Court of Appeals, State of Michigan

ORDER

DOAN RESTORATION OF MICHIGAN LLC V CHRISTINE ROWE

Docket No. 369611

LC No. 22-004222-CZ

Michelle M. Rick
Presiding Judge

Christopher P. Yates

Philip P. Mariani
Judges

The motion to correct opinion filed in this matter is GRANTED. The April 10, 2026 opinion is hereby AMENDED to correct a clerical error:

The third sentence of the first full paragraph of page 2 of the old opinion read:

> Defendant told plaintiff a lie in order to avoid conflict and to avoid using plaintiff's services because of the poor impression plaintiff's employees made while at defendant's home.

The new opinion reads:

> Non-party Matthew Genilla told plaintiff a lie in order to avoid conflict and to avoid using plaintiff's services because of the poor impression plaintiff's employees made while at non-party Matthew Genilla's home.

In all other respects, the April 10, 2026 opinion remains unchanged.

Michelle Rick
Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

May 8, 2026
Date

Jerome W. Zimmer Jr.
Chief Clerk

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

DOAN RESTORATION OF MICHIGAN, LLC,

Plaintiff-Appellant,

V

CHRISTINE ROWE and MEMBERSELECT INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
April 10, 2026
3:43 PM

No. 369611
Wayne Circuit Court
LC No. 22-004222-CZ

Before: RICK, P.J., and YATES and MARIANI, JJ.

PER CURIAM.

Political satirist Jonathan Swift is considered the originator of the concept behind the phrase "a lie can travel halfway around the world while the truth is still putting on its shoes," although he did not use that exact verbiage.[1] Instead of the modern quote, his actual words describing this phenomenon were:

> Few lies carry the inventor's mark, and the most prostitute enemy to truth may spread a thousand, without being known for the author: besides, as the vilest writer hath his readers, so the greatest liar hath his believers: and it often happens, that if a lie be believed only for an hour, it hath done its work, and there is no farther occasion for it. Falsehood flies, and truth comes limping after it, so that when men come to be undeceived, it is too late; the jest is over, and the tale hath had its effect: like a man, who hath thought of a good repartee when the discourse is changed, or

[1] This phrase is commonly attributed to Mark Twain, though that has since been debunked. See Joseph Wallace, *Five Commonly Misattributed Quotations* <https://style.mla.org/five-commonly-misattributed-quotations/> (accessed April 6, 2026).

> the company parted; or like a physician, who hath found out an infallible medicine, after the patient is dead.[2]

This sentiment is relevant today. It is applicable to the instant matter. Defendant told plaintiff a lie in order to avoid conflict and to avoid using plaintiff's services because of the poor impression plaintiff's employees made while at defendant's home. Rather than accept the truth that came limping along sometime after, plaintiff glommed onto the lie. The truth was too late. "[T]he tale hath had its effect",[3] and plaintiff initiated the instant lawsuit, born from a white lie.

Plaintiff now appeals as of right the trial court's order granting summary disposition to defendants under MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. FACTUAL BACKGROUND

In 2021, nonparty Matthew Genilla sustained water damage to his home and submitted a claim to his insurer, defendant MemberSelect Insurance Company. Defendant Christine Rowe was assigned as the adjuster. Genilla contacted plaintiff, a restoration company, for an assessment. He ultimately declined to hire plaintiff, citing unprofessional conduct during the initial visit. Plaintiff's owner, Wesley Doan, later spoke with Genilla by phone and secretly recorded the call. During the conversation, Genilla stated that, according to Rowe, MemberSelect did not use plaintiff's services and would not cover repairs if plaintiff were hired. At his deposition nearly two years later, Genilla acknowledged the voice on the recording sounded like his but stated he could not recall the conversation. He testified that Rowe never told him the claim would be denied if plaintiff performed the work and explained that he sometimes lies to avoid confrontation. Both Genilla and Rowe submitted affidavits denying that Rowe made the alleged statements.

Plaintiff sued defendants for defamation and tortious interference with a business relationship, relying on the recorded call. Defendants moved for summary disposition under MCR 2.116(C)(10), arguing the recording was inadmissible hearsay. Plaintiff asserted that the recording was admissible either as a nonhearsay "verbal act," or alternatively, under several hearsay exceptions. After a two-day hearing, the trial court concluded that the statements were neutral and not defamatory and that the recording was inadmissible hearsay not subject to any exception. The court thereafter granted defendants' motion for summary disposition. This appeal followed.

II. ANALYSIS

Plaintiff argues that the trial court erred by concluding that the statements allegedly made by Genilla in the recording were hearsay and not admissible under any exceptions. We disagree.

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[2] Jonathan Swift, The Examiner No. 14 (Sept. 11, 1710), available at <https://www.ourcivilisation.com/smartboard/shop/swift/examiner/chap14.htm (accessed April 6, 2026).

[3] *Id*.

This Court reviews a trial court's decision to grant or deny summary disposition de novo. *Krieger v Dep't of Environment, Great Lakes, & Energy*, 348 Mich App 156, 170; 17 NW3d 700 (2023). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When reviewing a motion brought under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the moving party meets its initial burden, "[t]he burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id*. When the nonmoving party has the burden of proof at trial, it must submit evidence that demonstrates a genuine issue of material fact exists and may not rest on mere allegations or denials in the pleadings. *Id*. at 362-363. "Inadmissible hearsay does not create a genuine issue of fact." *McCallum v Dep't of Corrections*, 197 Mich App 589, 603; 496 NW2d 361 (1992). Summary disposition is warranted "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto*, 451 Mich at 362.

"A trial court's decision whether to admit evidence is reviewed for an abuse of discretion, but preliminary legal determinations of admissibility are reviewed de novo." *Shivers v Covenant Healthcare Sys*, 339 Mich App 369, 373; 983 NW2d 427 (2021). "The admission or exclusion of evidence because of an erroneous interpretation of law is necessarily an abuse of discretion." *Id*. (citation and quotation marks omitted). This Court reviews the factual findings underlying a trial court's evidentiary decision for clear error, "meaning it defers to the trial court unless definitely and firmly convinced the trial court made a mistake." *Id*. at 373-374.

"Hearsay" is a statement that "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." MRE 801(c). Hearsay is generally inadmissible unless it falls within an enumerated exception. MRE 802. Likewise, when a statement contains multiple layers of hearsay testimony, it "is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule." MRE 805. A corollary to this principle, however, is that "[a] statement that is not offered to prove the truth of the matter asserted is not hearsay." *Airgas Specialty Prods v Michigan Occupational Safety & Health Admin*, 338 Mich App 482, 515; 980 NW2d 530 (2021).

A. VERBAL ACTS

Plaintiff first argues that the defamatory statements on the recorded call do not fit within the definition of hearsay because the statements are "verbal acts."

One type of nonhearsay utterance is a "verbal act," in which "the statement itself affects the legal rights of the parties or is a circumstance bearing on conduct affecting their rights." FRE 801, Advisory Committee Notes.[4] For example, in an action based on an alleged breach of

[4] MRE 801(c) is identical to its federal counterpart, FRE 801(c). Accordingly, our Supreme Court has explained, "when a particular rule is drawn from the corresponding Federal rule, the Michigan

contract, "no one would think to object that a writing offered as evidence of the contract is hearsay." McCormick, Evidence (9th ed) § 249. Additionally, "[e]ven though the words 'I offer' and 'I accept' are assertive, when offered to prove the existence of the offer or of the contract they are categorized as verbal acts and therefore not hearsay." 4 Jones, Evidence (7th ed), § 24:28.

In the present case, Genilla allegedly stated during the telephone call that, according to Rowe, MemberSelect did not use plaintiff as a restoration company. Genilla also allegedly stated that the restoration would not be covered if Genilla hired plaintiff to do the job. The trial court found that the statements at issue contained multiple layers of hearsay:

> Here I find the recorded statement to be hearsay, it is hearsay within hearsay under MRE 805. There needs to be a way to avoid the preclusion of the hearsay rule whether it be by identifying a non-hearsay statement or alternatively falling within one of the enumerated exceptions contained within MRE 803.

The court did not specifically address plaintiff's argument that the recording was not hearsay because it was a "verbal act." However, the Michigan and federal rules of evidence make clear that when a party's statement "itself affects the legal rights of the parties or is a circumstance bearing on conduct affecting their rights," it is not hearsay. FRE 801, Advisory Committee Notes. Stated another way, the spoken words are not significant for the substance of what they convey, but rather for the legal consequences they bring about.

Here, the recording contains two layers of statements that must be analyzed separately. In the first, Rowe allegedly told Genilla that the insurance company did not use plaintiff's services, and that if he used plaintiff for restoration work, his claim would not be reimbursed. This statement is not hearsay because plaintiff does not offer it to prove the truth of the matter asserted, i.e., that MemberSelect does not typically use plaintiff's restoration services and would not reimburse a claim for work performed by plaintiff. Rather, plaintiff sought to introduce this testimony as evidence of the *publication* of the allegedly defamatory statements. Because plaintiff offered this as evidence of the verbal act of publication, which is a necessary element for a defamation claim, it does not constitute hearsay under MRE 801(c). Consequently, plaintiff would be able to offer the sworn testimony of Genilla regarding Rowe's out-of-court statement to him if Genilla were willing to testify either in court or in a sworn statement. Such a statement would not be hearsay because Rowe's out-of-court statement would be evidence of the verbal act of publication of an allegedly defamatory statement.

This is not what plaintiff was attempting to do, however. Plaintiff was attempting to offer a *recorded conversation*, allegedly between Genilla and Doan, which represents another level of analysis. Here, plaintiff sought to introduce Genilla's out-of-court statement to Doan for the truth of the matter that Rowe told Genilla the work performed by plaintiff would not be covered. This statement *was* being offered for the truth of the matter asserted, i.e., that Rowe did in fact tell

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Committee Note usually does not restate the rule's background or comment on its meaning. Rather the Federal Advisory Committee Notes and Congressional reports are allowed to speak for themselves." *People v Malone*, 445 Mich 369, 379; 518 NW2d 418 (1994) (quotation marks and citation omitted).

Genilla that Memberselect did not use plaintiff's services. Accordingly, the statement falls within the definition of hearsay in MRE 801, unless it falls within a hearsay exception, either under MRE 801(d) or MRE 803. It is undisputed that Genilla is not an employee or agent of defendants, and the record otherwise provides no basis to conclude that any of the hearsay exclusions contained in MRE 801(d) were applicable.[5] Furthermore, despite plaintiff's furious and passionate stance, there is nothing in the record to suggest any of the hearsay exceptions in MRE 803 were applicable. To the contrary, the evidence establishes that Genilla, by his own admission, fabricated the recorded statements he made to Doan because Genilla did not want plaintiff's company to do the remediation work. End of story and analysis. Plaintiff is not entitled to relief on this basis.

B. RESIDUAL EXCEPTION

Plaintiff also alleges that the trial court erred when it did not admit the recording under MRE 803(24). We disagree.

As a preliminary matter, defendants' motion for summary disposition, plaintiff's response, and defendants' reply were filed in November and December 2023, and the motion was argued in December 2023. However, the court's written order was issued in January 2024, i.e., after the extensive reorganization of the Michigan Rules of Evidence became effective on January 1, 2024. See 512 Mich lxxxvii (2023). Consequently, when the trial court issued its order, the catchall exception to the hearsay rule formerly available under MRE 803(24) had been eliminated. The new residual provision is set forth in MRE 807:

> (a) In General. Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:
>
> (1) the statement has equivalent circumstantial guarantees of trustworthiness;

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[5] Plaintiff does not expressly argue that any of the exclusions in MRE 801(d) apply, but does make an opaque reference to a prior inconsistent statement which, according to plaintiff,

> is not hearsay if the declarant testifies and is subject to cross-examination regarding a prior statement, and the statement is inconsistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted with recent improper influence or motive in so testifying; or identifies a person as someone the declarant perceived earlier.

This is a slight mischaracterization of MRE 801(d)(1), which provides that a prior inconsistent statement is not hearsay if the declarant testifies and is subject to cross-examination about a prior statement, and the prior statement "is inconsistent with the declarant's testimony and *was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition* . . . ." MRE 801(d)(1)(A) (emphasis added). Here, the prior statement, the surreptitiously-recorded telephone conversation, was not given under penalty of perjury at trial, a hearing, or in a deposition, so this provision does not apply.

(2) it is offered as evidence of a material fact;

(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) admitting it will serve the purposes of these rules and the interests of justice.

(b) Notice. The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant's name and address—so that the party has a fair opportunity to meet it.

Although the rules were reorganized and renumbered, the substance of the residual exception formerly available in MRE 803(24) was preserved in the new MRE 807. Consequently, although we will evaluate the argument using the rubric of the new residual exception in MRE 807, our analysis would be the same as if the former residual exception in MRE 803(24) applied.

Our Supreme Court has explained that the prior iterations of the residual exceptions were designed "to be used as safety valves in the hearsay rules." *People v Katt*, 468 Mich 272, 281; 662 NW2d 12 (2003). However, the proponent of the evidence must meet the stringent requirements of the rule, "[t]he first and most important" of which is the requirement "that the proffered statement have circumstantial guarantees of trustworthiness . . . ." *Id*. at 290. This Court has provided the following nonexhaustive list of factors to consider when evaluating whether a statement has circumstantial guarantees of trustworthiness:

> (1) the spontaneity of the statements, (2) the consistency of the statements, (3) lack of motive to fabricate or lack of bias, (4) the reason the declarant cannot testify, (5) the voluntariness of the statements, i.e., whether they were made in response to leading questions or made under undue influence, (6) personal knowledge of the declarant about the matter on which he spoke, (7) to whom the statements were made . . . , and (8) the time frame within which the statements were made. [*People v Geno*, 261 Mich App 624, 634; 683 NW2d 687 (2004) (citation omitted).]

Additionally, our Supreme Court explained that the third requirement for admissibility under the residual exception, i.e., that the hearsay evidence is more probative than any other reasonably-available evidence, would also limit its applicability:

> The third requirement is that the proffered statement be the most probative evidence reasonably available to prove its point. It "essentially creates a 'best evidence' requirement." This is a high bar and will effectively limit use of the residual exception to exceptional circumstances. For instance, nonhearsay evidence on a material fact will nearly always have more probative value than hearsay statements, because nonhearsay derives from firsthand knowledge. Thus, the residual exception normally will not be available if there is nonhearsay evidence on point. [*Katt*, 468 Mich at 293 (citation omitted).]

Indeed, the requirements of the residual exception are "stringent and will rarely be met," alleviating concerns that the residual exception will "swallow" the hearsay rules through overuse. *Kuebler v Kuebler*, 346 Mich App 633, 656; 13 NW3d 339 (2023).

In the instant case, the trial court did not abuse its discretion by refusing to admit the recorded statement under the residual exception found in MRE 807. The first and most important requirement for admission under either the new iteration of the rule or the prior rule is that the proponent of the evidence must demonstrate that the evidence has circumstantial guarantees of trustworthiness. Plaintiff did not include any argument in its response to the motion for summary disposition or in its brief on appeal as to how this requirement was met. However, the record evidence makes clear that the recorded call is not supported by circumstantial guarantees of trustworthiness and should not have been admitted.

The first relevant factor in the trustworthiness inquiry is the spontaneity of the statement. As discussed above, there were several intervening events between the event perceived by Genilla (his conversation with Rowe) and his statement to Doan about the conversation with Rowe in the recorded call. Consequently, Genilla had time in the interim to reflect on the conversation with Rowe and either knowingly or unknowingly alter his description of the event.

Another relevant factor is the "lack of motive to fabricate or lack of bias . . . ." *Geno*, 261 Mich App at 634 (citation omitted). In his deposition, Genilla offered a reasonable motive for fabricating his description of his conversation with Rowe, i.e., he is a nonconfrontational person, and he wanted to avoid a difficult conversation with Doan about his company's lack of professionalism as the reason he decided not to hire them. Accordingly, this factor also weighs against admission of the recording under MRE 807.

Finally, the consistency of the statements also weighs against the admission of the recording. In the unsworn recording, Genilla told Doan that Rowe told him his insurer did not use plaintiff and would not cover the claim if he hired them. But in his subsequent sworn affidavit and deposition testimony, he claimed that Rowe never made this statement. Rowe, in her sworn affidavit, also said she never made that statement to Genilla. Accordingly, because the unsworn hearsay statement was inconsistent with the admissible evidence in the case, the statement did not have sufficient guarantees of trustworthiness under either MRE 803(24) or MRE 807 to justify its admission.

Although the trustworthiness of the recording was not the focus of the trial court's analysis when it evaluated whether to admit the evidence under the residual exception, it is the first and most important consideration. Sufficient guarantees of trustworthiness were not present in this case to warrant admission. Accordingly, we affirm the trial court's decision not to admit the recording under the residual exception because the court reached the correct result, even though our reasoning differs from that of the trial court. See *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 449; 886 NW2d 445 (2015) ("We will affirm a trial court's decision on a motion for summary disposition if it reached the correct result, even if our reasoning differs.").

Mark Twain once remarked: "If you tell the truth you don't have to remember anything."[6] Genilla could not bring himself to follow this simple advice. It is no wonder his deposition testimony and affidavit were at odds, and plaintiff felt unjustly injured. Had Genilla simply followed this guidance, this case likely never would have been initiated. Unfortunately, the falsehood flew, and the limping truth could not rectify the situation. Plaintiff decided to believe the falsehood rather than be disabused of it.

Affirmed.[7]

/s/ Michelle M. Rick
/s/ Christopher P. Yates
/s/ Philip P. Mariani

[6] Mark Twain, *Notebook* (1894), quoted in Twain Quotes, <http://www.twainquotes.com/Truth.html> (accessed April 6, 2026).

[7] We affirm the trial court's holding that the recorded statement was not admissible, and therefore both claims in the complaint must be dismissed because plaintiff failed to show with admissible evidence that there was a genuine issue of material fact as to either claim. Consequently, we decline to address the trial court's alternate holding that, even if the recorded statements were admissible, they were not defamatory as a matter of law.