2012 IL App (3d) 110258-U

Order filed February 16, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

ANDRE HARRISON,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit
Plaintiff-Appellant,	)	Rock Island County, Illinois
	)	
v.	)	Appeal No. 3-11-0258
	)	Circuit No. 09-L-136
SHAWN MADDOX,	)	
	)	Honorable
Defendant-Appellee,	)	James J. Mesich
	)	Judge, Presiding.
(Michael Addington, James Olson,	)	
Roy DeVault, Sherri Martin, Jeff Chisholm,	)	
Steve Brockway, Mark Digney and	)	
Mertroe Hornbuckle,	)	
	)	
Defendants).	)	

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err by finding that defendant's alleged defamatory statements were subject to a qualified privilege. The trial court properly allowed defendant's motion for directed verdict concerning plaintiff's claim of intentional interference with employment.

¶ 2 On March 12, 2010, plaintiff filed his third amended complaint alleging one count of defamation *per se* and one count of intentional interference with employment against this defendant. Before trial, the trial court found that defendant's statements were subject to a qualified privilege as a matter of law and allowed defendant's pretrial motion *in limine.* The trial court granted defendant's motion for directed verdict on the count alleging intentional interference with employment at the close of all the evidence. Subsequently, the jury returned a verdict in favor of defendant on the only remaining count against this defendant involving a defamation claim. We affirm.

¶ 3 FACTS

¶ 4 On March 12, 2010, plaintiff filed his third amended complaint against multiple defendants. In this appeal, plaintiff challenges the trial court's rulings with regard to only one defendant, Shawn Maddox. Consequently, we limit our discussion to those facts which are relevant to these two parties.

¶ 5 Plaintiff's third amended complaint alleged plaintiff was previously employed as a senior management employee with Deere & Co. (Deere) through one of its subsidiaries, Deere Seeding Group. The third amended complaint included an allegation that defendant also worked for Deere or one of its subsidiaries.

¶ 6 According to count I, on August 30, 2009, defendant falsely and maliciously reported to Dennis Black, a Deere industrial relations manager, that plaintiff recently assaulted defendant's daughter, Alissa Maddox (Maddox). In addition, count I alleged defendant advised Black that plaintiff was using his influence at Deere to continue a relationship with another female employee, Heather Thielbert (Thielbert). Plaintiff also alleged that he informed defendant on

August 31, 2009, that the information was not true, but nonetheless, defendant told Mark Digney on September 1, 2009, that plaintiff assaulted Maddox and threatened Thielbert's employment if Thielbert did not maintain the ongoing relationship with plaintiff. The complaint alleged defendant falsely and maliciously repeated these accusations to an additional Deere employee, Roy DeVault, and stated that a warrant was pending for plaintiff's arrest. Plaintiff claimed that defendant knew these statements were false or through the exercise of reasonable care should have known the statements were false, and defendant's actions proximately caused Deere to terminate plaintiff's employment.

¶ 7 Count V of plaintiff's third amended complaint alleged defendant wilfully and intentionally interfered with plaintiff's continued employment with Deere when he falsely and maliciously told Dennis Black, Roy Devault, James Olson, and Mark Digney the following information: plaintiff assaulted defendant's daughter; plaintiff was using his influence at work to maintain a relationship with Thielbert; and a warrant existed for plaintiff's arrest. Plaintiff claimed that as a proximate result of defendant's wilful actions, Deere terminated plaintiff's employment.

¶ 8 On August 16, 2010, defendant filed a motion for summary judgment with attached exhibits. On September 3, 2010, plaintiff filed a response to defendant's motion for summary judgment and a cross-motion for summary judgment with attached exhibits. Following a hearing, conducted by the court on September 15, 2010, the court denied both parties' motions for summary judgment.

¶ 9 Before trial, defendant filed a motion *in limine* claiming defendant's statements were protected by a qualified privilege because defendant's statements were communicated to his

employer in the context of an employment relationship. In the motion, defendant stated that it was "beyond dispute" that defendant, plaintiff, Maddox, and Thielbert all worked at John Deere Seeding. After hearing arguments from counsel, the trial court found that a qualified privilege applied as to all statements made by defendant in this case and allowed the motion *in limine*.

¶ 10 On the first day of the jury trial, Denny [Dennis] Black testified for plaintiff. According to Black, he previously worked for Deere as an "[i]ndustrial relation administrator" and resolved issues between "wage people and salary supervisors." Black said he worked with plaintiff who was a manager at John Deere Seeding.

¶ 11 Black recalled receiving a telephone call in August 2009 from defendant. During this telephone conversation, defendant asked Black what he would do if defendant "came in the factory and kicked somebody's ass." After Black made several inquiries concerning defendant's intended target, defendant finally admitted he was talking about plaintiff because plaintiff "raped his [defendant's] daughter." According to Black, defendant advised Black that defendant's daughter, Maddox, was at the emergency room for six or seven hours on Saturday and based on what Maddox reported to defendant, "there could be a warrant out" for plaintiff.

¶ 12 Black further testified that defendant mentioned a person named "Heather" who had been at plaintiff's house with Maddox on the Friday night in question. Black understood defendant to say Maddox told him that "Heather was – been trying to break it off with Andre [plaintiff], and Andre was holding that job over Heather's head." Black said that Heather Thielbert worked at John Deere Seeding on a paint project and that she reported to plaintiff for purposes of her employment. Black testified that defendant "was concerned about his daughter and being in there and running into Andre [plaintiff] and – and that stuff."

¶ 13 On the following day, Jim Olson, plaintiff's boss, contacted Black. Thereafter, Black met with Olson and plant security officer Mark Digney. Black testified that he shared the details of his conversation with defendant when speaking with each man.

¶ 14 On cross-examination, Black said that it was completely appropriate for defendant to contact him with a concern since defendant was "wage people," working as an assembler at the John Deere Seeding plant. Black said that he did not believe that defendant personally accused plaintiff of assaulting Maddox, but relayed information which came from Maddox. Black said that defendant was upset about his daughter and wanted to know what would happen if defendant went to work and "kicked somebody's ass." Black recommended that defendant call Dave Devault.

¶ 15 James Olson, a factory manager at John Deere Seeding, testified that in August and September 2009, he worked as plaintiff's direct supervisor. Olson explained that he first learned of problems involving plaintiff on Sunday, August 30, 2009, when he spoke with Dave Devault. According to Olson, Devault told Olson that defendant called Devault and told Devault that defendant's daughter, Maddox, had been sexually assaulted by plaintiff, that there may be a warrant out, and that Thielbert was involved. Olson then contacted Black. Olson said that "it seemed to be a lot possibly going on here and that [he] was worried about whether or not interactions would cause a problem at work." Due to these concerns, Olson concluded that everyone should be separated from working together on the following morning. Olson said that once everyone was separated, he would then contact Deere security in order "to sort all of this out." On Monday morning, August 31, 2009, Olson advised plaintiff to work from home and take time to "find out what was going on and sort out whatever he needed to sort out."

¶ 16 On cross-examination, Olson said that Deere's investigation "was to try to determine what, if any, concerns there would be due to the activities that took place and really try to evaluate whether or not it posed any potential problems at work." He went on to say, "Just the fact that there's four people in the same location that obviously, something happened. Don't know what. But all I wanted to do is ask the security folks to check it out, to understand before we just close the book on it, you know." According to Olson, plaintiff was terminated following Deere's own investigation.

¶ 17 Heather Thielbert testified she worked at John Deere Seeding from September 2008 to September 2009 as a paint engineer through her employer, Volt. She began a dating relationship with plaintiff in March 2009, and the relationship lasted for three or four months. At the time, both she and plaintiff were married to other individuals, but were separated from their spouses. She testified to events that transpired on August 28, 2009, when she, Maddox, and Maddox's boyfriend were present together at plaintiff's residence. On Monday, August 31, 2009, she reported to work. She said that Digney questioned her about the nature of her relationship with plaintiff and their meetings at work.

¶ 18 Jeff Chisholm, director of security operations, testified that he assigned Digney to conduct Deere's investigation in this case. Chisholm stated "the potential for a threat of workplace violence could actually come about if you're having a sexual relationship with other employees whose husbands may work at the facility too." From the investigation, Chisholm learned that another female Deere employee sent sexually suggestive text messages to plaintiff's work telephone, and then, plaintiff forwarded these text messages as emails to his home account. By September 2, 2009, Chisholm learned that there were "various situations within the company

between his [plaintiff's] relationship with the contingent workers, his relationship with coworkers, and the potential problems we may have with spouses of some of the people he was having relationships with." Chisholm stated that "there were people upset with him [plaintiff], the fact that there had been allegations which tied very closely to workplace violence, sexual harassment, and a hostile work environment, and based upon that it would be better that Mr. Harrison [plaintiff] wasn't at the work site at that time."

¶ 19 Mark Digney testified he started the investigation in this case at Chisholm's request and that he was assigned to investigate the relationships of the employees at John Deere Seeding. He described the catalyst of the investigation as the weekend's events which included an alleged assault between two parties working at John Deere Seeding. Based upon his investigation, he found that plaintiff did not "actively do a workplace violence incident himself," but it was "the creation of the environment that surrounded this incident."

¶ 20 Digney testified that he believed defendant was straightforward with Digney regarding what defendant learned over the weekend in August 2009 and that defendant was concerned for his daughter's safety and her work environment. Digney also believed that Maddox was concerned about a safe work environment and did not want to return to work if plaintiff would also be working in that department.

¶ 21 Plaintiff called defendant as an adverse witness. Defendant said that Maddox was his daughter. On the night of August 29, 2009, defendant learned that plaintiff allegedly assaulted Maddox. However, he did not contact anyone at Deere that night and did not contact anyone to corroborate the facts. On the following morning, Maddox told defendant that plaintiff assaulted her. Defendant then called Black and asked what would happen if he did something to someone

at work. Defendant said that his primary concern was his daughter and that he did not remember exactly what he said to Black.

¶ 22 Plaintiff testified that he began working for Deere in 2001, and in January 2007, began working at John Deere Seeding as operations manager. While working at John Deere Seeding, he was married, but separated from his wife. He started dating Thielbert and saw her in the factory on a daily basis. Plaintiff stated that he never received any information or training indicating that employees could not date one another. Plaintiff said that Thielbert was separated from her husband at the time.

¶ 23 On the night of August 28, 2009, he and a friend went out to a bar. While out, he met Thielbert, and eventually, he, Thielbert, Maddox and Maddox's boyfriend went to plaintiff's residence. Plaintiff explained that he and Thielbert went into his bedroom. After sleeping for a short time, Thielbert told Maddox and Maddox's boyfriend that it was time to leave. Later that day, Thielbert advised him that Maddox was making an allegation that he assaulted her.

¶ 24 Plaintiff reported to work on Monday, and Olson immediately contacted him. Plaintiff said that he "did absolutely nothing" and that he knew "what this is about." Later, plaintiff told Digney, during an interview, that his relationship with Thielbert was consensual and that he was not using his position to continue the relationship. Olson and Mike Addington told plaintiff on September 3 or 4, 2009, that he was going to be terminated.

¶ 25 On cross-examination, plaintiff admitted to having a relationship with Thielbert and Angie Solis, another Deere employee. He admitted that he received two intimate text messages from Solis in July 2009 on his work telephone which he then forwarded to his personal email. Plaintiff agreed that during his meeting with Addington on September 3, 2009, Addington

discussed several reasons for his termination, which included violating the company's electronic use policy, creating a financial risk to the company, and creating a risk of workplace violence.

¶ 26 At the close of all the evidence, defense counsel made a motion for directed verdict as to plaintiff's claim of intentional interference with employment, count V, and the trial court allowed the motion. The jury returned a verdict in favor of defendant as to plaintiff's defamation claim, count I. Following the denial of plaintiff's motion for new trial or for judgment notwithstanding the verdict, plaintiff filed a notice of appeal on April 7, 2011.

¶ 27 ANALYSIS

¶ 28 On appeal, plaintiff raises two claims of error. First, plaintiff argues that the trial court erred by allowing defendant's pretrial motion *in limine* after finding that a qualified privilege existed in this case. Second, plaintiff argues that the trial court erred by granting defendant's motion for directed verdict regarding count V at the close of all the evidence.

¶ 29 I. Qualified Privilege

¶ 30 The trial court found defendant's communications with persons at his place of employment were privileged as a matter of law, and it was a question for the jury as to whether defendant abused that privilege in making the statements. Consequently, the court allowed defendant's motion *in limine*.

¶ 31 Defendant contests, as a matter of law, the court's granting of defendant's motion *in limine* after finding that a qualified privilege existed. "In Illinois, the issue of whether a qualified privilege exists has been a question of law for the court, and the issue of whether the privilege was abused has been a question of fact for the jury." *Kuwik v. Starmark Star Marketing and Administration., Inc.* 156 Ill. 2d 16, 25 (1993). Since motions *in limine* invoke the trial court's

power to admit or exclude evidence, those rulings are reviewed for an abuse of discretion. In this case, the underlying issue of whether a qualified privilege existed presents a question of law for the court to decide, and therefore, we review this underlying issue *de novo*. See *People v. Williams*, 188 Ill. 2d 365 (1999).

¶ 32 "[C]onditionally privileged occasions" are divided into three categories based on situations where (1) the person publishing the information has some involved interest; (2) the person receiving the published information has an involved interest or shares an involved interest with some other third person; or (3) the published information is of a recognized public interest. *Kuwik v. Starmark Star Marketing and Administration, Inc.*, 156 Ill. 2d at 29. In determining whether a statement is subject to a conditional privilege, a trial court "looks only to the occasion itself for the communication and determines as a matter of law and general policy whether the occasion created some recognized duty or interest to make the communication so as to make it privileged." *Kuwik v. Starmark Star Marketing and Administration, Inc.*, 156 Ill. 2d at 27.

¶ 33 The case law recognizes that corporations have an interest in investigating claims of sexual harassment in the workplace, and "there is a definite general public interest in eradicating sexual harassment in the workplace." *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 402-403 (1999). Further, a qualified privilege extends to alleged defamatory comments made by a concerned coworker to a supervisor regarding the behavior of other workers and the accompanying investigation into that behavior. *Achanzar v. Ravenswood Hospital*, 326 Ill. App. 3d 944, 948-949 (2001). The courts have also applied the qualified privilege occasion to a corporate employer's investigation into misconduct by an employee. See *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 264 (2005).

¶ 34 Since defendant, Maddox, and plaintiff all worked in the same workplace following the alleged unwanted sexual encounter, the employer had an interest in minimizing any potential conflict in the workplace while investigating the events. In addition, defendant had concerns for his daughter's well being. Defendant's communications fell within at least two categories recognized by our supreme court in *Kuwik*. *Kuwik v. Starmark Star Marketing and Administration, Inc.*, 156 Ill. 2d at 29. Therefore, we conclude that a qualified privilege existed in this case.

¶ 35 II. Motion for Directed Verdict

¶ 36 A trial court's decision to allow a directed verdict is subject to *de novo* review. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010) (citing Evans v. Shannon, 201 Ill. 2d 424, 427 (2002)). The trial court's decision will be upheld in those cases in which all of the evidence, when viewed in the light most favorable to the opposing party, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand. *Mort v. Walter*, 98 Ill. 2d 391, 396 (1983); *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). "A plaintiff must present at least some evidence on every essential element of the cause of action or the defendant is entitled to judgment in his or her favor as a matter of law." Sullivan v. Edward Hospital, 209 Ill. 2d 100, 123 (2004).

¶ 37 Plaintiff argues that the trial court erred by granting defendant's motion for directed verdict at the close of all the evidence regarding count V, plaintiff's claim for intentional interference with employment. To prove a claim of intentional interference with employment, a plaintiff must establish the following elements: (1) a reasonable expectation of continued employment; (2) defendant's knowledge of this expectancy; (3) an intentional and unjustified

interference by defendant which caused or induced the termination of employment; and (4) damages to plaintiff resulting from the interference. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 406-07 (1996); *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d at 411-412. Since the court found defendant's statements to the other employees were privileged, plaintiff bore the burden of proving that defendant's actions were unjustified or malicious. *Zdeb v. Baxter International, Inc*., 297 Ill. App. 3d 622, 632 (1998), *appeal denied*, 179 Ill. 2d 623 (1998).

¶ 38 The trial court granted defendant's motion for directed verdict because the court did not believe that "there has been any showing of any interference by Shawn Maddox for the purpose of defeating Mr. Harrison's employment expectation." Contrary to plaintiff's argument on appeal, the trial court did not require plaintiff to provide direct evidence of defendant's intent. Rather, the court merely found plaintiff did not present any evidence which would support an inference that defendant intended to interfere with plaintiff's employment by maliciously making these statements as plaintiff alleged. We agree. The trial court did not err by granting defendant's motion for directed verdict at the close of all the evidence.

¶ 39 CONCLUSION

¶ 40 The judgment of the circuit court of Rock Island County is affirmed.

¶ 41 Affirmed.