Circuit Court for Montgomery County
Case No.: C-15-CV-23-001600

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1670

September Term, 2023

EMMANUEL EDOKOBI

v.

PETER SMITH

Graeff,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 16, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Emmanuel Edokobi, appellant, sued Peter Smith, appellee, in the Circuit Court for Montgomery County alleging, generally, defamation. Smith moved to dismiss for failure to state a claim, and Edokobi opposed. After a hearing, the court granted Smith's motion and dismissed the case. This appeal followed.

Whether dismissal was proper is a legal question. *Cain v. Midland Funding, LLC*, 475 Md. 4, 33 (2021). Our review is therefore *de novo*. *Id.* In doing so, we assume the truth of all well-pleaded facts and view all inferences reasonably drawn from them in the light most favorable to the plaintiff. *Morris v. Goodwin*, 230 Md. App. 395, 401 (2016). Dismissal is proper "only if the allegations and permissible inferences, if true, . . . do not state a cause of action for which relief may be granted." *Id.* (cleaned up). We may affirm the judgment "on any ground adequately shown by the record, whether or not relied upon by the trial court." *Id.* (cleaned up).

To adequately plead a claim for defamation, the complaint must allege: (1) the defendant made a defamatory statement to a third person; (2) the statement was false; (3) the defendant was at fault in making the statement; and (4) the plaintiff suffered harm. *See Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012). On appeal, Edokobi challenges the dismissal of only some of his claims, so we will limit our discussion accordingly. *See Jacober v. High Hill Realty*, *Inc.*, 22 Md. App. 115, 125 (1974) ("We decline to consider the argument as it was not presented in the brief."); Md Rule 8-504(a)(6).

In the light most favorable to Edokobi, the complaint alleged, generally, three claims: *first*, during an argument in front of two of Edokobi's employees about payment for work Smith had performed, Smith called Edokobi "a piece of garbage." *Second*, after

Edokobi's employees left, Smith cast "evil curses" upon Edokobi's life and business. And *third*, in private text messages between the parties, Smith called Edokobi "stupid," "evil," and "foolish," and threatened to remove Edokobi's industrial equipment from his warehouse.

Edokobi's second and third claims cannot satisfy the first element of defamation. Even if the alleged statements were defamatory, they were not made to, or in front of, a third person. *See Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 650 (1970) (quoting *Geraghty v. Suburban Tr. Co.*, 238 Md. 197, 202 (1965)). Thus, the circuit court did not err in dismissing them.

Edokobi's remaining claim also fails to satisfy the first element of defamation. Although this statement was made in front of third persons, as a matter of law, it was not defamatory. "A defamatory statement is one [that] 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). "The test is whether the words, taken in their common and ordinary meaning, in the sense in which they are generally used, are capable of defamatory construction." *Id.* at 724 n.14.

What is more, "statements that cannot reasonably be interpreted as stating actual facts" cannot be defamatory. *Balt. Sports & Soc. Club, Inc. v. Sport & Soc., LLC*, 228 F. Supp. 3d 544, 550 (D. Md. 2017) (cleaned up) (applying Maryland defamation law). For example, "rhetorical statements employing loose, figurative, or hyperbolic language[,]" unless coupled with verifiably false statements of fact, as a matter of law, are not

defamatory. *Id.* (cleaned up). *See also Letter Carriers v. Austin*, 418 U.S. 264, 286 (1974) (union newsletter, calling a non-union worker a "scab" and "traitor" for refusing to join union, was "merely rhetorical hyperbole, a lusty and imaginative expression of the contempt felt by union members towards those who refuse to join[,]" and could not reasonably be viewed as a "factual representation").

To be sure, merely couching a statement as an "opinion" does not foreclose it from being defamatory. *See generally Peroutka v. Streng*, 116 Md. App. 301, 313–16 (1997). For example, a statement in the form of an opinion may still be actionable "if it implies the allegation of undisclosed defamatory facts as the basis for the opinion." *Hearst Corp. v. Hughes*, 297 Md. 112, 131 (1983) (quoting RESTATEMENT (SECOND) OF TORTS § 566 (Am. L. Inst. 1977)).

A statement does not rise to the level of defamation, however, "simply because the subject of the [statement] finds [it] annoying, offensive, or embarrassing." R.A. Smolla, 1 *Law of Defamation*, § 4:7 (2d ed., 2023 Supp.). *See also*, *e.g.*, *Meier v. Novak*, 338 N.W.2d 631, 635 (N.D. 1983) (holding that it is not defamatory to call someone an "asshole"); *Cowan v. Time Inc.*, 245 N.Y.S.2d 723, 725–26 (1963) (holding that it is not defamatory to call someone an "idiot"). "The common law has always differentiated sharply between genuinely defamatory communications [and] obscenities, vulgarities, insults, epithets, name-calling, [or] other verbal abuse." Smolla, *supra*, at § 4:7. "No matter how obnoxious, insulting, or tasteless such name-calling [may be], it is regarded as a part of life for which the law of defamation affords no remedy." *Id.* at § 4:8. *Cf.* RESTATEMENT (SECOND) OF TORTS § 46, cmt. d (Am. L. Inst. 1965) (Liability for the tort of intentional infliction of

emotional distress "clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."). So too here.

Smith's statement calling Edokobi "a piece of garbage" is not capable of defamatory construction. Taken in their common and ordinary meaning, these words can be understood only as a metaphor through which the speaker—Smith—is expressing an unfavorable opinion of the subject—Edokobi. The statement cannot reasonably be interpreted as stating actual facts and, by itself, does not imply the allegation of undisclosed defamatory facts as the basis for the opinion. It is not a statement that "tends to expose [the subject] 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*, 325 Md. at 722–23. Put simply: Edokobi may have been *insulted* by Smith's statement, but, as a matter of law, he was not *defamed* by it. Consequently, Edokobi's complaint failed to state a claim for defamation, and the circuit court did not err in dismissing it.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.