

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SAM ANDRES, d/b/a SCHOOLCRAFT AUTO  
BODY,

UNPUBLISHED  
March 13, 2008

Plaintiff-Appellant/Cross-Appellee,

v

No. 276473  
Kalamazoo Circuit Court  
LC No. 06-000065-NO

TIM BROWN,

Defendant-Appellee/Cross-  
Appellant.

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Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

In this defamation suit, plaintiff Sam Andres appeals as of right the trial court's grant of summary disposition under MCR 2.116(C)(7) in favor of defendant Tim Brown on the ground that Brown had absolute immunity. On appeal, we decline to address whether the trial court erred when it determined that Brown had absolute immunity. Rather, because the statements at issue cannot support a claim for defamation as a matter of law, we conclude that Brown was entitled to summary disposition under MCR 2.116(C)(10). Because the trial court properly granted summary disposition in favor of Brown—albeit on a different basis—we affirm.

I. Facts and Procedural History

Andres owns an auto repair facility in the Village of Schoolcraft. Brown is the chair of the village's planning commission. In 2001, straight-line winds damaged Andres' business. After deciding to build a new facility, Andres submitted a site plan for the new facility to the village planning commission. The planning commission approved the site plan and the new facility opened in 2003.

In 2004, Cheri Lutz, who was the village manager, received a complaint that Andres had not complied with the site plan submitted for the new facility. According to Lutz, the complaint involved allegations that Andres' property was cluttered with junk, weeds, fallen trees, and abandoned vehicles. The complaint also included claims that the property contained dangerous buildings, improper signage, and that the property did not contain the sidewalk required by the site plan. Lutz stated that she began to work with the planning commission and Andres to resolve these issues and establish a timeline for completion of the tasks necessary to bring the property into compliance.

In December 2004, Andres sent a letter to Lutz in response to her concerns. In the letter, Andres stated that he was doing everything that he was capable of doing to bring the property into compliance. He explained that he was unable to meet some of the requirements because of financial hardship and illness in his family. But he claimed that, with time, he would be able to resolve many of the issues. He noted that he would submit a proposed timeline for the completion of the tasks.

In February 2005, Andres had a revised site plan submitted to the planning commission at a regularly scheduled meeting. The planning commission approved the revised site plan with nine conditions. Under the revised site plan, Andres had to bring the property into compliance by August 2005.

Andres did not bring the property into compliance by the August 2005 deadline. As a result, Lutz scheduled an informal administrative meeting with Andres to discuss the compliance issues. On November 9, 2005, Lutz and Brown met with Andres. Also present were two persons from Associated Government Services, which conducted inspections on Andres' property, and a private citizen who was in attendance on an unrelated matter.

During the course of the meeting, Andres explained that he was doing everything possible to comply with the site plan and that, because of various hardships, he was not able to comply. Andres provided the participants with a letter that outlined the reasons why he was unable to comply. Andres also stated that with additional time he would be able to bring the property into compliance. During Andres' explanation, Brown allegedly stated, "I am tired of you lying" and "you are lying." The private citizen in attendance also averred that Brown said to Andres "you're a liar." Brown admitted that, out of frustration with Andres, he stated "you have got to stop lying to the Village," but denied ever calling Andres a liar.

On November 30, 2005, Andres sent a letter regarding the meeting to the village president. In the letter, Andres complained about Brown's rude behavior at the meeting and noted that Brown said, "I'm tired of you lying." Andres claimed that Brown impugned his character and asked the village president to hold Brown accountable.

In December 2005, Andres attended a meeting of the village council and distributed a copy of the November 30 letter to the audience. He then addressed the council about the statements. Andres also spoke to a reporter in attendance at the meeting. After the meeting, the reporter also spoke to Brown. An article titled "Schoolcraft Business Owner Claims Slander" later appeared in a local paper. In the article, the reporter indicated that Brown denied that he called Andres a liar. However, Brown is quoted as saying that Andres "feels he shouldn't have to adhere to ordinances because of financial hardships." The reporter also indicated that Brown stated that Andres "would rather the village ignore these issues" and that "this is an attempt to redirect attention away from the fact that he's not following the ordinance."

In February 2006, Andres sued Brown for defamation. In his complaint, Andres claimed that Brown's statements at the meeting of November 9 and in the article were false and defamatory. In December 2006, defendant moved for summary disposition on the grounds that Brown's statements were not defamatory as a matter of law, were privileged, and because Brown had absolute immunity.

In February 2007, the trial court issued an opinion and order addressing Brown’s motion. The trial court concluded that there was a question of fact as to whether the statements were false and defamatory, but concluded that Brown had absolute immunity. For that reason, the trial court granted Brown’s motion under MCR 2.116(C)(7).

This appeal followed.

## II. Analysis

We shall first address Brown’s argument on cross-appeal that the trial court erred when it concluded that there were questions of fact as to whether the statements at issue were false and defamatory.

### A. Standard of Review

This Court reviews de novo a trial court’s decision on a motion for summary disposition. Summary disposition is appropriate under MCR 2.116(C)(10) if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” When determining whether there is a genuine issue as to any material fact, the trial court must consider the evidence presented by the parties in the light most favorable to the party opposing the motion. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). Although the proffered evidence must be viewed in the light most favorable to the nonmoving party, in cases involving constitutionally protected discourse, this Court has a duty to independently examine the record evidence to ensure that constitutional principles are properly applied. *Rouch v Enquirer & News*, 440 Mich 238, 253; 487 NW2d 205 (1992).

### B. False and Defamatory Statements

To establish a claim of defamation, a plaintiff must show that the defendant directed statements at the plaintiff that were false and defamatory. *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000). In the present case, Andres presented evidence that Brown made statements accusing Andres of lying to the village and calling him a liar. Specifically, he submitted evidence that Brown told him, “I am tired of you lying,” “you are lying,” and “you’re a liar.” Andres also presented a copy of the article with statements about Andres attributed to Brown. Andres alleged, and the trial court agreed, that there was a question of fact as to whether these statements were false and defamatory. Taken in context, we do not agree that there was a question of fact as to whether these statements were false or defamatory.

A statement cannot be false unless it concerns an objectively verifiable event—one that can be proven false. A subjective statement of opinion cannot be proven false and, therefore, cannot support a claim of defamation. *Ireland v Edwards*, 230 Mich App 607, 616-617; 584 NW2d 632 (1998). Because a statement that someone is a liar might be demonstrably false, it has the potential to support a claim for defamation. *Id.* at 616. Nevertheless, where the context demonstrates that the speaker’s assertion is a mere subjective opinion that is not capable of being proved false, the statement will not be actionable. *Id.* at 617.

In the present case, it is undisputed that the allegedly false statements Brown made at the November 9 meeting were made after Andres asserted that he had done all he could to comply

with the site plan and offered excuses as to why he could not complete the required modifications by the deadline. Hence, Brown's statements must be understood as an accusation that Andres' assertions about his intent and ability to comply with the site plan were false—i.e., that Andres was “lying” and a “liar” when he stated that he did everything that he could to comply. Yet, in order to support an action for defamation, Andres must be able to show that Brown's statements could be proved false. *Id.* at 616-617. In order to prove them false, Andres would have to be able to show that he was telling the truth when he asserted that he had done all that he could to comply, but was unable to comply due to various circumstances. However, whether Andres could have done more to comply with the site plan under the given circumstances is a matter of subjective opinion; different persons will invariably come to different conclusions about whether Andres could have done more under the given circumstances. Because Brown's statement that Andres was “lying” or a “liar” was nothing more than an expression of Brown's opinion that Andres could have done more to comply, the statements are incapable of being proved false. Because they cannot be proved false, the statements cannot support a claim for defamation. *Id.* at 617.

Likewise, even if these statements were factual and capable of being proved false, we would conclude that they were not defamatory as a matter of law. As a preliminary matter, a court may decide as a matter of law whether a statement is capable of defamatory meaning. *Id.* at 619. A statement is defamatory “if it tends to harm an individual's reputation so as to lower him in the estimation of the community or deter others from associating with him.” *Ledsinger v Burmeister*, 114 Mich App 12, 21; 318 NW2d 558 (1982). However, if a statement “could not be interpreted by a reasonable listener or reader as stating actual facts” about the plaintiff, even if the statement appears on its face to be factual and capable of being proved false, the statement will not be actionable. *Ireland, supra* at 617. Thus, where a statement is not capable of defamatory interpretation—such as where reasonable listeners would conclude that the statement at issue was mere rhetorical hyperbole—the statement cannot support an action for defamation. *Id.* at 617-618. When assessing whether a reasonable listener would conclude that a statement was mere rhetorical hyperbole, this Court must give the statement its natural and fairly accepted meaning as determined by the context within which it is made. *Ledsinger, supra* at 21; *Ireland, supra* at 617.

Examining Brown's statements at the November 9 meeting in context, no reasonable listener would conclude that Brown intended to make actual factual statements about Andres. Rather, it is clear that Brown was expressing frustration—albeit using strong language—with Andres' repeated failure to bring his property into compliance with the site plan. Hence, Brown's statements are more naturally to be understood as rhetorical hyperbole—as vigorous epithets used to attack Andres' position that his noncompliance should not be held against him. Therefore, although we agree that Brown's comments at the November 9 meeting were intemperate and inappropriate, we conclude that they are not defamatory as a matter of law.

Finally, because the statements attributed to Brown in the newspaper article are all clearly statements of Brown's subjective opinion concerning Andres' motivation and intentions, those statements are also incapable of being proved false. Hence, they too are not actionable. *Ireland, supra* at 617.

### III. Conclusion

The trial court erred when it concluded that there was a question of fact as to whether the statements at issue were false and defamatory. Because these statements were not false and defamatory as a matter of law, Brown was entitled to summary disposition of Andres' defamation claim on that basis. MCR 2.116(C)(10). Further, even if we were to conclude that the trial court's determination that Brown had absolute immunity was error, Brown would still be entitled to summary disposition. *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006) (noting that this Court will affirm a trial court's decision when it came to the right result, even if for a wrong reason). Therefore, we need not address Andres' other claims of error.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael R. Smolenski  
/s/ Jane M. Beckering