2019 IL App (1st) 181252-U

FIRST DIVISION
August 5, 2019

No. 1-18-1252

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARK McCOMBS, Plaintiff-Appellant, v. KATHRYN CRIVOLIO, Defendant-Appellant.	) Appeal from the Circuit Court of) Cook County))) No. 16 L 5202))) Honorable Kathy M. Flanagan) Judge Presiding

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err when it dismissed plaintiff's claims for malicious prosecution, abuse of process, conspiracy, and defamation. The trial court did not abuse its discretion when it denied plaintiff's petition for sanctions against defendant.

¶ 2 Plaintiff Mark McCombs filed a four-count second amended complaint against his ex-wife defendant Kathryn Crivolio for malicious prosecution, abuse of process, conspiracy, and defamation. The trial court dismissed the case in its entirety for plaintiff's failure to state a claim. Plaintiff also sought sanctions against defendant. The trial court denied plaintiff's petition for

sanctions. Plaintiff appeals both of those adverse rulings. We affirm.[1]

¶ 3 BACKGROUND

¶ 4 Plaintiff Mark McCombs and defendant Kathryn Crivolio were married and had four children together. In September 2010, defendant filed a petition to dissolve the marriage. The dispute and the parties' relationship became extremely contentious. Plaintiff filed this case as a result of events that transpired during the parties' divorce proceedings and thereafter. Plaintiff claims that he is entitled to damages from defendant for malicious prosecution, abuse of process, conspiracy, and defamation.

¶ 5 Plaintiff is trained as an attorney. From 2002 to 2010, while the parties were married, plaintiff served as special counsel to the Village of Calumet Park, Illinois where he provided legal services. It was uncovered, and plaintiff admitted, that during his time as special counsel to the Village, he stole between $600,000 and $800,000. He was indicted in March 2010. In September 2011, plaintiff pled guilty to theft of over $100,000, a Class X felony, and he was sentenced to six years in prison. In January 2012, he was disbarred. *In the Matter of Mark James McCombs*, Supreme Court No. M.R. 25072 (Jan. 13, 2012).

¶ 6 In October 2014, while plaintiff was still serving his sentence for felony theft, defendant filed for an emergency order of protection against plaintiff. In support of her request for an order of protection, defendant stated that plaintiff had been sending her harassing emails. Plaintiff moved to dismiss the application for an order of protection, and defendant voluntarily dismissed it. Five months later, defendant again filed for an emergency order of protection. In support of her second request for an order of protection, defendant stated that plaintiff had sent her more

[1] Plaintiff filed a motion to strike portions of defendant's brief on appeal. We have considered the objections that plaintiff raises and have disregarded any improper considerations raised by defendant's brief. Being fully advised of plaintiff's objections during our deliberations on the appeal, we were able to fully adjudicate the issues raised without hindrance. The motion to strike is denied.

than 725 emails in the last six months which constituted harassment. The court found that defendant failed to meet her burden to prove "abuse" as that term is defined in the Domestic Violence Act (750 ILCS 60/103(1) (West 2016)), so it denied her request for an order of protection.

¶ 7 In March 2015, the State filed a criminal complaint against plaintiff for harassment. In its criminal complaint, the State alleged that plaintiff had sent more than 780 emails to defendant over a six-month period. Defendant filed a motion to dismiss the complaint. At a case management conference in May 2015, the State sought leave to amend the complaint. The court denied the State's motion to amend and dismissed the criminal complaint. Soon thereafter, the State initiated another set of proceedings against plaintiff for disorderly conduct that again included allegations about the hundreds of emails that plaintiff had sent to defendant. Plaintiff moved to dismiss that second criminal complaint. The court dismissed the second criminal complaint as well.

¶ 8 The parties continued to correspond with one another to discuss issues relating to their children. In an October 15, 2015 email that defendant sent to plaintiff, defendant stated to plaintiff "you have stolen from me, your employers, your client's (sic) and your own mother." Plaintiff alleges that defendant published that statement to his family, their children, and others.

¶ 9 While all of the above quarreling was occurring, the parties' divorce proceedings remained ongoing. In December 2015, the judge presiding over the divorce case entered an order enjoining plaintiff "from filing any pleadings in this matter without first seeking leave of court [ ] to do so." The court later noted that plaintiff had filed 19 pleadings against defendant in the divorce case and entered the order granting injunctive relief to "restrict or prevent [plaintiff from] filing harassing or vexatious litigation against his ex-wife." On May 24, 2016, plaintiff

filed this case.

¶ 10 In his complaint in this case, plaintiff claims that he is entitled to recover for malicious prosecution, abuse of process, conspiracy, and defamation. Plaintiff maintains that "[t]he parties had a long history of contentious litigation, during which Defendant took unfounded and otherwise unreasonable actions to improperly harm Plaintiff."

¶ 11 In support of plaintiff's first three claims against defendant—for malicious prosecution, abuse of process, and conspiracy—plaintiff alleges that defendant's actions in attempting to obtain orders of protection against him were tortious. Plaintiff alleges that defendant also acted tortiously in having criminal charges brought against him, including that she has a friend that works for the State's Attorney's office and that she conspired with that friend to have the criminal charges brought against him. Plaintiff contends that defendant's actions were motivated by a desire to get the Illinois Department of Corrections to deny him early release from custody as a result of the allegations being levied against him. In support of his defamation claim, plaintiff contends that defendant defamed him when she wrote in an email to him that "you have stolen from me, your employers, your client's (sic) and your own mother." Plaintiff alleges that defendant published that email to their children, to his family, and to others and that he was harmed by the publication.

¶ 12 Defendant moved to dismiss the operative complaint, the second amended complaint. In a seven-page written order, the trial court dismissed plaintiff's claims with prejudice. Plaintiff also petitioned the trial court to sanction defendant for her conduct in this case and her conduct that gave rise to this case. The trial court rejected plaintiff's petition for sanctions. Plaintiff appeals the dismissal of his case and the denial of his petition for sanctions.

¶ 13 ANALYSIS

¶ 14 The trial court dismissed plaintiff's claims under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). A section 2-615 motion to dismiss attacks the sufficiency of a complaint and raises the question of whether a complaint states a cause of action upon which relief can be granted. 735 ILCS 5/2-615 (West 2016); *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (2008). All well-pleaded facts must be taken as true, and any inferences should be drawn in favor of the nonmovant. *Jones v. Brown-Marino*, 2017 IL App (1st) 152852, ¶ 19. A section 2-615 motion to dismiss should not be granted unless no set of facts could be proved that would entitle the plaintiff to relief. *Id.* We review the dismissal of a plaintiff's claims *de novo*. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55.

¶ 15 Plaintiff argues that he pled sufficient facts to survive a motion to dismiss. The claims at issue are: (1) malicious prosecution; (2) abuse of process; (3) conspiracy; and (4) defamation. We address the claims in turn. Plaintiff also argues that the trial court erred when it dismissed his petition for sanctions under Illinois Supreme Court Rule 137.

¶ 16 I. Motion to dismiss

¶ 17 A. Malicious Prosecution

¶ 18 Plaintiff's claim for malicious prosecution is based on defendant's attempts to obtain orders of protection against him and on criminal charges being brought against him allegedly at defendant's behest. The offensive conduct that defendant based her complaints against plaintiff upon was harassment and abuse—that plaintiff had sent defendant hundreds of emails and had repeatedly threatened to initiate contempt proceedings against her.

¶ 19 Plaintiff argues that defendant is liable for malicious prosecution as a result of her actions in attempting to get orders of protection against him. Plaintiff also argues that defendant is liable

for malicious prosecution because she continued to assert her allegations of harassment after her petition for an order of protection was denied, leading to criminal charges being filed against him. Plaintiff maintains that defendant's actions had the purpose of and, in fact, resulted in him being denied early parole and remaining in state custody for his theft conviction.

¶ 20 A malicious prosecution action is brought to recover damages suffered by one against whom a suit has been filed maliciously and without probable cause. *Howard v. Firmand*, 378 Ill. App. 3d 147, 149 (2007). To state a cause of action for malicious prosecution, a plaintiff must allege facts showing (1) the commencement or continuance of an civil or criminal judicial proceeding by the defendant, (2) the termination of the proceeding in the plaintiff's favor, (3) the absence of probable cause for the proceeding, (4) the presence of malice, and (5) damages to the plaintiff resulting from the commencement or continuance of that proceeding. *Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill. App. 3d 340, 346 (2000).

¶ 21 Under the parties' divorce and custody judgment, communications between the parties were restricted to emails and text messages about issues related to their children. In the petition for an order of protection, defendant alleged that plaintiff had sent her 725 emails over the period of less than six months that were "of a harassing nature" and caused her mental distress. Defendant asked the court to keep plaintiff from being near her, from entering or remaining at her place of residence, from stalking her, from interfering with her personal liberty, from physically abusing her and from harassing her.

¶ 22 Plaintiff does not deny that he sent more than 725 emails to plaintiff. He simply suggests that because the emails were sent over six month period, they did not "interrupt her electronic communication service," which is an element of criminal harassment. He argues that, because defendant pressed her allegations in court to seek an order of protection when she lacked

probable cause, she is liable for malicious prosecution.

¶ 23 Probable cause is a complete defense to an action for malicious prosecution. *Howard*, 378 Ill. App. 3d at 149. Probable cause is a set of facts that would lead a person of ordinary care and prudence to believe or to entertain an honest and sound suspicion that the accused committed the offense charged. *Id*. Plaintiff essentially argues that because defendant mostly failed in her attempts to get an order of protection, she lacked probable cause to pursue her allegations in the first place. That argument fails. It is immaterial that the accused is found to be not guilty of the charges made against him. *Id*. at 150.

¶ 24 Plaintiff does not dispute that he engaged in the course of conduct about which plaintiff complained. The court held that the course of conduct did not amount to "abuse" as defined in the Domestic Violence Act. Even if defendant made a mistake of law, plaintiff does not contest the accuracy of the facts defendant presented to the court and her mistake is insufficient to support a claim for malicious prosecution. See *Sang Ken Kim v. City of Chicago*, 368 Ill. App. 3d 648, 655-56 (2006) (a mistake or reasonable error will not affect the question of probable cause). Plaintiff does not dispute his conduct, he only disputes its legal effect. According to plaintiff, he did not commit a crime or commit "abuse" as that term is used in evaluating whether an order of protection should be granted. But defendant need not have succeeded in obtaining an order of protection lest she be liable for malicious prosecution, even if she made multiple attempts.

¶ 25 For example, plaintiff faults defendant for "fail[ing] to reasonably investigate or verify the legal requirements of the criminal harassment complaint despite those unreasonable factual allegations." But that statement exemplifies the problem with plaintiff's cause of action. He does not take issue with the factual circumstances underlying the allegations defendant made against him. He argues that defendant pressed the allegations despite the fact that they were *legally*

insufficient. It would be unreasonable to hold a person liable for making factually true allegations to a court and a prosecutor simply because they do not ultimately result in the obtainment of an order of protection or a successful criminal prosecution.

¶ 26 Plaintiff states that "[t]he court presiding over the post-decree proceedings found that no abuse occurred." The court never made such a finding. Plaintiff then states that "the divorce court previously determined that the same emails involved in the disorderly conduct complaint did not cause Defendant emotional distress." The court never made such a finding. The court found that defendant failed to meet her burden of proof. That is far different from a finding that no abuse or harassment ever occurred. Just because the petition for an order of protection was denied, does not mean that the trial court disbelieved defendant's assertions and it does not mean that defendant's subjective distress was unfounded.

¶ 27 The record demonstrates that, on average, plaintiff sent defendant more than 120 emails each month. Defendant believed that the volume of received emails was excessive in light of the parties' contentious relationship and that it constituted harassment where plaintiff was only allowed to contact her about the care of their children. She attempted to obtain orders of protection with the aim of stopping the conduct that she believed to constitute harassment against her. She only reported conduct to authorities and to the court that plaintiff does not factually dispute. If the factually accurate complaints about plaintiff's conduct caused the Department of Corrections to deny plaintiff early parole or early release from custody, those were matters beyond defendant's control and cannot be the basis for liability for malicious prosecution. See *Hill v. Walker*, 241 Ill. 2d 479, 487 (2011) (parole in Illinois is a matter of grace and parole determinations are within the exclusive discretion of the Illinois Prisoner Review Board).

¶ 28 Plaintiff also argues that defendant should be liable for malicious prosecution because she

continued to make assertions of harassment against him even after her petition for an order of protection was denied and that those continued assertions led to criminal charges being filed against him. Plaintiff contends that, because the petitions for an order of protection were denied based on the same allegations, defendant could not have had probable cause to continue to assert the allegations to prosecutors as substantiation of a crime. Again, however, the only action defendant is alleged to have taken was that she presented a set of facts to the prosecutor—a set of facts plaintiff does not dispute.

¶ 29 The commencement of a criminal proceeding requires official state action. *Rodgers*, 315 Ill. App. 3d at 346. A citizen does not commence a prosecution by giving information to the proper authorities. *Id*. In *Rodgers*, we held that a claim for malicious prosecution could go forward where the plaintiff alleged that defendants "knowingly provided false information to the State's Attorney's Office" resulting in the plaintiff being indicted. *Id*. In this case, it is not even alleged that defendant gave false information to authorities.

¶ 30 Plaintiff merely contends that defendant gave truthful information to authorities with a spiteful purpose. But upon learning of plaintiff's conduct from defendant, the prosecutors made an independent and official decision to prosecute the claim. Defendant had no control over whether criminal charges were actually brought. Plaintiff does not allege that defendant provided any false information. Plaintiff does not allege that defendant misled the prosecutor in any way. A person does not commit malicious prosecution by presenting a true set of facts to a prosecutor that the prosecutor decides constitutes a crime and pursues.

¶ 31 Illinois courts have a policy that disfavors malicious prosecution actions "on the ground that courts should be open to litigants for resolution of their rights without fear of prosecution for calling upon the courts to determine such rights." *Keefe v. Aluminum Co. of America*, 166 Ill.

App. 3d 316, 317 (1988). All that plaintiff alleges with regard to the order of protection is that defendant called upon the court to determine her rights, but received an adverse ruling. All that plaintiff alleges with regard to the criminal charges is that defendant presented the same set of facts to a prosecutor and the prosecutor decided to pursue the matter as a crime, but that the charges did not result in a successful prosecution. Those facts are insufficient to make out a malicious prosecution claim and the trial court properly dismissed it.

¶ 32 Defendant argues that whether probable cause exists in connection with a malicious prosecution claim is a question of fact for the jury (citing *Grundhoefer v. Sorin*, 2014 IL App (1st) 131276, ¶ 16 ("Where the circumstances giving rise to an alleged malicious prosecution are in dispute, the appropriate venue to resolve that dispute is before a jury and not by a court as a matter of law especially if the dispute involves a question of credibility." (Internal quotation marks omitted))). While the statement offered by defendant generally represents the applicable legal standard, none of the facts here are disputed and no questions of credibility need to be resolved. Even when defendant's allegations are taken as true, they do not amount to a claim for malicious prosecution. Plaintiff failed to state a cause of action for malicious prosecution, and the trial court did not err when it dismissed this claim.

¶ 33 B. Abuse of Process

¶ 34 Like plaintiff's claim for malicious prosecution, plaintiff's claim for abuse of process is based on defendant filing petitions for orders of protection and making criminal complaints against him. Plaintiff contends that defendant's complaints were the sole reason for him being denied early release from parole and remaining in State custody. Plaintiff also contends, in the orders of protection that defendant sought, her request that plaintiff not be allowed in her presence caused him to not be able to attend his daughter's first communion or his son's

confirmation into the Catholic Church.

¶ 35 An action for abuse of process provides recourse when a defendant misuses or misapplies the legal process to accomplish some objective other than something within the legitimate scope of the process. *Commerce Bank, N.A. v. Plotkin*, 255 Ill. App. 3d 870, 872 (1994). To state a claim for abuse of process, a plaintiff must allege facts showing: (1) the existence of an ulterior purpose or motive, and (2) some act in the use of the legal process which is not proper in the regular prosecution of the proceedings. *Withall v. Capitol Federal Savings of America*, 155 Ill. App. 3d 537, 544 (1987).

¶ 36 Plaintiff argues that defendant had an ulterior motive in filing for orders of protection and making criminal complaints—that she wanted him to remain in State custody and, as a result, prevented him from attending events involving the parties' children. The trial court held that plaintiff's allegations were insufficient because "it is not alleged, nor can it be alleged, that the filing of the complaints actually compelled the Department of Corrections to keep plaintiff in custody[.]" The trial court continued, "the decision of the Department of Corrections to deny early parole and keep plaintiff in custody was not a direct result of the complaints and was not within defendant's control." We agree with the reasoning of the trial court.

¶ 37 As stated above, defendant has no control over the State's custodial determinations (see *supra* ¶ 27). The Department of Corrections was not obligated in any manner to keep plaintiff in custody—it has discretion to make that decision based on the totality of the circumstances. Plaintiff's complaint simply alleges that defendant reported factually accurate conduct to the court and to the police. As even plaintiff acknowledges, the parties had been engaged in contentious divorce proceedings that precipitated defendant's actions and her aversion to plaintiff sending her more than 120 emails per month. Regardless of defendant's motives, she

simply used the legal process available to make her complaints and she is not even alleged to have made misrepresentations to the court or to the police. The only alleged inaccuracy of defendant's complaints was their legal effect, not their factual accuracy. Defendant is not liable for *abuse* of process when the allegations are only that she *used* the process. See *Erlich v. Lopin-Erlich*, 195 Ill. App. 3d 537, 539 (1990).

¶ 38 As we have previously observed, the mere filing of legal proceedings, even with a malicious motive, does not constitute an abuse of process. *Commerce Bank*, 255 Ill. App. 3d at 872. Plaintiff has basically only alleged that defendant filed legal proceedings for a malevolent purpose. That is not sufficient. In fact, Illinois courts have generally taken a very restrictive view of the tort of abuse of process. *Id*. The cause of action for abuse of process is a narrow one, and its elements are strictly construed because it is not a favored cause of action under Illinois law. *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 166 (2004). Plaintiff failed to state a cause of action for abuse of process, and the trial court did not err when it dismissed this claim.

¶ 39 C. Conspiracy

¶ 40 Plaintiff's claim for conspiracy is based on the criminal actions brought against him for criminal harassment and disorderly conduct. Plaintiff alleges that defendant did not swear to the criminal complaint, that the complaints did not meet the legal threshold to constitute a crime, and that defendant must have had an agreement with her friend that works for the State's Attorney's Office to unlawfully prosecute plaintiff for the non-criminal activity.

¶ 41 To state a claim for civil conspiracy, a plaintiff must allege facts showing (1) an agreement to accomplish by concerted action either an unlawful purpose or a lawful purpose by unlawful means, (2) a tortious act committed in furtherance of that agreement, and (3) an injury caused by the defendant. *Reuter v. MasterCard International, Inc.*, 397 Ill. App. 3d 915, 927-28

(2010). Plaintiff fails to state a claim here because he has not and cannot allege that a tortious act was committed in furtherance of any agreement. Plaintiff has similarly not alleged that defendant intended to or did accomplish anything unlawful or something lawful by unlawful means.

¶ 42 As addressed in sections A and B above, plaintiff's claims that defendant is liable in tort for her actions related to the criminal charges being brought against him are insufficient as a matter of law. Plaintiff has identified no other tort for which defendant could be liable for her actions related to criminal charges being brought against him. Being that plaintiff has identified no tortious or other legally cognizable wrongdoing on defendant's part, there can be no cause of action against defendant for a conspiracy in supposed furtherance of such actions. See *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 59 ("conspiracy is not an independent tort: the conspiracy claim fails if the independent cause of action underlying the conspiracy allegation fails.")

¶ 43 In addition, plaintiff has failed to meet the pleading requirement to show that there was any agreement to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means. Plaintiff's allegations amount to a contention that defendant "must have" agreed with her friend, who is a prosecutor, to cause the State's Attorney's office to pursue criminal charges against him. Plaintiff's estimation is made on information and belief. Plaintiff alleges no facts to show that there was, in fact, any agreement. Plaintiff reaches his speculative conclusion that there was an agreement to prosecute him upon his alleged conversation with a prosecutor who told him that the charges were being pursued at the direction of his supervisors. That is not enough.

¶ 44 Conclusory allegations that the defendant agreed with others to achieve some illicit purpose are not sufficient to substantiate a claim for civil conspiracy. *Reuter*, 397 Ill. App. 3d at 928 (2010). Plaintiff's allegation here is not a factual one, it is rank speculation about something

that could be possible. While it is true that there is somewhat of a relaxed standard for pleading facts to support a conspiracy claim (see *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 66 (1994)), plaintiff's allegations here still fall short. The inference that plaintiff wants drawn in his favor is not an inference, it is a factual creation intended to create a necessary legal nexus that does not otherwise exist. Plaintiff failed to state a cause of action for conspiracy, and the trial court did not err when it dismissed this claim.

¶ 45 D. Defamation

¶ 46 Plaintiff's claim for defamation is based on one sentence in an email that defendant sent to plaintiff on October 15, 2015. The full email concerns plaintiff's visitation with the parties' children.

> "I sent you an email at 730 am. Both of the kids wanted to spend time with their friends today, but I encouraged them to see you. They both wanted to play floor hockey. I told you that you could not watch the kids in our house because you are a thief and I don't trust you. You have stolen from me, your employers, your client's (sic) and your own mother. Its (sic) only 1030. You took three hours to respond. That is not my problem."

Plaintiff contends that the sentence "You have stolen from me, your employers, your client's (sic) and your own mother" was defamatory and "lowered Plaintiff in the eyes of the community." Plaintiff alleges that defendant "published" those statements "to the parties' children, [his] family, and others." Plaintiff argues that his allegations support viable claims for defamation *per se* and for defamation *per quod*.

¶ 47 To state a claim for defamation, a plaintiff must allege facts showing (1) that the defendant made a false statement about the plaintiff, (2) that the defendant made an unprivileged

publication of that statement to a third party, and (3) that this publication caused damages. *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 22. A statement is "defamatory" if it tends to cause harm to the reputation of another and lowers that person in the eyes of the community or deters third persons from associating with that person. *Salamone v. Hollinger International, Inc.*, 347 Ill. App. 3d 837, 839 (2004). Plaintiff claims that "these false statements constitute defamation per quod," and that "[a]dditionally, the false statements constitute defamation per se."

¶ 48 Statements that are alleged to be defamatory may be classified as either defamatory *per se* or as defamatory *per quod*. *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 40. Statements are defamatory *per se* when the defamatory character of the statement is so obviously harmful to the plaintiff that damages may be presumed. *Id.* In contrast, statements are defamatory *per quod* when the defamatory character of the statement is not so obviously harmful, but the plaintiff can plead and prove extrinsic facts that explain the injurious meaning of the statement. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 103 (1996). We begin by discussing why plaintiff fails to state a cause of action for defamation *per se* and then we will address why plaintiff fails to state a cause of action for defamation *per quod*.

¶ 49 In Illinois, there are five categories of statements that are considered defamatory *per se:* (1) words that impute a person has committed a crime; (2) words that impute a person is infected with a loathsome communicable disease; (3) words that impute a person is unable to perform or lacks integrity in performing his employment duties; (4) words that impute a person lacks ability or otherwise prejudices that person in his profession; and (5) words that impute a person has engaged in adultery or fornication. *Green v. Rogers*, 234 Ill. 2d 478, 491-92 (2009). Although a complaint for defamation *per se* need not set forth the exact defamatory words that

were used, the substance of the statement must be pled with "sufficient precision and particularity" so as to permit judicial review of its defamatory content and to allow the defendant to properly formulate an answer and identify any potential affirmative defenses. *Id*. at 92.

¶ 50 Plaintiff's claim for defamation fails because he fails to identify with any particularity what was conveyed to a third party, when it was conveyed, how it was conveyed, or even precisely to whom it was conveyed. The deficiencies in plaintiff's claim are significant enough that the trial court correctly found that the claim was deserving of dismissal.

¶ 51 The putatively defamatory statement was made *to plaintiff* in an email. Plaintiff fails to specify what was actually published to anyone else. Plaintiff does not even try to allege the actual words used in the purported defamatory statement(s). He references the email that was sent to only him as constituting the "false statement" and then says that defendant published that statement to others. But plaintiff fails to provide any specificity regarding the actual words that defendant conveyed to anyone else. It seems that plaintiff believes that it is sufficient that he simply alleged that plaintiff had conveyed the sentiments of that email to others—the idea that he stole from different groups of people. But the pleading standard in Illinois for defamation *per se* claim is more exacting. It is the words used by a defendant that matters. *Green*, 234 Ill. 2d at 498. Plaintiff's failure to even attempt to address the words that were conveyed, as opposed to the theme of defendant's message or a summary of the types of statements defendant made about him, is illustrative of the flaws in his claim for defamation *per se*. See *id*. (allegations that do not address the actual words used but are tantamount to vague and generic summaries of improper statements may provide "confirmation that plaintiff is not pleading precise and particular facts but rather only conclusions, inferences, and assumptions.").

¶ 52 In a conclusory fashion, referring to the email defendant sent to him, plaintiff alleges that

defendant "published" "these false statements" to the parties' children, plaintiff's family, and others. Plaintiff fails to specify how defendant "published" anything to anyone. Plaintiff does not allege how the statements were transmitted or whether defendant sent that email to others, showed it to others, or made verbal assertions similar to those made in the email to others. Plaintiff fails to detail the factual basis for his knowledge that "the statements" were even published. Plaintiff similarly does not attempt to state whether defendant made the exact same "statement" to everyone or what variations of the statement were made to the various alleged recipients.

¶ 53 Plaintiff also fails to adequately specify to whom the statements were published. Plaintiff does not attempt to state to whom in his family defendant published statements. Plaintiff does not attempt to state who the "others" might be to whom defendant made statements. See *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 164 (1998) (a complaint is factually deficient when it does not even identify to whom the allegedly defamatory statements were communicated). Plaintiff does not even attempt to state how many times defendant defamed her with these statements—how many recipients there were and their identities. Are there several "others"? Dozens? A defendant cannot be expected to answer for alleged conduct when she is not apprised by the complaint of the most basic details of the alleged wrongdoing. A total lack of precision and particularity can serve as the basis for dismissing a defamation *per se* claim. *Green*, 234 Ill. 2d at 499.

¶ 54 As stated above, a claim for defamation *per se* must be pled with "precision and particularity." *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 74 (2010) (explaining that a defamation *per se* claim was properly dismissed where the plaintiffs failed to state with any precision when the allegedly defamatory statements were made, to whom they were made, and what exactly was said); see also *Green*, 234 Ill. 2d at 492-499. Plaintiff's

claim here falls woefully short of the pleading standard. The second amended complaint, as it pertains to the defamation claim, consists of one conclusory allegation after the other. The totally conclusory nature of plaintiff's allegations lack the factual support required to show what defendant actually said, how she said it, or the other information necessary for us to meaningfully construe plaintiff's bare assertion of being defamed.

¶ 55 As in *Green*, plaintiff is "not pleading precise and particular facts but rather only conclusions, inferences, and assumptions." *Green*, 234 Ill. 2d at 498. Plaintiff's failure to employ the requisite precision and specificity renders both meaningful judicial scrutiny and the formulation of a responsive pleading impossible. See *id*. at 499. Plaintiff's conclusory allegations cannot be used as a substitute for facts in order to defeat a motion to dismiss. *Dennis v. Pace Suburban Bus Service*, 2014 IL App (1st) 132397, ¶ 25. The trial court properly found that plaintiff did not state a claim for defamation *per se*.

¶ 56 As to plaintiff's claim for defamation *per quod*, plaintiff failed to state a claim because he failed to adequately allege damages. While claims for defamation *per se* do not require allegations of specific damages because damages are deemed to exist because of the obviously harmful nature of the statements, claims for defamation *per quod* require allegations of specific damages. In a defamation *per quod* action, the plaintiff must plead and prove special damages to recover. *Bryson*, 174 Ill. 2d at 103. There is no precise definition for what will constitute special damages sufficient to sustain a cause of action for defamation *per quod*. *Salamone*, 347 Ill. App. 3d at 843. However, special damages in an action for defamation *per quod* are damages to the plaintiff's reputation and pecuniary losses resulting from the defamatory statement. *Id*. at 842.

¶ 57 The conclusory harm that plaintiff alleges—that the statements caused harm to his reputation—is unsupported by any allegations of fact that would demonstrate harm suitable to be

redressed by damages for defamation *per quod*. Plaintiff merely alleges that he "has suffered actual consequential and special damages as a result of Defendant' (sic) defamatory and false statements." But "[g]eneral allegations of damages, such as damages to an individual's health or reputation or general economic loss, are insufficient to state a claim of defamation *per quod*." *Taradash v. Adelet/Scott-Fetzer Co.*, 260 Ill. App. 3d 313, 318 (1993). That is exactly what plaintiff has done here. He has made generalized claims of harm to his reputation in the community without factually making the case for special damages. Plaintiff then makes the wholly conclusory statement that he, in fact, has special damages without factually making the case that the statements have caused him quantifiable or qualifiable harm in any way. Plaintiff failed to state a cause of action for defamation *per se* or defamation *per quod*, and the trial court did not err when it dismissed these claims.

¶ 58 II. Petition for Sanctions

¶ 59 In addition to his contention that the trial court erred when it found that plaintiff failed to state a claim, plaintiff argues that the trial court erred when it denied his petition for sanctions against defendant. In support of his petition for sanctions, plaintiff argued that a motion to dismiss that defendant filed against his originally filed complaint "lacked any reasonably objective basis in fact or law." Plaintiff further contended that he was entitled to a sanction award because defendant had delayed answering the complaint in this case and that she did not properly follow certain procedural rules in filing her motion to dismiss this case. Finally, defendant contends that the allegations giving rise to this case support an award of sanctions because defendant sought orders of protection against him and caused criminal charges to be filed against him without a sufficient factual basis.

¶ 60 Plaintiff's petition for sanctions was brought under Illinois Supreme Court Rule 137.

Rule 137 provides that a court may sanction a party for filing a pleading with the court that is not well grounded in fact or warranted by existing law or when the filing is made for an improper purpose. Ill. S. Ct. R. 137(a) (West 2016) (eff. Jan. 1 2018). The decision regarding the imposition of sanctions under Rule 137 is committed to the sound discretion of the trial court, and its decision will not be overturned absent an abuse of discretion. *Kuykendall v. Schneidewind*, 2017 IL App (5th) 160013, ¶ 40.

¶ 61 In the parties' divorce case, the trial court entered an order enjoining plaintiff from filing any additional pleadings without leave of court. The trial court had found that plaintiff was engaging in harassing behavior by his repeated filings in the divorce case that was prejudicial to defendant. When plaintiff filed this case, defendant moved to dismiss the case on the basis that plaintiff did not seek leave of court for permission to file the claims at issue herein. The trial court in this case denied that motion to dismiss on the grounds asserted by defendant, finding that the judge in the divorce case had only prohibited plaintiff from filing pleadings in the divorce case and that the prohibition imposed on plaintiff did not apply to the claims asserted in this case.

¶ 62 While the trial court rejected defendant's position that the filing injunction imposed by the judge in the divorce case barred the claims in this case, the position taken by defendant was not "blatantly unfounded" as plaintiff suggests (citing *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956 (2001). There was a reasonable basis on which to believe that the order enjoining plaintiff from filing without leave of court would encapsulate the claims made here. In connection with its order enjoining plaintiff from filing pleadings against defendant, the court noted that, in light of the volume of filings plaintiff had made against defendant, the order was necessary to "restrict or prevent [plaintiff from] filing harassing or vexatious litigation against

his ex-wife." It is not totally implausible to construe that order as an intended prohibition of the claims brought in this case, even though the circuit court eventually rejected that interpretation. We disagree with plaintiff's contention that defendant's position expressed in her motion to dismiss was "objectively unreasonable." Like in other areas of this case, just because the motion to dismiss was denied does not mean that its premise was objectively unreasonable. See *supra* ¶ 26. We cannot find that the trial court abused its discretion when it refused plaintiff's request for sanctions on the merit or lack thereof of defendant's motion to dismiss the original complaint in this case.

¶ 63 We also reject plaintiff's contention that the trial court abused its discretion when it did not sanction defendant for her alleged conduct during the case described by plaintiff as: evading service of process, filing and prosecuting an unfounded motion to dismiss, and defaulting four times for failing to timely answering the complaint. Plaintiff also contends that defendant engaged in sanctionable conduct by taking the actions for which he seeks recovery in this case, described by him as: pursuit of two unfounded and ultimately dismissed criminal actions against him and pursuit of four unfounded and ultimately denied motions for the entry of an order of protection against him.

¶ 64 We again disagree that the trial court abused its discretion when it rejected plaintiff's contentions that defendant should be sanctioned for the above-described conduct. The trial court was in the best position to determine whether defendant's conduct in the procedural aspects of this case were deserving of sanctions. The alleged conduct happened while the parties were before the trial court. There is nothing in the record and plaintiff presents nothing to us on appeal that would cause us to question the court's handling of the procedural components of this case. As we addressed in Part I of this order, *supra*, plaintiff has failed to allege facts that would

provide a basis for the imposition of liability, let alone sanctions, against defendant for the conduct giving rise to the claims he asserts in this case. Finding no abuse of discretion, we decline to disturb the trial court's ruling that defendant should not be sanctioned.

¶ 65 CONCLUSION

¶ 66 Accordingly, we affirm.

¶ 67 Affirmed.