

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT GHANNAM,

Plaintiff-Appellant,

v

NABEEL N. HAMAMEH and NABEEL N.
HAMAMEH, P.C.,

Defendants-Appellees.

UNPUBLISHED

May 22, 2014

No. 313568

Wayne Circuit Court

LC No. 12-007461-CZ

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff Robert Ghannam appeals by right the trial court’s order dismissing his claims against defendants, Nabeel N. Hamameh and Nabeel N. Hamameh, P.C. (collectively Hamameh). Because we conclude there were no errors warranting relief, we affirm.

Hamameh moved for summary disposition on the ground that all of Ghannam’s claims were barred because each claim involved statements Hamameh made in pleadings or in court during a separate lawsuit. However, the trial court—apparently sua sponte—decided to dismiss Ghannam’s claims on the ground that he should have brought them as counterclaims in the other suit. See MCR 2.116(I)(1). On appeal, Ghannam argues that the trial court erred when it dismissed his claims on that basis. “This Court reviews de novo a trial court’s decision on a motion for summary disposition.” *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

We agree that the trial court erred to the extent that it concluded that Ghannam was obligated to bring his claims as counterclaims in the other suit. Under MCR 2.203(A), a pleader “must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action” “Actions arise from the same transaction or occurrence only if each arises from the identical events leading to the other action.” *Nat’l Waterworks, Inc v Int’l Fidelity & Surety, Ltd*, 275 Mich App 256, 261; 739 NW2d 121 (2007).

Ghannam’s claims against Hamameh in this suit did not arise out of the same transaction or occurrence involved in Hamameh’s suit against Ghannam. Hamameh’s complaint involved Ghannam’s actions in an alleged scheme to defraud Hamameh through a fake investment. The events leading to Hamameh’s claims against Ghannam ended before he sued Ghannam. With

this lawsuit, by contrast, Ghannam sought to recover for damages allegedly caused by Hamameh's actions and statements in filing his own suit. Therefore, though the two lawsuits are related, they do not arise from identical events. *Id.* Consequently, Ghannam had no obligation to plead his claims as counterclaims in Hamameh's suit.

On appeal, Hamameh does not address the propriety of the trial court's actual basis for dismissing Ghannam's claims. Instead, Hamameh urges this court to affirm—in relevant part—on an alternate basis: Hamameh argues that the doctrine of judicial proceedings privilege bars all of Ghannam's claims.

A cross-appeal is not required in order to urge this Court to consider an alternative ground for affirmance. *Boardman v Dept' of State Police*, 243 Mich App 351, 358; 622 NW2d 97 (2000). Further, as this Court has explained, “[w]hen a trial court reaches the right result for the wrong reason, the ruling will not be disturbed.” *Burise v City of Pontiac*, 282 Mich App 646, 652 n 3; 766 NW2d 311 (2009).

Under the doctrine of judicial proceedings privilege, “[s]tatements made by judges, attorneys, and witnesses during the course of judicial proceedings are absolutely privileged if they are relevant, material, or pertinent to the issue being tried.” *Oesterle v Wallace*, 272 Mich App 260, 264; 725 NW2d 470 (2006). This privilege “extends to every step in the proceeding and covers anything that may be said in relation to the matter at issue, including pleadings and affidavits.” *Couch v Schultz*, 193 Mich App 292, 295; 483 NW2d 684 (1992). The privilege should be liberally construed in order to protect the participants in judicial proceedings from retaliation. *Id.* “If a statement is absolutely privileged, it is not actionable even if it was false and maliciously published.” *Oesterle*, 272 Mich App at 264. Michigan Courts have previously applied judicial proceedings privilege to actions for defamation, *Couch*, 193 Mich App at 294, negligence, *Maiden v Rozwood*, 461 Mich 109, 117, 133-134; 597 NW2d 817 (1999), intentional torts, *Dabkowski v Davis*, 364 Mich 429, 432-433; 111 NW2d 68 (1961), and tortious interference with a contractual or economic relationship, *Meyer v Hubbell*, 117 Mich App 699, 710-711; 324 NW2d 139 (1982).

In his complaint, Ghannam first alleges that Hamameh caused him damage from libel and defamation by making remarks and accusations against him “in and in connection with” the other suit, which statements he alleged were false. Ghannam listed seven paragraphs from Hamameh's complaint and cited remarks and accusations that Hamameh made on the record during a hearing in the first lawsuit. Each of these alleged instances of defamation or libel occurred either within a pleading or during a hearing before the court, *Couch*, 193 Mich App at 295, and, therefore, are absolutely privileged, *Oesterle*, 272 Mich App at 264.

Ghannam similarly alleged that this same conduct—“as outlined above in *Count I* was intentional or reckless”—was outrageous and of such a character as not to be tolerated in a civilized society and caused him serious emotional distress. Once again, the conduct that Ghannam alleges to have caused his damages all arise from a pleading or from statements made at a hearing before the court. The judicial proceedings privilege bars suit for intentional torts based upon statements made in the course of a judicial proceeding. *Dabkowski*, 364 Mich at 432-433. Therefore, this claim was barred by an absolute privilege.

Ghannam also alleged in his third claim that Hamameh's conduct in the other lawsuit was done intentionally to interfere with his employment relationship. Again, the conduct that Ghannam alleges to have caused his damages all arise from either a pleading, such as Hamameh's complaint, or from statements that he made at a hearing. Therefore, they are absolutely privileged. *Oesterle*, 272 Mich App at 264; see also *Meyer*, 117 Mich App at 710-711 (applying the judicial proceedings privilege to bar a claim for tortious interference with a contractual or economic relationship).

Finally, Ghannam also alleged a claim for breach of fiduciary duties against Hamameh. It is again evident that Ghannam's breach of fiduciary duty claim arises from Hamameh's conduct in bringing and prosecuting his own lawsuit. The judicial proceedings privilege is meant to be liberally construed in order to protect the participants in judicial proceedings from retaliation. *Couch*, 193 Mich App at 295. Further, breach of fiduciary duty is a tort claim, *Urbain v Beierling*, 301 Mich App 114, 131; 835 NW2d 455 (2013), and our Supreme Court has determined that claims for both negligence and intentional torts may be barred by the judicial proceedings privilege. *Maiden*, 461 Mich at 117, 133-134; *Dabkowski*, 364 Mich at 432-43. Hamameh's allegations that Ghannam committed fraud in taking his money and yet not investing it were obviously "relevant, material, or pertinent to the issue being tried." *Oesterle*, 272 Mich App at 264. Consequently, the judicial proceedings privilege also applies to Ghannam's claim for breach of fiduciary duty.

Hamameh also argues that summary disposition of Ghannam's claim for breach of fiduciary duty was proper because the harm that he alleges was not related to the previous attorney-client relationship, which gave rise to the fiduciary duty. Given our determination that this claim is barred, we need not address this issue.

The trial court came to the correct result, even if for an incorrect reason. *Burise*, 282 Mich App at 652 n 3.

There were no errors warranting relief.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Michael J. Kelly