UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0694

September Term, 2014

CASH WILLIAMS

v.

AMIRA HICKS, ET AL.

Hotten,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: July 20, 2015

Appellant, a high school mathematics teacher, filed a defamation suit in the Circuit Court for Prince George's County, against the principal of the school at which she was employed, two students, and one parent. The circuit court granted appellees' respective motions for summary judgment, and appellant appealed, presenting five issues for our review, which we have consolidated and rephrased into three:

1. Can the principal, Dr. Cadet, be held liable for defamatory comments made by students?

2. Did the circuit court err in *sua sponte* raising statute of limitations?

3. Did statements made by the two students and parent constitute and/or benefit from qualified privilege?

For the reasons that follow, we shall affirm in part and reverse in part the judgment of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

Appellant, Cash Williams, was a mathematics teacher at Oxon Hill High School. During the 2010-2011 school year, appellee Dr. Jean-Paul Cadet ("Dr. Cadet"), was the principal, and appellees Amira Hicks ("Ms. Hicks") and Antonett Battle ("Ms. Battle") were students in appellant's Algebra 2 course. Appellant and Amira Hicks experienced several negative interactions during the Fall 2010 semester, which precipitated Ms. Hicks' failure of an open book test. Following a complaint by Ms. Hicks's mother, appellee, Aletha Waters ("Ms. Waters"), a conference was held on December 22, 2010, between appellant, Dr. Cadet, Ms. Hicks, Ms. Waters and other administrative officials.

On March 25, 2011, during a Parent Teacher Student Association meeting, several students expressed concerns regarding appellant's teaching practices. Additionally, several parents presented a student petition that was signed by 131 students requesting the removal of appellant. During this meeting, Dr. Cadet indicated to the students and parents that while he would not comment about appellant's performance specifically, he would follow school and county policies to address their concerns. In April of 2011, two events took place that are a subject of appellant's case. First, Ms. Battle published an article in the school newsletter entitled "Children Come First" which, according to appellant, contained defamatory statements about her. Second, on April 6, 2011, Ms. Hicks and Ms. Battle organized a protest regarding appellant. Some students held up signs. Ms. Waters testified that, after learning from her daughter that the protest would occur, she watched from her vehicle to ensure that her daughter did not do anything inappropriate, but did not participate. Following the protest, the Oxon Hill High School administration determined that it was in the school's best interest to place appellant on administrative leave for the remainder of the school year and to transfer her to another school for the following school year.

On April 5, 2012, appellant filed a defamation suit against Dr. Cadet, Ms. Hicks, Ms. Waters and Ms. Battle, asserting claims within the period between 2010 and 2011. Dr. Cadet moved for summary judgment through counsel and, Ms. Hicks and Ms. Waters, who were *pro se*, also moved for summary judgment on the basis of a failure to state a claim. Appellant was unable to personally serve Ms. Battle, who was subsequently served by

publication upon leave of the court. She never filed an answer to the complaint, did not participate in any of the proceedings before the circuit court, and did not file a brief before this Court.[1] The circuit court held a hearing regarding the motions for summary judgment on June 5, 2014, and granted the motions finding that the statements at issue were not defamatory and that additionally, most were barred by the statute of limitations. Regarding the claims against Ms. Battle, appellant had previously moved for a default judgment against her, however, the circuit court dismissed the claims against Ms. Battle, based on the same reasoning above. Appellant noted a timely appeal. Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues on appeal.

STANDARD OF REVIEW

We review a circuit court's grant of summary judgment *de novo*. *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 506 (2005). "In reviewing the grant of a motion for summary judgment, appellate courts focus on whether the [circuit] court's grant of the motion was legally correct." *Laing v. Volkswagen of Am., Inc*., 180 Md. App. 136, 152-53 (2008) (citations omitted). "The parameter for appellate review is determining whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial. . . ." *Id.* at 153 (internal quotations omitted). "Additionally, if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party." *Id*.

[1] Ms. Hicks also did not file a brief before this Court.

DISCUSSION

The court ruled on all three motions for summary judgment during the hearing on June 5, 2012. Although as previously noted, Ms. Battle did not participate, the court nonetheless resolved the claims against her.

1. Allegations pertaining to Dr. Cadet

Before the circuit court, appellant attributed five alleged defamatory "statements" to Dr. Cadet:

1) Dr. Cadet's statement that he would "get [appellant] out of the building by any means [n]ecessary[.]"
2) Dr. Cadet's statement to Ms. Hicks brother that he "did not want [appellant] in the building that that [appellant] would see what was in store for [appellant] and that [appellant] would be sorry."
3) Dr. Cadet's statement that "[appellant] could not teach."
4) Dr. Cadet's alleged encouragement of students to make signs about appellant.
5) Dr. Cadet permitting Ms. Battle's article to be published in the school newsletter.

From the commencement of the motions hearing, it was apparent that the circuit court had concerns regarding whether any of these statements were defamatory. Following appellant's arguments, the circuit court was unpersuaded and ruled:

> THE COURT: All right. I am going to grant the Motion for Summary Judgment – (Inaudible) to that. The five alleged defamatory statements – first of all, I find that they are not defamatory.
>
> (Pause)
>
> THE COURT: And a – I find further that all but – the fourth and fifth allegations are barred by limitations. Fourth and fifth are also not defamatory. That [Dr. Cadet] encouraged the students to assert that she was incompetent, unknowledgeable and unprofessional and that he encouraged

> and authorized an article. I do not find that he is responsible for the actions of the students in a legal sense, that is, in a tort sense.
>
> And a – further that the – Battle article does not appear to me to be defamatory either.
>
> So, I find that they are not defamatory. And the first three are barred by the Statute of Limitations.
>
> I do not find as a matter of law that they are either privileged or new, given that there is – some material dispute as to whether there was – they were delivered with malice. But I do find in any event that they were neither defamatory – they were not defamatory and – of course, they are barred by the Statute of Limitations. . . .

Before this Court, appellant asserts that Dr. Cadet is liable because he inspired appellees to make defamatory statements and encouraged the article authored by Ms. Battle. We are not persuaded.

Defamation encompasses two forms: libel (written defamation) and slander (oral defamation). *Adam v. Wells Fargo Bank, N.A., No*. CIV.A. ELH-09-2387, 2011 WL 3841547, at *21 (D. Md. Aug. 26, 2011) (citing *Gen'l Motors Corp. v. Parker*, 27 Md. App. 95, 113 (1975)). In order to properly plead defamation, a plaintiff must allege:

> . . . specific facts establishing four elements to the satisfaction of the fact-finder: (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.

Piscatelli v. Van Smith, 424 Md. 294, 306 (2012) (citations and internal quotes omitted). Counsel has not directed us to any authority supporting a proposition that an individual could be held liable for defamation by inspiring or encouraging another individual to publish a defamatory account and we were unable to find any case law to that effect. Accordingly, we disagree with appellant's claim that Dr. Cadet can be held liable for

statements made by students or articles written by students. The first element of defamation is that the defendant must make a statement. Therefore, her argument fails.

Appellant also argues that the court erred in *sua sponte* finding that the first three statements were barred by limitations. Maryland Code, Courts and Judicial Proceedings Article §5-105 provides: "An action for assault, libel, or slander shall be filed within one year from the date it accrues." Appellant's lawsuit was filed April 5, 2012; accordingly, only statements made after April 5, 2011 fell within the statute of limitations.

Appellant does not dispute that the first three statements were made prior to April 5, 2011, but rather claims that the court erred in raising the limitations issue when Dr. Cadet did not raise the issue himself. We note however, that the court's grant of Dr. Cadet's summary judgment motion relied upon its finding that the statements were not defamatory. The court merely mentioned that it also found that the first three were barred by limitations. Dr. Cadet was entitled to summary judgment notwithstanding that three of the statements were barred by limitations. Accordingly, we perceive no error.

2. Allegations pertaining to Ms. Hicks, Ms. Waters and Ms. Battle

a. Statute of limitations

Similar to her claim against Dr. Cadet, appellant contends that the court erred in granting summary judgment regarding the remaining appellees, based on its reasoning that all of the claims, except one, were barred by the statute of limitations. Appellant argues that appellees did not assert limitations in their answers and accordingly, the defense was waived. Therefore, she claims the court erred in its *sua sponte* finding that the statements were barred. Akin to the claims against Dr. Cadet, appellant does not argue that the

statements were not barred by limitations. Rather, appellant contends that the court should not have *sua sponte* raised the issue. The circuit court found:

> THE COURT: All right. I find that everything but the April 6th incident is barred by the Statute of Limitations. I do note that it was raised in Ms. Hicks' Answer. And again, I find that – while [appellees] themselves may be stopped from raising it if they failed to raise it timely, the Court under these circumstances, the Rule exists to protect the Courts from having to spend limited resources on stale claims.
>
> The Court has spent an extreme amount of time on this case already. And as I said, it is not two jackets and probably four inches thick at least, the file is. Spent a great deal of time on this case. And they are all stale claims.

The Court of Appeals has discussed the underlying rationale of statutes of limitation in *Pierce v. Johns-Manville Sales Corp.*, 296 Md. 656, 664-65 (1983). There, the Court opined:

> Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. Thus, the determination of when a cause of action accrues is properly made with reference to the rationale underlying statutes of limitation. The adoption of statutes of limitation reflects a policy decision regarding what constitutes an adequate period of time for a person of reasonable diligence to pursue a claim. Such statutes are designed to balance the competing interests of each of the potential parties as well as the societal interests involved. Thus, one of the purposes of such statutes is to assure fairness to a potential defendant by providing a certain degree of repose. This is accomplished by encouraging promptness in prosecuting actions; suppressing stale or fraudulent claims; avoiding inconvenience that may stem from delay, such as loss of evidence, fading of memories, and disappearance of witnesses; and providing the ability to plan for the future without the uncertainty inherent in potential liability. Another basic purpose is to prevent unfairness to potential plaintiffs

> exercising reasonable diligence in pursuing a claim. Still another purpose is to promote judicial economy.

(internal citations and quotations omitted).

Appellant's claim that the trial court *sua sponte* raised limitations was not an accurate reflection of the proceedings before the circuit court. As the court noted, Ms. Hicks raised the issue in her Answer to appellant's complaint. Accordingly, concerning Ms. Hicks, we hold that the court did not err in granting her motion for summary judgment on the basis of limitations.

Ms. Waters on the other hand, did waive her right to assert a limitations defense, predicated on her failure to assert such a claim in her answer. *See Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 508 (1995) (finding that an appellee had waived his right to assert limitations as a defense after failing to assert the claim in his answer). Appellant alleged that Ms. Waters made two defamatory comments/actions. First, that Ms. Waters stated that appellant "was no teacher, [appellant] could not teach, and [Ms. Waters] would see that the Principal would get rid of [appellant]." Second, that Ms. Waters was involved in the protest. Notwithstanding her waiver of limitations as a defense, we hold that any error the court may have committed granting Ms. Water's motion based on limitations was harmless, because the statements were protected under qualified privilege. We elaborate below.

b. Qualified privilege

Appellant challenges the circuit court's finding that all of her claims made against Ms. Hicks, Ms. Waters and Ms. Battle, were barred by qualified privilege.

> THE COURT: . . . The only one that is not [barred by limitations] is a claim arising from the April 6th, 2011 – protest incident. And I find that those statements are privileged – they are both comments regarding limited public figures in matters of general public interest. This being a teacher in a public school and also there is a privilege, I find for the students and their – parents, legal guardians when the students are minors, to – with regard to complaints about their teachers.
>
> So, I find that the claims are barred, all but the April 6th protest, are barred by [l]imitations. And that all the claims are – against Ms. Waters and Ms. Hicks are privileged.

Under common law, there are only two defenses to defamation: truth[2] and privilege. *See Jacron Sales Co. v. Sindorf*, 276 Md. 580, 584 (1976). Judge Charles Moylan explained in *Montgomery Investigative Servs., Ltd. v. Horne*, 173 Md. App. 193, 196 (2007), that "[t]he rule is that a defendant may not, without liability, publish defamatory information about a plaintiff. An exception to the rule is that sometimes a defendant enjoys a qualified privilege to publish defamatory information in order to serve some greater need." Judge Moylan continued:

> the general legal principle whereby conditional or qualified privileges rest upon the notion that a defendant may escape liability for an otherwise actionable defamatory statement, if publication of the utterance advances social policies of greater importance than the vindication of a plaintiff's reputational interest. . . . [T]he common law recognized that a person ought

[2] Maryland Courts have held that when truth is asserted as a defense, the plaintiff holds the burden of establishing falsity. *See e.g. Chesapeake Pub. Corp. v. Williams*, 339 Md. 285, 296 (1995); *Jacron*, *supra*, 276 Md. at 597 (1976). *Cf. Fitzgerald v. Penthouse Int'l LTD*, 639 F.2d 1076 (4th Cir. 1981) (reviewing a defamation suit in which the federal district court granted summary judgment reasoning that the alleged statements were not defamatory, and alternatively that the statements were true. The United States Court of Appeals for the 4th Circuit observed that in Maryland, truth is a defense to defamation, but notwithstanding, the Court reversed, based on its finding that there were disputes of fact and accordingly, summary judgment was improper).

> to be shielded against civil liability for defamation where, in good faith, he publishes a statement in the furtherance of his own legitimate interests, or those shared in common with the recipient or third parties.

Id. at 206 (quoting *Marchesi v. Franchino,* 283 Md. 131, 135, 387 A.2d 1129 (1978)). Furthermore, "[w]hen the evidence in the record demonstrates that the defendant had a reasonable basis for believing the truth of the statement and there is no evidence impeaching the defendant's good faith, the court must enter judgment against the plaintiff." *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 512 (1995).

In *Reichardt v. Flynn*, 374 Md. 361, 372 (2003), the Court of Appeals acknowledged the strong public interest in proceedings arising out of the public school system involving students and parents. This case involved statements made at administrative hearings, but nevertheless expresses the idea that there is social benefit from students, parents and teachers being free to make claims and initiate investigations into activities within public schools. *Id.* at 364-66. There, the Court held that a circuit court did not err in dismissing a teacher's defamation suit against students and parents because the statements were privileged. *Id*. at 378.

In the case at bar, we agree with the circuit court's finding that the statements made by appellees were privileged. Since we conclude that the statements were privileged, we shall not address whether they were in fact defamatory. The first alleged defamatory statements occurred during a meeting between appellant, Dr. Cadet, Ms. Hicks, Ms. Waters and other school administrators. The purpose of the meeting was to address Ms. Hicks' concerns regarding appellant's teaching practices. Furthermore, regarding the allegations of defamation made subsequent to the meeting and those made at the protest, we find that

Ms. Waters, Ms. Hicks and Ms. Battle, had reasonable grounds for making their statements. Ms. Hicks testified that she had maintained at least a 3.0 grade point average throughout high school, and therefore, her receipt of failing grades in appellant's course led her to question appellant's teaching methods. Additionally, after a review of the record before the circuit court, we fail to discern bad faith on the part of Ms. Hicks, Ms. Waters or Ms. Battle. We conclude that the public benefit in allowing students and parents to question teaching methods, with the goal of ensuring students are receiving a proper education, is of "greater importance than the vindication of a plaintiff's reputational interest." *Horne*, *supra*, 173 Md. App. at 206.

If a court finds that "a statement enjoys a qualified privilege, the privilege defeats an action for defamation." *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 511 (1995). Therefore, because we perceive no error in the court's finding that the alleged defamatory statements were privileged, we decline to reverse the circuit court's grant of summary judgment.

c. Dismissal of claims against Ms. Battle

Finally, appellant contends that the circuit court erred in dismissing the claims against Ms. Battle, when appellant moved for a default judgment against her for failing to file an answer. Regarding Ms. Battle, the circuit court found:

> THE COURT: . . . The only other [appellee] is Ms. Battle. Remind me again, I cannot find it in all this – paperwork, [what] is the status of that claim?
>
> * * *
>
> [APPELLANT'S COUNSEL]: No. But there has been a Motion for Default, it has been filed, Your Honor, it is in the record.

THE COURT: And Ms. Battle is the one who wrote the – the claim against her is that she wrote that –

[APPELLANT'S COUNSEL]: The Search –

THE COURT: – newspaper article that is – the SearchLight article.

[APPELLANT'S COUNSEL]: Yes.

THE COURT: I am going to – and when was that published?

[APPELLANT'S COUNSEL]: A –

THE COURT: April 17th

(Pause)

THE COURT: I am going to dismiss that as well. It is not barred by limitations. It is – for the most party non-defamatory and to the extent that there is an [sic] defamatory statements, I find again that, it is privileged in dealing with –

APPELLANT: I am sorry, I can't hear you.

THE COURT: I find that it is privileged in dealing with a – limited public figure, comments and opinions regarding limited public figure on a matter of general public interest.

(Pause)

. . . So, I am going to – grant all the Motions and dismiss the outstanding claim against Ms. Battle, who – while she may be in default, but I am not going to allow it go [sic] forward in any event.

Maryland Rule 2-613 outlines the default judgment process. Once the time to respond to a pleading has expired, a plaintiff may file a request with the court to enter an order of default. Md. Rule 2-613(b). The court must then enter an order of default, and issue notice to the defendant stating that the defendant has 30 days to move to vacate the order of default. Md. Rule 2-613(c). If no motion to vacate is filed, the court *may* enter a default judgment. Md. Rule 2-613(f).

In the instant case, Ms. Battle neither answered the complaint nor participated in the proceedings before the circuit court. On July 9, 2013, appellant filed a motion for order of default judgment as to Ms. Battle. Therefore, as required by Md. Rule 2-613(b), the circuit court should have entered an order of default against Ms. Battle but did not. After waiting the requisite 30 days, if Ms. Battle failed to move to vacate the order of default, the court could have considered appellant's motion to enter a default judgment and addressed the question of possible damages. Accordingly, we shall reverse the court's dismissal of the claims against Ms. Battle, remand the matter for the entry of an order of default and further proceedings regarding the claims against Ms. Battle.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.