant's motion for summary disposition, there was discussion of a news story entitled "Red flags with Kzoo Co. concert promising Drake, Cardi B" (the "Red Flags Article"). Although the Red Flags Article was not attached to plaintiff's complaint, the parties did not dispute that the statements in the article formed the basis of plaintiff's complaint or that the article was the news story referred to in plaintiff's complaint. The Red Flags Article stated as follows:

¹ We have reprinted the handwritten complaint as best we can. At times, the handwriting is difficult to discern. This Court also struggled with the numerous grammatical and spelling errors contained within the handwritten complaint.

² According to defendant, WOOD-TV-8 is not an actual corporate entity. Defendant asserts the owner of television station WOOD-TV is Nexstar Broadcasting, Inc.

A local man is promoting a concert on a Kalamazoo County farm, but Target 8 found nothing with the so-called “Meeting of the Minds” festival adds up.

With the tickets starting \$130, the website for the festival says Drake and Cardi B will be there.

But the internet is calling the event a copycat of the Fyre Festival, a failed music festival that was supposed to take place in the Bahamas and is now the subject of two wildly popular documentaries on Netflix and Hulu.

So Target 8 went straight to the source, calling up Tyler Holland, who says he’s putting on the event.

“The concert is actually still in the works,” he said. “(I’ve) been in contact with the sponsors. This is the week that they have to give us a call back. Been in contact with all the agents and artists and everything like that. The people that are saying this is a scam are actually trying to steal my business.”

He claims he has already sold 1,700 tickets.

His website shows that the concert will take place May 25 at a farm estate north of Augusta, just outside Kalamazoo, but the address listed is for the home next door. When Target 8 went to the location shown on the website, we found nothing but horses and confused people.

“We focus on lessons and horses,” said Amy Newman, the head instructor at EastFork Farms.

When she saw the map of the concert site, she said it would include the farm and at least two neighboring properties.

“Apparently we’re inviting people to come here,” she said after seeing it.

“Please don’t come,” she added.

Target 8 also called property owner Tara East, who is out of town, just in case she knew something the staff didn’t.

“It has to be a scam. There is no concert there,” she said. “It’s private property.”

East said no one ever told her that they were interested in hosting an event at her farm.

“The people are going to be out a lot of money because they are not going to be allowed to go there,” she said.

The event was also a surprise to the companies listed as sponsors. Every representative who spoke with Target 8 Monday, including one for Bell's Brewery, said their business is not affiliated and that the site was using logos without permission.

The website also promises to donate thousands of dollars to charities including St. Jude. No one from St. Jude or the other charities was aware of the event when Target 8 checked in with them.

Additionally, the big performers listed on the site haven't promoted anywhere else that they plan to be in West Michigan on May 25.

When asked to send documentation of artist contracts or other verification, Holland did not do so.

The trial court granted defendant's motion for summary disposition and dismissed plaintiff's complaint with prejudice and without leave to amend. The trial court reasoned that summary disposition was proper for plaintiff's defamation claim because he failed to identify any specific defamatory statements in his complaint and failed to allege facts showing that defendant acted with actual malice after plaintiff admitted that he was a public figure. The trial court also dismissed plaintiff's tortious interference and emotional distress claims because they were founded upon the failing defamation claim. Regarding its decision to deny leave to amend, the trial court stated:

In this case, the parties submitted several instruments and materials with their briefing. Plaintiff filed his affidavit and several documents he contended were "proof" or evidence that he was in fact attempting to plan, promote and put on a concert. Plaintiff brought several more such items of proof to the hearing held on June 27, 2019 and discussed those items orally. Defendant provided in its briefing a copy of the [Red Flags Article] about Plaintiff and questions regarding whether his music festival would actually take place as advertised. Defendant argued that Plaintiff should not be given leave to amend because there are no facts Plaintiff could allege that would create a viable claim because there is no statement in Defendant's news story that is capable of defamatory meaning as a matter of law. This Court agrees.

The Court did not consider the [Red Flags Article] in ruling under subrule (C)(8), as discussed above. Nevertheless, in determining whether to allow Plaintiff leave to amend, Plaintiff's affidavit and the [Red Flags Article] should be considered "evidence then before the court" for purposes of MCR 2.116(I)(5). Plaintiff alleges Defendant's conduct in publishing the [Red Flags Article] as the basis for his claims, and there is no dispute as to the authenticity of the [Red Flags Article]. Based upon a plain reading of the subject [Red Flags Article] in full and in context, the Court finds there is no statement in the [Red Flags Article] that is capable of defamatory meaning as a matter of law. Indeed, when reviewing the statements therein in full context, it is clear that any statement or implication that "people shouldn't come" or that the music festival is a "scam" is a statement of opinion

based upon fully disclosed facts. . . . Thus, Plaintiff cannot possibly prevail on any claim as a matter of law and any amendment would not be justified.

This appeal then ensued.

II. ANALYSIS

To the extent this Court can glean plaintiff's arguments on appeal, we think he initially argues that the trial court erred by granting defendant's motion for summary disposition under MCR 2.116(C)(8) because plaintiff alleged sufficient facts in his complaint to establish viable claims of defamation, tortious interference, or intentional infliction of emotional distress.

Appellate courts review de novo a trial court's decision whether to grant a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Under MCR 2.116(C)(8), summary disposition is proper when the "opposing party has failed to state a claim on which relief can be granted." A summary disposition motion under MCR 2.116(C)(8) "tests the legal sufficiency of a claim based on the factual allegations in the complaint." *Id.* The motion is decided solely on the basis of the facts alleged in the complaint, taken as true and construed in favor of the nonmoving party, and may not be supported by other documentary evidence. *Dalley v Dykema Gossett*, 287 Mich App 296, 304-305; 788 NW2d 679 (2010). Summary disposition may only be granted under MCR 2.116(C)(8) "when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *El-Khalil*, 504 Mich at 160.

To survive a motion for summary disposition under MCR 2.116(C)(8), "[a] plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory." *Thomas M Cooley Law Sch v Doe I*, 300 Mich App 245, 262; 833 NW2d 331 (2013). The quotation of certain words and phrases or citation to outside material is not sufficient to adequately identify the allegedly defamatory statements and survive summary disposition under MCR 2.116(C)(8). *Sarkar v Doe*, 318 Mich App 156, 185 n 15; 897 NW2d 207 (2016).

In this case, we cannot glean from plaintiff's handwritten complaint where he specifically identifies any allegedly defamatory statements made by defendant. Although plaintiff argued that the allegedly defamatory statement made by defendant was the word "scam," the only time that the word "scam" appeared in plaintiff's complaint was in the statement, "I explained to them during both phone calls, text, also in person my business was clean and not a scam." In the context of the complaint, the word "scam" was used by plaintiff to explain that his business was "not a scam," but plaintiff did not identify a specific instance when defendant used the word "scam" in reference to plaintiff or his business.

Additionally, although plaintiff referred to a story in which he claimed that defendant made allegedly defamatory statements, plaintiff failed to identify in his complaint the exact language from the story that was allegedly defamatory. See *Thomas M Cooley Law Sch*, 300 Mich App at 262. Plaintiff's reference to this outside story was insufficient by itself to avoid summary disposition under MCR 2.116(C)(8). See *Sarkar*, 318 Mich App at 185 n 15. Because plaintiff failed to sufficiently identify any allegedly defamatory statements made by defendant in his

complaint, the trial court properly granted defendant's motion for summary disposition as to plaintiff's defamation claim. See *id.*; *Thomas M Cooley Law Sch*, 300 Mich App at 262.

Review of plaintiff's appellate papers also reveals what this Court believes to be an argument wherein plaintiff asserts that the trial court improperly granted summary disposition on his tortious interference and emotional distress claims. A tortious interference with a contractual or business relationship claim requires an allegation that the defendant intentionally committed a wrongful act per se or "a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or the business relationship of another." *CMI Int'l, Inc v Internet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002) (quotation marks and citation omitted). An act is wrongful per se if it is inherently wrongful or could "never be justified under any circumstances." *Badiee v Brighton Area Sch*, 265 Mich App 343, 367; 695 NW2d 521 (2005) (quotation marks and citation omitted). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *Id.*

In this case, plaintiff did not allege that defendant committed an inherently wrongful act, and plaintiff failed to allege, with any degree of specificity, affirmative acts that defendant committed with the motive of interfering with defendant's contractual or business relationships. See *Badiee*, 265 Mich App at 367; *CMI Int'l, Inc*, 251 Mich App at 131. Plaintiff simply stated in his complaint that defendant "did a story on [plaintiff's] business," and the story damaged his business. Defendant's act of publishing a story, even if the story contained a lie, was not so inherently wrongful that it could never be justified. See *Badiee*, 265 Mich App at 367. Therefore, plaintiff was required to allege in his complaint specific and affirmative acts that defendant intentionally committed in order to interfere with plaintiff's contractual or business relations. See *CMI Int'l, Inc*, 251 Mich App at 131. Because plaintiff failed to make any specific allegations to demonstrate affirmative acts of unlawful interference, the trial court did not err by granting summary disposition on plaintiff's tortious interference claim under MCR 2.116(C)(8). See *id.*; *El-Khalil*, 504 Mich at 159.

To avoid summary disposition for a claim of intentional infliction of emotional distress, the plaintiff must "describe conduct so extreme or outrageous that it surpasses all bounds of decency in a civilized society." *Dalley*, 287 Mich App at 321. The trial court must make the initial determination whether the alleged conduct rises to the requisite level of outrageousness to support an intentional infliction of emotional distress claim. *Id.* Conduct that is merely insulting, annoying, or oppressive will not give rise to a claim of intentional infliction of emotional distress. *Id.*

In this case, plaintiff failed to describe any extreme and outrageous conduct by defendant. See *id.* Assuming, in a light most favorable to plaintiff, that defendant lied about defendant's business in its story, this conduct was not so outrageous that it "surpasse[d] all bounds of decency in civilized society." *Id.* at 304-305, 321. At most, defendant's conduct, as alleged in the complaint, was insulting and oppressive and did not give rise to an intentional infliction of emotional distress claim. *Id.* at 321. Therefore, the trial court did not err by granting summary

disposition on plaintiff's intentional infliction of emotional distress claim as well. See *El-Khalil*, 504 Mich at 159; *Dalley*, 287 Mich App at 321.³

We also discern an argument by plaintiff that the trial court erred by not allowing plaintiff to amend his complaint when there were facts that plaintiff could allege to create a viable claim.

A trial court's decision to deny leave to amend a complaint is reviewed for an abuse of discretion. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 53; 684 NW2d 320 (2004). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). Generally, when summary disposition is granted under MCR 2.116(C)(8), the trial court must give the plaintiff an opportunity to amend his or her complaint, "unless the evidence then before the court shows that amendment would not be justified." MCR 2.116(I)(5). An amendment is not justified if it would be futile, such as when the amended claim would be "legally insufficient on its face." *PT Today, Inc v Comm'r of the Office of Fin and Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006).

To establish an actionable tort claim, the plaintiff must resolve the following questions of law on the pleadings alone: "(1) whether a statement is capable of being defamatory, (2) the nature of the speaker and the level of constitutional protections afforded the statement, and (3) whether actual malice exists, if the level of fault the plaintiff must show is actual malice." *Thomas M Cooley Law Sch*, 300 Mich App at 263. In this case, the trial court denied plaintiff leave to amend on the basis of the first question of law because it determined that defendant's statements were not capable of defamatory meaning.

The trial court may initially determine whether a statement is capable of defamatory meaning as a matter of law. *Ireland v Edwards*, 230 Mich App 607, 619; 584 NW2d 632 (1998). A statement is capable of defamatory meaning if "it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual." *Id.* at 614. However, a defamatory statement is not actionable and protected by the First Amendment if it "cannot be reasonably interpreted as stating actual facts about the plaintiff." *Id.* Moreover, "[t]o be considered defamatory, statements must assert facts that are provable as false." *Ghanam v Does*, 303 Mich App 522, 545; 845 NW2d 128 (2014) (quotation marks and citation omitted). Whether facts are provable as false depends on the "context and forum in which statements

³ In reaching its determination that plaintiff's other tort claims should also be dismissed under MCR 2.116(C)(8), the trial court relied on other grounds. Specifically, the trial court cited this Court's holding in *Ireland v Edwards*, 230 Mich App 607, 624-625; 584 NW2d 632 (1998), that other tort claims predicated upon the same statements as a defamation claim must fail when the defamation claim fails as a result of First Amendment protections. However, determining whether plaintiff's defamation claim failed on the basis of First Amendment protections required the trial court to examine evidence outside the scope of MCR 2.116(C)(8) review. See *El-Khalil*, 504 Mich at 159. Despite any improper reasoning, this Court will not reverse the trial court's grant of summary disposition on plaintiff's tortious interference and intentional infliction of emotional distress claims because reversal is not proper "where a trial court reaches the right result for the wrong reason." See *Ireland*, 230 Mich App at 625 n 16.

appear.” *Id.* at 546. Statements are not provable as false if a reasonable reader would interpret the statements as “pure opinion rather than statements or implications of actual, provable fact.” *Id.* For example, this Court has found that “when a speaker outlined the factual basis for his conclusion, his statement is protected by the First Amendment” because the underlying facts make it clear to the reader that the statement reflects the speaker’s opinion. *Sarkar*, 318 Mich App at 190-191 (quotation marks and citation omitted).

In this case, the trial court considered the Red Flags Article as “evidence then before the court” in determining whether an amendment would be futile. See MCR 2.116(I)(5). Defendant clearly outlined the factual basis for everything stated or implied in the Red Flags Article. See *Sarkar*, 318 Mich App at 190-191. Specifically, defendant only provided the reader with statements made by others or facts gathered in the course of its investigation into plaintiff’s business. The closest that the article came to drawing a conclusion regarding the information it provided was that defendant “found nothing with the so-called ‘Meeting of the Minds’ festival adds up,” otherwise the reader was presented with facts, including plaintiff’s side of the story and left to draw his or her own conclusion. Therefore, because defendant outlined the factual basis for its statements in the Red Flags Article, the statements were not actionable under the First Amendment. See *Sarkar*, 318 Mich App at 190-191.

Given the context of the Red Flags Article, the trial court did not abuse its discretion by determining that “any statement or implication that ‘people shouldn’t come’ or that the music festival [was] a ‘scam’ [was] a statement of opinion based upon fully disclosed facts.” See *Saffian*, 477 Mich at 12; *Sarkar*, 318 Mich App at 190-191; *Ghanam*, 303 Mich App at 546. Because defendant’s statements were not actionable under the First Amendment, the trial court properly denied plaintiff leave to amend his complaint when an amendment would be futile. See MCR 2.116(I)(5); *Sarkar*, 318 Mich App at 190-191; *PT Today, Inc*, 270 Mich App at 143.⁴

Additionally, the trial court did not abuse its discretion by denying plaintiff leave to amend his complaint on the basis of his other tort claims. See *Ireland*, 230 Mich App at 624. First Amendment limitations on actionability, including the requirement that statements are “provable as false” and “understandable as stating actual facts about plaintiff,” are not exclusive to defamation claims. *Id.* When tort claims are founded upon the same underlying statements that cannot overcome First Amendment limitations in the context of a defamation claim, the trial court may properly dismiss the tort claims on the same basis as the defamation claim. See *id.* Therefore, because plaintiff’s tortious interference and intentional infliction of emotional distress claims were premised on the same underlying facts and statements as his defamation claim in this case, the trial court did not abuse its discretion by dismissing all plaintiff’s claims with prejudice and without leave to amend. See *id.*; MCR 2.116(I)(5).

⁴ To the extent plaintiff argues that an amendment was justified because a social media post by defendant’s employee was capable of defamatory meaning, any implication arising from the statement “scam warning” in the post was similarly protected by the First Amendment and not actionable because the post included the factual basis for its statement—that the Kalamazoo Sheriff’s office warned the concert was a possible scam. See *Sarkar*, 318 Mich App at 190-191.

Affirmed.

/s/ Stephen L. Borrello

/s/ David H. Sawyer

/s/ Deborah A. Servitto