

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

JOSHUA J. BARNEY; and GRAND
RAPIDS HYDROPONICS, INC., a
Michigan corporation,

Plaintiffs,

vs.

ADAM WILLIAM BURRELL,

Defendant.

Case No. 13-05795-CZB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

The non-jury trial of this odd business dispute requires the Court to write yet another chapter in the ongoing saga of the Grand Rapids hydroponics industry. On June 21, 2013, Plaintiffs Joshua Barney and his former employer, Grand Rapids Hydroponics, Inc. (“GR Hydro”), filed a complaint against Adam Burrell, the owner of a competing hydroponics outlet known as the “Garden Doctor.” The complaint alleged that Burrell sullied the names and reputations of Barney and GR Hydro by passing on accusations that they were “snitches” or “NARCs.” The plaintiffs presented four claims for false light, intrusion upon seclusion, defamation, and injurious falsehood arising from Burrell’s alleged circulation of the “snitch” rumors. On May 12, 2014, the Court conducted a bench trial and heard testimony from three witnesses: Plaintiff Barney; Defendant Burrell; and GR Hydro owner Christopher Nicholson. After obtaining a transcript of the trial proceedings, the Court heard closing arguments on July 7, 2014. Based upon the record developed at the trial, the Court can now render findings of fact, conclusions of law, and a verdict finding that Defendant Burrell is not liable on any of the four claims set forth in the plaintiffs’ complaint.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, “the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” The Court must render “[b]rief, definite, and pertinent findings and conclusions on the contested matters” that may take the form of “a written opinion.” See MCR 2.517(A)(2) & (3). Accordingly, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

Christopher Nicholson owns and operates Plaintiff GR Hydro as a hydroponics outlet in the City of Grand Rapids. See Trial Tr at 47. GR Hydro relies heavily upon social media – especially Facebook – in marketing itself to potential customers. Id. at 28, 49-50. Nicholson hired Barney to assist in opening and operating GR Hydro, id. at 33, 36, 55, but in time Barney was forced out of the hydroponics industry because of persistent rumors that he was a “snitch” or “NARC.” Id. at 35-36. Barney blamed most of his troubles on Defendant Burrell, citing Facebook activity from Burrell that included posts about Barney’s alleged involvement with law-enforcement authorities and invitations to others to view such posts. See Trial Exhibits 1, 3, 4. The most significant item was a page from a federal presentence investigation report (“PSIR”) that included a statement that “[d]etectives from KANET received information from Joshua Barney,” who reported on the illegal activities of others whose names were redacted with black lines. See Trial Exhibit 1, page 2 of 6.

Defendant Burrell owns and operates a hydroponics store known as the “Garden Doctor” that competes with GR Hydro. See Trial Tr at 64-65. Burrell readily conceded that he wrote or directed others to the posts about Plaintiff Barney being a “snitch” or a “NARC.” Id. at 67-68. Beyond that, Burrell attempted to introduce portions of the federal PSIR that appeared as a Facebook post in one of the plaintiffs’ exhibits, id. at 68-70, and he explained that he “obtained this document from the

person in the document, not Josh” Barney. Id. at 78-79. Consequently, the Court finds that Burrell posted comments and materials indicating that Barney acted as a “snitch” or a “NARC.” The Court simply must decide whether Burrell’s actions give rise to a viable claim under Michigan law.

II. Conclusions of Law

The plaintiffs’ claims all essentially find their foundation in Defendant Burrell’s posting of comments and materials on Facebook. Counts One, Three, and Four alleging false light, defamation, and injurious falsehood all depend upon the theory that spreading information accusing someone of cooperating with law enforcement constitutes an actionable civil wrong, while Count Two alleging intrusion upon seclusion focuses upon the manner in which Burrell obtained the PSIR excerpt.

The Court shall first analyze the plaintiffs’ defamation claim, which comprises four elements: “(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting to at least negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication.” Mitan v Campbell, 474 Mich 21, 24 (2005). The plaintiffs’ claim for defamation suffers from two fatal flaws. First, the PSIR excerpt contained in an exhibit introduced by the plaintiffs demonstrates that Plaintiff Barney did provide information to a detective at KANET, see Trial Exhibit 1, page 2 of 6, so Defendant Burrell can rely upon the absolute defense that his statements about Barney were actually true. See Wilson v Sparrow Health System, 290 Mich App 149, 155 (2010) (“Truth is an absolute defense to a defamation claim.”). Second, as a matter of law, a statement that someone has assisted law-enforcement officials cannot be defamatory. See, e.g., Agnant v Shakur, 30 F Supp 2d 420, 424 (SDNY 1998) (collecting cases). Therefore, the Court

concludes that the plaintiffs' proofs in support of their claim for defamation fail to establish a right to recovery on that theory.

Turning next to the plaintiffs' claim for false light, which "is similar to a defamation claim," Battaglieri v Mackinac Center for Public Policy, 261 Mich App 296, 304 (2004), the Court finds the plaintiffs' evidence insufficient. "In order to maintain an action for false-light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position." Duran v The Detroit News, Inc., 200 Mich App 622, 631-632 (1993). Such a claim "cannot succeed if the contested statements are true." Porter v City of Royal Oak, 214 Mich App 478, 487 (1995). Here, the PSIR excerpt demonstrates that the challenged statements of Burrell were, in fact, true. See Trial Exhibit 1, page 2 of 6. Also, "[t]he population of right-thinking persons unambiguously excludes 'those who would think ill of one who legitimately cooperates with law enforcement[.]'" Michtavi v New York Daily News, 587 F3d 551, 552 (2d Cir. 2009), so the plaintiffs cannot establish that the Facebook posts by Burrell include "information that was unreasonable and highly objectionable[.]" See Duran, 200 Mich App at 632. Accordingly, the Court must deny relief to the plaintiffs on their false-light claim.

The plaintiffs' claim for injurious falsehood fares no better than their defamation and false-light theories. To be sure, "[o]ne who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if (a) he intends for publication of the statement to result in harm to the interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and (b) he knows that the statement is false or acts in

reckless disregard of its truth or falsity.” See Kollenberg v Ramirez, 127 Mich App 345, 352 (1983). But the PSIR excerpt establishes the truth of Defendant Burrell’s statements about Plaintiff Barney. See Trial Exhibit 1, page 2 of 6. Additionally, because “the tort of injurious falsehood is similar to defamation,” Felton v Saylor-Beall Manufacturing Co, No 210442, slip op at 3 (Mich App Oct 5, 1999) (unpublished decision), it would be anomalous to foreclose a defamation claim but allow an injurious-falsehood claim to proceed based upon the statement that the plaintiff provided assistance to law-enforcement officials. Cf. Agnant, 30 F Supp 2d at 424 (ruling that defamation claim cannot be based upon statement that plaintiff assisted law-enforcement officials). Thus, the Court concludes that the plaintiffs have shown no right to recovery on their claim for injurious falsehood.

Finally, the Court must reject the plaintiffs’ demand for relief upon their claim for intrusion upon seclusion. To prevail on such a claim, the plaintiffs must prove: ““(1) the existence of a secret and private subject matter; (2) a right possessed by the plaintiff to keep that subject matter private; and (3) the obtaining of information about that subject matter through some method objectionable to a reasonable man.”” Dalley v Dykema Gossett PLLC, 287 Mich App 296, 306 (2010). “An action for intrusion upon seclusion focuses on the manner in which the information was obtained, not on the information’s publication.” Lewis v LeGrow, 258 Mich App 175, 193 (2003). The evidence in this case plainly establishes that Defendant Burrell obtained an excerpt from a federal PSIR, which historically has been treated as a confidential document. But Burrell received the PSIR excerpt from the defendant in the federal criminal case, see Trial Tr at 78-79, who had a right to obtain the PSIR. United States Dep’t of Justice v Julian, 486 US 1, 13 (1988). Although the Court harbors concerns about the dissemination of presentence reports, see MCL 791.229 (Michigan presentence reports “shall be privileged or confidential communications not open to public inspection”), those concerns

cannot support the conclusion here that Burrell obtained the PSIR except ““through some method objectionable to a reasonable man.”” See Dalley, 287 Mich App at 306. As a result, the Court must deny recovery to the plaintiffs on their claim for intrusion upon seclusion.

III. Verdict

Because the plaintiffs failed to adduce sufficient evidence to establish, by a preponderance of evidence, the right to relief on any of their four claims, the Court must return a verdict in favor of Defendant Adam Burrell on each claim set forth in the plaintiffs’ complaint. Therefore, the Court hereby renders a verdict of no cause of action on each of the plaintiffs’ four claims.

IT IS SO ORDERED.

Dated: July 16, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge