

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JON H. ENTINE,	:	APPEAL NO. C-060826
	:	TRIAL NO. A-0603809
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
BRUCE HUMBERT,	:	
	:	
Defendant-Appellee,	:	
ELLEN L. TURNER and TURNER &	:	
HUMBERT, LLC,	:	
	:	
Defendants.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Plaintiff-appellant Jon H. Entine appeals from the entry of summary judgment for defendant-appellee Bruce Humbert on, among other things, Entine’s claim that one email sent by Humbert to the organizers of a lunchtime forum for public-relations professionals was defamatory and had resulted in actionable injury to his reputation and to his consulting business.

Entine, a consultant and former television producer, was invited to address the Cincinnati chapter of the Public Relations Society of America (“PRSA”) on the topic “Green Business or Greenwashing: The Perils and Promise of Strategic Corporate Social Responsibility.” One week before the forum, Humbert sent an email to PRSA stating that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

the organization could have “do[ne] better than” choosing Entine to speak at its luncheon. The email contained five other statements questioning whether Entine was qualified to speak on the subject and urging PRSA to be more thorough in reviewing the qualifications of its future speakers.

Despite the email, Entine spoke at the PRSA luncheon. He then brought these claims against Humbert for defamation, invasion of privacy, tortious interference with business relationships, and intentional infliction of emotional distress. Defendants Ellen Turner, Entine’s ex-wife, and Turner & Humbert, LLC, were voluntarily dismissed from the case on September 15, 2006. They are not parties to this appeal.

On July 27, 2006, Humbert moved for summary judgment relying on his own affidavit to which he had attached over fifty pages of documentation regarding Entine’s qualifications. Entine responded with a memorandum in opposition supported by his affidavit and the affidavit of a local PRSA official. Each party supplemented its position with a subsequent affidavit. And Humbert introduced the affidavit of Entine’s ex-wife, along with copies of her application for protective orders against Entine made in the course of their recent divorce.

The trial court held a hearing on the summary-judgment motion in August 2006. And one month later, in a 12-page decision, the trial court granted summary judgment for Humbert. This appeal followed.

In his first assignment of error, Entine contends that the trial court erred in entering summary judgment on his defamation claim. Because summary judgment presents only questions of law, an appellate court reviews the entry of summary judgment *de novo*, without deference to the trial court’s determinations.² Summary judgment is

² See *Polen v. Baker*, 92 Ohio St.3d 563, 564-565, 2001-Ohio-1286, 752 N.E.2d 258.

proper pursuant to Civ.R. 56(C) when (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence viewed most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.³

Because the determination of whether words are defamatory is a question of law, summary judgment is appropriate in defamation actions.⁴ To establish the essential elements of a claim of defamation, a plaintiff must show that (1) a false statement of fact was made concerning him or her; (2) the statement was defamatory; (3) the statement was written; (4) the statement was published; and (5) in publishing the statement, the defendant acted with the requisite degree of fault.⁵ Private-citizen defamation plaintiffs like Entine must show by clear and convincing evidence that the defendant failed to act reasonably in attempting to discover the truth or falsity or defamatory character of the publication.⁶

The Ohio Constitution protects statements of opinion. For a statement to be defamatory, it must be a statement of fact and not of opinion.⁷ Whether alleged defamatory remarks are statements of fact or statements of opinion is also a question of law appropriate for resolution by summary judgment.⁸ The court applies a totality-of-the-circumstances test to determine whether a statement is fact or opinion. In applying that test, a court should consider the specific language used, whether the statement is

³ See, also, *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264.

⁴ See *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 1995-Ohio-187, 649 N.E.2d 182.

⁵ See *Brown v. Lawson*, 169 Ohio App.3d 430, 2006-Ohio-5897, 863 N.E.2d 215, at ¶9; see, also, *Hauck v. Gannett Corp.* (Mar. 20, 1998), 1st Dist. No. C-970171.

⁶ See *Lansdowne v. Beacon Journal Publishing Co.* (1987), 32 Ohio St.3d 176, 512 N.E.2d 979.

⁷ See *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d at 281-282, 1995-Ohio-187, 649 N.E.2d 182.

⁸ See *id.*; see, also, *Wampler v. Higgins*, 93 Ohio St.3d 111, 2001-Ohio-1293, 752 N.E.2d 962.

verifiable, the general context of the statement, and the broader context in which the statement appeared.⁹

Under this test, Humbert's statements were protected opinion. Humbert's specific language was prefaced with cautionary terms like "I believe" to indicate that his statements reflected his opinion of Entine's qualifications.¹⁰ Humbert's other statements each contained value-laden, subjective, and emotional terms like "messy divorce," "abusive behavior," and "failed author," which conveyed subjective interpretations rather than objective facts.¹¹ The general context in which the words were offered also strongly confirms that the statements were ones of opinion. Therefore, the first assignment of error is overruled.

Entine's second assignment of error, in which he asserts that the trial court erred in entering summary judgment on his claims for invasion of privacy, tortious interference with business relationships, and intentional infliction of emotional distress, is overruled. When, as here, the party moving for summary judgment discharges its initial burden to identify the absence of genuine issues of material fact on an essential element of the nonmoving party's claims, the nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth "specific facts," by the means listed in Civ.R. 56(C) and 56(E), showing that triable issues of fact exist.¹²

Entine did not produce any evidence of damages resulting from Humbert's single email, either to his business pursuits or to his person. The proof of damages is an essential

⁹ See *Vail v. Plain Dealer Publishing Co.*, syllabus (applying the test in resolving a Civ.R. 12[B][6] motion where the evidence is not weighed but is taken as stated in the pleadings); see, also, *Fuchs v. Scripps Howard Broadcasting Co.*, 170 Ohio App.3d 679, 2006-Ohio-5349, 868 N.E.2d 1024 (applying the test in affirming the entry of summary judgment).

¹⁰ See *Fuchs v. Scripps Howard Broadcasting Co.*, 2006-Ohio-5349, at ¶44.

¹¹ See *Toledo Heart Surgeons, Inc. v. Toledo Hosp.*, 154 Ohio App.3d 694, 2003-Ohio-5172, 798 N.E.2d 694.

¹² See *Dresher v. Burt*, 75 Ohio St.3d at 293, 1996-Ohio-107, 662 N.E.2d 264.

element of each claim.¹³ While Entine admitted to the trial court during the summary-judgment hearing that he had not yet developed evidence of damages, he failed to file a Civ.R. 56(F) request, supported by the appropriate affidavit, for additional discovery to defend against Humbert's motion for summary judgment. Failure to seek this relief does not preserve the party's challenge to the adequacy of discovery on appeal.¹⁴

Because Entine failed to make a showing sufficient to establish any damages resulting from the single email—essential elements of his claims for invasion of privacy, tortious interference with business relationships, and intentional infliction of emotional distress—summary judgment was properly entered.

Therefore, the trial court's entry of summary judgment is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on September 26, 2007

per order of the Court _____.

Presiding Judge

¹³ See *Rothstein v. Montefiore Home* (1996), 116 Ohio App.3d 775, 689 N.E.2d 108 (invasion of privacy); *A & B-Abell Elevator Co. v. Columbus/Central Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 1995-Ohio-66, 651 N.E.2d 1283 (tortious interference with a business relationship); *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 453 N.E.2d 666 (intentional infliction of emotional distress).

¹⁴ See *Solid Waste v. Clarkco Landfill* (1996), 109 Ohio App.3d 19, 36, 671 N.E.2d 1034; see, also, *Thomas v. Cranley* (Nov. 2, 2001), 1st Dist. No. C-010096.