

STATE OF MICHIGAN  
COURT OF APPEALS

---

DIANE HYRMAN,

Plaintiff-Appellant,

v

THOMAS BROOKS,

Defendant-Appellee.

---

UNPUBLISHED

May 3, 2005

No. 251508

Genesee Circuit Court

LC No. 01-072016-NZ

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff, the township treasurer for Gaines Township, brought this defamation action against defendant, alleging that defendant defamed her in a recall petition when he accused her of “taking monies under false pretenses.” The basis for this allegation was that plaintiff’s base salary was increased by \$2,400 in 1993, to include compensation that plaintiff previously received separately for the collection of the summer tax. Although the township ceased collecting the summer tax in 1995, plaintiff continued to collect the full amount of her salary, as adjusted in 1993. The trial court granted defendant’s motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court’s resolution of a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 540.

In order to establish a claim of defamation, a plaintiff must show: (1) a false or defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either that the statement was defamation per se, which is actionable regardless of special harm to the plaintiff, or that the plaintiff did suffer special harm as a result. *Mino v Clio School Dist*, 255 Mich App 60, 72; 661 NW2d 586 (2003).

Plaintiff argues that summary disposition was inappropriate because defendant falsely accused her of committing a crime. A false accusation of criminal conduct constitutes

defamation per se, which is actionable regardless of the plaintiff's ability to prove actual or special damages. MCL 600.2911(1); *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 726; 613 NW2d 378 (2000). Direct accusations or inferences of criminal conduct or wrongdoing are not protected as opinion, and there is no First Amendment protection for "a charge which could reasonably be understood as imputing specific criminal conduct or other wrongful acts." *Hodgins v Times Herald Co*, 169 Mich App 245, 253-254; 425 NW2d 522 (1988). But statements that are necessarily subjective, and statements that no reasonable person would accept as a statement of actual fact are protected speech and not actionable. *Kevorkian v American Medical Ass'n*, 237 Mich App 1, 6-7; 602 NW2d 233 (1999). Statements must be viewed in context to determine whether they are capable of defamatory interpretation, or whether they constitute no more than "rhetorical hyperbole" or "vigorous epithet." *Id.*; *Greenbelt Cooperative Publishing Ass'n v Bresler*, 398 US 6, 14; 90 S Ct 1537; 26 L Ed 2d 6 (1970); *Ireland v Edwards*, 230 Mich App 607, 618; 584 NW2d 632 (1998).

In *Kevorkian*, *supra* at 7-8, this Court elaborated on the distinction between actionable accusations of criminal behavior and mere "rhetorical hyperbole":

[I]n *Greenbelt*, *supra*, a real estate developer was involved in simultaneous negotiations with the city of Greenbelt, Maryland. Because the developer was both selling land to the city and seeking a zoning variance from the city, a local newspaper printed articles reporting that community members described his bargaining position as "blackmail." The Supreme Court rejected the developer's argument that the newspaper effectively charged him with the crime of blackmail, and concluded that "even the most careless reader must have perceived that the word [blackmail] was no more than rhetorical hyperbole . . . ." *Ireland*, *supra*, p 618, citing *Greenbelt*, *supra*, p 14. In *Hodgins*, *supra*, p 524, referring to *Greenbelt*, *supra*, we noted that "[e]xaggerated language used to express opinion, such as 'blackmailer,' 'traitor' or 'crook,' does not become actionable merely because it could be taken out of context as accusing someone of a crime." Into this category, we would place statements that are both necessarily subjective and objectively verifiable, and statements that both do and do not state actual facts about a person.

Statements that are not protected and therefore are actionable include false statements of fact, i.e., those that state actual facts but are objectively provable as false and direct accusations or inferences of criminal conduct. *Hodgins*, *supra*, p 253. Language that accuses or strongly implies that someone is involved in illegal conduct crosses the line dividing strongly worded opinion from accusation of a crime. *Id.*, p 254.

The Court in *Kevorkian* concluded that statements implying that the plaintiff, Jack Kevorkian, was a murderer were not actionable because they were necessarily subjective, rhetorical expressions of the speaker's opinion of the plaintiff's highly public and controversial actions. *Kevorkian*, *supra* at 13-14.

In this case, we conclude that summary disposition was properly granted to defendant. The alleged defamatory statement was made in a recall petition and concerned plaintiff's capacity as an elected, public official. As this Court observed in *Kevorkian*, *supra* at 9, quoting

*Locricchio v Evening News Ass'n*, 438 Mich 84, 88; 476 NW2d 112 (1991), the First Amendment accords “maximum protection to public speech about public figures . . . [with a] special solicitude for speech of public concern.” Political argument is inherently and necessarily subjective and prone to distortion, even when it purports to contain verifiable fact. In contrast to the defamatory statements in *Hodgins*, which involved actual facts objectively provable as false, defendant here stated a conclusion without reciting any factual premise. When viewed in the context of the political arena in which it was made, defendant’s exaggerated and distorted conclusion can be categorized as protected rhetorical hyperbole. This case is further distinguishable from *Hodgins* because plaintiff is a public figure, not a private citizen, whose actions are therefore subject to greater scrutiny, and defendant’s speech was directed at plaintiff’s capacity to hold public office and, therefore, involved a matter of public concern. Accordingly, the trial court did not err in granting defendant’s motion for summary judgment.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ David H. Sawyer  
/s/ Kurtis T. Wilder