STATE OF MICHIGAN

COURT OF APPEALS

GREGORY J. ROHL and THE LAW OFFICES OF GREGORY J. ROHL, P.C.,

Plaintiffs-Appellants,

v

KYM J. WORTHY and THOMAS WENZEL,

Defendants-Appellees,

and

KHALIL RAHAL,

Defendant.

UNPUBLISHED
April 10, 2014

No. 312967
Wayne Circuit Court
LC No. 11-012501-NO

Before: DONOFRIO, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court granting summary disposition in favor of defendants, Kym Worthy and Thomas Wenzel.[1] We affirm.

I. BACKGROUND

On April 16, 2010, Kim Tourner, filed a police report with the Trenton Police Department, claiming that Greg Rohl, plaintiff, had assaulted her the night before. On April 21, 2010, plaintiff served Tourner with a civil suit, seeking return of $30,000 and an engagement ring, both of which were allegedly given in contemplation of marriage. On May 5, 2010, a PPO was issued prohibiting plaintiff from contacting Tourner.

Upon Rohl's initiative, he took a polygraph test. He attempted to use the favorable test results to get the domestic violence charge dropped but was unsuccessful. In a related matter, during one of his phone conversations with Tourner, plaintiff told her, "I passed the polygraph.

[1] Defendant Khalil Rahal was dismissed as a party by stipulation at the trial court.

My case was dismissed on Tuesday. They're going to charge you [with filing a false police report]. . . . Kim, they're going to charge you on Tuesday." Plaintiff further stated that "this lawsuit is not the first thing that's going to happen."

Contrary to plaintiff's assertions, the domestic violence case was not dropped. In fact, the case proceeded to trial and resulted in two hung juries in November 2010 and December 2010. Worthy personally made the decision to try plaintiff a third time.

On October 18, 2010, Worthy, additionally charged plaintiff with witness intimidation (threatening to kill or injure), bribing/intimidating/interfering with a witness, and obstruction of justice. On that same date, a Wayne County Prosecutor's Office held a press conference, where Worthy spoke. In addition to her spoken words, a written press release was issued that provided the following:

> Prosecutor Kym L. Worthy has charged attorney Gregory Joseph Rohl, 48, of Trenton, in connection with the alleged intimidation of the witness against him in a domestic violence case that is currently pending against him. The victim in both cases is Kim Tourner, 44, of Trenton. Ms. Tourner is the former girlfriend of the defendant.
>
> Ms. Tourner alleged that on April 16, 2010, at 9:30 p.m., she was assaulted in her Trenton home by Rohl. On April 20, 2010, Rohl was arraigned on the misdemeanor domestic violence charge and the judge ordered no contact with the victim. It is alleged that on April 21, 2010, Rohl filed a civil suit against Ms. Tourner and said that he would dismiss the suit if she dismissed the domestic violence case. It is further alleged that Rohl engaged in behavior designed to intimidate and interfere with Ms. Tourner's participation as a prosecution witness in the domestic violence case. The domestic violence case is currently set for a jury trial before Judge Michael McNally in 33rd District Court on November 19, 2010, at 9:00 a.m.
>
> Rohl has been charged with Intimidating a Witness, Threatening to Kill or Injure, a felony punishable by up to 15 years in prison, Bribing/Intimidating/Interfering with a Witness, a felony punishable by up to four years in prison, and Obstruction of Justice, a felony punishable by up to five years in prison.
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> "An attorney is sworn to uphold the law, not use it to intimidate victims and legal expertise to exploit the facts. The evidence in this case will show that Attorney Rohl did just that," said Prosecutor Worthy.
>
> Rohl was arraigned on October 12, 2010 and has received a personal bond with a no contact order with the victim. His preliminary examination is set for October 26, 2010 before Judge Michael McNally.

A preliminary examination for the three charged felonies was held in November 2010. In addition to the 2010 events mentioned previously, the prosecution introduced evidence of other acts that happened in 2007 and 2008. The prosecution maintained that these were evidence of a "common scheme or plan." In 2007, after Tourner filed a police report accusing plaintiff of

harassing her, plaintiff responded with a civil suit of his own against Tourner, alleging defamation, abuse of process, conversion, and breach of contract. In 2008, Tourner and plaintiff went to Orlando, Florida, where Tourner alleged plaintiff assaulted her. Upon their return to Michigan, defendant showed Tourner a complaint against her, which he had not filed yet. According to Tourner, defendant inquired whether she really wanted to pursue the Florida charge. Tourner testified that defendant had her call the prosecutor's office in Orlando and advised them that she would not be pressing charges.

The prosecution argued that it should be allowed to aggregate the separate violations of law from 2007, 2008, and 2010, and proceed with the charged three counts, based upon a common plan or scheme theory. The prosecution alternatively argued that it should be allowed to amend the information to bind plaintiff over on nine separate counts consisting of three charges from each of the three cited years.

The trial court concluded that "the series of events which occurred between 2007 and 2010 are not part of a common plan or scheme" and, accordingly, denied the prosecutor's motion to bind plaintiff over on the three charges under that theory.

The trial court then analyzed whether plaintiff should be bound over on the amended nine-count information. It concluded that the prosecution failed to establish its case related to the three counts of intimidating (threatening to injure or kill), MCL 750.122(7)(c), and failed to establish the three counts of obstruction of justice, MCL 750.505. But the trial court did bind plaintiff over on the three counts of witness intimidation under MCL 750.122(3) for the acts occurring in 2007, 2008, and 2010.

As part of a plea agreement, plaintiff pleaded guilty to malicious use of telecommunication service, MCL 750.540e, and disorderly conduct, MCL 750.167. In exchange, all other charges were dismissed from the domestic violence case and the latter witness-intimidation case.

Plaintiff filed the instant complaint against defendants, alleging false light and defamation. Defendants moved for summary disposition on the basis of governmental immunity. The trial court granted the motion with respect to defendant Worthy because the court concluded that only Worthy was absolutely immune from any liability pursuant to MCL 691.1407(5). Later, defendant Wenzel moved for summary disposition, and the trial court granted that motion because it determined that the alleged statements were either not published by Wenzel or defamatory as a matter of law.

II. SUMMARY DISPOSITION, MCR 2.116(C)(7) – DEFENDANT WORTHY

Plaintiff first argues on appeal that the trial court erred in granting summary disposition in favor of defendant Worthy on the basis of her being immune from liability.

We review a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(7) de novo. *Roby v City of Mount Clemens*, 274 Mich App 26, 28; 731 NW2d 494 (2006). "MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties." *Haliw v City of Sterling Heights*, 464 Mich 297, 301-302; 627 NW2d 581 (2001) (quotation

marks omitted). When deciding a motion for summary disposition under MCR 2.116(C)(7), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Herman v Detroit*, 261 Mich App 141, 143-144; 680 NW2d 71 (2004). "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

MCL 691.1407(5) provides that "[a] judge, a legislator, and the elective or highest appointed executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." Worthy is the chief law enforcement officer of Wayne County, and accordingly, she is absolutely immune from tort liability as long as she was acting within the scope of her executive authority. *Bischoff v Calhoun Co Prosecutor*, 173 Mich App 802, 806; 434 NW2d 249 (1988); see also *Petipren v Jaskowski*, 494 Mich 190, 212; 833 NW2d 247 (2013).

On appeal, the only cogent argument that plaintiff puts forth on this issue is that the trial court erred because when it dismissed Worthy from the lawsuit, it did so sua sponte. We first note that the trial court did not sua sponte address the issue because defendants raised the issue of absolute immunity in their first motion for summary disposition. In fact, the entire argument portion of defendants' brief in support of their motion for summary disposition was dedicated to the position that defendants were immune from liability. The fact that defendants did not expressly cite MCL 691.1407(5) and, instead, only mentioned "[t]he common law . . . protection of absolute immunity" is of little consequence. There is no question that plaintiff was put on notice that defendants were seeking dismissal based on being immune from liability; plaintiff even admitted at the motion hearing that he "concentrated on [defendants'] absolute immunity [argument]." Additionally, defendants cited *Bischoff*, which specifically addressed MCL 691.1407(5) and how that statute granted immunity to a county's elected prosecutor. *Bischoff*, 173 Mich App at 806. Moreover, assuming arguendo that the trial court did sua sponte address the immunity issue, this would have been permissible under MCR 2.116(I)(1), which provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law . . . , the court shall render judgment without delay." See *Wilson v King*, 298 Mich App 378, 381 n 4; 827 NW2d 203 (2012).

Notably, plaintiff failed to explicitly put forth an argument that Worthy was not absolutely immune from liability. Instead, plaintiff merely states "that even the highest executive is not always entitled to absolute immunity as a matter of law" and that Worthy's duties do not include "the authority to defame" plaintiff. However, a prosecutor making statements to the press regarding arraignments/prosecutions of public interest is indeed part of an elected prosecutor's duties. See *Payton v Wayne Co*, 137 Mich App 361, 370-371; 357 NW2d 700 (1984). Plaintiff's focus on whether Worthy had the authority to make *defamatory* statements as part of her job is not the proper inquiry. See *Petipren*, 494 Mich at 212 (stating that issue was whether a police chief's "executive authority" includes the ability to conduct an arrest – not whether such authority includes the ability to conduct an *illegal* arrest, as the plaintiff alleged happened). Accordingly, because plaintiff's claim of defamation related to Worthy is based solely on Worthy's statements to the press in conjunction with her executive authority, she

was entitled to absolute immunity, and the trial court did not err in dismissing the claims against her.

III. SUMMARY DISPOSITION, MCR 2.116(C)(10) – DEFENDANT WENZEL

Plaintiff next argues that the trial court erred when it granted summary disposition in favor of defendant Wenzel.

Even though Wenzel moved for summary disposition pursuant to both MCR 2.116(C)(7) and MCR 2.116(C)(10), it is apparent that the trial court granted summary disposition under MCR 2.116(C)(10). We conclude so because the trial court did not grant Wenzel's motion on the basis of any immunity granted by law; instead, the trial court simply reviewed all of the submitted documents and determined that the alleged statements were either not published by Wenzel or defamatory as a matter of law. See *Sisk-Rathburn v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 425, 427; 760 NW2d 878 (2008). Accordingly, we will review the issue under subrule (C)(10).

A trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001).

We conclude that plaintiff's cursory treatment of the issues on appeal with respect to defendant Wenzel results in those issues being abandoned. *Barrow v City of Detroit Election Comm'n*, 301 Mich App 404, 418 n 6; 836 NW2d 498 (2013). The trial court determined that Wenzel was entitled to judgment as a matter of law on the false light count because Worthy was the person who made the press release, not Wenzel. The trial court also determined that Wenzel was entitled to judgment as a matter of law on the defamation count because either (1) there was no evidence that Wenzel actually published any of the alleged defamatory statements or (2) any statements that Wenzel made were not defamatory. In his brief on appeal on this issue, plaintiff does not adequately address either count. In the section of his brief addressing Wenzel, plaintiff repeated nearly verbatim his five pages of argument related to defendant Worthy, which involved the concept of immunity. After dedicating these pages to the issue of immunity, plaintiff added two short paragraphs, neither one sufficiently addressing the pertinent legal issues involved. Accordingly, plaintiff has abandoned the issue on appeal. *Id.*

Not only did plaintiff's brief on appeal fail to address the trial court's reasons for granting summary disposition in favor of Wenzel, the brief also failed to adequately address plaintiff's own theory that Wenzel should be liable because Worthy, the one who actually published the bulk of the allegedly defamatory statements, was merely a "reader" and ultimately relied on information that Wenzel provided to her. His entire "argument" in his brief that ostensibly pertains to this issue is as follows:

> The general rule is one who published a defamatory statement is liable for the injurious consequences of its repetition where the repetition is the natural and probable result of the original publication. *Tumbarella v Kroger Company*, 85 Mich App 482; 271 NW2d 284 (1978).

As we have noted, a party's cursory treatment of an issue on appeal results in it being abandoned. *Barrow*, 301 Mich App at 418 n 6.

Affirmed. Appellees, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen