STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH DUNCAN,

Plaintiff-Appellant,

v

PERRY DRUG STORES, INC., JON BUCKLEY and MICHELE WAGNER,

Defendants-Appellees.

UNPUBLISHED
August 29, 1997

No. 192169
Wayne Circuit Court
LC No. 94-436837

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition of her libel and slander claims. We disagree. A trial court's determination of a motion for summary disposition is reviewed de novo on appeal. *Peters v Dep't of Corrections,* 215 Mich App 485, 486; 546 NW2d 668 (1996). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Porter v Royal Oak,* 214 Mich App 478, 484; 542 NW2d 905 (1995). In deciding such a motion, the trial court must consider the pleadings, depositions, affidavits, admissions, and other documentary evidence, and must give the nonmoving party the benefit of every reasonable doubt. *Id.* Although the court should be liberal in finding genuine issues of material fact, summary disposition is appropriate when the party opposing the motion fails to provide evidence to establish a material factual dispute. *Id.*

In an action for defamation, a plaintiff must prove: (1) 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) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *Linebaugh v Sheraton Michigan Corp,* 198 Mich App 335, 338; 497 NW2d 585 (1993). An employer has a qualified privilege to defame an employee by making statements to other employees whose duties interest them in the subject

matter. *Sias v General Motors Corp*, 372 Mich 542, 548; 127 NW2d 357 (1964); *Patillo v Equitable Life Assur. Society of US,* 199 Mich App 450, 454-455; 502 NW2d 696 (1992). The elements of a qualified privilege are: (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Prysak v R L Polk Co*, 193 Mich App 1, 14-15; 483 NW2d 629 (1992). The determination whether a privilege exists is one of law for the court. A plaintiff may overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth. The issue of actual malice is generally one of fact for the jury and for which supporting facts must be given; general allegations of malice are insufficient to establish a genuine issue of material fact. *Id.*

Here, even assuming that a factual dispute existed regarding the truth or falsity of defendants' statements, we find that as a matter of law defendants were entitled to assert a qualified privilege because the statements of Wagner and Buckley were made between persons having an interest in the subject matter of the communication, thereby rebutting a prima facie inference of malice on the part of defendants. *Smith v Fergan,* 181 Mich App 594, 597-598; 450 NW2d 3 (1989). The circumstances surrounding Wagner's publication of the contents of the phone message do not demonstrate that they were made in bad faith. Wagner's actions demonstrate her concern, both personal and professional, regarding the message as it related to the robbery, and her statements concerned an interest to be upheld and were limited in its scope to this purpose. Wagner raised her concern regarding this message at a proper occasion, and published the statements in a proper manner and to proper parties only, including individuals in the Loss Prevention Department and Buckley. *Prysak, supra.* Regarding Buckley, we conclude that his statements were also published in good faith regarding an interest to be upheld. Buckley filed the Corrective Action Report concerning the alleged phone message with the Human Resources Department, which was the proper department to receive this information. The report was limited in its scope to the purpose of detailing Wagner's report of the phone message, and was written on a proper occasion, and was published in a proper manner and to proper parties only. *Id.*

To overcome defendants' qualified privilege, plaintiff asserts that a genuine issue of material fact existed whether defendants acted with actual malice. In support of this claim, plaintiff denies making the threatening telephone call to Wagner and points to certain slight inconsistencies in Wagner's testimony at deposition and in an earlier MESC hearing. Plaintiff also asserts that Buckley was motivated to defame plaintiff because she had complained to his superior that Buckley had harassed her. However, even viewing the evidence in a light most favorable to plaintiff, we cannot say that her general, unsupported allegations create an inference that defendants made their statements with knowledge that they were false or with reckless disregard for their truth. See *Prysak, supra; Wynn v Cole,* 91 Mich App 517; 284 NW2d 144 (1979). Accordingly, the trial court properly granted summary disposition in favor of defendants.

Plaintiff also argues that Wagner's and Buckley's statements were published to three other employees of Perry Drugs who were not privileged to hear this information. We disagree. A review of the record demonstrates that the employees most likely heard about the alleged phone message and

plaintiff's termination through gossip, rather than through direct publication by Wagner or Buckley. Plaintiff admitted at her deposition that two of the employees did not state that they heard about the phone message from either Wagner or Buckley, and both of these employees denied having any conversations whatsoever with Wagner or Buckley regarding plaintiff, the phone message, or plaintiff's termination. Although plaintiff claims that the third employee, a store manager, did hear the statements directly from Wagner and Buckley, it is likely that these publications, assuming they occurred, were privileged because of the employee's status as a store manager.

Plaintiff next argues that the trial court erred in granting defendants' motion for summary disposition of plaintiff's claim for false light invasion of privacy. We disagree. In order to maintain an action for false light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that would be highly objectionable to a reasonable person by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. *Porter, supra.*

Even assuming that six to eight employees of Perry Drugs were informed of plaintiff's alleged telephone message, we conclude that this number does not constitute a broadcast to the public in general, or to a large number of people. *Id.*; *Dzierwa v Michigan Oil Co,* 152 Mich App 281, 288; 393 NW2d 610 (1986). Moreover, as discussed above, plaintiff has failed to establish that defendants Wagner and Buckley acted with reckless disregard as to the truth or falsity of their publicized statements. See *Hall v Pizza Hut of America, Inc,* 153 Mich App 609, 618-619; 396 NW2d 809 (1986). Wagner honestly believed that plaintiff was the person who left the message on her answering machine, and she reported the phone call to Loss Prevention personnel and to her supervisor. Buckley properly reported this information to the Human Resources Department. Buckley believed Wagner's claim that plaintiff left this message, and made a deliberate decision to believe Wagner over plaintiff. Accordingly, plaintiff has failed to establish that defendants' statements placed her in a false light.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski