STATE OF MICHIGAN

COURT OF APPEALS

JOHN BRADFORD,

Plaintiff–Appellant,

v

USA DEMOLITION DERBY, INC.& FIGURE EIGHT, ROSE ANN HALL and SONNY HALL,

Defendants–Appellees.

UNPUBLISHED
December 13, 1996

No. 182569
Oakland County
LC No. 94-478465

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants summary disposition on all of plaintiff's claims. We affirm.

According to the complaint, Sonny Hall is the president of Demolition Derby, Inc. & Figure Eight (Derby), and his wife, Rose Ann Hall, is a Derby employee and officer. Plaintiff has competed in events sponsored by Derby. In a letter dated May 23, 1994, Sonny informed plaintiff, "Due to your impetuous driving last season it is the decision of the U.S.A. Demolition Derby and Figure Eight that you be suspended from driving for our company." Plaintiff alleged "intentional interference with advantageous economic relations" against the Halls, defamation against Sonny, and "violation of equal accommodations statute" against Derby.

Defendants brought a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court ruled that plaintiff failed to allege a violation of the Equal Public Accommodations Act, MCL 750.146; MSA 28.343, because "I feel I heard nothing or see nothing there concerning race, color, religion, national origin, or sex as far as that allegation." The court granted summary disposition to defendants on the remainder of the complaint under 2.116(C)(8) and (10) without further explanation.

I.

Plaintiff first contends that the trial court erroneously granted defendants' motion for summary disposition on his claim for tortious interference with a business relation. We conclude that the trial court properly granted defendants' motion as to this claim pursuant to MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

In order to establish a claim of tortious interference with a business relationship, the plaintiff must establish the following elements: (1) the existence of a valid business relation or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) and resultant damage to the party whose relationship has been disrupted. *Lakeshore Hosp v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995). To maintain a cause of action for tortious interference, a plaintiff must show that the defendant was a "third party" to the contract or business relationship. *Reed v Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). Corporate agents are not liable for tortious interference with the corporation's contracts unless they acted solely for their own benefit with no benefit to the corporation. *Id.*

The complaint does not allege that the defendants, who plaintiff alleged were corporate agents of Derby, interfered with plaintiff's relationship with Derby solely for their own benefit and without benefit to the corporation. Rather, the complaint states that the Halls decided to "arbitrarily and capriciously exclude him [plaintiff] from further competitions with Defendant corporation based solely on his prior success at their events." (Emphasis added.) At the hearing on defendant's motion, plaintiff's counsel argued "USA has attempted to eliminate Mr. Bradford because he became very good." She explained her theory why defendants would want to eliminate plaintiff because of his success. "Because he became very good, [Derby] decided to change the rules. [Derby] wanted to try and make everyone feel at each race that they had an opportunity and the ability to compete and win. . . ." Thus, even considering plaintiff's assertion that Rose Hall harbored and displayed intense personal animosity toward plaintiff, the complaint, as well as counsel's arguments, belie any argument that the Halls acted "solely for their own benefit with no benefit to the corporation" when they allegedly interfered with plaintiff's relationship with Derby.

We reject plaintiff's contention that the trial court should have denied the motion for summary disposition because further discovery was needed. Further discovery on this issue would not correct the deficiency of plaintiff's claim as stated in the complaint.

II.

Plaintiff next contends that he is entitled to protection under the equal accommodation statute, MCL 750.146; MSA 28.343, because Derby contracts with the state to conduct amusement events on state land. We agree with the trial court's determination that plaintiff failed to state a claim on which relief can be granted. MCR 2.116(C)(8).

The equal accommodations statute prohibits the denial of equal accommodations to any person based upon race, religion, color, sex, national origin, or blindness. *Reigler v Holiday Skating Rink*, 393 Mich 607, 613-614; 227 NW2d 759 (1975). Plaintiff did not allege that he was denied equal accommodation for any of these reasons. Therefore, summary disposition was appropriately granted for defendants on this issue pursuant to MCR 2.116(C)(8).

III.

Plaintiff's final contention is that the trial court erroneously granted summary disposition on his defamation "slander per se" claim. Plaintiff alleged that Sonny "has made statements to third parties that Plaintiff started a riot at the 1993 State Championship Race," and that "[s]tatements of Defendant, Sonny Hall, mischaracterized Plaintiff's character as well as his actions at the incident in question." The only factual support for the claim presented by plaintiff was Hall's admission that he "made statements to [plaintiff's attorney] that Plaintiff almost started a 'riot' at the 1993 championship race."

In order to establish a claim for slander per se, plaintiff must establish the following: 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) actionability of the statement regardless of the harm. *Duran v Detroit News*, 200 Mich App 622, 633; 504 NW2d 715 (1993).

Plaintiff failed to establish the second element because Sonny's statement to plaintiff's attorney was privileged. A communication is privileged if the plaintiff consents to the conversation in which the slanderous statement was made. *Hollowell v Career Decisions, Inc*, 100 Mich App 561, 574-575; 298 NW2d 915 (1980). In this case, it was established that Sonny Hall made the statement to plaintiff's attorney in a telephone conversation initiated by plaintiff's attorney, in which she inquired regarding the facts surrounding Sonny Hall's letter suspending plaintiff. No other evidence was presented, and plaintiff has not suggested that his attorney engaged in the conversation without his consent. Consequently, we find that plaintiff has failed to establish a genuine issue of material fact as to the second element of his claim. Accordingly, Sonny was entitled to summary disposition on the basis of MCR 2.116(C)(10).

Plaintiff also argues that summary disposition was premature. We disagree. According to plaintiff, Sonny hired security guards to follow and watch plaintiff when he attended Derby sponsored events as a spectator and that defendants "falsely instructed their additional security personnel that [plaintiff] was or is violent and dangerous." Inasmuch as these purported statements are not alleged in the complaint as the basis of the defamation claim, they provide no basis for us to conclude that summary disposition was premature.

Affirmed.

/s/ Maureen P. Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer