STATE OF MICHIGAN

COURT OF APPEALS

ALFONSO IGNACIO VIGGERS, Plaintiff-Appellant,	UNPUBLISHED August 10, 2017
v	No. 332481 Washtenaw Circuit Court
MARIA DE LA MERCED VIGGERS, Defendant-Appellee.	LC No. 15-000799-CZ

Before: CAVANAGH, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff, Alfonso Viggers, appeals as of right the trial court's order granting summary disposition in favor of defendant, Maria Viggers. For the reasons stated below, we affirm.

I. BASIC FACTS

Viggers filed a defamation suit against Maria Viggers, his stepmother, claiming that she had defamed him in e-mails and voice-mail messages left for employees in the University of Michigan's Information Technology (IT) department.[1] He contends that the defamation caused him to lose a job opportunity with the University.

Viggers was employed at ALPAC, Inc., as a computer programmer and database administrator. ALPAC provided IT contracting services to the University. The University made Viggers an employment offer contingent on a background check and immigration status. In March and April 2015, Maria Viggers left several voice-mail messages and sent several e-mails to employees in the University's IT department accusing Viggers of hacking and other illegal activities. At the end of July 2015, ALPAC notified the University that it was terminating Viggers's employment because of certain statements that Viggers made in two e-mails that ALPAC had interpreted as threats. Viggers was notified that his employment with ALPAC was terminated on July 30. The next day, he received a letter from the University stating that it was rescinding its employment offer.

[1] Because the parties share a surname, we will refer to plaintiff as "Viggers" and defendant as "Maria Viggers."

Plaintiff filed a complaint asserting that Maria Viggers's accusations caused the University to rescind its employment offer. Maria Viggers filed for summary disposition under MCR 2.116(C)(10). According to Maria Viggers, she made the communications at issue to the University between April 15, 2015, and May 1, 2015, while she was suffering from a psychotic break with reality. On April 29, 2015, Maria Viggers was committed to a psychiatric facility based on a medical certification that she was a danger to herself or others. While Maria Viggers was in the hospital, she stated that she was a patient at a psychiatric facility in her communications to the University. Therefore, Maria Viggers argued that no reasonable person "standing in the shoes" of the employees at the University could have taken any of her statements "to be anything other than the ramblings of a troubled person with a mental illness." Furthermore, she asserted that the University clearly demonstrated through the sworn testimony of its employees that nothing she did or said had anything to do with Viggers's loss of a job opportunity. The trial court granted the motion, finding that Viggers had failed to establish that Maria Viggers's statements caused him any damages or that the statements were made with malice.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Viggers contends that the trial court erred in granting summary disposition in favor of Maria Viggers. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). When reviewing a motion brought pursuant to MCR 2.116(C)(10), this Court "must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the party opposing the motion." *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). This Court's "task is to review the record evidence, and all reasonable inferences drawn from it, and decide whether a genuine issue regarding any material fact exists to warrant a trial." *Id.*

B. ANALYSIS

A successful claim for defamation requires:

> 1) a false and defamatory statement concerning the plaintiff, 2) an unprivileged communication to a third party, 3) fault amounting to at least negligence on the part of the publisher, and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. [*Rouch v Enquirer & News of Battle Creek Mich*, 440 Mich 238, 251; 487 NW2d 205 (1992).]

In pertinent part, MCL 600.2911 provides:

> (1) Words imputing a lack of chastity to any female or male are actionable in themselves and subject the person who uttered or published them to a civil action for the slander in the same manner as the uttering or publishing of words imputing the commission of a criminal offense.

> (2)(a) Except as provided in subdivision (b), in actions based on libel or slander the plaintiff is entitled to recover only for the actual damages which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.
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> (7) An action for libel or slander shall not be brought based upon a communication involving a private individual unless the defamatory falsehood concerns the private individual and was published negligently. Recovery under this provision shall be limited to economic damages including attorney fees.

This Court has explained that:

> Under subsection 7, if the publication of the defamatory falsehood is negligent, a private plaintiff must prove economic damages but cannot recover for injuries to feelings. Under subsection 2(a), however, if a private plaintiff proves actual malice, the plaintiff is entitled to, among other things, actual damages to reputation or feelings. [*Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993)].

"To show actual malice, plaintiffs must prove that the defendant made the statement with knowledge that it was false or with reckless disregard of the truth." *Id*. at 438.

In Maria Viggers's motion for summary disposition, she argued that sworn testimony of University employees showed that her statements did not have anything to do with the University's decision to rescind the job offer. Further, the University suspended Viggers's visa application process after being notified that ALPAC was pursuing a green card on Viggers's behalf at the same time. The process was again suspended due to the human resources employee's workload and her inability to access the proper forms. As a result, Maria Viggers contended that Viggers failed to demonstrate that her statements caused any damages. She also contended that Viggers could not show malice because she made the statements while she was suffering from a psychotic break with reality.

In response, Viggers did not "set forth specific facts at the time of the motion showing a genuine issue for trial." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 8; 890 NW2d 344 (2016). He did not provide any evidence to demonstrate that the University rescinded the job offer or suspended the visa process because of Maria Viggers's statements. Thus, Viggers failed to show that the statements caused any economic damages. *Glazer*, 201 Mich App at 437. In addition, he did not provide any evidence showing that Maria Viggers, who was undisputedly committed to a psychiatric facility during the period when she made some of the statements, made the statements with actual malice. Although Viggers contends that the time and effort Maria Viggers put into finding the contact information for University employees shows that she acted with malice or that she did not suffer from a mental illness, the petition requesting her hospitalization stated that she was "paranoid and delusional." Specifically, Maria Viggers believed that her husband, Viggers, and the government were "attempting to take control of her life by watching her through the T.V., following her, tapping her phones and crawling through

her attic." Based on the evidence submitted to the trial court, Viggers has not shown that Maria Viggers "made the statement[s] with knowledge that it was false or with reckless disregard of the truth."[2] As such, the trial court properly granted summary disposition.[3]

III. DISCOVERY

A. STANDARD OF REVIEW

Next, Viggers argues that the trial court erred in denying him discovery on a number of issues. "This Court reviews rulings on motions to compel discovery for an abuse of discretion." *Cabrera v Ekema*, 265 Mich App 402, 406; 695 NW2d 78 (2005).

B. ANALYSIS

1. SPOUSAL PRIVILEGE

Viggers contends that the trial court erred in denying him discovery related to his father. In pertinent part, MCL 600.2162 provides:

> (1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).

Here, the trial court properly concluded that the marital privilege applied. Viggers acknowledged that Maria Viggers and his father were married. Furthermore, none of the exceptions listed in MCL 600.2162(3) apply in this case. We note that whether Maria Viggers committed a "personal wrong or injury" against Viggers's father as required in MCL 600.2162(3)(d) had no bearing on Viggers's defamation claim against her. Therefore, the trial court did not abuse its discretion in concluding that the spousal privilege did apply and that Viggers's father was excused from being deposed.

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[2] We note that, according to the petition for involuntary committal, it appears that Maria Viggers actually believed the allegations she made against Viggers were true.

[3] At the summary disposition motion hearing, Viggers also argued that defamation per se did not require a showing of economic damages. Accusations of criminal activity "constitute defamation per se and are actionable even in the absence of an ability to prove actual or special damages." *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 728; 613 NW2d 378 (2001). However, Viggers did not allege defamation per se in his complaint. He also did not request leave to amend his complaint in the trial court to include a claim of defamation per se, and the trial court did not consider this claim when it addressed the motion for summary disposition. Therefore, this claim was not properly raised in the trial court. "As a general rule, issues that are not properly raised before a trial court cannot be raised on appeal absent compelling or extraordinary circumstances." *People v Gant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Therefore, we decline to address this argument further.

2. ATTORNEY-CLIENT PRIVILEGE

Next, Viggers contends that the trial court improperly denied discovery of five redacted e-mails from the University based on the conclusion that those documents were protected by the attorney-client privilege. "Whether the attorney-client privilege may be asserted is a legal question that this Court reviews de novo." *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 618; 576 NW2d 709 (1998). Once this Court determines "whether the attorney-client privilege is applicable to the facts of [the] case, [this Court] must then determine whether the trial court's order was proper or an abuse of discretion." *Id*.

> The attorney-client privilege attaches to direct communication between a client and his attorney as well as communications made through their respective agents. The scope of the attorney-client privilege is narrow, attaching only to confidential communications by the client to his advisor that are made for the purpose of obtaining legal advice. Where an attorney's client is an organization, the privilege extends to those communications between attorneys and all agents or employees of the organization authorized to speak on its behalf in relation to the subject matter of the communication. [*Id*. at 618-619 (citations omitted).]

At the outset, Viggers does not appear to argue that the trial court improperly concluded that the attorney-client privilege applied to the redacted e-mails at issue. Instead, Viggers contends that the e-mails are subject to an exception to the attorney-client privilege. Furthermore, the original (unredacted) e-mails are not included in the lower court file, and Viggers has not filed a motion requesting them pursuant to MCR 8.119(I)(6).[4]

At a motion hearing before the trial court, the University argued that even if the information on the redacted e-mails was directly relevant to Viggers's claim, it was protected as communications between a lawyer and client for the purpose of obtaining legal advice. The University allowed the trial court to review the e-mails in camera. After review, the trial court concluded that the e-mails contained conversations between University employees and their lawyer regarding hiring and firing decisions, which were protected by the attorney-client privilege. Because Viggers does not allege that the trial court's determination that the e-mails were protected by the attorney-client privilege was in error, because the e-mails were not included in the lower court record and Viggers did not file a motion requesting them, and because the trial court reviewed the e-mails in camera before making its determination, we

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[4] MCR 8.119(I)(6) states:

> Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

cannot conclude that the trial court's decision to preclude discovery of these e-mails was an abuse of discretion. See *Reed Dairy Farm*, 227 Mich App at 618.

3. E-MAIL HEADER INFORMATION

Finally, Viggers argues that the trial court erred in denying discovery of Maria Viggers's e-mail header information. In the trial court and on appeal, he contends that he is entitled to the e-mail header information because he believes that she did not provide all e-mails relating to him. However, as discussed above, Maria Viggers admitted she made the communications. Additionally, whether she violated a personal protection order is irrelevant to Viggers's claims that her communications damaged him. Further, Maria Viggers also provided all e-mails she sent involving Viggers during discovery in the trial court. As a result, we do not believe that the trial court abused its discretion in ordering that Maria Viggers manually provide e-mails pertaining to Viggers instead of ordering that she sign a consent form to allow her Internet service provider to provide her e-mail header information to Viggers.

Affirmed. As the prevailing party, Maria Viggers may tax costs. MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Patrick M. Meter
/s/ Michael J. Kelly