

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVEN M. GURSTEN and MICHIGAN AUTO  
LAW, PC,

UNPUBLISHED  
March 18, 2021

Plaintiffs-Appellants,

v

No. 352225  
Oakland Circuit Court  
LC No. 2019-171503-NO

JOHN DOE 1, also known as TOM MAHLER,  
JOHN DOE 3, also known as MARCELLUS  
FRANCIS an VICTOR LANDON, SR., JOHN DOE  
4, also known as VEGAN4 LIFE and ARIELLE  
HIPPIE GIRL, and JOHN DOE 5, also known as  
STOP EATING ANIMALS,

Defendants,

and

JOHN DOE 2, also known as PATRICK  
ANDERSON,

Defendant-Appellee.

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Before: LETICA, P.J., and GLEICHER and O'BRIEN, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order voluntarily dismissing with prejudice the claims against defendants, John Doe 3 (Doe 3), John Doe 4 (Doe 4), and John Doe 5 (Doe 5). On appeal, plaintiffs challenge the trial court's earlier order granting summary disposition under MCR 2.116(C)(8) (failure to state a claim) on plaintiff's claim of defamation in favor of defendant-appellee, John Doe 2 (Doe 2). We affirm.

## I. BACKGROUND

This case concerns a one-star Google review Doe 2 posted, under a pseudonymous username “Patrick Anderson,” on plaintiffs’ Google Review page. Plaintiffs, a Michigan attorney and law firm that primarily practice no-fault insurance law, filed a complaint alleging that Doe 2, negligently or with actual malice, posted the wordless one-star review to plaintiffs’ Google review page with the intent to cause damage to plaintiffs’ reputation or profession and to dissuade potential clients from doing business with plaintiffs.<sup>1</sup>

Doe 2 moved for summary disposition under MCR 2.116(C)(8), arguing that the only allegation of defamation was the one-star Google review and “[b]ecause no words were ever spoken or written, . . . there cannot be claims of defamation or libel.” Doe 2 asserted that a one-star Google review was an opinion, not a statement that could be proven false for defamation purposes. In response, plaintiffs argued that a publication can still be defamatory by implication. By posting the review, plaintiffs contended that Doe 2 implicitly stated that he had an attorney-client interaction with plaintiffs, which can be proven false. Doe 2 responded that the implicit statement that Doe 2 was a client of plaintiffs by posting the review was not actionable because it was not defamatory. Specifically, Doe 2 argued “Google reviews are based on experiences[,]” and do “not demand that Doe 2 was or is a client of [p]laintiffs or that Doe 2 must have directly spoken with Gursten.”

The trial court held a hearing regarding Doe 2’s motion for summary disposition and took the matter under advisement. Plaintiffs filed a supplemental response after further discovery identified John Doe 1 (Doe I) as a former Michigan personal-injury attorney who was disbarred. Plaintiffs argued that Doe 2 was also a competitor, particularly because Doe 2’s attorney was primarily involved in no-fault litigation, much like plaintiffs. Plaintiffs asserted the First Amendment did not protect their competitors from leaving false and defamatory reviews on the Internet; thus, plaintiffs argued that they were entitled to learn Doe 2’s true identity. Doe 2 replied that Doe 1’s identity only established that Doe 1 and Doe 2 were not the same person. Doe 2 reasserted that plaintiffs incorrectly assumed that one must be or have been a client to post a review on Google. Because there was no such requirement, Doe 2 argued its wordless one-star Google review was not defamation and not actionable.

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<sup>1</sup> Attorney Gursten also responded to the review on the website:

This is a fake review. I have never spoke with this person. No one from our law firm has worked or spoke with this person. There is no record showing this person has called our law firm before. The Google profile of this person shows he has not written a Google review before or after this one. In fact, the Google profile for Patrick Anderson shows no Google activity whatsoever. Sadly, this all suggests this is a fake profile created by a competitor attorney. To read real client reviews of people I have helped (and actually talked with), please visit [http://www.michiganautolaw.com/firm\\_profile/attorneysteven-gursten/](http://www.michiganautolaw.com/firm_profile/attorneysteven-gursten/). You will find dozens of actual client reviews of people I have helped.

The trial court granted Doe 2's motion for summary disposition, ruling:

[A] one-star review is pure opinion and is not a statement capable of being defamatory. Even if the review implies that John Doe 2 had an experience with [p]laintiffs as [p]laintiffs contend, the Court does not find that this implication would render what would otherwise be pure opinion, defamatory. The implication of an experience with [p]laintiffs is not a defamatory implication regardless of whether it is provable as false. The Court has not been presented with [] authority for the contention that a one-star review[,] standing alone[,] is defamatory because it was posted anonymously or pseudonymously.

Moreover, in considering the context of the review, the Court cannot ignore that the one-star review at issue in this case was made on Google Review. Such websites are well-recognized places for anyone to place an opinion. Within this context, an ordinary [I]nternet reader understands that such comments are mere statements of opinion. To hold that the pseudonymous review in this case is defamatory would make nearly all negative anonymous or pseudonymous [I]nternet reviews susceptible to defamation claims.

Because the court finds that the one-star review is not a statement capable of being defamatory, [p]laintiffs' claim for defamation and business defamation fail as a matter of law.

This appeal followed.

## II. DISCUSSION

Plaintiffs argue the trial court erred in granting summary disposition by finding Doe 2's wordless one-star Google review of plaintiffs' business was not capable of defamatory meaning. We disagree.

We review de novo a trial court's decision regarding a motion for summary disposition, under MCR 2.116(C)(8), which tests the legal sufficiency of a claim. *Eplee v City of Lansing*, 327 Mich App 635, 644; 935 NW2d 104 (2019). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Id.* (quotation marks and citation omitted). When deciding a motion for summary disposition under MCR 2.116(C)(8), we only consider the pleadings. *Id.* Summary disposition should be granted when "the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 644-645 (quotation marks and citation omitted).

Likewise, we review de novo the trial court's finding that plaintiffs failed to establish their defamation claim. *Faxon v Mich Republican State Central Comm*, 244 Mich App 468, 473; 624 NW2d 509 (2001). "When addressing defamation claims, appellate courts must make an independent examination of the record to ensure against forbidden intrusions into the field of free expression." *Kevorkian v American Med Ass'n*, 237 Mich App 1, 5; 602 NW2d 233 (1999). Therefore, summary disposition is appropriate when a statement is not capable of a defamatory meaning as a matter of law. *Id.* at 9. This is a preliminary question. *Sarkar v Doe*, 318 Mich App 156, 179; 897 NW2d 207 (2016).

Here, plaintiffs asserted claims for defamation and business defamation. A for-profit business may assert a defamation claim if a defamatory statement “tends to prejudice it in the conduct of its business or to deter others from dealing with it[.]” *Heritage Optical Ctr, Inc v Levine*, 137 Mich App 793, 797; 359 NW2d 210 (1984) (quotation marks and emphasis omitted). In order to establish a business or regular defamation claim, a plaintiff must prove:

(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication 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 publication. [*Edwards v Detroit News, Inc*, 322 Mich App 1, 12; 910 NW2d 394 (2017) (quotation marks and citation omitted).]

“Generally, a communication is defamatory if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 257; 833 NW2d 331 (2013) (quotation marks, alterations, and citation omitted). “The dispositive question is whether a reasonable fact-finder could conclude that the statement implies a defamatory meaning.” *Sarkar*, 318 Mich App at 179 (quotation marks and ellipsis omitted). “A plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory.” *Thomas M Cooley Law Sch*, 300 Mich App at 262.

“The First Amendment protects communications that cannot be reasonably interpreted as stating actual facts about the plaintiff, i.e., expressions of opinion are protected.” *Edwards*, 322 Mich App at 13 (quotation marks and citation omitted). An “author’s decision to remain anonymous” is also protected by the First Amendment. *Thomas M Cooley Law Sch*, 300 Mich App at 256 (quotation marks and citation omitted). “However, there is no constitutional protection given to false statements of fact” or statements “provable as false.” *Hope-Jackson v Washington*, 311 Mich App 602, 621-622; 877 NW2d 736 (2015) (quotation marks and citation omitted); *Ghanam v Does*, 303 Mich App 522, 545; 845 NW2d 128 (2014) (quotation marks and citations omitted). “Even statements couched in terms of opinion may often imply an assertion of objective fact and, thus, can be defamatory.” *Ghanam*, 303 Mich App at 545.

Michigan recognizes “a cause of action for defamation by implication[.]” *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 702; 609 NW2d 607 (2000). To prove a defamation by implication claim, a plaintiff need not show that a statement was literally false, but must show “that the defamatory implications [were] materially false.” *Id.* “[A] statement which is substantially true is a defense to a charge of defamation by implication.” *Lawrence v Burdi*, 314 Mich App 203, 214-215; 886 NW2d 748 (2016) (quotation marks and citation omitted). “Furthermore, defendants in defamation suits are not required to prove the statement is literally and absolutely accurate in every minute detail.” *Id.* at 215 (quotation marks and citation omitted).

The trial court did not err in granting summary disposition under MCR 2.116(C)(8), finding Doe 2’s wordless one-star Google review of plaintiffs’ business was not capable of defamatory meaning as a matter of law. It is undisputed that an Internet Google review is a published a statement to a third party. *Edwards*, 322 Mich App at 12. Likewise, Doe 2 did not dispute plaintiffs’ allegation that the one-star Google review was harmful to plaintiffs’ reputation in the

industry. As a result, we must decide whether Doe 2's wordless one-star Google review constituted a false and defamatory statement.

We conclude that, as a matter of law, a one-star wordless review posted on Google Review is an expression of opinion protected by the First Amendment. *Edwards*, 322 Mich App at 13. We have previously held that “[t]he context and forum in which statements appear also affect whether a reasonable reader would interpret the statements as asserting provable facts.” *Ghanam*, 303 Mich App at 546 (quotation marks and citations omitted). In the context of Internet message boards and similar opinion-based platforms, statements “are generally regarded as containing statements of pure opinion rather than statements or implications of actual, provable fact . . . . Indeed, the very fact that most of the posters [on Internet message boards] remain anonymous, or pseudonymous, is a cue to discount their statements accordingly.” *Id.* at 546-547 (quotation marks and citations omitted). As plaintiffs note, Google Review is an online consumer review service where posters can share their subjective experience with, among other things, a business, a professional, or a brand. We therefore conclude that Google Review is no different than the [I]nternet message boards in *Ghanam*; that is, it contains purely a poster's opinions, which are afforded First Amendment protection.

Plaintiffs, however, argue Doe 2's one-star Google review was a defamatory statement by implication. Plaintiffs assert that “Google review is an [I]nternet-based consumer review service” where individuals can post reviews of a business or professional on the basis of their actual experience; therefore, by posting a wordless one-star Google review, the poster implies that his or her experience with that business was a negative one. Because Doe 2 failed to establish that he or she was a prospective, former, or current client, plaintiffs contend that the review is defamatory as it was implied that Doe 2 had an actual attorney-client experience and received legal services from plaintiffs. But plaintiffs fail to establish how Doe 2's one-star review was materially false. *American Transmission, Inc.*, 239 Mich App at 702. Indeed, plaintiffs do not even know Doe 2's true identity. While plaintiffs urge this Court to assume Doe 2 is a competitor-attorney because Doe 1 was identified as such, this is mere speculation without any factual basis.<sup>2</sup>

Similarly, plaintiffs argue Doe 2 was only permitted to post a review that evaluated their attorney-client experience with plaintiffs. Google's policy states that “content should reflect [the poster's] genuine experience at the location and should not be posted just to manipulate a place's ratings.” Because Google's policy does not limit a poster's experience to an attorney-client

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<sup>2</sup> Plaintiffs argue that summary disposition was premature because additional discovery was necessary to identify Doe 2. We are unpersuaded by this argument for many reasons. We have noted that “the use of the discovery process . . . seeking to identify anonymous Internet critics raises First Amendment concerns about the use of defamation actions to identify current critics and discourage others from exercising their rights to free speech.” *Ghanam*, 303 Mich App at 529. We do acknowledge that Google's policy disallows “[p]osting content about a competitor to manipulate their ratings.” But plaintiffs have pleaded no actual factual allegations that Doe 2 was engaged in this practice. Moreover, regardless of Doe 2's true identity, this does not alter our conclusion that a one-star wordless review on Google review is an opinion, even if it violates Google's policy.

experience, it could reflect any experience with plaintiffs, including their website, physical location, blogs, in-court interactions, or appearance. Accordingly, even if Doe 2's wordless one-star Google review was "couched in opinion," it was not actionable defamation because it contained a subjective rating of plaintiffs' business without any further words or statements describing that experience. Such a review could not imply an assertion of objective fact, but only an opinion, that is protected under the First Amendment. *Ghanam*, 303 Mich App at 545.

Therefore, the trial court did not err in concluding that the wordless one-star Google review was incapable of defamatory meaning as a matter of law. See *Thomas M Cooley Law Sch*, 300 Mich App at 269-270; *Ghanam*, 303 Mich App at 529.

Affirmed.

/s/ Anica Letica

/s/ Colleen A. O'Brien