

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL J. GLOWICKI,

Plaintiff-Appellant,

v

BRENDA R. SWANSON,

Defendant-Appellee.

UNPUBLISHED

March 14, 2006

No. 256574

Bay Circuit Court

LC No. 99-003062-NZ

Before: Fitzgerald, P.J. and O’Connell and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order dismissing his claims for defamation and intentional infliction of emotional distress (IIED). We affirm.

I. Standard of Review

“We review a trial court’s grant or denial of a motion for summary disposition de novo.” *Collins v Detroit Free Press, Inc.*, 245 Mich App 27, 31; 627 NW2d 5 (2001). “Because the court looked beyond the pleadings in deciding the motion,” review under 2.116(C)(10) is appropriate. *Id.* “In reviewing a motion under MCR 2.116(C)(10), the court must examine the documentary evidence presented by the parties and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists.” *Id.*

II. Defamation

Plaintiff first argues that the trial court erred by ruling that he was a limited-purpose public figure, which required him show actual malice instead of a private figure, which would have only required that he show negligence. However, even assuming, without deciding, that plaintiff was a private figure, we conclude that the trial court did not err in dismissing plaintiff’s defamation claim. Although our conclusion is based on a different ground than that stated by the trial court, we will not reverse when the trial court reached the right result. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

“Where a defendant’s statements are not protected by the First Amendment, a plaintiff can establish a defamation claim by showing: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication

(defamation per quod).” *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). Defamation of a private figure requires only a showing of negligence. *J & J Construction Co v Bricklayers*, 468 Mich 722, 732; 664 NW2d 728 (2003). A statement must be provably false to be actionable, but a “subjective assertion” is not. *Ireland, supra* at 616.

Under the circumstances of this case, we conclude that defendant’s alleged statements were merely subjective assertions and are not actionable. In or about September 1996, defendant reported to police that she was alone in a basement when a man attacked and raped her. An investigation ensued, but police were unable to locate the attacker. Defendant later saw a man she believed to be the attacker driving a car. This man was plaintiff. Defendant reported this to police, but plaintiff was not charged. In July 1997, defendant saw plaintiff on the Riverwalk in Bay City and an altercation ensued wherein plaintiff committed an assault and battery for which he was ultimately convicted. When questioned by a newspaper in February 1998 about this incident, defendant asserted as a possible motive for the July attack, “I guess he saw the look in my eyes when I realized who he was, the fear on my face.” The newspaper wrote that defendant “believed she recognized him as the man who attempted to rape her in 1996.” The newspaper also quoted defendant as stating, “You don’t forget those eyes, and at the Riverwalk, I seen those eyes again[.]” Plaintiff concedes that defendant believes that he is the man who attacked and raped her in September 1996. On the basis of the evidence presented in the trial court, we conclude that there is no genuine issue of material fact as to whether defendant’s statements were subjective assertions. Accordingly, we conclude, as a matter of law, that the statements are not actionable. Therefore, the trial court did not err in dismissing plaintiff’s defamation claim.

III. Intentional Infliction of Emotional Distress

Plaintiff also contends that the court erred by granting summary disposition of his IIED claim. We disagree.

Our Supreme Court has not officially recognized the tort of intentional infliction of emotional distress. *Smith v Calvary Christian Church*, 462 Mich 679, 690; 614 NW2d 590 (2000) (WEAVER, J., concurring), citing *Roberts v Auto-Owners Ins Co*, 422 Mich 594; 374 NW2d 905 (1985). Assuming the claim is valid, it consists of the following elements: “(1) ‘extreme and outrageous’ conduct, (2) intent or recklessness, (3) causation, and (4) ‘severe emotional distress.’” *Roberts, supra* at 602.

In plaintiff’s IIED claim, he alleged, “Defendant’s conduct as outlined above [in the defamation claim] was intentional.” He further alleged that the “conduct outlined above” was extreme and outrageous, was for an ulterior motive, and caused severe and serious emotional distress. Thus, it is clear that plaintiff’s IIED claim was premised solely on the assumption that defendant’s statements were defamatory. Because defendant’s subjective assertions were not defamatory as a matter of law, the trial court did not err in dismissing plaintiff’s IIED claim.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly