UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0156

September Term, 2015

JEFFREY HEFLIN

v.

KENNETH ULMAN, *et al.*

Graeff,
Nazarian,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: April 6, 2016

We are asked to determine whether the circuit court properly granted appellees' motion to dismiss. Because appellant Jeffrey Heflin's complaint failed to state a viable cause of action, we conclude that the circuit court properly granted the motion to dismiss.

BACKGROUND

Heflin is a former employee of the Howard County Department of Public Works ("DPW"). In 2013, Charles Lindenberg, another DPW employee, accused Heflin of harassment. Following an investigation, James Irwin, DPW's Director, issued charges of dismissal. The charges notified Heflin of Irwin's intent to terminate his employment for misconduct, pending a pre-termination hearing. Heflin appeared before Irwin for a pre-termination hearing. Irwin subsequently terminated Heflin's employment for misconduct, pursuant to section 1.115 of the Howard County Code. The termination letter, however, failed to include notice of Heflin's right to appeal the termination to the Personnel Board within 15 days, as is required by section 1.117(e) of the Howard County Code. Heflin never filed an appeal or a belated attempt to appeal with the Personnel Board.

Heflin instead filed a complaint in the Circuit Court for Howard County, naming as defendants: then-County Executive Kenneth Ulman, Irvin, and Lindenberg. In his complaint, Heflin asserted three claims stemming from his termination: (1) a violation of due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights; (2) intentional infliction of emotional distress; and (3) defamation. In response to Heflin's complaint, Ulman, Irvin, and Lindenberg filed a motion to dismiss for failure to state a claim. Heflin did not file a

response to the motion, but instead filed an amended complaint. The circuit court permitted Ulman, Irvin, and Lindenberg to adopt their first motion to dismiss as a motion to dismiss Heflin's amended complaint. Heflin again did not file a response to the motion to dismiss. The circuit court granted the unopposed motion to dismiss, dismissing all claims against Ulman, Irvin, and Lindenberg.

DISCUSSION

On appeal, Heflin argues that the circuit court erred in granting the motion to dismiss. Ulman, Irvin, and Lindenberg argue that the circuit court properly dismissed Heflin's suit. We review each of Heflin's causes of action—violation of procedural due process, intentional infliction of emotional distress, and defamation—and conclude that the circuit court properly granted the motion to dismiss because Heflin's allegations were insufficient to state a plausible claim for any of the three causes of action he asserted.[1]

"In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action. [We] should presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences

[1] This analysis applies to the claims against Ulman, as well as those against Irvin and Lindenberg. Additionally, as Heflin conceded at oral argument, Ulman, the county executive, is shielded from suit by public official immunity. "A governmental representative is entitled to public official immunity under the common law when he or she is acting as a public official, when the tortious conduct occurred while that person was performing discretionary rather than ministerial acts, and when the representative acted without malice." *Livesay v. Balt. Cnty.,* 384 Md. 1, 12 (2004). Perhaps more importantly, there are no allegations that Ulman was involved in any way.

derived therefrom." *Fioretti v. Maryland State Bd. of Dental Examiners*, 351 Md. 66, 72 (1998) (citations omitted). The grant of the motion to dismiss should be affirmed "if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven." *Higginbotham v. Public Serv. Comm'n of Maryland*, 171 Md. App. 254, 264 (2006).

I. Due Process Violation

In Count One, Heflin alleged that his procedural due process rights were violated because his termination letter did not include notice of the right to appeal. Ulman, Irvin, and Lindenberg argue that Heflin's allegations may have established a violation of Howard County Code, but failed to state a claim for a violation of due process. We conclude that Heflin's allegation of lack of notice was insufficient to establish a violation of his due process rights. We explain.

Heflin alleged that his termination letter did not include notice of his right to appeal his termination, as is required by Section 1.117(e) of the Howard County Code. That provision requires: "The notification of dismissal shall include notice that the employee may appeal the dismissal to the Personnel Board." Helfin's complaint alleged that the "lack of notice … constitutes … a strict liability violation of [his] due process rights" and that it was "a violation of [his] procedural due process rights."

The due process required to terminate an employee with a vested property interest in employment consists of a "limited pre-termination hearing that is an 'initial check against mistaken decisions' and a more comprehensive post-termination hearing." *Murphy*

v. Baltimore Cnty., 118 Md. App. 114, 125 (1997) (quoting *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 545 (1985)).

Even assuming that he had a vested property interest in his employment, Heflin's allegations did not establish a due process violation because he was not denied hearings. *First*, Heflin received a pre-termination hearing. *Second*, Heflin did not allege that he was denied a post-termination hearing, but only that he was not given proper notice of the right to that hearing. The letter's lack of notice, while a violation of Howard County Code § 1.117(e), does not rise to the level of a procedural due process violation. Moreover, Heflin never filed an appeal or a belated attempt to appeal with the Personnel Board, and therefore, has not shown that he was denied his post-termination hearing. Accordingly, we conclude that Heflin failed to state a claim for a violation of his procedural due process.

II. Intentional Infliction of Emotional Distress

In Count Two, Heflin alleged intentional infliction of emotional distress because, according to him, Lindenberg made "outrageous charges" against him and Irvin failed to properly and fully investigate the allegations. Ulman, Irvin, and Lindenberg respond that Heflin failed to state a claim for intentional infliction of emotional distress because he failed to allege facts showing extreme and dangerous conduct. We agree with Ulman, Irvin, and Lindenberg and conclude that Heflin's allegations failed to plead sufficient facts to establish intentional infliction of emotional distress.

The test for a sufficiently pled cause of action in intentional infliction of emotional distress is "rigorous, and difficult to satisfy." *Kentucky Fried Chicken Nat'l Mgmt. v. Weathersby*, 326 Md. 663, 670 (1992) (internal quotation omitted). "Simply including the signature language of an intentional tort does not cause a … claim to transform into an intentional tort." *Hines v. French*, 157 Md. App. 536, 559 (2004). Intentional infliction of emotional distress is a tort reserved for conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Harris v. Jones*, 281 Md. 560, 567 (1977). "The Court of Appeals has emphasized that 'the tort is to be used sparingly and only for opprobrious behavior that includes truly outrageous conduct.'" *Lasater v. Guttmann*, 194 Md. App. 431, 450 (2010) (quoting *Kentucky Fried Chicken Nat'l Mgmt.,* 326 Md. at 670).

Heflin failed to plead facts to establish intentional infliction of emotional distress. Although Heflin's complaint used the words "extreme and outrageous," he failed to plead any facts to support that allegation. *Hines*, 157 Md. App. at 558-59. The behavior that Heflin alleged—Irvin conducted a superficial investigation and Lindenberg made "outrageous" charges—does not satisfy the requirement of "truly outrageous conduct." *Lasater*, 194 Md. App. at 450. Therefore, Heflin failed to state a claim for intentional infliction of emotional distress.

III. Defamation

In Count Three, Heflin alleged defamation, claiming that Irvin and Lindenberg told others that Heflin had been "fired for misdeeds." Ulman, Irvin, and Lindenberg argue that Heflin failed to articulate facts sufficient to satisfy the elements of defamation. We conclude that Heflin's allegations were insufficient to establish defamation.

To properly plead a defamation claim under Maryland law, a plaintiff must allege specific facts establishing 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 thereby suffered harm." *Offen v. Brenner,* 402 Md. 191, 198 (2007).

Additionally, allegedly defamatory statements made within the context of the employer-employee relationship enjoy a qualified privilege. *Happy 40, Inc. v. Miller*, 63 Md. App. 24, 31 (1985). This privilege applies when the employer makes a statement about a previous employee or when discussing with other employees the circumstances giving rise to the employee's termination. *Id.* at 35-36. "If [an employer] were not permitted to tell [his or her employees] his [or her] reasons [for terminating the employee], he [or she] would run the risk of appearing arbitrary or capricious. This would affect the remaining employees' morale and sense of security." *Id.* at 36. To overcome the employer-employee privilege and prevail in a defamation suit, it is necessary for the plaintiff to show that the

statements were made with actual malice. *Montgomery Investigative Servs., Ltd. v. Horne*, 173 Md. App. 193, 208 (2007).

Here, Heflin failed to identify with any specificity the alleged false statements or to whom and in what form those statements were made. Additionally, Heflin's allegations showed that any statements were made in the context of the employer-employee relationship. Therefore, to the extent that any information regarding Heflin's termination, including the reason for his termination, was relayed to or discussed with his former coworkers, those communications fall within the employer-employee privilege. *See Happy 40, Inc.*, 63 Md. App. at 31. Because Heflin alleged no facts showing that those communications were made with actual malice, that privilege was not defeated. *See Montgomery Investigative Servs., Ltd.*, 173 Md. App. at 208. Accordingly, we determine that Heflin failed to state a claim for defamation.

Because Heflin's allegations were insufficient to state a plausible claim for any of the three causes of action he asserted, we conclude that the circuit court was correct in granting the motion to dismiss. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.