Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001560

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1330

September Term, 2021

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MARGUERITE R. MORRIS

v.

DENNY'S CORPORATION, *et al.*

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Wells, C.J.,
Friedman,
Tang,

JJ.

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Opinion by Friedman, J.

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Filed: October 13, 2022

Appellant Marguerite R. Morris appeals the order of the Circuit Court for Anne Arundel County granting summary judgment in favor of appellees, S&H Restaurant Company, Inc., Sonya Howard, and Hamid Mohebbi.[1] Ms. Morris, representing herself, presents ten questions for our review, all of which may be condensed into the question of whether the circuit court was legally correct in granting appellees' motions for summary judgment. For the reasons that follow, we affirm the circuit court's order.

## BACKGROUND

This matter results from two visits Ms. Morris made to an Anne Arundel County Denny's restaurant, which was owned and operated by a Denny's Corporation franchisee, appellee S&H Restaurant Company, Inc. On June 28, 2019, Ms. Morris entered the restaurant in possession of several boxes of Krispy Kreme donuts left over from a fundraiser and asked if she could sell or give away the donuts to restaurant patrons. The restaurant manager, appellee Hamid Mohebbi, said no.

Despite Mr. Mohebbi's refusal, Ms. Morris nonetheless attempted to sell or give the donuts away, leading to a verbal altercation with Mr. Mohebbi. Mr. Mohebbi asked Ms. Morris to leave the restaurant, and when she refused, he called Anne Arundel County Police. When the police arrived, Mr. Mohebbi gave an oral statement describing the events. Ms. Morris disputed Mr. Mohebbi's version of events and told the police that Mr. Mohebbi was "racist and only wanted her to leave because she was black." After arguing with the

[1] The circuit court had previously granted appellee Denny's Corporation's motion for summary judgment. Ms. Morris, in her brief, does not directly challenge the circuit court's grant of summary judgment to Denny's, and we do not consider it here.

police for 20 to 30 minutes and being threatened with arrest, Ms. Morris left the restaurant of her own accord. Mr. Mohebbi advised her not to return.

Two weeks later, however, on July 12, 2019, Ms. Morris returned to the same Denny's. She ordered a Caesar salad with extra tomatoes and croutons and was told by her server, appellee Sonya Howard, that those additions would incur a small upcharge of less than $1.00. Ms. Morris claimed that "the upcharge was retaliatory" and became combative with Ms. Howard—loudly calling her a racist—and recorded their interaction on her cell phone. Mr. Mohebbi instructed Ms. Morris to pay for her meal and leave, but Ms. Morris raised her voice and called him a racist, too.

Mr. Mohebbi again called the police. Ms. Morris told the police she had done nothing wrong, that Mr. Mohebbi was making a "false report," and that she would not leave the restaurant unless she was arrested. After spending 20 to 30 minutes trying to persuade Ms. Morris to leave, a police officer advised her she was under arrest. The officer helped Ms. Morris gather her items and allowed her to approach the counter to pay for her meal. Once at the counter, Ms. Morris used her phone to record the employees on the other side and raised her voice, causing another disturbance.

Police officers escorted Ms. Morris from the restaurant. Despite the officers' threat of arrest, Ms. Morris was issued a written ban from the restaurant and released from the

scene without arrest. Mr. Mohebbi and Ms. Howard provided written statements of their account of the incident to the police.[2]

As Ms. Morris sat in her vehicle outside the restaurant, someone, whom Ms. Morris identified as Mr. Mohebbi, called her cell phone and called her a "crazy bitch." The call, answered by Ms. Morris over speaker phone, was heard by a police officer still on the scene. Mr. Mohebbi admitted to making the call.[3]

Ms. Morris, representing herself, filed complaints against Mr. Mohebbi and Ms. Howard in the District Court for Anne Arundel County and against Denny's Corporation, S&H, and Mr. Mohebbi in the Circuit Court for Anne Arundel County. All three lawsuits were consolidated in the circuit court. After the suits were consolidated, Ms. Morris amended her complaint twice, ultimately alleging the following counts: (1) abuse of process; (2) intentional infliction of emotional distress; (3) negligent

[2] Mr. Mohebbi's written statement detailed: "Marguerite Morris, came on 6/28/19 and tried to sell donuts to the customers. After I told her she couldn't do that she continued to try to sell them to customer at Denny's. I called the police and they defused the situation. I told her to finish her food and not to return again. Today (7/12/19) she came in and tried to accuse my staff as racists for charging her for tomatoes. She caused a scene and started yelling and recording my employee. That is why I called the police again[, … a]fter I noticed she came back."

Ms. Howard gave the following written statement: "On 7/12/19 I was serving a lady a [Caesar] salad and when I delivered the salad she said that the salad usually is served with [tomatoes] and croutons. I told her the salad doesn't come with those items that there is [an] upcharge. She was being loud and rude saying I was a racist. When I came back with the salad she said I'm recording you am I being charged for these items. She was causing a scene."

[3] Ms. Morris had given Mr. Mohebbi her business card, which contained her cell phone number. Mr. Mohebbi later said he regretted making the call and apologized to Ms. Morris.

retention/supervision; (4) harassment; (5) slander; (6) libel; (7) false light; and (8) defamation.

Appellees moved to dismiss all counts in the third amended complaint except for negligent retention and supervision. Following a hearing, the circuit court dismissed Ms. Morris's counts of: (1) abuse of process; (2) intentional infliction of emotional distress; (3) harassment; (4) libel; and (5) false light. The circuit court granted Ms. Morris an additional 15 days to amend her complaint regarding the counts of abuse of process and libel. Ms. Morris filed the operative fourth amended complaint on April 29, 2021, including counts of negligent retention and supervision, slander, and libel.[4]

Denny's Corporation moved for summary judgment on the negligent retention and supervision count in Ms. Morris's complaint. Denny's Corporation averred that because the circuit court had dismissed all the other counts in which it could potentially be implicated, there was no legal basis for a vicarious liability claim against it, as Ms. Morris could not establish an agency relationship between Denny's Corporation and its franchisee that would authorize Denny's Corporation to exercise control over or discipline the franchisee's employees. At the hearing on Denny's Corporation's motion, the defendants' attorney argued that Mr. Mohebbi and Ms. Howard were employees of S&H, not Denny's Corporation, so there was no employment relationship between them and Denny's Corporation to support a negligent retention or supervision claim. The circuit court agreed

[4] Ms. Morris's fourth amended complaint also included one count of false light, however, the circuit court had previously dismissed that count with prejudice following her third amended complaint.

and granted Denny's Corporation's motion for summary judgment as to all remaining claims against it.

Ms. Howard also moved for summary judgment, asserting that Ms. Morris had failed to establish a *prima facie* case of defamation, slander, and libel against her, because her written statement to the police was not defamatory and fell within the protection of qualified privilege. Moreover, the count of negligent retention/supervision could not apply to her because, as a server at the restaurant, she had no authority to hire, discipline, or fire staff.

Mr. Mohebbi and S&H Restaurant Corporation moved for summary judgment, also arguing that Mr. Mohebbi's statements to the police were not defamatory and fell within the protection of qualified privilege. In addition, in the absence of any tortious act by its employees Mr. Mohebbi and Ms. Howard, S&H denied it could be liable for negligent retention and supervision.[5]

[5] Ms. Morris moved to strike the defendants' motions for summary judgment on the ground that they were filed after the circuit court's April 25, 2021, deadline for the filing of dispositive motions. The defendants responded that Ms. Morris's operative fourth amended complaint had not been filed until after the deadline, so they could not have known which counts in the complaint would remain viable and subject to a motion for summary judgment before the deadline had passed. The circuit court denied Ms. Morris's motions to strike the motions for summary judgment without comment. In its later memorandum opinion granting the defendants' motions for summary judgment, however, the court, citing *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997), explained that this Court has recognized that deadlines set in a scheduling order are not "unyieldingly rigid" and that "absolute compliance with scheduling orders is not always feasible," particularly when, as here, there is no prejudice to the non-moving party in the late filing of motions. We affirm the circuit court's ruling permitting the filing of the defendants' motions for summary judgment after the deadline for dispositive motions had passed.

The circuit court heard argument on the motions for summary judgment on September 28, 2021, and later issued a written order granting summary judgment on all remaining counts on October 4, 2021. Ms. Morris filed a timely notice of appeal of the circuit court's orders.

## DISCUSSION

Ms. Morris contends that the circuit court was not legally correct in granting appellees' motions for summary judgment. In her view, she presented sufficient evidence of defamation on the part of Mr. Mohebbi and Ms. Howard, and therefore of negligent retention or supervision on the part of S&H, such that her claims should have survived summary judgment. We disagree.

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." MD. R. 2-501(f). When ruling on a motion for summary judgment, a circuit court must first determine whether there is a genuine dispute of material fact. *Rivas v. Oxon Hill Joint Venture*, 130 Md. App. 101, 106-07 (2000). In doing so, a circuit court "should look to the 'pleadings, depositions, and admissions on file, together with the affidavits, if any[.]'" *George v. Baltimore Cty.*, 463 Md. 263, 274 (2019) (quoting *Cox v. Sandler's, Inc.*, 209 Md. 193, 197 (1956)). The existence of some alleged or immaterial factual dispute is not a genuine dispute of material fact. *Collins v. Li*, 176 Md. App. 502, 591 (2007). If there is no dispute of material fact, the circuit court must decide whether the moving party is, as a matter of law, entitled to judgment. *Piney Orchard Cmty. Ass'n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 206 (2015) (quoting *Hines v. French*, 157 Md.

App. 536, 549-50 (2004)). On appeal, this Court must determine whether the circuit court's entry of summary judgment was "legally correct." *Id.*

The focus of Ms. Morris's claims is her assertion that Mr. Mohebbi and Ms. Howard defamed her in their written and oral statements to the police, and that S&H, as their employer, was liable for negligently retaining and supervising them. To establish a *prima facie* case of defamation, "a plaintiff must establish four elements: (1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff suffered harm." *Hosmane v. Seley-Radtke*, 227 Md. App. 11, 20-21 (2016) (citing *Offen v. Brenner*, 402 Md. 191, 198 (2007)).

"A defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Batson v. Shiflett*, 325 Md. 684, 722-23 (1992). If the defendant's statement is not defamatory, that is the end of the inquiry.

If the statement is defamatory, the plaintiff must then prove falsity, that is, that the statement was not substantially correct. *Batson*, 325 Md. at 726. If there is no proof that the statement is false—and minor inaccuracies do not amount to falsity—the statement cannot support an action for defamation. *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 510 (1995).

Here, there was no error by the circuit court in determining that Ms. Morris was not defamed by Mr. Mohebbi or Ms. Howard on June 28, 2019, or July 12, 2019. On both

occasions, Mr. Mohebbi and Ms. Howard provided the police with factual recitations of Ms. Morris's actions for the purpose of removing an unruly customer from the restaurant and protecting the other patrons. Doing so did not malign Ms. Morris's character or expose her to scorn, contempt, or ridicule. Moreover, the facts of both incidents were undisputed and there was nothing false contained in either Mr. Mohebbi's or Ms. Howard's statements.

Even assuming, for the sake of argument, that Ms. Morris could have established a *prima facie* case of defamation, Mr. Mohebbi and Ms. Howard still would not have been liable because a qualified privilege applied to their statements.[6] *Lindenmuth v. McCreer*, 233 Md. App. 343, 361 (2017). Qualified privilege, which is broad and may apply to "an infinite variety of factual circumstances," *Hanrahan v. Kelly*, 269 Md. 21, 28 (1973), is a defense to a defamation action, so long as the privilege is not abused. *Piscatelli v. Van Smith*, 424 Md. 294, 306-07 (2012). The defense of privilege rests upon the notion that sometimes, as a matter of public policy, a person is justified in publishing information without incurring liability. *Miner v. Novotny*, 304 Md. 164, 167 (1985).

The Court of Appeals has recognized four common law qualified privileges:

> (1) The public interest privilege, to publish materials to public officials on matters within their public responsibility; (2) the privilege to publish to someone who shares a common interest, or, relatedly, to publish in defense

[6] Ms. Morris claims that appellees cannot raise the defense of privilege because they did not list it as an affirmative defense in their answer to her fourth amended complaint. While privilege is an affirmative defense that is required to be set forth separately in the answer, *see* MD. R. 2-323(g)(19); *Gooch v. Maryland Mech. Sys., Inc.*, 81 Md. App. 376, 384 (1990), appellees did state, in their answer, that in addition to the listed affirmative defenses, they "further raise the defenses set forth in Maryland Rule 2-323(f) and (g) as if each defense was set forth fully in their Answer." Under the facts of this matter, that was sufficient.

> of oneself or in the interest of others; (3) the fair comment privilege; and (4) the privilege to make a fair and accurate report of public proceedings.

*Gohari v. Darvish*, 363 Md. 42, 57 (2001) (quoting Dan B. Dobbs, THE LAW OF TORTS, § 413, 1158 (2000)). The public interest privilege is applicable here, as Mr. Mohebbi and Ms. Howard published their statements to the police on matters within the police department's public responsibility of investigating and deterring criminal activity. *See Caldor, Inc. v. Bowden*, 330 Md. 632, 653-54 (1993) (noting that "a number of other courts apply ... a qualified privilege to communications made to police for the purpose of reporting criminal activity" and assuming these statements to the police are entitled to a qualified privilege in Maryland).

The only remaining question would be whether Mr. Mohebbi and Ms. Howard abused the qualified privilege. To demonstrate that a defendant abused the privilege, the plaintiff must establish that the defendant made the statement with actual malice—*i.e.*, with knowledge of falsity coupled with intent to deceive another by means of the statement. *Shirley v. Heckman*, 214 Md. App. 34, 45 (2013). Actual malice is not established if evidence shows the defendant "acted on a reasonable belief that the defamatory material was substantially correct and there was no evidence to impeach the publisher's good faith." *Bagwell*, 106 Md. App. at 513 (quoting *Capital-Gazette Newspapers, Inc. v. Stack*, 293 Md. 528, 539-40 (1982)). Here, there is nothing to suggest that Mr. Mohebbi and Ms. Howard acted in anything but good faith in providing statements to the police about what

they personally witnessed.[7] For all these reasons, the circuit court was legally correct in granting Mr. Mohebbi and Ms. Howard summary judgment on the defamation counts in Ms. Morris's complaint.

Ms. Morris's negligent retention or supervision claim against S&H is based on her claims of defamation in Mr. Mohebbi's and Ms. Howard's oral and written statements to the police, but the claim is actionable only if she established her underlying claims of libel and slander on the part of those S&H employees. Because, for the reasons above, we have concluded that Ms. Morris was unable to do so, the circuit court was also legally correct in granting S&H summary judgment.

**ORDERS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[7] Ms. Morris asserts that Mr. Mohebbi's phone call after the July 12, 2019, incident, in which he called her a "crazy bitch" within earshot of a police officer, shows malice that should negate his qualified privilege (she makes no specific claim in her brief that the call itself was defamatory). Mr. Mohebbi's phone call expressing his apparent opinion, however, occurred after he had made the privileged statements to the police and cannot be used to show the malice necessary to overcome the privilege he enjoyed in making his earlier factual statements to the police.