IN THE COURT OF APPEALS OF IOWA

No. 0-431 / 99-1712
Filed November 8, 2000

ROGER A. GODFREDSEN,
Plaintiff-Appellant,

vs.

LUTHERAN BROTHERHOOD, A FRATERNAL BENEFIT SOCIETY, DENNIS C. MUEHLING and DENNIS C. MUEHLING, D/B/A MUEHLING ASSOCIATES,
Defendants-Appellees.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Dale B. Hagen, Judge.

Roger A. Godfredsen appeals following a district court's grant of Lutheran Brotherhood's motion for judgment notwithstanding the verdict. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

William W. Graham of the Graham Law Firm, P.C., Des Moines, for appellant.

Roscoe A. Ries, Jr. and Timothy J. Walker of Whitfield & Eddy, P.L.C., Des Moines, for appellees.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Roger Godfredsen was a district representative for Lutheran Brotherhood from 1979 to 1996. The terms of his contract with Lutheran Brotherhood were specified in Godfredsen's individual district representative agreement and Lutheran Brotherhood's marketing policies. The dispute resulting in this litigation originated with Godfredsen's request for an intra-company transfer from an Iowa-based Lutheran Brotherhood agency to a Lutheran Brotherhood agency in Minnesota. Lutheran Brotherhood terminated Godfredsen's district representative agreement after he would not accept Lutheran Brotherhood's restrictions on the requested transfer.

After Godfredsen's termination, Harry Peterson, a representative of Lutheran Brotherhood, contacted insureds who purchased Lutheran Brotherhood products from Godfredsen in an effort to retain their business and determine if Godfredsen solicited their business for other insurance companies in violation of a restrictive covenant in Godfredsen's district representative agreement. Godfredsen claims that in the course of these discussions Peterson stated that Godfredsen was not terminated by Lutheran Brotherhood and was illegally churning the insured's policies to increase commissions.

Godfredsen subsequently sued Lutheran Brotherhood and its Iowa general agent, Dennis Muehling, alleging multiple tort and contract theories of recovery. Those relevant to these proceedings include Godfredsen's breach of contract, tortious interference with prospective business relationships, and defamation claims.

Lutheran Brotherhood denied liability under any of Godfredsen's theories of recovery. The district court, citing the legitimate business interest advanced by Lutheran Brotherhood's communication with its insureds, granted Lutheran Brotherhood's and Muehling's motions for summary judgment on Godfredsen's tortious interference with prospective business relationships and defamation claims.

The case proceeded to trial on Godfredsen's breach of contract claim, premised on Lutheran Brotherhood's breach of the following provision of his district representative agreement:

> The Society [Lutheran Brotherhood] does not seek, and will not assert, control of the daily activities of the District Representative, but expects the District Representative to exercise his or her own judgment as to the time, place, and manner of soliciting insurance, servicing members and contract members, and otherwise carrying out the provisions of this Agreement . . . .

Under Godfredsen's theory, because this provision permitted him to market Lutheran Brotherhood products anywhere, Lutheran Brotherhood's transfer restrictions violated the express terms of this provision. Lutheran Brotherhood disputed Godfredsen's interpretation, citing other restrictive language of the district representative agreement[1] and Lutheran Brotherhood's marketing policies concerning intra-company transfers by district representatives.[2]

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[1] The district representative agreement also states:

> The District Representative shall comply with all applicable federal and state laws and regulations and the Society's policies, rules, and practices.

[2] Lutheran Brotherhood's marketing policies provide:

> **Business Written Outside of the Assigned General Agency**

[T]here will be instances when a DR from one general agency has occasion to write business on individuals who reside in another general agency area. Generally, these people will be a close friend, relatives or certain clients.

Although referred leads may be followed into another agency, prospecting activity is to be limited to the agency to which the DR is assigned . . . . Common courtesy and professionalism require that exceptions to these guidelines should be discussed with and approved by the General Agency of the area in which this activity is to take place.

Rep's Responsibilities-Procedure for Requesting a Transfer
The representative should first discuss the decision with the current GA to explore:

- the reason for the request
- where the representative desires to relocate
- when the move is to be completed

The representative should then approach the GA in the area of the desired relocation to determine:

- if the new GA is interested.
- in which market area that GA would suggest the representative work. All agency policies and procedures will be completely communicated to the transferring DR.
- when the representative could be absorbed in the new agency.
- licensing in a new state. It's important to note that when a DR is in the process of moving from one state to another, the process of obtaining a new resident Life/Health license can be very time consuming. There is usually a "down time" when the DR is not licensed in any state and, therefore, cannot write any business. Please contact the Licensing areas of LB and LBSC as soon as it is determined that a DR is moving so that the licensing process can begin.

When the two General Agents involved have been contacted, the representative should correspond with the Regional Vice President(s) for their current agencies (with copies to both General Agents) outlining plans and detailing the DR's communication with the General Agent.
The DR Transfer Agreement form 220.11 (obtained from Licensing) needs to be completed and signed by all parties involved before the transfer process is complete. In addition to the Transfer Agreement, a properly completed Correspondent DR form must be submitted listing those details related to Exhibit A (contract numbers).

Home Office Involvement
If it is decided that the representative will move to another agency, Marketing must receive the signed Transfer Agreement from the releasing and the accepting GAs before any change is made.

Lutheran Brotherhood's motion for a directed verdict, citing the absence of any evidence supporting Godfredsen's disputed interpretation or breach of the district representative agreement, was denied. Godfredsen's breach of contract claim was submitted to the jury along with the following special interrogatory:

> Did defendant Lutheran Brotherhood breach its contract with plaintiff, Roger Godfredsen by imposing restrictions on his transfer to the Odell [Minnesota] agency?

The jury answered in the affirmative, awarding Godfredsen damages totaling $269,000.

Lutheran Brotherhood moved for judgment notwithstanding the verdict on the same grounds urged in its motion for a directed verdict. The district court granted Lutheran Brotherhood's motion, stating:

> There is no evidence on the record indicating LB failed to perform any term in the contract. The employment agreement, when read as a whole, does not entitle Godfredsen to conduct an intra-agency transfer in the time, place and manner which he sees fit; rather, when read as a whole, the contract requires Godfredsen to adhere to particular requirements in order to receive approval for a transfer. This is supported by the fact that the requirements for a transfer are consistently reproduced throughout the DR Agreement, the Transfer Agreement, the Marketing Policy and the transfer terms communicated by Grinna to Godfredsen. The provision cited to by Godfredsen cannot operate to vitiate the rest of the contract with regard to specific transfer procedures. Therefore, the Court concludes LB was entitled to a directed verdict on the transfer restrictions claim.

> The Regional Vice President(s) must be satisfied that such a move has the sanction of both GAs and that the move will not be detrimental to the representative's well-being before giving final approval.
>
> It is understood that any moves, under the circumstances described above, will be at the expense of the representative, with no reimbursement from Lutheran Brotherhood.

On appeal, Godfredsen contends the trial court erred in (1) granting Lutheran Brotherhood's motion for judgment notwithstanding the verdict on the issue of whether Lutheran Brotherhood breached its contract with him, (2) sustaining Lutheran Brotherhood's motion for summary judgment on the issue of defamation, and (3) sustaining Lutheran Brotherhood's motion for summary judgment on the issue of interference with prospective business relationships.

II. Judgment Notwithstanding the Verdict.

We review a judgment notwithstanding the verdict on error. *See Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 541 (Iowa 1997). The question is whether the evidence, when viewed in the light most favorable to Godfredsen, was sufficient to generate a jury question. *Nesler v. Fisher and Co.*, 452 N.W.2d 191, 193 (Iowa 1990).

We initially emphasize the narrow breach of contract theory Godfredsen advances. His theory is not based on the specifics of Lutheran Brotherhood's transfer restrictions but rather on Lutheran Brotherhood's contractual right to impose any restrictions on Godfredsen's interagency marketing of Lutheran Brotherhood products. The resolution of this issue accordingly turns on which of the parties' conflicting interpretations of the district representative agreement should prevail.

Interpretation involves ascertaining the meaning of contractual words. *Fashion Fabrics of Iowa, Inc. v. Retail Investors, Corp.*, 266 N.W.2d 22, 25 (Iowa 1978). Interpretation is a legal issue for the court unless it depends on extrinsic evidence or on a choice among reasonable inferences from extrinsic evidence. *Connie's Constr. Co. v. Fireman's Fund Ins. Co.*, 227 N.W.2d 207, 210 (Iowa

1975). Questions of performance or breach are generally a jury question. *Iowa-Illinois Gas & Elec. Co. v. Black & Veatch*, 497 N.W.2d 821, 825 (Iowa 1993).

When viewed in this context, the extrinsic evidence concerning the meaning of the independent contractor provision of the district representative agreement is more superfluous than substantial. The evidence on this issue was entirely devoted to the specifics of the restrictions rather than the meaning of the relevant provisions of the district representative agreement. We agree with the district court's determination that, when the district representative agreement and marketing policies incorporated by reference are considered as a whole, Godfredsen did not have the unrestricted right to market Lutheran Brotherhood products in the manner he claimed. The jury's contrary conclusion is not supported either as a matter of law, or by substantial evidence. The district court properly entered judgment notwithstanding the verdict. We affirm on this issue.

III. Defamation Claim.

Godfredsen also contends the district court erred in granting summary judgment on his defamation claim. Summary judgment is appropriate only if there exists no genuine issue of material fact. *Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact. *Id.* The evidence must be viewed in the light most favorable to the nonmoving party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.* Generally, a fact issue is generated if reasonable minds can differ on how the issue should be resolved.

Id. If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne,* 424 N.W.2d at 423.

We initially determine that summary judgment dismissing Godfredsen's defamation claim against Muehling was properly entered. Peterson was not Muehling's agent. Peterson's statements, accordingly, could not be attributed to him. *See generally Biddle v. Sartori Mem'l Hosp.,* 518 N.W.2d 795, 797 (Iowa 1994) ("[V]icarious liability rests on proof of an agency relationship."). We may affirm the district court for any reason appearing in the record even if it is not the same as the district court relied on in making its ruling. *Bensley v. State*, 468 N.W.2d 444, 445 (Iowa 1991).

Defamation is the invasion of another's interest in reputation or good name. *See Johnson v. Nickerson*, 542 N.W.2d 506, 510 (Iowa 1996). It consists of the twin torts of libel and slander--the former being written and the latter being oral. *Id.* To establish a prima facie case in any defamation action, a plaintiff must show the defendant (1) published a statement that was (2) defamatory (3) of and concerning the plaintiff. *Taggart v. Drake Univ.*, 549 N.W.2d 796, 802 (Iowa 1996).

Whether the defendant's statements could be reasonably understood as defamatory is a matter of law for the court to decide. *Brown v. First Nat'l Bank of Mason City*, 193 N.W.2d 547, 553 (Iowa 1972). If the words used are unambiguous the court decides as a matter of law whether they are actionable. *Vinson v. Linn-Mar Cmty. Sch. Dist.*, 360 N.W.2d 108, 116 (Iowa 1984). Words susceptible of different meanings and whether they were understood as

defamatory are jury questions. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 14 (Iowa 1990).

Statements that are slander per se are actionable without proof of malice, falsity, or actual harm. *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 139 (Iowa 1996). Statements that attack integrity and moral character are slanderous per se. *Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994). Other slanderous per se statements include charges of criminal conduct and slanderous imputations affecting a person's trade or profession. *Rees v. O'Malley*, 461 N.W.2d 833, 835 (Iowa 1990); *Lara*, 512 N.W.2d at 785.

Communications, which are otherwise defamatory, are not actionable if they are privileged. *Vojak v. Jensen*, 161 N.W.2d 100, 105 (Iowa 1968). A qualified privilege applies if communications are made in good faith, concerning a subject matter in which the speaker has an interest, right, duty or obligation, and to a listener who has a corresponding interest right, duty, or obligation. *Brown v. First Nat'l Bank of Mason City*, 193 N.W.2d 547, 552 (Iowa 1972). A qualified privilege applies to statements that are defamatory per se but only protect those made without actual malice. *Vinson*, 360 N.W.2d at 116.

Ordinarily, the availability of the privilege is for the court to decide as a matter of law. *Brown*, 193 N.W.2d at 552. Issues of fact defeating the privilege are for the jury to decide. *Higgins v. Gordon Jewelry Corp.*, 433 N.W.2d 306, 309 (Iowa App. 1988).[3]

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[3] There is a difference of opinion concerning the role of the court and the jury in determining whether the assertion of a qualified privilege is supported by good faith. There is authority indicating satisfaction of the common interest elements of the privilege

The summary judgment record discloses the following undisputed facts. Lutheran Brotherhood hired Peterson to contact its insureds to determine why some had transferred funds to other companies, who if anyone encouraged them to do so, and Lutheran Brotherhood's "position with these policy holders." Lutheran Brotherhood also wanted to explain its version of the facts surrounding Godfredsen's termination as a district representative. In the course of these discussions, Peterson told insureds:

> Based on my experience it appears to me that Roger wanted rather than serving Lutheran Brotherhood's mission, to serve clients with a higher level of service. Roger wanted Lutheran Brotherhood to change their standard to serve Roger Godfredsen.
>
> Lutheran Brotherhood, when they see an agent leave in a few cases we find funds leaving L.B. to the new agent's company. We become concerned. We really become concerned when, as in this case, the agent goes with a third company. Usually a new sales commission is generated each time the money is moved. This is called churning and NASD has a law against this. We do have a concern for L.B. investors and I'm sure the NASD would not like us if we did not follow up.

Contrary to Lutheran Brotherhood's contention, Peterson's statements could be reasonably understood as defamatory. At the very least, both contain negative imputations concerning Godfredsen's work as an insurance agent and at worst accuse him of a criminal offense. Whether they were in fact so understood is a question for the jury to decide.

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results in a presumption of good faith. 50 Am. Jur. 2d *Libel & Slander* § 276 (1995). Others suggest any underlying factual dispute concerning good faith should be submitted to the jury. Restatement (Second) of Torts § 619(1) cmt. a (1977). In the absence of more attentive advocacy or clearly controlling authority, we decline to resolve this apparent conflict. Moreover, we need not address the issue in this case because the notions of honesty underlying good faith, also inhere in the actual malice issue facing the jury on remand.

As noted earlier, the district court disposed of Godfredsen's defamation claim citing the legitimate business interest advanced by Lutheran Brotherhood's communications with its insureds. In doing so, we believe the district court properly recognized the common interest served by Lutheran Brotherhood's communication with its insureds concerning its former agent. *See Haldeman v. Total Petroleum, Inc.*, 376 N.W.2d 98, 104 (Iowa 1985) (recognizing the common interest element of qualified privilege where a former employer provided a reference to a prospective employer regarding the character of a former employee, including allegations of criminal conduct); *Washington Nat'l Ins. Co. v. The Administrators*, 2 F.3d 192, 196 (7th Cir. 1993) (recognizing an insurer's qualified privilege to publish otherwise defamatory information in communications with its insureds concerning its agents). This determination, however, should not have ended the inquiry.

The summary judgment record also includes deposition testimony that neither Peterson nor anyone at Lutheran Brotherhood were aware of any facts implicating Peterson in illegal or wrongful sales practices. Moreover, Godfredsen's deposition testimony disputes Peterson's statement that fund transfers by insureds constituted illegal churning. Because the summary judgment record discloses factual issues concerning the honesty of Peterson's statements, we cannot say, as a matter of law, they were made in good faith[4] or

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[4] We find no Iowa authority addressing the meaning of good faith in the context of a qualified privilege. Generally, good faith means the "speaker must have had reasonable grounds for believing the statement made was correct." 50 Am. Jur. 2d *Libel and Slander* § 278 (1995). In other contexts, good faith has been defined in terms of honesty and lawfulness of purpose. *Sieg v. Kelly*, 568 N.W.2d 794, 805 (Iowa 1997).

without actual malice.[5] These issues should have been submitted to the jury based on appropriate instructions on the elements of proof essential to establish the defense of qualified privilege and actual malice. We accordingly reverse and remand for a new trial on this issue.

IV. Intentional Interference with Prospective Business Advantage.

Lastly, Godfredsen argues that summary judgment was improperly entered on his intentional interference with prospective business advantage claim. This tort imposes liability on a person who intentionally and improperly interferes with the claimant's business expectancies whether the interference consists of (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or (b) preventing the other from acquiring or continuing the prospective relation. *Gordon v. Noel*, 356 N.W.2d 559, 563 (Iowa 1984). In order to recover under this theory, the plaintiff must prove the defendant acted with the sole or predominant purpose to injure or financially destroy the plaintiff. *Compiano v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 462, 464 (Iowa 1999).

As mentioned above, we review a summary judgment ruling for correction of errors at law. Iowa R. App. P. 4. Summary judgment is appropriate only when the entire record before the court shows that there are no genuine issues of material fact and that the district court correctly applied the law. Iowa R. Civ. P.

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[5] Actual malice requires a statement made with knowledge that it is false or with a reckless disregard for its truth or falsity. *See Vinson*, 360 N.W.2d at 117. A showing of antagonism, contempt, or intent to inflict harm is not sufficient to show actual malice. There must be an intent to inflict harm through falsehood. *McCarney v. Des Moines Register and Tribune Co.*, 239 N.W.2d 152, 156 (Iowa 1976).

237(c); *see Robert's River Rides, Inc. v. Steamboat Dev. Corp.*, 520 N.W.2d 294, 299 (Iowa 1994).

In order to successfully resist summary judgment, Godfredsen had the burden of setting forth specific facts constituting competent evidence to support a prima facie claim. Our review of the summary judgment record, even when viewed in a light most favorable to Godfredsen, discloses undisputed evidence indicating Lutheran Brotherhood's motivation was at best mixed. As an insurer, Lutheran Brotherhood had a legitimate business interest in communicating with its insureds to retain their business and investigate Godfredsen's potential breach of the restrictive covenants of his district representative agreement. In the absence of any legal or factual dispute concerning the legitimacy of Lutheran Brotherhood's communication with its insureds, Godfredsen cannot, as a matter of law, prove Lutheran Brotherhood's sole or predominate purpose was to destroy or financially injure him. *See Compiano*, 588 N.W.2d at 466. We also affirm on this issue.

The judgment of the district court is affirmed in part, reversed in part, and remanded. Lutheran Brotherhood should pay one-third of the costs of this appeal, and Godfredsen shall pay the remainder.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.