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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HELEN G. BRINKER, Plaintiff-Appellant,	)	Filed October 27, 1981
vs.	)	
EDGEWOOD MANOR CARE CENTER, INC., and BARBARA KROUSE, Defendants-Appellees.	)	1-220 / 2-65951

Appeal from Linn District Court. Thomas M. Horan, Judge.

Plaintiff appeals from a directed verdict entered by the district court at the close of plaintiff's evidence in an action for defamation and intentional infliction of emotional distress. AFFIRMED.

James R. Norris, Cedar Rapids, Ia., for plaintiff-appellant.

Gregory Lederer, of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, Ia., Ralph W. Koons, Cedar Rapids, Ia., and John Stone, of Neiman, Neiman, Stone & Spellman, Des Moines, Ia., for defendants-appellees.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff appeals from a directed verdict entered by the district court at the close of plaintiff's evidence in an action for defamation and intentional infliction of emotional distress. We affirm.

Plaintiff, Helen G. Brinker, was employed by the defendant, Edgewood Manor Care Center, Inc., in 1976. In late November of 1976, plaintiff's paycheck could not be found on payday. Her supervisor issued a duplicate check to plaintiff.

When both the original and the duplicate checks were cashed, plaintiff was called into the office of defendant-supervisor Barbara Krouse for questioning. Plaintiff was questioned twice. After the last period of questioning, Krouse allegedly directed plaintiff's immediate supervisor to tell plaintiff she was fired because of the check incident. Plaintiff testified that she "got upset, screamed, yelled, panicked and went into a shock."

Plaintiff brought this suit alleging intentional infliction of emotional harm and defamation by slanderous statements. At the close of plaintiff's evidence, defendants asked for and were given a directed verdict. The case was dismissed with prejudice at plaintiff's cost. Plaintiff appealed.

Our scope of review in this law action is on error assigned. Iowa R. App. P. 4. In considering the propriety of this motion for a directed verdict, we view the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). The movant is considered to have admitted both the truth of all evidence offered by his opponent and every favorable inference which may be fairly and reasonably deduced from it. If there has been offered substantial evidence in support of each element of plaintiff's cause of action, the motion should be overruled. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978) (citing authorities). If reasonable minds could differ on the issues presented in plaintiff's evidence, a directed verdict was improper. Meeker v. City of Clinton, 259 N.W.2d 822, 828 (Iowa 1977). It is with these principles in mind that we review this case.

I. Intentional Infliction of Emotional Harm.

The elements of a prima facie case for the tort of intentional infliction of severe emotional distress are (1) outrageous conduct, (2) intent to cause or reckless disregard of the probability of causing emotional distress, (3) severe or extreme emotional distress,

and (4) actual or proximate causation of the emotional distress by the defendant's outrageous conduct. Amsden v. Grinnell Mutual Reinsurance Co., 203 N.W. 2d 252, 255 (Iowa 1972).

The facts presented in this appeal do not prove the elements of the alleged tort. The supervisor was investigating a missing check, and when both the original and duplicate checks showed up with plaintiff's signature and her correct social security number on them, the investigation naturally pointed towards plaintiff. Plaintiff failed to show the investigation constituted outrageous conduct. She also failed to show that the defendants acted intentionally to cause emotional distress.

Plaintiff's only evidence about her emotional distress is some testimony by herself and her husband regarding her initial reaction and her fear that when money was missing from her current place of employment she would be blamed. There is no substantial evidence presented by plaintiff which raises her alleged injuries to the level at which the Iowa courts permit compensation under this tort action. Meyer v. Nottger, 241 N.W.2d 911, 915-16 (Iowa 1976). Northrup v. Miles Homes, Inc., 204 N.W.2d 850, 855 (Iowa 1973). Blakeley v. Shortal's Estate, 236 Iowa 787, 789, 20 N.W.2d 28, 30 (1945).

Plaintiff also failed to show the last element of this tort, causation, in either the trial or her appellate brief. We hold that plaintiff failed to present to the jury any substantial evidence on the elements of the alleged tort, and we affirm the trial court's directed verdict on this cause of action.

II. Defamation

Defamation is the invasion of a person's interest in his reputation and name, Hughes v. Samuels Brothers, 179 Iowa 1077, 1080, 159 N.W. 589, 590 (1916), and to be successful plaintiff had to offer "substantial evidence" on each of the following elements of the tort: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Restatement (Second) of Torts § 558 (1977).

Plaintiff was questioned twice. She alleges that each time she was questioned, she was slandered. The first time she was questioned, a security guard asked whether

she had seen the original paycheck before. The record is not quite clear on who was present, but we assume Krouse, Blasdell, the guard, plaintiff, and Jocille Davis were there. The facts in the record indicate that no slanderous statements were made at this time; rather, the employer was merely investigating the problem, and an investigation necessarily requires that questions be asked.

The second time plaintiff was questioned, Krouse, Blasdell, and plaintiff were present in Krouse's office. Krouse asked plaintiff repeatedly whether she had anything "to tell her," and also asked her directly whether she had taken the check. No direct accusations were made, but the type of questions arguably could have imputed the crime to plaintiff, especially because the questions caused plaintiff to deny her guilt and assert her innocence. However, the question is moot because defendant asserts a qualified privilege to this communication. The defense protects communications made in good faith on a subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, which are made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances warranted by the occasion, duty, right or interest. Brown v. First National Bank of Mason City, 193 N.W.2d 547, 552 (Iowa 1972).

"The court is to decide as a matter of law whether the occasion of the statement or the official position of the individual rendered the communication privileged." L. Blades & D. Kader, Iowa Tort Guide § 6.23 (1976). See Brown, supra at 552, and Mills v. Denny, 245 Iowa 584, 589, 63 N.W.2d 222, 225 (1954). Since there was the employment relationship of employer, immediate supervisor, and employee, we think that what was said between Krouse, Blasdell and plaintiff was privileged and warrants protection under the defense of qualified privilege.

Plaintiff also alleges that she was slandered when Blasdell said the following to her: "You're supposed to leave." "Barbara said that you're supposed to leave for everybody concerned." "You're fired." "You're fired, all over this check incident." Since publication to plaintiff alone is insufficient, Royston v. Vander Linden, 197 Iowa 536, 536, 197 N.W. 435, 436 (1924), plaintiff wants us to infer that defamatory words were spoken to Blasdell by defendant Krouse, words which then precipitated Blasdell coming to plaintiff and telling her she was fired. We have decided that the privileged communication defense applies to Blasdell, so thus we cannot say that Krouse's alleged directions to Blasdell were actionable.

Of course, even when a communication is privileged, if plaintiff can prove actual malice, she would be successful. German Savings Bank v. Fritz, 135 Iowa 44, 47, 109 N.W. 1008, 1009 (1906). Plaintiff failed to offer such proof.

Plaintiff further testified that she heard the head nurse say, "Let's all practice not writing like Helen does." Looking at this comment in the light most favorable to plaintiff, we could infer possible publication by defendants to employees to whom the privilege does not extend. We think the nurse's comment makes an insufficient basis for a defamation suit.

We have looked at the testimony offered by plaintiff and plaintiff's two witnesses: her husband and a former fellow employee who testified that she "knew nothing," but that she heard some "hearsay." Plaintiff's offer of proof was insufficient to meet the substantial evidence test. Beitz v. Horak, 271 N.W.2d at 757.

Plaintiff additionally asserts that she was accused of larceny by defendants and that this is slander per se. Being accused of an indictable crime is considered so naturally and immediately injurious that no proof of actual damages is required. Amick v. Montross, 206 Iowa 51, 55, 220 N.W. 51, 53 (1928). As we mentioned above, the second time that plaintiff was questioned, Krouse directly asked plaintiff whether she had taken the check. The question caused plaintiff to deny her guilt and assert her innocence. The questioning coupled with the subsequent firing of plaintiff makes it seem that ultimately plaintiff was fired because the defendants thought plaintiff cashed both checks.

A somewhat analogous situation existed in Brown, where a bank investigated cash shortages, and the bank president published in the newspaper a statement that the investigation was continuing in order to clear all innocent persons, and that some people were not working because their bonds had been withdrawn. This statement imputed criminal conduct to the plaintiff employee who did not return to work after failing two lie detector tests. She was not formally discharged, but she received a letter notifying her of termination of her salary. Publication was clear in Brown, and the meaning of the words was clear that those not working were involved in the shortages. The statements made by the president were held to be libelous per se.

A similar situation exists here. By the very fact that plaintiff did not return to work, even given that she left for vacation, the meaning is clear that she was not working because defendants thought she took the check. We do not need to search for innuendo or inference. But, before we can say that plaintiff has an actionable case of slander per se, there has to be publication. In Brown, the publication was in the local newspaper. Here we think that the only possible evidence of publication of plaintiff being accused of an indictable offense was the rather innocuous statement made by the head nurse. We think that that statement is insufficient to support an inference of defamation and insufficient to prove slander per se.

We affirm the trial court's ruling granting a directed verdict. Costs to plaintiff.

AFFIRMED.