STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH SMITH,

Plaintiff-Appellee,

v

PRIMCO MANAGEMENT CORPORATION and MARCIA K. NIX,

Defendants-Appellants,

and

CITY OF DETROIT, OFFICER PIERRIE, and OFFICER D. WRIGHT,

Defendants.

UNPUBLISHED
July 15, 1997

No. 193207
Wayne Circuit Court
LC No. 94-427366

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

In this action arising out of plaintiff's arrest and brief incarceration on suspicion of embezzling from her employer, defendants Primco and Marcia Nix appeal by leave granted the trial court's denial of their motions for summary disposition. We affirm in part and reverse in part.

On appeal, defendants first contend that the trial court erred in denying their motion for summary disposition brought pursuant to MCR 2.116(C)(8) with respect to plaintiff's false imprisonment claim. Plaintiff, in her complaint, alleged that defendants provided information to the police concerning a "pretext charge of embezzlement," which information led to plaintiff's (allegedly wrongful) arrest and incarceration. Defendants, in response, argue that plaintiff's claim fails as a matter of law because plaintiff's incarceration was a discretionary act of the police officers, an act for which defendants may not be held responsible. In determining whether summary disposition pursuant to MCR 2.116(C)(8) was appropriate, this Court accepts all plaintiff's well-pleaded factual allegations as true and considers whether the claim was "so clearly unenforceable as a matter of law that no factual

development could possibly justify a right of recovery." *Peters v Dep't of Corrections*, 215 Mich App 485, 486-487; 546 NW2d 668 (1996).

The question on appeal, then, is purely one of law, namely, whether allegedly false information given to the police may support a claim for the resultant "false imprisonment." As stated in *Lewis v Farmer Jack Division, Inc*, 415 Mich 212, 218 n 2 (emphasis suppressed); 327 NW2d 893 (1982), quoting 1 *Restatement Torts*, 2d , § 45A, p 69, "[o]ne who instigates or participates in the unlawful confinement of another is subject to liability to the other for false imprisonment." The Court in *Lewis*, however, qualified the preceding general rule with the following limitation:

> In order for this section to be applicable to an arrest, it must be a false arrest, made without legal authority. One who instigates or participates in a lawful arrest, as for example an arrest made under a properly issued warrant by an officer charged with the duty of enforcing it, may become liable for malicious prosecution, as stated in Chapter 29, or for abuse of process, as stated in Chapter 31, but he is not liable for false imprisonment, since no false imprisonment occurred. [*Id.*, quoting *Restatement*, comment b.]

Thus, because plaintiff's claim of false imprisonment is based on her arrest, the claim will withstand a motion for summary disposition pursuant to MCR 2.116(C)(8) only if plaintiff has alleged facts demonstrating that her arrest was unlawful. Plaintiff alleged that she was arrested solely "[o]n the basis of the criminal allegations of defendant" and that the officers failed "to conduct any investigation whatsoever of the alleged acts [before] arresting" plaintiff.[1] As set forth in MCL 764.15(1)(d); MSA 28.874(1)(d), a peace officer may, without a warrant, arrest a person "[w]hen the police officer has probable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it."

Our review of the pleadings does not indicate that plaintiff at any point alleged facts supporting an inference that the arresting officers lacked probable cause.[2] On the contrary, plaintiff's assertion that the officers based their arrest on defendants' allegations would support a finding that the officers did, in fact, have probable cause to arrest. While plaintiff avers that she was arrested without an "investigation" designed to corroborate defendants' allegations, she has not directed this Court's attention to any authority suggesting that an investigation is required under circumstances such as those here presented. Therefore, we conclude that plaintiff's complaint is insufficient on its face to state a claim for false imprisonment, and that the trial court erred in denying defendants' motion for MCR 2.116(C)(8).[3]

In summary, an action for false imprisonment in an arrest situation will not lie unless it is predicated on an unlawful arrest. *Lewis*, *supra*. A warrantless arrest is lawful where the arresting officer has probable cause to believe that a felony was committed and probable cause to believe that the defendant committed it. MCL 764.15(1)(d); MSA 28.874(1)(d). Here, plaintiff failed to allege specific facts supporting a conclusion that the arresting officers lacked probable cause to arrest and, hence, that her arrest was unlawful. Therefore, summary disposition was appropriate.

At oral argument before this Court, plaintiff argued that her false imprisonment claim against defendants did not rest upon her initial incarceration, but upon defendants' involvement in the wrongful perpetuation of that incarceration. However, under MCR 2.116(C)(8), we review the sufficiency of the complaint, and plaintiff does not make this allegation in her complaint. Further, it does not appear that plaintiff raised this issue at any point during the proceedings below, and she certainly does not present this argument in her brief on appeal. The section of her brief on appeal devoted to the false imprisonment claim is titled, "Because appellants . . . gave false information to the arresting police officer *to induce the arresting officers to arrest appellee,* appellants are liable to appellee for false arrest and false imprisonment" (emphasis added), and the text of the brief comports with the title. Because this Court will not consider arguments that are not properly briefed, see *City of Lansing v Hartsuff,* 213 Mich App 338, 351; 539 NW2d 781 (1995), much less arguments that are not briefed at all, we decline to consider plaintiff's contention.

Defendants next argue that the trial court erred in denying their motion for summary disposition with respect to plaintiff's defamation claim where plaintiff failed to plead this claim with the specificity required by Michigan law and, therefore, failed to state a claim on which relief could be granted pursuant to MCR 2.116(C)(8). One asserting a claim for defamation must allege, *inter alia*, that the defendant published false and defamatory statements concerning the plaintiff. *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 251; 487 NW2d 205 (1992). Generally, the plaintiff must allege "the very words of the libel." *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc,* 197 Mich App 48, 51; 495 NW2d 392 (1992), quoting Gatley, *Law & Practice of Libel & Slander* (1924 ed), p 467. "General allegations" of defamatory statements are typically not sufficient. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 80; 480 NW2d 297 (1991).

Here, in her complaint plaintiff alleged that defendants made allegations "to the effect that she embezzled and stole money . . . [and] had otherwise acted unlawful [sic] . . . ." While "the very words of the libel" are not alleged, this Court has recognized that "because a slanderous statement cannot be retained verbatim in many instances since it is spoken, . . . it is sufficient if the complaint sets out the substance of the alleged slander and it is not necessary to recite the exact words used." *Pursell v Wolverine-Pentronix, Inc*, 44 Mich App 416, 422; 205 NW2d 504 (1973). Though some tension may exist between the general rule that one must plead a defamation claim with specificity and the exception carved out in *Pursell*, under the facts of the present case, plaintiff's allegation that defendant stated that plaintiff had "embezzled and stole money" is sufficiently specific to withstand a motion for summary disposition.

Defendants also contend that plaintiff's defamation claim fails because any allegations made by defendant to the police officers were privileged. While some type of privilege attaches to communications made to police officers in the context of suspected criminal activity, Michigan law is not entirely clear regarding whether that privilege is absolute or qualified. In *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619; 396 NW2d 809 (1986), this Court, ostensibly relying on *Shinglemeyer v Wright*, 124 Mich 230, 239-240; 82 NW 887 (1900), stated that "information given to police officers regarding criminal activity is absolutely privileged." This statement would seem to support

defendants' position that the statements made to the police officers were absolutely privileged and may not support a defamation action.

However, the statement of the *Hall* Court quoted in the preceding paragraph must be read in context. Though this Court pronounced the privilege to be absolute, in the very next sentence we stated that even if statements to a police officer concerning criminal activity are "not absolutely privileged, a qualified privilege" attaches. Clearly, the Court was not entirely certain that the privilege was absolute. Further, the *Shinglemeyer* decision expressly provided that where one maliciously gives false information to the police, such a communication may "form the basis themselves [of] an action for slander." *Shinglemeyer*, *supra*, p 239. Thus, because the decision of our Supreme Court in *Shinglemeyer* is preeminent over any statements on the matter made by this Court, *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), we conclude that no more than a qualified privilege attaches to communications made to police officers concerning criminal activity.

Viewed in this light, we find plaintiff's allegations of defamation to be sufficient to withstand defendants' motion for summary disposition brought pursuant to MCR 2.116(C)(8). Plaintiff alleged that defendant Marcia Nix made the statements described above to the police while knowing them to be "absolutely false and without . . . foundation or basis in fact." If this allegation is proven, plaintiff will have shown that defendant Nix acted maliciously with respect to her communications to the police officers, a showing that is legally sufficient under *Shinglemeyer*. Therefore, we determine that the circuit court acted properly in denying defendants' motion for summary disposition with respect to plaintiff's defamation claim.

Affirmed in part and reversed in part.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell

[1] Plaintiff also alleged that the officers acted "maliciously, wantonly, with gross omissions and gross negligence and in complete bad faith and with deliberate indifference . . . ." These allegations are devoid of specific factual underpinnings, are for the most part legal conclusions, and are so vague as to be properly ignored for purposes of determining the sufficiency of the complaint. See MCR 2.111(B)(1).

[2] Plaintiff did plead that the officers acted without probable cause. Again, however, she pleaded no facts supporting this assertion. The allegation of conclusions without facts to support those conclusions is not sufficient. See MCR 2.111(B)(1).

[3] We would note that where one believes, as in the present case, that one has been arrested and prosecuted based on accusations known to have been false by the accusing party, the proper claim to bring is malicious prosecution or abuse of process. *Lewis*, *supra*. Plaintiff did, in fact, allege in a

separate claim that defendants engaged in malicious prosecution, though that claim is not before this Court on appeal.