Gearin v. Rogers
Mich.App.,2007.
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Michael GEARIN, Plaintiff-Appellant,

v.

Cindy ROGERS and Little Caesar's, Defendants-Appellees.

Docket No. 272569.

March 13, 2007.

Harold Dunne, Livonia MI for plaintiff-appellant.
Gerard Mantese and Ian Williamson, Mantese & Associates, P.C. for defendants-appellees.

Wayne Circuit Court; LC No. 05-518133-CZ.

Before: SERVITTO, P.J., and TALBOT and SCHUETTE, JJ.

PER CURIAM.

***1** In this action for intentional interference with a business relationship and intentional interference with a contract, plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 2002, plaintiff was discharged as an employee of Airborne Express ("Airborne") for being discourteous to defendant Cindy Rogers, an employee of defendant Little Caesar's. Plaintiff denied being discourteous to Rogers and claimed that he acted in a proper manner. Plaintiff's complaint included a single count of intentional interference based on separate theories of interference with his business relationship with Airborne and interference with contractual relations. In particular, plaintiff alleged:

13. On the day in question Gearin delivered parcels from Airborne to Little Caesar's in his normal manner.

14. Gearin was in the process of delivering the parcels to Little Caesar's Detroit Business office when a guard working for Little Caesar's asked him to move his vehicle from the front of Little Caesar's business office.

15. Since Gearin was in the process of delivering the parcels he chose to immediately deliver the parcels and then promptly move his vehicle.

16. Gearin did move his vehicle immediately upon completing his delivery.

17. Rogers became upset at Gearin delivering his parcels before moving his vehicle and became abusive to Gearin in speaking to him in a loud and aggressive manner.

18. Weeks before the incident alleged by Rogers she telephoned Airborne personnel that if Gearin was not removed by Airborne Little Caesar's would "drop Airborne."

19. Rogers did not like Gearin and decided to exercise her authority to have him discharged by Airborne.

20. Rogers did not have a valid reason to demand that Airborne discharge Gearin.

21. Rogers' intent was to interfere with Gearin's employment.

22. Rogers has a history of telephoning employers of individuals with whom she has a dislike in an effort to create a problem for them with their employers.

23. When Rogers telephoned Airborne she knew that Gearin had a valid business and contractual relationship with Airborne.

24. When Rogers telephoned Airborne she intentionally caused Gearin's discharge, which resulted in Gearin losing his job and his wages and benefits.

The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(8) and (C)(10). This Court reviews a trial court's summary disposition decision de novo. *Spiek v. Dep't of Transportation*, 456 Mich. 331, 337, 572 N.W.2d 201 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's complaint by the pleadings alone. *Patterson v. Kleiman*, 447 Mich. 429, 432, 526 N.W.2d 879 (1994). The motion should be granted only if the claims are so clearly unenforceable as a matter of law that no factual development could justify recovery. *Id.* at 431-432, 526

N.W.2d 879.

***2** A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if, except "with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Babula v. Robertson*, 212 Mich.App. 45, 48, 536 N.W.2d 834 (1995).

A claim for tortious interference with a business relationship differs from a claim for tortious interference with a contract. *Badiee v. Brighton Area Schools*, 265 Mich.App. 343, 365-367, 695 N.W.2d 521 (2005). Under both theories, however, the plaintiff must prove wrongful conduct or malice:
In order to establish tortious interference with a contract or business relationship, plaintiffs must establish that the interference was improper. *Patillo v. Equitable Life Assurance Society of the United States*, 199 Mich.App. 450, 457, 502 N.W.2d 696 (1992). In other words, the intentional act that defendants committed must lack justification and purposely interfere with plaintiffs' contractual rights or plaintiffs' business relationship or expectancy. *Winiemko v. Valenti*, 203 Mich.App. 411, 418 n. 3, 513 N.W.2d 181 (1994) (citations omitted); *Feldman v. Green*, 138 Mich.App. 360, 369, 360 N.W.2d 881 (1984). The "improper" interference can be shown either by proving (1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiffs' contractual rights or business relationship. *Id.* [*Advocacy Organization for Patients & Providers v. Auto Club Ins. Ass'n*, 257 Mich.App. 365, 383, 670 N.W.2d 569 (2003).]

Where a defendant's actions are motivated by legitimate business reasons, its actions do not constitute improper motive or interference, and are not wrongful per se under either theory. *Badiee, supra* at 366, 695 N.W.2d 521; see also *Michigan Podiatric Medical Ass'n v. Nat'l Foot Care Program, Inc.*, 175 Mich.App. 723, 736, 438 N.W.2d 349 (1989); *Formall, Inc. v. Community Nat'l Bank of Pontiac*, 166 Mich.App. 772, 780, 421 N.W.2d 289 (1988).

Plaintiff correctly observes that summary disposition is not appropriate in cases involving a witness's credibility, intent, or state of mind, and that a trial court is not permitted to determine disputed facts when deciding a motion for summary disposition. *Downey v. Charlevoix Co. Bd. of Co. Rd. Comm'rs*, 227 Mich.App. 621, 626, 576 N.W.2d 712 (1998); *Arbelius v. Poletti*, 188 Mich.App. 14, 18, 469 N.W.2d 436 (1991). Contrary to what plaintiff argues, however, the trial court did not make an improper finding of fact whether Rogers asked Airborne to fire plaintiff. In her deposition, Rogers testified that she specifically told plaintiff's supervisor during their telephone call, before he asked her to write out a statement, that she did not want anyone to lose their job over the incident. Further, Rogers's email, on which plaintiff relies, also discloses that Rogers never made a request that Airborne fire plaintiff. In short, plaintiff failed to provide any factual support for his claim that Rogers asked Airborne to fire plaintiff.

***3** The submitted evidence disclosed that Rogers had legitimate business reasons for complaining to Airborne about the quality of service Little Caesar's was receiving from Airborne through plaintiff.

Plaintiff argues that the trial court erred by rejecting his claim that his violation of Little Caesar's parking policy was a mere pretext to have him discharged. Plaintiff argues that there was evidence that Little Caesar's did not have a parking policy because other drivers were permitted to park where he had parked before he was fired and have continued to park in front of the building after he was discharged. Plaintiff's argument misconstrues the record. In his deposition, plaintiff testified that he and other drivers were permitted to park in a "no parking" area before the incident. But plaintiff's supervisor testified that he was aware of a parking policy in effect for Little Caesar's. Even if plaintiff was not personally aware of the policy, or of anyone who was asked to adhere to the policy, this does not prove malice on the part of defendants to have him fired from his position. And even if Little Caesar's did not uniformly enforce a parking policy, there is no evidence that Rogers used the policy as a pretext to have plaintiff fired

from his job with Airborne. As the trial court noted, the mere fact that Rogers complained about plaintiff and that plaintiff was discharged does not alone prove that Rogers acted with malice, and the evidence otherwise established that Rogers had legitimate business interests in complaining to plaintiff's employer about plaintiff's conduct.

The trial court properly dismissed plaintiff's claim for intentional interference with a business relationship under MCR 2.116(C)(10).

Plaintiff also argues that the trial court erred in dismissing his claim for intentional interference with a contract under MCR 2.116(C)(8).

In his complaint, plaintiff combined this theory with his claim for intentional interference with a business relationship and alleged that he had both a valid business relationship and contractual relationship with Airborne. Because plaintiff's contractual relationship claim was not based on any new facts, we conclude that dismissal was warranted for the same reasons that the business relationship claim was dismissed. Under either theory, plaintiff was required to prove malice. Because there was no genuine issue of material fact whether Rogers acted with malice or without justification in complaining to plaintiff's employer about his conduct, summary disposition of the contractual relationship claim was warranted under MCR 2.116(C)(10).[FN1]

> FN1. The fact that the trial court dismissed plaintiff's tortious interference with a contract claim under MCR 2.116(C)(8), not MCR 2.116(C)(10), does not require reversal, because the right result was reached. See *The Detroit News, Inc. v. Policemen & Firemen Retirement Sys. of the City of Detroit*, 252 Mich.App. 59, 66, 651 N.W.2d 127 (2002).

Affirmed.

Mich.App.,2007.
Gearin v. Rogers
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