

Patrick Kason

IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
UNION COUNTY

JESSICA MOORE,  
PLAINTIFF-APPELLANT,

v.

DOLLAR GENERAL  
CORPORATION, ET AL.,

DEFENDANTS-APPELLEES.

CASE NO. 14-15013

2015 NOV -9 AM 11:44

COURT OF APPEALS  
UNION COUNTY

JUDGMENT  
ENTRY

Wanda K. Nicolle  
CLERK

This appeal, having been placed on the accelerated calendar, is being considered pursuant to App.R. 11.1(E) and Loc.R. 12. This decision is therefore rendered by summary judgment entry, which is only controlling as between the parties to this action and not subject to publication or citation as legal authority under Rule 3 of the Ohio Supreme Court Rules for the Reporting of Decisions.

On September 17, 2013, plaintiff-appellant Jessica Moore ("Appellant") went to the Dollar General Store in Marysville owned by defendant-appellee Dollar General Corporation ("Appellee"). The store manager was one Logan Good ("Good") who greeted Appellant and started talking to her. Appellant's Dep. at 13. While Appellant was shopping, she opened her purse and put something in it. Ex. D, Appellant's Dep. at 24-25. The video was unclear as to what the item was. Ex D. After Good observed this on the video he spoke with the cashier, Megan Gamble ("Gamble") and indicated that he thought Appellant

was shoplifting. Gamble Dep. at 8. Gamble told Good that company policy was to call the police. *Id.* Good then called the police and followed Appellant around the store and chatted with her. *Id.* at 15. After Appellant paid for the items in her cart, she walked out of the store and was stopped by Good and the police. Appellant's Dep. at 26. Good then informed Appellant that he needed to search her purse. *Id.* at 27. After the police informed her that she had to let Good go through the purse, she opened the purse. *Id.* Good then searched the purse, found nothing, and said "oops." *Id.* Appellant was permitted to leave. *Id.* The entire stop lasted a little over a minute and a half. Ex. D. Two other customers and an employee of the store observed this. Appellant's Dep. 36-38. Appellant put her items in her car, returned the cart, and left. Ex. D.

On April 9, 2014, Appellant filed a complaint alleging claims of false imprisonment, defamation, and tortious interference with a business relationship against Appellee and Good. Doc. 2. Appellee was served on April 14, 2014, but no service was obtained on Good as he was no longer at the store. Doc. 6, 7. Appellee filed its answer claiming privilege as one of its defenses. Doc. 10. Appellee later filed a motion for summary judgment. Doc. 34. Appellant then voluntarily dismissed the claim for tortious interference with a business relationship. Doc. 41. Good filed a motion through counsel to dismiss for failure of service. Doc. 50. Appellant filed her response to Appellee's motion for summary judgment. Doc. 54. Appellant also filed a response agreeing to the

dismissal of Good as a party, but indicating that if he were to be found, she wished the opportunity to depose him prior to him testifying at trial. Doc. 55. On May 5, 2015, the trial court entered judgment granting Appellee's motion for summary judgment on the grounds of absolute immunity. Doc. 63. Appellant then filed her notice of appeal. Doc. 68. On appeal, Appellant raises the following assignment of error.

**The trial court erred in granting Appellee's motion for summary judgment where reasonable minds could differ in concluding that Appellee's employee did not act to detain Appellant with probable cause to believe Appellant had committed theft and that Appellee's accusations of theft were made in bad faith.**

*Standard of Review*

This court reviews a grant of summary judgment de novo without deference to the trial court. *Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 2007-Ohio-4948, 874 N.E.2d 1155 at ¶ 5. "The party moving for summary judgment must establish (1) that there are no genuine issues of material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Lillie v. Meachem*, 3d Dist. Allen No. 1-09-09, 2009-Ohio-4934, ¶ 21. "In ruling on a summary judgment motion, a court is not permitted to weigh evidence or choose among reasonable inferences, rather, the court must evaluate evidence, taking all permissible inferences and resolving

questions of credibility in favor of the non-moving party.” *Adkins v. Chief Supermarket*, 3d Dist. Paulding No. 11-06-07, 2007-Ohio-772, ¶ 8.

The party moving for summary judgment has the burden of stating specifically which areas of the opposing claims raise no genuine issue of material fact. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 116, 526 N.E.2d 798 (1988). A failure to meet this burden means that summary judgment is inappropriate. *Lillie*, *supra* at ¶ 22. However, if the burden is met, the non-moving party must then set forth specific facts showing that there is a genuine issue of material fact. *Id.*

#### *False Imprisonment Claim*

Appellant raises claims of false imprisonment and defamation in her complaint. One has been falsely imprisoned if he or she was confined intentionally without lawful privilege and without consent for any appreciable time, however short. *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71, 362 N.E.2d 646 (1977). In Ohio, a merchant is granted authority under certain circumstances to temporarily detain a person suspected of shoplifting. R.C. 2935.041. “A merchant, or an employee or agent of a merchant, who has probable cause to believe that items offered for sale by a mercantile establishment have been unlawfully taken by a person, may for the purposes set forth in division (C) of this section, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity. R.C. 2935.041(A). The statute then permits the limited detention for the purpose of recovering the

property, causing the person to be arrested, allowing for the authorities to obtain a warrant of arrest, and to allow the merchant to inform the person of the legal remedies available to the merchant. R.C. 2935.041(C). A merchant who detains an individual pursuant to this statute with probable cause to do so has qualified immunity from civil liability for false imprisonment. *Ashcroft Mt. Sinai Medical Ctr.* 68 Ohio App.3d 359, 588 N.E.2d 280 (1990) (concluding that false imprisonment claim fails under the statutory immunity when guards had probable cause to detain defendant suspected of shoplifting in a hospital gift shop).

Appellant in this case was seen on the surveillance video entering the store and picking up various pieces of merchandise. At one point in the surveillance video, Appellant was seen placing something unidentifiable in her purse. Although it was later determined that the item was her phone and she had not placed any merchandise in her purse, the video provides probable cause for Good, an employee of Appellee, to suspect Appellant of shoplifting and to detain her for a reasonable time to investigate. The undisputed evidence is that Good saw the video and contacted the police for assistance in recovering Appellee's property pursuant to Appellee's policy. Once Appellant left the store, she was temporarily detained and asked to show the inside of her purse. Although Good contacted the police for assistance, he was the one who stopped Appellant and indicated that he wished to search her purse, and thus is subject to the requirements of R.C. 2935.041. The search was quick and the entire detention lasted less than two

minutes. This was not unreasonable under the circumstances. Since the undisputed evidence indicates that Good, as an agent of Appellee, had probable cause to suspect shoplifting based upon what is seen in the surveillance video, Appellee has qualified immunity to briefly detain Appellant for the purpose of attempting to recover property believed to have been stolen. Therefore, summary judgment was proper as to the false imprisonment claim.

#### *Defamation Claim*


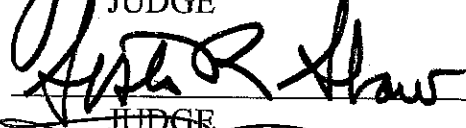
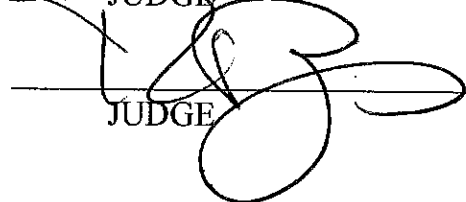
The second claim dismissed pursuant to summary judgment was defamation. The elements of defamation are 1) a false and defamatory statement, 2) an unprivileged publication to a third party, 3) fault amounting to at least negligence by the publisher, and 4) actionability of the statement. *Hodges v. Meijer, Inc.*, 129 Ohio App.3d 318, 324, 717 N.E.2d 806 (1998). The degree of fault must at least rise to the level of negligence. *Bosak v. Kalmer*, 7<sup>th</sup> Dist. Mahoning No. 01CA18, 2002-Ohio-3463, ¶ 29. If a party has reasonable grounds to believe that what they claim is true, then there is no defamation. *Id.*

Here the basis for the defamation claim was exposing Appellant to public shame and ridicule by stopping her outside the store. Thus the detention and the search of her purse in public are the “statement” alleged to be false and defamatory. However, as discussed above, the stop outside the store and the subsequent search of Appellant’s purse was privileged pursuant to R.C. 2935.04. Since the “publication” was privileged, the defamation claim must fail.

Although the trial court granted summary judgment based upon the claim of absolute privilege, we do not address that argument. The review of a motion for summary judgment is de novo and this court finds that the claim is barred pursuant to the qualified immunity granted by R.C. 2935.041. Thus, the assignment of error is overruled.

Accordingly, for the aforementioned reasons, it is the order of this Court that the Judgment Entry of the Court of Common Pleas of Union County be, and hereby is, affirmed. Costs are assessed to Appellant for which judgment is hereby rendered. This cause is remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this judgment entry to the trial court as the mandate prescribed by App.R. 27, and serve a copy of this judgment entry on each party to the proceedings and note the date of service in the docket as prescribed by App.R. 30.

  
\_\_\_\_\_  
JUDGE  
  
\_\_\_\_\_  
JUDGE  
  
\_\_\_\_\_  
JUDGE

DATED: NOVEMBER 9, 2015  
/hlo