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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1130

Filed: 16 May 2017

Tyrrell County, No. 15 CVS 47

BRENDA WYNN, Plaintiff,

v.

TYRRELL COUNTY BOARD OF EDUCATION and MICHAEL J. DUNSMORE,
individually and in his official capacity, Defendants.

Appeal by plaintiff from order entered 28 January 2016 by Judge Wayland J. Sermons, Jr. in Tyrrell County Superior Court. Heard in the Court of Appeals 21 March 2017.

Meynardie & Nanney, PLLC, by Joseph H. Nanney, for plaintiff-appellant.

Schwartz & Shaw, P.L.L.C., by Richard A. Schwartz, for defendant-appellee Tyrrell County Board of Education.

ZACHARY, Judge.

Plaintiff Brenda Wynn appeals from an order dismissing her complaint against defendant Tyrrell County Board of Education (the Board) pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. On appeal, Wynn argues that because she pled her claim for defamation against the Board with sufficient particularity, her

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complaint should have survived the Board's motion to dismiss. For the reasons that follow, we affirm the order of the trial court.

I. Background

The Board, a corporate body given powers pursuant to state law, is responsible for operating the Tyrrell County Public School System. Wynn was employed in various positions by the school system for approximately twenty-one years. Most of the positions that Wynn held were located in the accounting department, in which she worked as a "bookkeeper" and a "health benefits representative." Wynn was transferred from the school system's central office to Tyrrell Elementary School in July 2014.

After an internal investigation revealed payroll discrepancies, the school system suspended Wynn from her duties with pay on 6 August 2014. Wynn's status was changed to "suspended without pay" a few weeks later. According to Wynn, her supervisors refused to provide further details or documentation concerning the reasons for Wynn's suspension. On 23 August 2014, Wynn submitted her resignation to the school system. Three days later, Wynn received a letter signed by defendant Michael Dunsmore, the school system's acting superintendent, stating that she owed the school system \$3,353.49. The letter is not in the record on appeal, but the letter purportedly contained an accusation that Wynn misappropriated dental insurance

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benefits. According to Wynn, she resigned under the belief that “she would be terminated in connection with the trumped-up charges[.]”

On 31 July 2015, Wynn filed a complaint in Tyrrell County Superior Court, alleging claims for defamation against Dunsmore and the Board. Specifically, Wynn alleged that Dunsmore and members of the Board had made defamatory statements to third parties consisting “of variations on the assertion that Ms. Wynn embezzled from the school system[.]” The Board filed a Rule 12(b)(6) motion to dismiss on 8 September 2015, asserting that Wynn’s complaint failed to state a defamation claim. The trial court granted the Board’s motion to dismiss on 28 January 2016. After filing a notice of voluntary dismissal of her claim against Dunsmore on 15 July 2016,¹ Wynn timely appealed from the order dismissing her claim against the Board.

II. Discussion

Wynn’s sole argument on appeal is that the trial court erred in dismissing her claim against the Board. According to Wynn, the allegations contained in her complaint were sufficient to state a claim for defamation *per se* and survive a Rule 12(b)(6) motion to dismiss. We disagree.

A. Standard of Review

¹ We note that the order dismissing Wynn’s claim against the Board was interlocutory at the time it was filed. However, that order became final when Wynn voluntarily dismissed her claim against Dunsmore.

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An appellate court reviews “an order granting a 12(b)(6) motion [to determine] whether the complaint states a claim for which relief can be granted under some legal theory when the complaint is liberally construed[.]” *Wells Fargo Bank, N.A. v. Corneal*, 238 N.C. App. 192, 195, 767 S.E.2d 374, 377 (2014). Under this mode of review, “the complaint’s material factual allegations are taken as true. Legal conclusions, however, are not entitled to a presumption of validity.” *Id.* Similarly, this Court is “not required . . . to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Strickland v. Hedrick*, 194 N.C. App. 1, 20, 669 S.E.2d 61, 73 (2008) (citations and internal quotation marks omitted). Dismissal is proper “when on its face the complaint reveals either no law supports the plaintiff’s claim or the absence of fact sufficient to make a good claim, or when some fact disclosed in the complaint necessarily defeats the plaintiff’s claim.” *Andrews v. Elliot*, 109 N.C. App. 271, 274, 426 S.E.2d 430, 432 (1993). In sum, we “must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court’s ruling on the motion to dismiss was correct.” *Craven v. Cope*, 188 N.C. App. 814, 816, 656 S.E.2d 729, 732 (2008) (citation omitted).

B. Defamation *Per Se*—General Principles

“In order to recover for defamation, a plaintiff must allege that the defendant caused injury to the plaintiff by making false, defamatory statements of or concerning

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the plaintiff, which were published to a third person.” *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 29, 568 S.E.2d 893, 897 (2002) (citation omitted), *writ denied, disc. rev. denied, appeal dismissed*, 357 N.C. 163, 580 S.E.2d 361, *cert. denied*, 540 U.S. 965, 157 L. Ed. 2d 310 (2003). Two distinct torts are encompassed by the term “defamation”: libel and slander. *Id.* at 29, 568 S.E.2d at 898. Generally, “libel is written while slander is oral.” *Phillips v. Winston-Salem/Forsyth County Bd. of Educ.*, 117 N.C. App. 274, 277, 450 S.E.2d 753, 756 (1994), *disc. review denied*, 340 N.C. 115, 456 S.E.2d 318 (1995). “When the defamatory words are spoken with an intent that the words be reduced to writing, and the words are in fact written, the publication is both libelous and slanderous.” *Boyce & Isley, PLLC*, 153 N.C. App. at 30, 568 S.E.2d at 898.

Under North Carolina law, “publications or statements which are susceptible of but one meaning, when considered alone without innuendo, colloquium, or explanatory circumstances, and that tend to ‘disgrace and degrade the party or hold him up to public hatred, contempt, or ridicule, or cause him to be shunned and avoided’ are defamatory *per se*.” *Andrews*, 109 N.C. App. at 274, 426 S.E.2d at 432 (quoting *Flake v. Greensboro News Co.*, 212 N.C. 780, 786, 195 S.E. 55, 60 (1938)).

Libel *per se* is “a publication which . . . : (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person’s trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace. . . .” Slander *per se* is “an oral communication to

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a third party which amounts to (1) an accusation that the plaintiff committed a crime involving moral turpitude; (2) an allegation that impeaches the plaintiff in his trade, business, or profession; or (3) an imputation that the plaintiff has a loathsome disease.”

Boyce & Isley, PLLC, 153 N.C. App. at 29-30, 568 S.E.2d at 898 (quoting *Phillips*, 117 N.C. App. at 277, 450 S.E.2d at 756). In an action for libel or slander *per se*, both malice and damages are presumed, as a matter of law, by proof of publication. *Andrews*, 109 N.C. App. at 274, 426 S.E.2d at 432. Thus, no additional evidence “is required as to any resulting injury.” *Id.*

C. Pleading a Defamation Claim

Whether a statement is defamatory *per se* is a question of law to be decided by the trial court. *See Ellis v. N. Star Co.*, 326 N.C. 219, 224, 388 S.E.2d 127, 130 (1990). In making this determination, the court must consider the statement contextually, evaluating the words “within the four corners” of the publication and interpreting the words “as ordinary people would understand” them. *Renwick v. News and Observer Pub. Co.* and *Renwick v. Greensboro Daily News*, 310 N.C. 312, 319, 312 S.E.2d 405, 410, *reh’g denied*, 310 N.C. 749, 315 S.E.2d 704, *cert. denied*, 469 U.S. 858, 83 L. Ed. 2d 121 (1984). When pleading a claim for defamation, the alleged defamatory statements made or published by the defendant need not be set out verbatim in the plaintiff’s complaint if alleged “substantially *in haec verba*, or with sufficient particularity to enable the court to determine whether the statement was

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defamatory.” *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 84, 266 S.E.2d 861, 866 (1980). In addition, allegations of time and place are material for the purpose of testing the sufficiency of any pleading, *see* Rule 9(f) of the North Carolina Rules of Civil Procedure, and such allegations should be pleaded with particularity in a defamation complaint. *See Stutts*, 47 N.C. App. at 83-84, 266 S.E.2d at 866 (finding that use of the date “September 10th, 1976” and reference to “‘numerous occasions since on or about September 10th, 1976’” satisfied the time requirement and that the allegation that the defendants “‘told the Plaintiff’s fellow workers at the McGuire Nuclear Construction Project,’” satisfied the place requirement of Rule 9(f)); *see also Horne v. Cumberland Cty. Hosp. Sys., Inc.*, 228 N.C. App. 142, 150, 746 S.E.2d 13, 20 (2013) (“Plaintiff’s complaint fails to identify the allegedly defamatory remarks made by [the defendant] or to specify when they were made. This lack of specificity is, by itself, a sufficient basis to support the dismissal of plaintiff’s defamation claim.”) (citing *Stutts*, 47 N.C. App. at 84, 266 S.E.2d at 866).

In the present case, the material allegations concerning Wynn’s defamation claim read as follows:

46. Defendants, individually, and through their agents or employees, have made false statements of fact to third parties that amount to defamation.

47. Upon information and belief, the defamation consists of both spoken words and written materials.

48. The defamatory statements consist of variations on the

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assertion that Ms. Wynn embezzled funds from the school system, which is a crime involving moral turpitude.

49. As a result of Defendants' defamation they have succeeded in putting a black cloud over Ms. Wynn, leaving her unemployed, and unable to gain employment in Tyrrell County, where she has lived practically all of her life.

50. Ms. Wynn has suffered actual harm as a result of the false statements made by Defendants.

51. Ms. Wynn's reputation has been harmed, and continues to be harmed by the defamatory statements.

D. Analysis

These allegations are deficient in several ways. Wynn fails to identify with any degree of specificity the substance of the allegedly defamatory statements made by members of the Board. Although the gist of the statements—that Wynn embezzled funds from the school system—is set forth in the complaint, the allegations are otherwise devoid of further relevant factual enhancement.

Significantly, the complaint does not identify which members of the Board made the allegedly defamatory statements; nor does the complaint allege the specific individuals to whom those statements were made. Instead, Wynn merely refers to statements that “Defendants” made to “third parties.” Such conclusory allegations constitute a complete failure to identify the speaker or speakers of the alleged statements, much less the recipients. What is more, the complaint does not even hint at the time or the place of the alleged defamatory statements. Lacking all relevant

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factual detail, Wynn's vague and conclusory allegations preclude judicial determination of whether the statements were defamatory. In short, the complaint fails to state when who said what to whom. Accordingly, Wynn's claim for defamation *per se* was properly dismissed.

III. Conclusion

Even under a liberal construction of the complaint, Wynn failed to plead the alleged defamatory statements—as well as who spoke them and who received them—with sufficient particularity, rendering her claim for defamation *per se* facially deficient. Therefore, the trial court's order dismissing Wynn's defamation claim pursuant to Rule 12(b)(6) is affirmed.

AFFIRMED.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).