

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH SCHMIZZI,

Plaintiff-Appellant,

v

JOSEPH BORRAJO,

Defendant-Appellee.

UNPUBLISHED
November 2, 2004

No. 248578
Wayne Circuit Court
LC No. 02-232506-NO

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this defamation action after defendant sent a letter to the Secretary of State accusing plaintiff of selling driver's licenses for \$500. The trial court ruled that the statement was absolutely privileged and dismissed the complaint.

We review de novo a trial court's ruling on a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a privilege attaches to a defamatory statement is a question of law for the trial court. *Couch v Schultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992).

Plaintiff argues that defendant's statement was not absolutely privileged. We agree. While statements to police officers regarding suspected crimes may be subject to an absolute qualified privilege, *Shinglemeyer v Wright*, 124 Mich 230, 239-240; 82 NW 887 (1900); *Hall v Pizza Hut of America, Inc.*, 153 Mich App 609, 619-620; 396 NW2d 809 (1986), the statement at issue here was not made to the police. Instead, the privilege properly at issue here is the qualified privilege applicable to bona fide communications regarding any subject in which a party has an interest or duty when such communications are made to a person with a corresponding interest or duty, be the duty legal, moral, or social. *Bostetter v Kirsch Co.*, 319 Mich 547, 556-557; 30 NW2d 276 (1948). Reports of criminal activity made in good faith and without malice to officials responsible for criminal prosecutions are subject to a qualified privilege. See, e.g., *Fridovich v Fridovich*, 598 So 2d 65, 69 (Fla, 1992); *Richmond v Nodland*, 552 NW2d 586, 589 (ND, 1996). See also 50 Am Jur 2d, Libel & Slander, § 293, pp 583-584; 53 CJS, Libel & Slander, § 83, pp 154-155.

“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, 15; 483 NW2d 629 (1992). With respect to the good faith element, “[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.” *Id.*

The trial court did not determine whether summary disposition on the basis of the qualified privilege was warranted or whether further factfinding was needed on that question. Accordingly, we reverse and remand for future determinations on that issue.

Plaintiff also claims that summary disposition was premature because discovery was not complete. This issue has not been preserved for appeal because plaintiff failed to include it in his statement of questions presented and we therefore decline to consider it. *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003).

We reverse and remand. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra