STATE OF MICHIGAN

COURT OF APPEALS

JAMES R. KNUTSON, JANET KNUTSON, and JAMES R. KNUTSON REVOCABLE TRUST,

Plaintiffs/Counterdefendants-Appellees,

v

DEAN P. GASSERT,

Defendant/Counterplaintiff/Third-Party Plaintiff-Appellant,

and

THOMAS WAYNE KNUTSON,

Third-Party Defendant-Appellee.

UNPUBLISHED
September 14, 2023

No. 361675
Jackson Circuit Court
LC No. 20-000929-CH

COLUMBIA TOWNSHIP,

Plaintiff/Counterdefendant-Appellee,

v

DEAN P. GASSERT,

Defendant/Counterplaintiff-Appellant,

and

D&D AUTO GROUP, INC.,

Defendant/Counterplaintiff.

No. 361754
Jackson Circuit Court
LC No. 19-004845-CH

Before: GLEICHER, C.J., and JANSEN and RICK, JJ.

PER CURIAM.

These consolidated[1] appeals arise from defendant Dean Gassert's use of his property in Columbia Township as a used car dealership. In Docket No. 361754, in a lawsuit between Columbia Township and Gassert, Gassert appeals as of right the trial court order granting summary disposition to the township on the basis that the car dealership constituted a violation of the applicable zoning classification. Docket No. 361675 involves a dispute between Gassert and his neighbors, James and Janet Knutson. The case began as a nuisance action by the Knutsons, and Gassert counterclaimed with claims of defamation, false-light invasion of privacy, and intentional infliction of emotional distress (IIED); he filed a third-party complaint raising the same claims against the Knutsons' son, Thomas Knutson. With respect to Gassert's claims, the trial court granted summary disposition to the Knutsons and Thomas, and on appeal, in Docket No. 361675, Gassert challenges the trial court's grant of summary disposition in this regard.[2] For the reasons explained in this opinion, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The Knutsons own, and reside at, property on Brooklyn Road in Colombia Township, where they have lived for 55 years. In December 2018, Gassert purchased a neighboring property, where he planned to operate a used car dealership. After his purchase, Gassert spoke to the township supervisor, Robert Elrod, about his plans, and undisputedly, Elrod initially approved the project. Without obtaining any permits and without site-plan approval for the project, Gassert opened his car dealership in September 2019. However, the township ultimately concluded that a used car dealership was not a permitted use for the property under the applicable zoning classification, and in October 2019, the township ordered Gassert to cease and desist operation of his car dealership. For their part, the Knutsons actively opposed the use of the property for a car dealership, and their adult son—Thomas—spoke against the use of the property as a car dealership at two township meetings in September 2019.

The dispute related to the use of Gassert's property eventually prompted two lawsuits against Gassert, the first by the township to enjoin the car dealership as a zoning violation. As to the township, Gassert counterclaimed, maintaining that the car dealership constituted a lawful use of the property under the applicable zoning ordinances or that the township should be estopped from precluding this use of the property in light of Elrod's approval of the project. Relevant to the zoning issue, Gassert contended that the property was zoned C-2 as reflected in minutes for a meeting of the township board of trustees on April 21, 2008, which indicated that the board voted

[1] This Court consolidated the appeals to advance the efficient administration of the appellate process. *Knutson v Gassert*, unpublished order of the Court of Appeals, entered July 26, 2022 (Docket Nos. 361675 and 361754).

[2] In the Knutsons' lawsuit, their nuisance claims were ultimately dismissed as moot; that portion of the trial court's ruling is not before us on appeal.

to approve a rezoning request—made by the property's previous owner—to rezone the property from AG-1, for agriculture, to C-2, a general commercial designation. The township, in contrast, contended that the property's zoning has been C-1 as reflected on the township's zoning map since 2008. Additionally, the township asserted that a new zoning ordinance and incorporated zoning map were adopted in February 2019, and under the newly adopted map, Gassert's property was unambiguously zoned C-1, designating the "local commercial" district in which a car dealership is a prohibited use.[3] In the lawsuit between Gassert and the township, the trial court ultimately granted summary disposition to the township, concluding that the property was zoned C-1 and the car dealership was, therefore, not a permissible use of the property.

In the Knutsons' lawsuit, they filed suit alleging nuisance. Gassert counterclaimed, and filed a third-party complaint against Thomas. Most notably, Gassert maintained that Thomas—personally and as an agent for the Knutsons—defamed Gassert in his statements during two township meetings in September 2019, and that these statements also supported claims for false-light invasion of privacy and IIED. The trial court concluded that Thomas's statements were not defamatory and that, in any event, the statements were protected by a qualified privilege. The trial court granted summary disposition to the Knutsons, concluding that they could not be held vicariously liable for Thomas's statements.

These appeals followed.

II. THIRD-PARTY CLAIMS AGAINST THOMAS

On appeal, we first address Gassert's contention that the trial court erred by granting summary disposition to Thomas with respect to Gassert's third-party claims for defamation, IIED, and false-light invasion of privacy. Gassert argues that Thomas's statements were defamatory. He contends that the statements amount to defamation per se, and that qualified privilege did not protect Thomas's statements, which, according to Gassert, were made with actual malice. We disagree. We review de novo a trial court's decision to grant summary disposition. *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012).

> When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all the evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party. [*Magley v M & W Inc*, 325 Mich App 307, 313; 926 NW2d 1 (2018) (quotation marks and citation omitted).]

"A court may hold as a matter of law that a defamatory statement is incapable of defamatory meaning. But questions of fact may exist regarding the statement's potential defamatory meaning." *Hope-Jackson v Washington*, 311 Mich App 602, 621; 877 NW2d 736

[3] Under the 2019 ordinance, a car dealership would, however, be permitted in a C-2 district.

(2015) (citation omitted). "Whether evidence is sufficient to support a finding of actual malice is a question of law." *Kefgen v Davidson*, 241 Mich App 611, 624-225; 617 NW2d 351 (2000).

> When addressing defamation claims implicating First Amendment freedoms, appellate courts must make an independent examination of the record to ensure against forbidden intrusions into the field of free expression and to examine the statements and circumstances under which they were made to determine whether the statements are subject to First Amendment protection. [*Northland Wheels Roller Skating Ctr, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 322; 539 NW2d 774 (1995).]

The existence of a privilege that immunizes a defendant from liability is a question of law that this Court considers de novo. *Id*. at 324.

"A defamatory communication is one that tends to harm the reputation of a person so as to lower him in the estimation of the community or deter others from associating or dealing with him." *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 702; 609 NW2d 607 (2000).

> The elements of a defamation claim are: (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. [*Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005).]

"To be considered defamatory, statements must assert facts that are provable as false." *Ghanam v Does*, 303 Mich App 522, 545; 845 NW2d 128 (2014) (quotation marks and citation omitted). "Statements that cannot be interpreted as stating facts, such as 'rhetorical hyperbole' and the sort of 'imaginative expression' often found in satires, parodies, and cartoons, are protected by the First Amendment." *Hope-Jackson*, 311 Mich App at 622. Likewise, expressions of opinions typically are not actionable as defamation, provided that the "statement cannot be reasonably interpreted as stating actual facts about the plaintiff." *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998).

Words charging a person with the commission of a crime constitute "defamation per se if the crime involves moral turpitude or would subject the person to an infamous punishment." *Lakin v Rund*, 318 Mich App 127, 138; 896 NW2d 76 (2016). However, not all statements that can be construed as a criminal accusation support a claim for defamation. *Ghanam*, 303 Mich App at 545-546.

> Terms such as "blackmailer," "traitor," "crook," "steal," and "criminal activities" must be read in context to determine whether they are merely exaggerations of the type often used in public commentary. Casual use of these terms and similar epithets "is the language of the rough-and-tumble world of politics. It is core political speech. It is consumed by an often skeptical and wary electorate" and is not seriously regarded as asserting factual truth. If a reasonable reader would

> understand these epithets as merely "rhetorical hyperbole" meant to express strong disapproval rather than an accusation of criminal activity or actual misconduct, they cannot be regarded as defamatory. [*Id*. at 546 (citations omitted).]

Whether a statement may be interpreted as asserting provable facts depends on the context and forum in which the statement appears. *Id*. Courts also recognize that "[t]echnical inaccuracies in legal terminology employed by nonlawyers, particularly when the popular sense of a term may not be technically accurate, should not form the basis for recovery." *Hope-Jackson*, 311 Mich App at 622 (quotation marks and citation omitted; alteration in original). Moreover, liability for defamation will not be found when the statement is substantially true; "[i]t is sufficient for the defendant to justify so much of the defamatory matter as constitutes the sting of the charge, and it is unnecessary to repeat and justify every word of the alleged defamatory matter, so long as the substance of the libelous charge be justified." *Hawkins v Mercy Health Servs, Inc*, 230 Mich App 315, 332; 583 NW2d 725 (1998) (quotation marks and citation omitted). Considering the statement in context and as a whole, "[t]he dispositive question . . . is whether a reasonable fact-finder could conclude that the statement implies a defamatory meaning." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 128-130 & n 63; 793 NW2d 533 (2010).

In this case, there is also a question whether Thomas's statements were protected by qualified privilege.[4] Generally speaking, "a qualified privilege is recognized where the public interest in activities which presuppose frank communication on certain matters between persons standing in particular relationships to each other outweighs the damage to individuals of good faith but defamatory utterances relevant to the interests of those involved." *Merritt v Detroit Mem Hosp*, 81 Mich App 279, 284; 265 NW2d 124 (1978).

> In general, a qualified privilege extends to all communications made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, to a person having a corresponding interest or duty, and embraces cases where the duty is not a legal one but is of a moral or social character of imperfect obligation. [*Swenson-Davis v Martel*, 135 Mich App 632, 636; 354 NW2d 288 (1984).[5]]

"The essential elements of a conditionally privileged communication may accordingly be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." *Nuyen v Slater*, 372 Mich 654, 659; 127 NW2d 369 (1964) (quotation marks and citation omitted). The occasion of the statement is a key fact in determining whether qualified privilege applies. *Lawrence v Fox*,

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[4] In the trial court, Thomas also asserted that his statements were absolutely privileged. The trial court did not apply absolute privilege, and Thomas appears to have abandoned his absolute privilege argument on appeal. As such, we will not discuss it.

[5] "Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority." *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012).

357 Mich 134, 139-140; 97 NW2d 719 (1959). Qualified privilege has been found to apply, for example, to private citizens complaining to officials about the fitness of a public-school teacher, *Swenson-Davis*, 135 Mich App at 636, or to private citizens expressing concern about the administration of a government department, *Nuyen*, 372 Mich at 660. More generally, comments about a public figure—or comments about a limited-purpose public figure—are subject to qualified privilege. *Kefgen*, 241 Mich App at 624; *New Franklin Enterprises v Sabo*, 192 Mich App 219, 222; 480 NW2d 326 (1991). When a qualified privilege exists there is a presumption of good faith. *Nuyen*, 372 Mich at 660.

A party claiming defamation "may overcome a qualified privilege only by showing that the statement was made with actual malice." *Prysak v RL Polk Co*, 193 Mich App 1, 15; 483 NW2d 629 (1992).

> Actual malice is defined as knowledge that the published statement was false or as reckless disregard as to whether the statement was false or not. Reckless disregard for the truth is not established merely by showing that the statements were made with preconceived objectives or insufficient investigation. Furthermore, ill will, spite or even hatred, standing alone, do not amount to actual malice. "Reckless disregard" is not measured by whether a reasonably prudent man would have published or would have investigated before publishing, but by whether the publisher in fact entertained serious doubts concerning the truth of the statements published. [*Ireland*, 230 Mich App at 622 (quotation marks and citation omitted).]

The party claiming defamation "bears the burden of showing actual malice by clear and convincing evidence." *Id*. at 615. At the summary disposition stage, "a court must consider whether the evidence is sufficient to allow a rational finder of fact to find actual malice by clear and convincing evidence." *Id*. at 622. General allegations of malice are insufficient to establish a genuine issue of material fact. *Gonyea v Motor Parts Fed Credit Union*, 192 Mich App 74, 79-80; 480 NW2d 297 (1991).

In this case, Gassert's complaint against Thomas and the Knutsons set forth a long list of allegedly defamatory statements. However, on appeal, Gassert focuses his appellate arguments solely on two statements by Thomas: (1) that Gassert was running an "illegal" business and (2) that Gassert violated the "EPA."[6] In context, at a meeting on September 10, 2019, Thomas stated, in part:

> I don't see that the board is, uh, [unintelligible] anyone up there to question whether they had any permits, or whether they did electrical permitting, plumbing permits and all that type of stuff was done inside the facility. [Unintelligible] and nobody verified whether [unintelligible]. If they would have, they would have made them stop, which would have then forced a site plan before they would have come in and we wouldn't have been in, probably in this situation that we are right now. The

[6] Thomas did not specify what he meant by the EPA. Michigan's current statutory scheme related to environmental protection is the natural resources and environmental protection act (NREPA), MCL 324.101 *et seq*.

> business is running, they shouldn't be, its illegal. There's also issues on that property that it uh, well you know, that uh, it is contaminated. It has been contaminated forever and ever and ever, there is a reason why Jim and Jan don't own that property because it is contaminated. At one time it was on Superfund, it's no longer on the Superfund, but all that grading and stuff that they have been doing the last three four days are absolutely positively I'm sure in violation of EPA uh for a contaminated site. There is no um, black, uh, what do you want to call it? There is none of that put up and that drains right into the uh, basically uh, the marsh for the river [unintelligible]. Of course, rain is going to wash all that silt and stuff into the wetlands so, that is just one of the other issues. So basically, the government has been in total disregard of all the rules and viola—, the rules and regulations, including [unintelligible]. So as far as that goes . . . .

To begin, as to the assertion that Gassert's business was "illegal," in isolation, this language potentially falls into the category of exaggeration and casual use of terms that cannot seriously be understood to denote criminal activity. See *Ghanam*, 303 Mich App at 546. When the language is considered in context, however, it appears that Thomas was speaking more specifically to Gassert's purported violations of the zoning ordinances and the lack of permits for his project. The legality of Gassert's car dealership was a matter of public concern and the subject of debate at the meetings in question. Given that the township ultimately concluded that Gassert's use of the property constituted a zoning violation (a conclusion with which the trial court and, ultimately, this Court agree), it is challenging to see how Thomas's statement of illegality can be considered "objectively" false. See *Smith*, 487 Mich at 128 ("If a statement of opinion is about a matter of public concern, it is protected speech under the First Amendment, unless it can be objectively proven to be false.").

Moreover, when considered as a whole and in the context of a meeting considering the zoning of Gassert's property, no reasonable listener would interpret Thomas's reference to an "illegal" business as anything more than his opinion that the car dealership did not conform to the township's zoning ordinances and permit requirements. Thomas provided a factual basis for his opinions—noting, correctly, that Gassert did not obtain any permits for the work on the property or submit a site plan to the township. Thomas's personal interpretation of the available information constitutes his opinion, and this opinion is not actionable as defamation.[7] See *Sarkar v Doe*, 318 Mich App 156, 190 & n 18; 897 NW2d 207 (2016) ("[W]hen a speaker outlines the factual basis for his conclusion, his statement is protected by the First Amendment.") (quotation marks and citation omitted).

[7] Indeed, Gassert's claim of defamation is grounded in nothing more than the fact that Thomas—and ultimately the township—disagreed with Gassert's position regarding the zoning of his property. When an alleged defamatory statement occurs in the course of a public debate perpetuated by Gassert himself, and the comment "is focused precisely on a matter lying at the heart of the debate, it is hard to understand how tort law could be implicated." *Kevorkian v American Med Ass'n*, 237 Mich App 1, 13-14; 602 NW2d 233 (1999). "Indeed, it is hard to imagine anything that could more effectively chill legitimate public debate." *Id*. at 14.

As to Thomas's assertion that the property was contaminated and that recent grading activities on the property violated the EPA, these statements are potentially defamatory insofar as these statements are provable as false and tend to harm Gassert's reputation. See *Ghanam*, 303 Mich App at 545; *American Transmission, Inc*, 239 Mich App at 702. Moreover, at his deposition, Thomas acknowledged that he later learned, after the meeting, that the Michigan Department of Environment, Great Lakes, and Energy did not consider the property to be contaminated. With that said, Thomas made these statements on an occasion—at a public meeting discussing zoning matters of public concern—that warrant application of qualified privilege. As a private citizen with a concern regarding the township's administration of its zoning ordinances and whether Gassert's use of the property was appropriate, Thomas was qualifiedly privileged to express his concerns to the appropriate officials. Cf. *Nuyen*, 372 Mich at 660. He expressed his opinions during public-comment sessions of meetings held, in part, for the purpose of considering Gassert's use of the property, and there is no indication that his statements about the property exceeded the scope of the purpose—namely, to offer his views and understanding of the property as relevant to the township's decision. See *Weiman v Mabie*, 45 Mich 484, 485; 8 NW 71 (1881). This is, in short, an occasion to which privilege applies. See *Joseph v Collis*, 272 Ill App 3d 200, 211; 649 NE2d 964 (1995) ("[P]rivate citizens are deserving of protection for their statements made at legislative or judicial proceedings.").[8]

Because Thomas's statements are subject to a qualified privilege, there is a presumption of good faith. See *Nuyen*, 372 Mich at 660. And Gassert has not overcome that presumption by presenting evidence that would support a finding of actual malice by clear and convincing evidence. See *Ireland*, 230 Mich App at 622. Actual malice requires evidence that Thomas knew the statement was false or that he made it with a reckless disregard as to whether the statement was false or not. *Id*. In this case, however, the record provides a reasonable basis for believing the property was contaminated—the property was historically used as a laundromat and numerous records related to the property include notes to the effect that it was "contaminated." Indeed, even Gassert admitted during his deposition that he was aware of records stating that the property was contaminated and that he had his realtor investigate the issue. With justification for believing the property was contaminated, Thomas's concerns that changes to the grading and runoff to the marsh or wetlands was a violation of the EPA were likewise justifiable concerns. In short, Thomas's environmental concerns had a reasonable basis. In contrast, there is no evidence that he knew they were false or that he acted with a reckless disregard of their falsity. See *id*.

At most, in attempting to show evidence of malice, Gassert contends that Thomas should have investigated the environmental status of the property before making his statements, but actual

[8] Illinois recognizes an *absolute* privilege for private citizens in these circumstances. See *Joseph*, 272 Ill App 3d at 211. Michigan provides officials with an absolute privilege in these circumstances, but has not yet extended that absolute privilege to private citizens, see *Kefgen*, 241 Mich App at 619, and we do not do so here. We rely on *Joseph* as persuasive authority simply for the proposition that statements by private citizens at legislative or judicial proceedings warrant protection. See *In re Estate of Vansach*, 324 Mich App 371, 387 n 7; 922 NW2d 136 (2018) (recognizing that authority from other states may be considered persuasive).

malice is not established on the basis "whether a reasonably prudent man would have published or would have investigated before publishing, but by whether the publisher in fact entertained serious doubts concerning the truth of the statements published." See *id*. (quotation marks and citation omitted). There is no evidence that Thomas had serious doubts regarding the truth of his statements. More broadly, Gassert makes general assertions that Thomas acted with malice, but such general assertions are insufficient to establish a genuine issue of material fact. See *Gonyea*, 192 Mich App at 79-80. Overall, Gassert has not presented evidence of actual malice to establish a genuine issue of material fact, and the trial court did not err by granting summary disposition to Thomas on Gassert's defamation claim.[9] See *id*.

III. COUNTERCLAIMS AGAINST THE KNUTSONS

Next, Gassert contends that the trial court erred by granting summary disposition to the Knutsons regarding Gassert's counterclaim. Gassert maintains that the Knutsons may be held vicariously liable for Thomas's statements and those of their attorney, Eric Kyser, who spoke at one of the township meetings. Apart from statements at the meetings, Gassert asserts that Janet, in particular, made defamatory statements on other occasions. We see no error in the trial court's grant of summary disposition to the Knutsons.

First, with respect to the Knutsons' liability for Thomas's statements, having concluded that Thomas's statements are not actionable as defamation, we also conclude that any vicarious-liability claims against the Knutsons on the basis of those statements must also fail. See *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 295-296; 731 NW2d 29 (2007) (recognizing that a principal could not be held liable for negligence when it could not be shown that the agent acted negligently); see also *Cooke v Ford Motor Co*, 333 Mich App 545, 563; 963 NW2d 405 (2020) ("[A] master's liability is derivative of the servant's . . . .") (quotation marks and citation omitted). Consequently, even assuming arguendo that Thomas can be considered the Knutsons' "agent," the Knutsons were entitled to summary disposition.

Second, Gassert's claims related to Kyser's statements lack merit. Gassert's complaint failed to allege that the Knutsons' attorney defamed him or that the Knutsons should be held vicariously liable for the statements of their attorney. "A party is bound by its pleadings, and it is not permissible to litigate issues or claims that were not raised in the complaint." *Lenawee Co v Wagley*, 301 Mich App 134, 160; 836 NW2d 193 (2013) (quotation marks, citations, and brackets omitted). Because Gassert failed to plead allegations related to the attorney in his complaint, these allegations cannot be litigated, and we need not address them further. See *Bailey v Antrim Co*, 341 Mich App 411, 424; 990 NW2d 372 (2022).

Third, and lastly, we find no merit to Gassert's contention that summary disposition was improperly granted because Janet personally made defamatory statements about him. Gassert's

[9] Aside from defamation, in his questions presented, Thomas also asserts that the trial court erred by granting summary disposition to Thomas on his claims for false-light invasion of privacy and IIED. Thomas fails, however, to present any argument with respect to IIED or false-light invasion of privacy. By failing to brief these issues, Gassert has abandoned these arguments. See *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1993).

claim related to Janet fail because Gassert failed to plead this defamation claim with particularly. The elements of defamation must be "specifically pleaded, including the allegations with respect to the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words." *Gonyea*, 192 Mich App at 77. With respect to slander, setting forth the basic "substance" of the defamation will suffice in pleading because of the difficulty that may be involved in recounting spoken words verbatim. *Pursell v Wolverine-Pentronix, Inc*, 44 Mich App 416, 421-422; 205 NW2d 504 (1973). Nevertheless, pleading defamation with specificity requires an allegation *where* the statements were made. *Id*. at 421. A defending party must be given a statement of facts with "the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B). See also *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 53; 495 NW2d 392 (1992).

In this case, Gassert's counterclaim against the Knutsons is simply a list of allegedly defamatory statements without any indication who, in particular, made them or where they were allegedly made or to whom. Although at his deposition Gassert identified *Thomas* as the sole defamer,[10] Gassert now claims that Janet made some of these statements, possibly at a Big Boy restaurant or elsewhere. But these allegations about Janet and Big Boy are not contained in his complaint. Moreover, even on appeal, he fails to identify with enough specificity when, where, and to whom these statements were made.[11] Cf. *Gonyea*, 192 Mich App at 77-78 (concluding that a claim for defamation was insufficiently pleaded when complaint failed "to state to whom publication was made"). As to his assertion that Janet personally defamed him, Gassert's complaint lacks the particularity required to plead defamation. See *id*.; *Pursell*, 44 Mich App at 421-422.

The trial court did not err by granting summary disposition to the Knutsons, and Gassert is not entitled to relief on appeal.

IV. TOWNSHIP ZONING DISPUTE

The final issue before us is whether the trial court erred by granting summary disposition to the township on the basis that Gassert's property is zoned C-1, where a used car dealership would not be permitted. The trial court concluded that the property has been zoned C-1 since 2008, notwithstanding the conflict between the 2008 meeting minutes and the zoning map. We

[10] The only statement Gassert did not attribute to Thomas was the statement that someone twice called the police on Gassert. Gassert did not know who made this statement. Gassert also admitted, however, that the police were in fact called on him twice in a single weekend, meaning that the statement is true and not actionable as defamation.

[11] Gassert has not asked to amend his complaint with respect to statements made by Janet. In any event, considering Gassert's allegations in his brief, which still lack the specificity needed to support a defamation claim, it appears that amendment would be futile. See *Gonyea*, 192 Mich App at 78.

find it unnecessary to decide whether the property has been zoned C-1 since 2008[12] because, in our view, this case is more straightforwardly resolved by considering the 2019 ordinance and the 2019 ordinance's express incorporation of the zoning map depicting the property as C-1. Notwithstanding any confusion related to the 2008 proceedings, under the 2019 ordinance and incorporated map, the property is clearly zoned C-1.

We review de novo a trial court's decision on a motion for summary disposition. *Cuddington*, 298 Mich App at 270. The interpretation and application of an ordinance poses a question of law, which this Court also reviews de novo. *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396, 407; 761 NW2d 371 (2008). "Ordinances are treated as statutes for the purposes of interpretation and review." *Id*. "The goal of statutory construction, and thus of construction and interpretation of an ordinance, is to discern and give effect to the intent of the legislative body." *Id*. at 407-408. Terms used in an ordinance should be given their plain and ordinary meanings. *Id*. at 408. Words and phrases must also be considered in context, and the ordinance read as whole; an ordinance should not be construed as to render any part of the ordinance "surplusage or nugatory." *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012).

In this case, the township board of trustees voted to adopt a new township zoning ordinance on February 21, 2019. The new ordinance contained several provisions affecting the zoning of Gassert's property. Most significantly, the 2019 amendment expressly incorporated a zoning map as an "integral part" of the ordinance itself, and the ordinance established zoning districts that "shall have boundaries as delineated" on the zoning map. More fully, in context, the 2019 ordinance provides:

> Section 3.1 Purpose
>
> It is the purpose of this Article to establish the zoning districts into which the Township is hereby divided, to establish an Official Zoning Map that delineates the boundaries of the zoning districts, to identify the uses permitted in each district, and to establish basic site development standards for each District.
>
> Section 3.2 Establishment of Districts
>
> For the purpose of this Ordinance, the Township is hereby divided into the following zoning districts, which shall be known by the following respective symbols and names, and shall have boundaries as delineated on the Official Zoning Map.

[12] The zoning issue related to the events in 2008 centers on the meeting minutes and how the conflict between the minutes and the then-applicable zoning map—as well as other evidence—should be resolved. See generally *North Star Twp v Cowdry*, 212 Mich 7, 14-15; 179 NW 259 (1920); *Stevenson v Bay City*, 26 Mich 44, 46-47 (1872); and *Cady v Ihnken*, 129 Mich 466, 468; 89 NW 72 (1902) (discussing the correction of meeting minutes).

* * *

Section 3.3 Zoning District Map

A. The boundaries of the respective Districts enumerated in Section 3.2 are defined and established as depicted on the Official Zoning Map entitled COLUMBIA TOWNSHIP ZONING MAP, which is an integral part of this Ordinance. This map, with all notations and explanatory matter thereon, shall be published as part of this Ordinance as if fully described herein.

B. This Official Zoning Map shall be identified by the signature of the Township Supervisor, attested by the Township Clerk, and bearing the following: *This is to certify that this is the Official Zoning Map of the Columbia Township Zoning Ordinance adopted on the 18th day of February, 2019*. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map.

C. The Official Zoning Map shall be located at the official office of the Township and shall be the final authority with regard to the current zoning status of all land in the Township, along with supporting minutes of Township Board meetings regarding zoning district changes, regardless of the existence of copies of the Official Zoning Map which may be made and published from time to time. [Emphasis in original.]

Under the 2019 ordinance, the official zoning map was unambiguously adopted by the township board of trustees and made part of the ordinance itself. See *Hillsdale v Hillsdale Iron & Metal Co*, 358 Mich 377, 384; 100 NW2d 467 (1960). Notably, on this map, Gassert's property is undisputedly zoned as C-1. In adopting the zoning ordinance—including the zoning map—the township engaged in legislative activities involving the zoning and rezoning of property. See *Connell v Lima Twp*, 336 Mich App 263, 283; 970 NW2d 354 (2021). Regardless of the 2008 zoning dispute, by its legislative actions in 2019, adopting a new ordinance and expressly incorporating the zoning map as an integral part of that ordinance, the township board of trustees zoned Gassert's property as C-1.[13]

[13] In concluding that Gassert's property is zoned C-1 as a result of the 2019 ordinance and incorporated zoning map, we briefly note that Gassert makes no challenge to the validity of the 2019 ordinance or the applicability of the 2019 ordinance to his property. There is, for example, no contention that the township failed to provide appropriate notice related to the adoption of the ordinance and zoning map or that the township otherwise failed to follow the appropriate procedures for adopting the ordinance. Somewhat relatedly, we note that Gassert did raise arguments in the trial court involving estoppel and reliance, asserting that the township should be estopped from enforcing its ordinance because the township supervisor, Elrod, initially expressed

In contrast to this conclusion, Gassert makes one textual argument relating to the 2019 amendment, asserting that under § 3.3(C) the map must be considered in conjunction with the township board meeting minutes from 2008, which reflect a C-2 rezoning. Gassert's argument in this regard lacks merit. More fully, the language at issue provides that the map "shall be the final authority with regard to the current zoning status of all land in the Township, along with supporting minutes of Township Board meetings regarding zoning district *changes* . . . ." (Emphasis added.) When this language from § 3.3(C) is read in the context of the section as a whole, it is clear that *changes* to the zoning map must be considered on the basis of the map and the supporting minutes. Section 3.3(B) provides the process for making changes to the map, stating: "If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map such changes shall be made on the Official Zoning Map." But the baseline map—the original official zoning map of the township—under the 2019 ordinance, is the map expressly incorporated into the ordinance itself as an integral part of the 2019 ordinance. That map was adopted legislatively by the township board of trustees and that map is the final authority on the zoning districts. In other words, the 2019 ordinance and adoption of the map constitute a zoning or rezoning, making the prior meeting minutes irrelevant to the current zoning designation. Only if there are "changes" to the new 2019 zoning districts are meeting minutes relevant under § 3.3(C). In sum, contrary to Gassert's arguments, by its legislative actions in 2019, adopting a new ordinance and incorporating a new zoning map, the township board of trustees zoned Gassert's property as C-1.

Overall, under the 2019 ordinance, Gassert's property is zoned C-1, and in this district, a used car dealership is a prohibited use. In these circumstances, the township was entitled to summary disposition. Although the 2019 ordinance was not the basis for the trial court's ruling when granting summary disposition, this Court "will not reverse a trial court's decision when it reaches the right result, even if it was for the wrong reason." *Bailey*, 341 Mich App at 420.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kathleen Jansen
/s/ Michelle M. Rick

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approval of Gassert's car dealership. Gassert fails, however, to brief this issue related to Elrod on appeal. By failing to brief these issues, Gassert has abandoned any arguments in this regard. See *State Treasurer v Sprague*, 284 Mich App 235, 243; 772 NW2d 452 (2009) ("Failure to brief a question on appeal is tantamount to abandoning it."). As to Elrod's approval, we also note briefly that generally speaking, a township "cannot be estopped to enforce its valid ordinance by acts of its officers in violation thereof," *Hillsdale*, 358 Mich at 383-384, and we see no evidence of any action or reliance by Gassert that would preclude application of the 2019 ordinance, see *Schubiner v West Bloomfield Twp*, 133 Mich App 490, 501; 351 NW2d 214 (1984) ("The making of preparatory plans, landscaping and the removal of an existing structure is not sufficient.").