2016 IL App (2d) 151176-U
No. 2-15-1176
Order filed October 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KAREN BERLANT, Plaintiff-Appellant, v. FAITH AND MATTHEW GOLDSTEIN, Defendants-Appellees.	))))))))	Appeal from the Circuit Court of Lake County. No. 14-L-895 Honorable Thomas M. Schippers, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Holding*: We affirmed the trial court's dismissal of plaintiff's amended complaint. The allegedly defamatory statements were each either capable of innocent construction or protected expressions of opinions, plaintiff waived her argument that her allegations were sufficient to state a cause of action for defamation *per quod*, and plaintiff could not establish any damages resulting from defendants' conduct.

¶ 2 Plaintiff, Karen Berlant, filed a two-count complaint against defendants, Faith and Matthew Goldstein, bringing claims for defamation *per se* and tortious interference with prospective business relations. The trial court dismissed the complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). Plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are derived from the pleadings and exhibits.

¶ 5 Plaintiff was a substitute teacher in the Aptakisic-Tripp Community Consolidated School District 102 for more than eight years. She was often requested to substitute teach at the Pritchett Elementary School, where she was held in high esteem by the administrators. This changed after plaintiff's grandson, B.B., began attending the Pritchett school.

¶ 6 Plaintiff is B.B.'s paternal grandmother—plaintiff's son (B.B.'s father) was formerly married to defendant, Faith Goldstein (B.B.'s mother). That relationship ended in "bitter and acrimonious" dissolution of marriage proceedings. Faith later married defendant, Matthew Goldstein. The bitter relationship between plaintiff's son and Faith transcended to the relationship between plaintiff and defendants.

¶ 7 According to defendants, B.B. would become "upset" and "confused" whenever he interacted with plaintiff at the Pritchett school, as plaintiff had occasionally picked B.B. up from school in the past. Defendants therefore sought to prevent plaintiff from having any contact with B.B. at the Pritchett school. To that end, defendants e-mailed the Pritchett school's principal, Dr. Matt Moreland, and the District 102 Superintendant, Dr. Theresa Dunkin, regarding plaintiff's interactions with B.B. during the school day. Plaintiff attached copies of several such e-mails to her amended complaint.

¶ 8 On August 29, 2013, Faith e-mailed Moreland and stated:

> "I know I discussed this with you last year, but (sic) just wanted to reiterate again that [plaintiff] cannot sub for [B.B.'s] kindergarten class * * * because she is his paternal grandmother and that would be a conflict of interest."

¶ 9 On February 5, 2014, Faith e-mailed Moreland again, this time stating:

"I'm sorry to bother you again with this issue. It's just that [plaintiff] has (still) been coming to [B.B.]'s classroom everyday at the end of the day (I believe to help with coats). Is there something we can do to ensure that she does not come into the room (even if it is just for coats) because this has been really confusing and upsetting for [B.B.]. Again, I hate seeing him so upset after school. Please let me know how we can handle this situation."

¶ 10 In another e-mail, which lacks an identifiable date, Faith told Moreland:

"[B.B.] came home from school very upset today because [plaintiff] came into his classroom at the end of the day to help the children get their coats on; [B.B.] was very confused and thought he was going home with her (she used to pick him up from school once in a while in the past). Can we make sure that [plaintiff] stays completely out of his classroom, even if it is just to help the students with their coats? I hate to see [B.B.] coming home this upset from school!"

¶ 11 Plaintiff alleged that the statements in these e-mails were false. She claimed that she did not go into B.B.'s classroom at the end of every day, and the only time she had ever entered B.B.'s classroom was at the direction of B.B.'s teacher to help students put on their coats. Plaintiff further alleged that B.B. did not become confused or upset when he saw plaintiff at school, because plaintiff had never taken B.B. home from school.

¶ 12 On November 10, 2014, Matthew e-mailed Dunkin and stated:

"Today [plaintiff] once again has upset [B.B.] at school by talking to him and pulling him aside from the other students. The problem is that whenever [plaintiff] interacts with [B.B.] at school he gets very upset and acts out, blaming Faith and I for those interactions."

Plaintiff alleged that these statements were false, claiming that she had only said "hello" to B.B. and she did not pull him away from the other students.

¶ 13 The final statement in question was also allegedly made on November 10, 2014. Plaintiff alleged as follows: "[u]pon information and belief, [defendants] on or about November 10th, 2014 claimed that [plaintiff] had shown B.B. a picture of his new half-sister." Plaintiff alleged that this was false. She acknowledged that she had asked Moreland prior to the start of the school day for permission to show the picture to B.B., and that Moreland told her not to show B.B. the picture. Plaintiff claimed, however, that she followed Moreland's instructions and never showed B.B. the picture. In her response to defendants' section 2-615 motion to dismiss, plaintiff further claimed that Moreland "never said not to approach B.B."

¶ 14 Also attached to plaintiff's amended complaint was a letter from Susie Martaugh, the District 102 human resources coordinator, dated November 13, 2014. The letter reads as follows:

> "Dear [plaintiff]:
>
> It has come to our attention that on Monday, November 10, 2014, at Pritchett School, an incident occurred during the day while you were substitute teaching. It is our understanding that you asked Dr. Moreland, the building principal, if it would be Ok to approach your grandson, a first grade student at Pritchett, to tell him and/or show him a picture of his father's new baby. Dr. Moreland responded, 'No, it would not be Ok to approach him about this or show him a picture.' Our subsequent investigation of this report indicated that you did, in fact, approach your grandson during the day, after Dr. Moreland specifically told you not to do it. In addition, Dr. Moreland has reminded you

> several times about the parameters that have been set for you with regard to 'seeking out' and interacting with your grandson during the school day, which you have not followed.
>
> The actions stated above are not only insubordinate, but also in violation of general professional expectations for District employees by deliberately going against the directive of Dr. Moreland. Based on this report and the previous incidents where you have not respected the parameters set for you while working at Pritchett, you are being removed from the substitute calling list for Pritchett School effective immediately. You may still substitute teach at Tripp Elementary School, Meridian Middle School, and Aptakisic Junior High School."

¶ 15 Finally, plaintiff attached a letter to her response to defendants' section 2-615 motion to dismiss from Ellyn Ross, president of the District 102 board of education, dated January 27, 2015. Ross stated in pertinent part:

> "The Board has no doubt that [plaintiff] is well respected and appreciates her past efforts at Pritchett School. The Board believes that [plaintiff] has the opportunity to replicate the same successful working relationships with the staff at the other three buildings in the District, specifically Tripp School where she can substitute teach in the grade levels where she stated she feels most comfortable."

¶ 16 In support of her count alleging defamation *per se*, plaintiff alleged that defendants engaged in a malicious campaign to intentionally "injure and destroy" her earning capacity and reputation. Plaintiff further alleged that defendants were not privileged to make the statements in question, which resulted in her finances and reputation being "greatly damaged." According to plaintiff, Dunkin relied solely on the defendants' statements and determined that it was more convenient to bar plaintiff from teaching at the Pritchett school than to "deal" with defendants.

In support of her count alleging tortious interference with prospective business relations, plaintiff alleged that, because she was held in high esteem at the Pritchett school, there was "no reason to doubt" that she would have continued substitute teaching at the Pritchett school "for the remainder of the school year and into the future." Plaintiff requested $50,000 in compensatory damages, plus court costs and punitive damages in an amount to be determined, and further sought to have defendants publicly retract their statements.

¶ 17 Following a hearing, the trial court granted defendants' section 2-615 motion to dismiss with prejudice. In so ruling, the trial made oral findings that none of defendants' statements were actionable as defamation *per se*, and defendants' statements were not intentionally made to induce the District 102 administration to fire plaintiff. Defendant filed a timely notice of appeal.

¶ 18 II. ANALYSIS

¶ 19 A section 2-615 motion to dismiss tests the legal sufficiency of a complaint. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. Rather than raising affirmative defenses, a section 2-615 motion disputes whether the pleadings contain sufficient facts which, if proven, could entitle the plaintiff to relief. *Grundhoefer v. Sorin*, 2014 IL App (1st) 131276, ¶ 10. In determining whether a plaintiff has established a cause of action, reviewing courts must consider all facts apparent from the face of the pleadings and exhibits, and the allegations of the complaint must be construed in the light most favorable to the plaintiff. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). Where a trial court dismisses a complaint pursuant to section 2-615 of the Code, our standard of review is *de novo*. *Id.*

¶ 20 Here, plaintiff contends that her amended complaint stated valid causes of action for defamation and tortious interference with prospective business relations. Plaintiff's arguments rest on her assertion that defendants made false statements to Moreland and Dunkin that she had:

(1) entered B.B.'s classroom at the end of every school day to help the children with coats; (2) caused B.B. to become upset and confused; (3) pulled B.B. aside from other students on November 10, 2014; and (4) showed B.B. a picture of his new half-sister on November 10, 2014.

¶ 21 A. Defamation

¶ 22 A defamatory statement harms a person's reputation by either lowering that person in the eyes of the community or deterring others from associating with that person. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). To successfully state a defamation claim, a plaintiff must present facts showing that: (1) the defendant made a false statement about the plaintiff; (2) the defendant made an unprivileged publication of that statement to a third party; and (3) this publication caused damages. *Id.* There are two types of defamatory statements: defamation *per se* and defamation *per quod*. *Jacobson v. Gimbel*, 2013 IL App (2d) 120478, ¶ 25.

¶ 23 "A statement is defamatory *per se* if its harm is obvious and apparent on its face." *Green*, 234 Ill. 2d at 491. Illinois recognizes five categories of statements as defamation *per se:* (1) words that impute the commission of a crime; (2) words that impute an infection with a loathsome communicable disease; (3) words that impute an inability to perform or lack of integrity in performing employment duties; (4) words that prejudice a party or impute a lack of ability in a person's profession; and (5) words that impute that a person has engaged in adultery or fornication. *Jacobson*, 2013 IL App (2d) 120478, ¶ 26. If a defamatory statement is actionable *per se*, the harm to the plaintiff's reputation may be presumed, meaning the plaintiff need not plead or prove actual damages. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 87 (1996).

¶ 24 A cause of action for defamation *per quod* may be brought if the defamatory character of the statement is not apparent on its face, meaning that the plaintiff must plead and prove extrinsic facts to explain the injurious meaning of the statement. *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 41. A claim of defamation *per quod* may also be appropriate if the statement is defamatory on its face, but it does not fall within one of the limited categories of statements that are actionable *per se*. *Id.* "Plaintiffs pursuing a claim of defamation *per quod* under either category must allege special damages, which are damages to the plaintiff's reputation and pecuniary losses resulting from the defamatory statement." *Id*. General allegations of damages are insufficient to state a cause of action for defamation *per quod*. *Salamone v. Hollinger International, Inc.*, 347 Ill. App. 3d 837, 842 (2004).

¶ 25 1. Defamation *per se*

¶ 26 Plaintiff argues that the statements in question are actionable *per se*, because they impute a lack of integrity and ability in the discharge of her duties as a substitute teacher. However, plaintiff acknowledges elsewhere in her brief that the statements "appear innocuous" when taken out of context. As noted, "[a] statement is defamatory *per se* if its harm is obvious and apparent on its face." *Green*, 234 Ill. 2d at 491. Thus, by definition, an innocuous statement cannot be actionable *per se*. This contradiction notwithstanding, plaintiff argues that the trial court improperly dismissed her complaint on the basis of "affirmative defenses" raised by defendants. See *Bryson*, 174 Ill. 2d 77, 86 (1996) (noting that a section 2-615 motion alleges only defects on the face of the complaint and does not raise affirmative factual defenses).

¶ 27 In announcing its ruling, the trial court found that each of the statements in question was either subject to an innocent construction, protected as an expression of opinion, or privileged as

a statement made regarding a parent's concern for a child. We will address these findings in turn, including a consideration of whether they were made at the proper stage of the litigation.

¶ 28 a. Innocent Construction

¶ 29 "Even if a statement falls into one of the recognized categories of words that are actionable *per se*, it will not be found actionable *per se* if it is reasonably capable of an innocent construction." *Bryson*, 174 Ill. 2d at 90. Under the innocent construction rule, a statement cannot be actionable *per se* if it may be reasonably interpreted as having a non-defamatory meaning. To determine whether a statement is capable of an innocent construction, "a court must consider the statement *in context* and give the words of the statement, and any implications arising from them, their natural and obvious meaning." (Emphasis in original.) *Green*, 234 Ill. 2d at 499-500. The innocent construction rule applies only to actions for defamation *per se*; it does not apply to actions for defamation *per quod*. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 412 (1996).

¶ 30 In *Tuite v. Corbitt*, 224 Ill. 2d 490, 509 (2006), our supreme court observed that there is no conflict between the innocent construction rule and the standards applied to a section 2-615 motion to dismiss. The court explained that, although the facts alleged in the complaint must be accepted as true, the meaning of the disputed statement is not a fact that can be accepted as true. Thus, the preliminary construction of the statement is a question of law. *Id*. at 510. The court emphasized, however, that a plaintiff's claim should not be dismissed under the innocent construction rule if the likely intended meaning of the statement is defamatory. *Id*. at 512.

¶ 31 We first address Faith's statement that plaintiff entered B.B.'s classroom at the end of every school day to help the children with coats. The trial court applied the innocent

construction rule to this statement, which was made on February 5, 2014, when Faith e-mailed Moreland as follows:

> "I'm sorry to bother you again with this issue. It's just that [plaintiff] has (still) been coming to [B.B.]'s classroom everyday at the end of the day (I believe to help with coats). Is there something we can do to ensure that she does not come into the room (even if it is just for coats) because this has been really confusing and upsetting for [B.B.]. Again, I hate seeing him so upset after school. Please let me know how we can handle this situation."

The trial court reasoned that, assuming these statements were false, they could reasonably be interpreted as Faith conveying her desire to keep plaintiff out of B.B.'s classroom, even if it was only to help with coats. Plaintiff disagrees, arguing that Faith falsely implied that plaintiff lacked ability and integrity in her profession because she had been entering B.B.'s classroom every day "of her own accord" for the purpose of harassing B.B.

¶ 32 We agree with the trial court. Faith had previously indicated her desire that plaintiff not substitute teach for B.B.'s class. Taken in context, we believe it is more reasonable and likely that Faith was simply expressing her concern for B.B. and her desire that plaintiff be kept out of B.B.'s classroom altogether. We find nothing to suggest an implication by Faith that plaintiff was entering the classroom of her own accord for the purpose of harassing B.B.

¶ 33 We next turn to Matthew's statement that plaintiff pulled B.B. aside from other students. Although it did not specifically address this statement in its oral findings, it appears that the trial court applied the innocent construction rule. The statement was made on November 10, 2014, when Matthew e-mailed Dunkin as follows:

> "Today [plaintiff] once again has upset [B.B.] at school by talking to him and pulling him aside from the other students. The problem is that whenever [plaintiff] interacts with [B.B.] at school he gets very upset and acts out, blaming Faith and I for those interactions."

¶ 34 Plaintiff maintains that she did not pull B.B. aside from the other students or cause him to become upset.[1] She further argues that, taken in context, Matthew's statements impute plaintiff's inability to perform in her profession. We disagree. First, we find nothing unusual about a parent's statement that a child becomes upset when a particular teacher pulls him or her aside during the course of the school day. This could be meant to imply that the child dislikes interacting with a particular teacher for a variety of reasons which have nothing to do with the teacher's ability to perform in his or her profession. Second, as we will discuss more fully below, defendants' multiple correspondences with Moreland and Dunkin reflect a concern for B.B.'s well-being, rather than an effort to defame plaintiff. Stated differently, we do not believe the likely intended meaning of Matthew's statement was that plaintiff lacked the ability to perform in her profession.

¶ 35 We next consider plaintiff's allegation that, upon information and belief, defendants claimed that plaintiff showed B.B. a picture of his new half-sister on November 10, 2014. The trial court found in relevant part, "making an allegation that somebody showed a picture of a relative to a child is not defamation *per se*." The trial court further ruled that, assuming plaintiff did not show B.B. the picture, defendants' alleged statement could be innocently construed as parents showing concern about their child, rather than making a defamatory statement about

[1] We will later consider whether defendants' statements that plaintiff caused B.B. to become "upset" and "confused" were expressions of opinion.

plaintiff. According to plaintiff, the statement was a false report of an incident of insubordination, "which suggests that [plaintiff] lacks ability to perform in her profession and lacks integrity in her profession."

¶ 36 Before addressing the application of the innocent construction rule, we first note that a claim for defamation *per se* must be pleaded with a "heightened level of precision and particularity." This is due to the important policy consideration that a properly pleaded claim for defamation *per se* relieves the plaintiff of proving actual damages. *Green*, 234 Ill. 2d at 495. Although the facts relating to alleged statements themselves may not be known to the plaintiff, the facts informing the plaintiff's belief will always be within the plaintiff's direct knowledge. Therefore, where a claim for defamation *per se* is pleaded upon information and belief, the factual basis informing the plaintiff's belief must be pleaded with the requisite precision and authority. *Id*. at 495-96.

¶ 37 Here, plaintiff alleged only that, "upon information and belief, the [defendants] on or about November 10th, 2014 claimed that the [plaintiff] had shown B.B. a picture of his new half-sister." Plaintiff goes on to acknowledge that she had asked Moreland for permission to show the picture to B.B. prior to the start of the school day, and that Moreland instructed her not to show B.B. the picture. However, plaintiff does not allege that defendants provided any such factual background to the recipient of the statement in question. Thus, the trial court was correct to observe that the only statement defendants allegedly made was a claim that plaintiff "had shown B.B. a picture of his new half-sister." This is not sufficient to satisfy the heightened pleading requirements pertaining to a claim for defamation *per se* based on allegations which are stated upon information and belief. See *Green*, 234 Ill. 2d at 495-96.

¶ 38 Regardless, even presuming the statement was made to Moreland or Dunkin, and presuming the factual background underlying the statement was understood, we believe the innocent construction rule applies. The context of a statement is critical in determining its meaning, and a "given statement may convey entirely different meanings when presented in different contexts." *Tuite*, 224 Ill. 2d at 512. As we noted at the outset, this case sadly centers on a "bitter and acrimonious" divorce between B.B.'s parents—Faith and plaintiff's son. Defendants repeatedly requested that plaintiff, Faith's former mother-in-law, be prevented from interacting with B.B. during the school day. However, there is no indication that defendants made these requests in an effort to impute that plaintiff lacked ability and integrity in her profession. Rather, the reasonable and likely interpretation of these requests is that plaintiffs were concerned because B.B. became "upset" and "confused" after he interacted with plaintiff at the Pritchett school. Faith explained to Moreland on February 5, 2015, that plaintiff had occasionally picked B.B. up from school in the past. Beyond that, it is understandable that a young child in these circumstances might have an emotional response after interacting with his paternal grandmother during his school day. Given this context, we cannot say the more likely interpretation of defendants' alleged statement that plaintiff showed B.B. the picture was made as part of a contrived effort to defame plaintiff. We agree with the trial court that the statement can be reasonably construed as defendants' conveying their concern for B.B.'s well-being.

¶ 39 b. Opinion

¶ 40 The trial court found that defendants' various statements about plaintiff causing B.B. to become "upset" and "confused" were protected as expressions of opinion. Defendant argues that the trial court was correct, because there is no way of proving whether B.B. was in fact upset or confused after his interactions with plaintiff, much less proving the cause of B.B.'s distress.

Plaintiff disagrees, arguing that testimony from eyewitnesses could be considered to verify whether B.B. in fact became upset and confused after his interactions with plaintiff. We agree with defendant.

¶ 41 "In defamation actions, statements that are capable of being proven true or false are actionable, whereas opinions are not." *Seitz-Partridge v. Loyola University of Chicago*, 2013 IL App (1st) 113409, ¶ 29; see also *Tuite*, 224 Ill. 2d at 508 (discussing the constitutional protection afforded to statements of opinion). However, a factual assertion couched as an opinion is not free from a defamatory action; only statements that cannot reasonably be interpreted as stating actual facts are protected as opinions. *J. Maki Construction Co. v. Chicago Regional Council of Carpenters*, 379 Ill. App. 3d 189, 200 (2008). In considering whether a statement constitutes an opinion or factual assertion, courts should consider: (1) whether the statement has a precise and readily understood meaning; (2) whether the statement is verifiable; and (3) whether the statement's literary or social context signals that it has factual content. *Solaia*, 221 Ill. 2d at 581.

¶ 42 Whether a statement is an opinion or a factual assertion that could give rise to a defamation claim is a question of law for the court. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 398 (2008). Courts may properly resolve this question when ruling on a section 2-615 motion to dismiss. See *Hadley v. Doe*, 2015 IL 118000, ¶¶ 41-42 (holding that the plaintiff's complaint was sufficient to survive a section 2-615 motion to dismiss because the allegedly defamatory statement could reasonably be considered an assertion of fact); see also *Rose v. Hollinger International, Inc.*, 383 Ill. App. 3d 8, 19 (2008) (affirming the trial court's section 2-615 dismissal of a defamation claim because the allegedly defamatory statement was a non-actionable opinion). If a statement can be reasonably interpreted as a factual assertion, the question of whether the statement was actually understood as defamatory is reserved for a

determination by the trier of fact. See *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 16 (1992).

¶ 43 In *Pompa v. Swanson*, 2013 IL App (2d) 120911, ¶ 8, we considered allegations that the defendant made defamatory statements during a union board meeting that the plaintiff did not deserve a retirement gift because he had performed his job "unsatisfactorily" and he had been "overpaid" during his career working in the union. We affirmed the trial court's section 2-615 dismissal of the complaint with prejudice, based partly on our conclusion that the statements constituted "classic" forms of opinion. We first determined that the statements were generalized and highly subjective, and therefore lacked precise and readily understood meanings. We next determined that the statements were not verifiable, explaining that there were no allegations about any actual performance reviews or other similar criteria which would allow a reasonable person to ascertain whether the plaintiff had in fact performed his job unsatisfactorily. Furthermore, regardless of what the plaintiff was actually paid in relation to the amount and quality of his work, reasonable people could disagree as to whether he was in fact overpaid. Finally, we determined that the context in which the statements were made did not indicate that they were based on any underlying factual content. We acknowledged that the defendant had allegedly referenced the number of hours that the plaintiff had worked, but noted that the "overpaid" statement was nonetheless an opinion based on that information. *Id*. ¶¶ 23-24.

¶ 44 We believe a similar analysis applies in this case to the statements that plaintiff's interactions with B.B. caused him to become "upset" and "confused." First, the statements lack a precise and readily understood meaning—that is to say, what constitutes a state of distress or confusion will vary widely from one person to another. Second, we agree with the trial court that the statements are not verifiable. Third, similar to our conclusion in *Pompa*, we do not

believe that the context in which the statements were made indicates that they were based on any underlying factual content.

¶ 45 Plaintiff argues that, taken in context, the statements were factual assertions. In support, plaintiff argues that this case is similar to *Solaia*. That case dealt with statements in a magazine article discussing the plaintiffs' patent infringement claims against various well-known companies. One of the statements was a reprinted comment from an industry veteran describing the plaintiffs' patent as " 'essentially worthless.' " *Solaia*, 221 Ill. 2d at 570. The appellate court held that this statement was an expression of opinion and it was therefore not actionable. *Id*. at 576. In reversing that ruling, our supreme court held that the statement had a "very precise meaning" in the context of the industry veteran's letter, which accused the plaintiffs of purchasing the " 'essentially worthless' " patent from another company for one dollar " 'plus a cut of the settlements.' " The industry veteran went on to explain that the patent was purchased for the purpose of obtaining settlements from frivolous infringement claims. *Id*. at 584.

¶ 46 Plaintiff concedes that the statements at issue here are "to (sic) vague to have a precise and objectively verifiable meaning." Plaintiff argues, however, that the context of the statements shows defendants' intent to imply that B.B. was upset and confused "as a direct result of a very specific action taken by [plaintiff]." Plaintiff argues that this makes the statements similar to the statement considered in *Solaia*. We disagree.

¶ 47 The statement in *Solaia* was made by an industry veteran who claimed that an "essentially worthless" patent was purchased for a specific price and for a specific purpose. *Solaia*, 221 Ill. 2d at 584. Here, the context of defendants' statements clearly reveals a claim that B.B. was upset and confused as a result of his interactions with plaintiff, but there is no indication of the "specific action" taken by plaintiff which led to B.B.'s distress. Although

Matthew stated in his e-mail on November 10, 2014, that a social worker and a psychiatrist had "expressed their concerns to [Moreland] about these interactions," this falls far short of the specificity conveyed by the industry veteran in *Solaia*. Similar to *Pompa*, we believe the context of defendants' statements in this case that B.B. became "upset" and confused" does not indicate that they were based on any underlying factual content. See *Pompa*, 2013 IL App (2d) 120911, ¶¶ 23-24.

¶ 48 c. Privilege

¶ 49 "A defamatory statement is not actionable if it is privileged; this is a question of law. [Citation.] There are two classes of privileged statements: those subject to an absolute privilege, and those subject to a conditional or qualified privilege." *Solaia*, 221 Ill. 2d at 585. Whereas an absolute privilege provides a complete bar to a claim for defamation, a qualified privilege can be overcome in circumstances where the defendant makes a false statement with the intent to injure or with reckless disregard for the truth. *Naleway v. Agnich*, 386 Ill. App. 3d 635, 639 (2008). Absolutely privileged communications are found in rare instances where the propagation of a communication "is so much in the public interest that the publisher should speak fully and fearlessly." *Anderson v. Beach*, 386 Ill. App. 3d 246, 249 (2008) (quoting *Weber v. Cueto*, 209 Ill. App. 3d 936, 942 (1991)). In Illinois, a conditional (or "qualified") privilege has been found to exist as a matter of law where the following elements are present: "(1) good faith by the defendant in making the statement; (2) an interest or duty to uphold; (3) a statement limited in its scope to that purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only." *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 72 (quoting *Kuwik v. Starmark Star Marketing & Administration, Inc.*, 156 Ill. 2d 16, 25 (1993).

¶ 50 "Once a defendant establishes conditional privilege, the burden shifts to the plaintiff to show an abuse of the privilege." *Anderson*, 386 Ill. App. 3d at 253. A conditional privilege can be defeated in circumstances where: (1) false statements are made with malice or a reckless disregard for their truth; (2) the statements are not limited in scope; or (3) publication is not limited to proper parties. *Zych v. Tucker*, 363 Ill. App. 3d 831, 834-35 (2006). The question of whether a speaker abused the privilege is generally a question for the trier of fact, which can be determined as a matter of law only if the pleadings and attached exhibits present no genuine issue of material fact. *Anderson*, 386 Ill. App. 3d at 253.

¶ 51 Here, the trial court found that all of the statements in question were conditionally privileged as statements made regarding a parent's concern for a child. The trial court noted that this placed a burden on plaintiff of proving malice, but found as a matter of law that none of the statements were sufficiently malicious.

¶ 52 We need not address the propriety of the trial court's rulings on the subject of conditional privilege. As we have explained above, we agree with the trial court that each of the statements in question was either capable of an innocent construction or an expression of opinion. These were proper rulings to be made in considering defendants' section 2-615 motion to dismiss. We therefore affirm the trial court's dismissal of plaintiff's count for defamation *per se*.

¶ 53 2. Defamation *per quod*

¶ 54 In the alternative to her argument that she stated a valid claim for defamation *per se*, plaintiff argues that her allegations were sufficient to satisfy the pleading requirements for defamation *per quod.* Plaintiff argues that we should reverse the trial court's dismissal on that basis, even though the count in her amended complaint was labeled defamation *per se*. Plaintiff

posits that the "ultimate question" for this court to determine is whether she stated a valid claim—not whether she properly labeled her claim. We disagree.

¶ 55 Plaintiff provides no case law establishing that a trial court must consider whether allegations within a claim labeled as defamation *per se* are sufficient to satisfy the pleading requirements of a claim for defamation *per quod*. We are also unaware of any cases where an Illinois appellate court has conducted such an inquiry on review. See *Dobias v. Oak Park & River Forest High School Dist. 200*, 2016 IL App (1st) 152205, ¶ 53 ("Here, plaintiff has only alleged defamation *per se*, and we will confine our analysis accordingly.").

¶ 56 We reject plaintiff's reliance on this court's holding in *Duncan v. Peterson*, 359 Ill. App. 3d 1034 (2005). The plaintiff in that case, a pastor, filed a complaint against his former church including three counts for invasion of privacy. *Id*. at 1036. The trial court granted the defendants' motion for summary judgment, finding that the ecclesiastical abstention doctrine barred a determination of the issues. *Id*. at 1036. On appeal, we determined that the trial court erred in applying the ecclesiastical abstention doctrine and proceeded to consider whether there was a factual basis upon which the plaintiff could be entitled to recover. *Id*. at 1046-47. We noted that there are four invasion of privacy torts: (1) intrusion upon seclusion of another; (2) appropriation of a name or likeness of another; (3) publication given to private life; and (4) publicity placing another person in false light. We further noted that, although not specified in the plaintiff's complaint, the plaintiff's allegations described a cause of action for the tort of placing a person in a false light. *Id*. at 1047. We concluded that there were genuine issues of material fact pertaining to the plaintiff's false light claims, and accordingly reversed the trial court's ruling. *Id*. at 1050.

¶ 57 Our identification of the distinct invasion of privacy tort alleged in *Duncan* does not stand for the proposition that courts must look beyond the label of a claim for defamation *per se* to determine whether a cause of action could stand for defamation *per quod*. Unlike in this case, the trial court in *Duncan* did not consider the merits of the plaintiff's invasion of privacy claims. Moreover, the plaintiff in *Duncan* did not argue on appeal that he had alleged a different invasion of privacy tort than the tort that was considered by the trial court. Here, the trial court conducted a hearing in which it considered whether plaintiff stated a valid claim for defamation *per se* in her amended complaint. Plaintiff had opportunities in the trial court to amend her complaint with an additional claim for defamation *per quod* and to argue that she had stated sufficient allegations to maintain such a cause of action. Plaintiff instead relied solely on her claim for defamation *per se*.

¶ 58 We are not persuaded by plaintiff's argument that our review is justified because she simply "mislabeled" her claim and she has not raised any new or different facts on appeal. See *Lawson v. Hill*, 77 Ill. App. 3d 835, 848 (1979) ("It is well established that issues, points, questions or contentions which were not presented to the trial court will not be considered on appeal, nor can a party-litigant change his theory upon which a case is tried in the lower court upon reaching a court of review."); see also *Tunca*, 2012 IL App (1st) 093384, ¶ 34 (rejecting the plaintiff's contention that he preserved claims of slander *per se* because he stated the necessary facts in counts alleging slander *per quod*). Plaintiff's theory that her allegations state a claim for defamation *per quod* is therefore waived for failure to assert it before the trial court. See *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 63. However, even if we were to hold otherwise, we would nonetheless affirm the trial court's dismissal.

¶ 59 As noted, a plaintiff bringing a claim of defamation *per quod* must allege special damages, whereas the harm to the plaintiff's reputation may be presumed if the statement is actionable *per se*. See *Bryson*, 174 Ill. 2d at 87; *Tunca*, 2012 IL App (1st) 093384, ¶ 41. General allegations such as damage to one's reputation, economic loss, or emotional distress are insufficient to state a cause of action for defamation *per quod*. *Salamone*, 347 Ill. App. 3d at 842.

¶ 60 In *Tunca*, the appellate court conducted a thorough review of the special damages pleading requirement in the context of a claim for defamation *per quod*. *Tunca*, 2012 IL App (1st) 093384, ¶¶ 60-61. The court noted that, although there is no precise definition for what will constitute special damages, a plaintiff sufficiently pleads special damages by explicitly stating the dollar amount of lost revenue which resulted from the defendant's statements. If specifically alleged, a plaintiff can prevail by showing that a third party stopped doing business with the plaintiff as a result of the defendant's statements. *Id*. ¶ 60. The plaintiff in *Tunca*, a surgeon specializing in gynecological oncology, had specifically alleged that, as a result of the defendants' statements, the number of patients referred to him by other doctors had declined by approximately 25%, and his income had decreased by $861,506 from the previous year. *Id*. ¶ 62. The court held that these allegations were sufficient to survive a section 2-615 motion to dismiss. *Id*. ¶ 75.

¶ 61 Here, plaintiff alleged only that, "as a direct and proximate result of the false and malicious statements of [defendants] [plaintiff] was greatly damaged both financially, (sic) emotionally and her reputation as a substitute teacher was greatly harmed as set forth above." These are precisely the type of general allegations that are insufficient to state a claim of defamation *per quod.* See *Quinn v. Jewel Food Stores, Inc.*, 276 Ill. App. 3d 861, 870 (1995)

(holding that the plaintiff's claim that he sustained grave economic loss when he was unable to secure a franchise was insufficient to state a cause of action for defamation *per quod*). In her prayer for relief, plaintiff sought $50,000 in compensatory damages, plus court costs and punitive damages in an amount to be determined. However, unlike in *Tunca*, plaintiff's amended complaint includes no allegations showing how she arrived at this number. During oral argument, plaintiff's counsel conceded that the complaint contained "no specific allegation as to specific dollar amounts." With nothing more, plaintiff's request appears arbitrary.

¶ 62 We are aware that a cause of action should not be dismissed with prejudice pursuant to section 2-615 unless it is clear that no set of facts can be proved under the pleading which would entitle the plaintiff to relief. *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 584-85 (2003). However, we believe the pleadings and exhibits in this case establish that plaintiff cannot show any damages resulting from defendants' conduct.

¶ 63 The letter from Martaugh states that plaintiff was removed from the substitute teacher calling list at the Pritchett school because she approached B.B. during the school day on November 10, 2014, in violation of Moreland's instructions. Martaugh further stated that plaintiff failed to follow the parameters that had been set forth by Moreland "with regard to 'seeking out' and interacting with [B.B.] during the school day." Plaintiff admitted saying "hello" to B.B. on November 10, 2014, but denied that she pulled him away from the other students. Although we are not called upon to determine what transpired on November 10, 2014, it is clear that plaintiff had some interaction with B.B. which led to her removal from the substitute teacher calling list at the Pritchett school. There are no indications of any findings by District 102 that plaintiff entered B.B.'s classroom at the end of every school day to help the children with coats, caused B.B. to become upset and confused, pulled B.B. aside from other

students on November 10, 2014, or showed B.B. a picture of his new half-sister on November 10, 2014. We further note that plaintiff retained her ability to substitute teach at three other District 102 schools, including Tripp Elementary School, in the grade levels where plaintiff felt most comfortable.

¶ 64 For these reasons, even if plaintiff was granted another opportunity to amend her complaint, we do not believe she would be able to show the damages that are necessary to state a cause of action for defamation *per quod*.

¶ 65 B. Tortious Interference with Prospective Business Relations

¶ 66 To state a cause of action for tortious interference with prospective business advantage, a plaintiff must allege: (1) a reasonable expectancy of entering into a valid business relationship; (2) the defendant's knowledge of the expectancy; (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy; and (4) damage to the plaintiff resulting from the defendant's interference. *Voyles v. Sandia Mortgage Corp.*, 196 Ill. 2d 288, 300-01 (2001).

¶ 67 This tort recognizes that a person's business relationships constitute property interests that are entitled to protection from unjustified tampering by another. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 373 (2007). It is the interference with a business relationship that creates the actionable tort, and there is no requirement that the cause of action be based on an enforceable contract. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 862 (2008). An at-will employee may successfully bring an action for tortious interference, as the relationship will presumptively continue so long as the parties are satisfied. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 381 (2004).

¶ 68 The trial court in this case focused on the third element of the cause of action, finding that the statements in question were "not intentional and malicious statements made to induce the school district to fire [plaintiff] as a matter of law." Plaintiff argues that this was an improper factual finding that should not have been made in considering defendant's section 2-615 motion to dismiss. Defendant counters by pointing out that we may affirm the trial court's dismissal on any basis appearing in the record (see *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 586 (2005)), and arguing that plaintiff's status as a substitute teacher precludes her from establishing the first element: a reasonable expectancy of entering into a valid business relationship.

¶ 69 However, we need not determine whether plaintiff could satisfy the first or third elements of the cause of action. As we noted above, plaintiff cannot show any damages resulting from defendants' conduct. Therefore, plaintiff cannot establish the fourth element. See *Voyles*, 196 Ill. 2d at 300-01.

¶ 70 III. CONCLUSION

¶ 71 For the reasons stated, we affirm the trial court's section 2-615 dismissal of plaintiff's amended complaint.

¶ 72 Affirmed.