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DISTRICT II

September 12, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2018AP522-FT

James C. Leichtnam v. Crystal M. Fuller (L.C. #2017CV250)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James Leichtnam appeals from a judgment of the circuit court. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the judgment of the circuit court.

The following is the entirety of Leichtnam's allegations against Crystal Fuller in his amended complaint: "On Dec 18, 2014 Crystal M Fuller filed a false statement to law

enforcement.” All parties have agreed before the circuit court and on appeal that this appeared to be an attempt at an allegation of defamation against Fuller. Fuller moved for dismissal of the amended complaint on the basis that it failed to state a claim upon which relief may be granted and alternatively for summary judgment. After a hearing on the motions, the circuit court dismissed the amended complaint, stating: “[W]hether we call it a summary judgment motion or motion to dismiss, there are no grounds here in my opinion for defamation.”

We have previously clarified that

the first step in summary judgment methodology is to determine if the complaint states a claim for relief. This is the same analysis as that employed on a motion to dismiss for failure to state a claim. Whether the motion is initially one for dismissal under WIS. STAT. § 802.06(2) and is then converted to one for summary judgment under § 802.06(2)(b), or whether it is filed in the first instance as a motion for summary judgment under [WIS. STAT.] § 802.08, the court does not consider matters outside the pleading until it has determined that the complaint states a claim for relief. *See C.L. [v. Olson]*, 143 Wis. 2d [701,] 706[, 422 N.W.2d 614 (1988)] (“*Only if a claim for relief has been stated does the court then proceed to determine whether the [affidavits and other submissions] demonstrate a genuine issue as to any material fact.*”).

Broome v. DOC, 2010 WI App 176, ¶12, 330 Wis. 2d 792, 794 N.W.2d 505 (some citations omitted). Thus, whether we consider this an appeal of the grant of a motion to dismiss or grant of summary judgment, our first task is to determine if Leichtnam’s amended complaint states a claim upon which relief may be granted, which is a matter of law we review de novo. *See Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. While “[i]n examining the complaint, we take the allegations as true, construing them liberally in

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

the plaintiff's favor," *Broome*, 330 Wis. 2d 792, ¶14, if the complaint ultimately fails to state a claim, we need go no further.

A claim of defamation can only prevail if it is determined that the defendant made

(1) a false statement; (2) communicated by speech, conduct or in writing to a person other than the person defamed; and, (3) the communication is unprivileged and tends to harm one's reputation so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.

Torgerson v. Journal/Sentinel, Inc., 210 Wis. 2d 524, 534, 563 N.W.2d 472 (1997). Absent a sufficient allegation of each of these elements in the complaint, a claim for defamation cannot proceed. See *Data Key Partners*, 356 Wis. 2d 665, ¶21; *Doe 67C v. Archdiocese of Milwaukee*, 2005 WI 123, ¶¶36, 42, 43, 45, 51, 284 Wis. 2d 307, 700 N.W.2d 180.

Leichtnam's amended complaint contains one substantive, but conclusory, allegation—"On Dec 18, 2014 Crystal M Fuller filed a false statement to law enforcement." This is insufficient. As to the first element—a false statement—the amended complaint merely states the element that must be proved but provides no details as to what the objectionable statement was that Fuller allegedly made. While we are a "notice pleading" state, there must at least be notice provided as to what objectionable statement the person being sued made. *Doe 67C*, 284 Wis. 2d 307, ¶36 ("[W]e will dismiss a complaint if, '[u]nder the guise of notice pleading, the complaint before us requires the court to indulge in too much speculation leaving too much to the imagination of the court.'" (citations omitted)). Here, neither Fuller nor the circuit court would be on notice as to what statement allegedly was made that Leichtnam claims was false. Moreover, a claim of defamation is insufficient and cannot advance if "the particular words

complained of” are not identified in the complaint. *See* WIS. STAT. § 802.03(6); *Ashker v. Aurora Med. Grp., Inc.*, 2013 WI App 143, ¶11, 352 Wis. 2d 193, 841 N.W.2d 297.

Furthermore, because the amended complaint fails to identify what objectionable statement Fuller allegedly made and provides no details whatsoever as to what, or whom, the “false statement” was about, Leichtnam also fails to sufficiently allege that the third element was met. The third element requires that the communication “tends to harm one’s reputation so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.” *Torgerson*, 210 Wis. 2d at 534. The amended complaint makes no allegation and provides no facts in this regard, and we may not “add an unpleaded fact” in order to make a claim viable. *See Doe 67C*, 284 Wis. 2d 307, ¶57. The amended complaint does not even allege that Fuller made a false statement related to *Leichtnam*, and it is questionable as to whether we could reasonably infer that from the amended complaint. For all the circuit court would know from the amended complaint, Leichtnam may have been alleging that Fuller made a false statement about Leichtnam’s dog or his wife’s dress. The circuit court properly dismissed the amended complaint.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals