APPENDIX

Michigan Supreme Court
Lansing, Michigan

Order

March 5, 2018

156447

ALFONSO IGNACIO VIGGERS,
Plaintiff-Appellant,

MARIA DE LA MERCED VIGGERS,
Defendant-Appellee.

SC: 156447
COA: 332481
Washtenaw CC: 15-000799-CZ

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On order of the Court, the application for leave to appeal the August 10, 2017 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN
COURT OF APPEALS

ALFONSO IGNACIO VIGGERS,
Plaintiff-Appellant,
v
MARIA DE LA MERCED VIGGERS,
LC No. 15-000799-CZ
Defendant-Appellee.

No. 332481
Washtenaw Circuit Court
LC No. 15-000799-CZ
UNPUBLISHED
August 10, 2017

Before: CAVANAGH, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff, Alfonso Viggers, appeals as of right the trial court's order granting summary disposition in favor of defendant, Maria Viggers. For the reasons stated below, we affirm.

I. BASIC FACTS

Viggers filed a defamation suit against Maria Viggers, his stepmother, claiming that she had defamed him in e-mails and voice-mail messages left for employees in the University of Michigan's Information Technology (IT) department.1 He

contends that the defamation caused him to lose a job opportunity with the University.

Viggers was employed at ALPAC, Inc., as a computer programmer and database administrator. ALPAC provided IT contracting services to the University. The University made Viggers an employment offer contingent on a background check and immigration status. In March and April 2015, Maria Viggers left several voice-mail messages and sent several e-mails to employees in the University's IT department accusing Viggers of hacking and other illegal activities. At the end of July 2015, ALPAC notified the University that it was terminating Viggers's employment because of certain statements that Viggers made in two e-mails that ALPAC had interpreted as threats. Viggers was notified that his employment with ALPAC was terminated on July 30. The next day, he received a letter from the University stating that it was rescinding its employment offer.

Plaintiff filed a complaint asserting that Maria Viggers's accusations caused the University to rescind its employment offer. Maria Viggers filed for summary disposition under MCR 2.116(C)(10). According to Maria Viggers, she made the communications at issue to the University between April 15, 2015, and May 1, 2015, while she was suffering from a psychotic break with reality. On April 29, 2015, Maria Viggers was committed to a psychiatric facility based on a medical certification that she was a danger to herself or others. While Maria Viggers was in the

hospital, she stated that she was a patient at a psychiatric facility in her communications to the University. Therefore, Maria Viggers argued that no reasonable person "standing in the shoes" of the employees at the University could have taken any of her statements "to be anything other than the ramblings of a troubled person with a mental illness." Furthermore, she asserted that the University clearly demonstrated through the sworn testimony of its employees that nothing she did or said had anything to do with Viggers's loss of a job opportunity. The trial court granted the motion, finding that Viggers had failed to establish that Maria Viggers's statements caused him any damages or that the statements were made with malice.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Viggers contends that the trial court erred in granting summary disposition in favor of Maria Viggers. This Court reviews de novo a trial court's ruling on a motion for summary disposition. Barnard Mfg Co, Inc v Gates Performance Engineering, Inc, 285 Mich.App. 362, 369; 775 N.W.2d 618 (2009). When reviewing a motion brought pursuant to MCR 2.116(C)(10), this Court "must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the party opposing the motion." Baker v Arbor Drugs, Inc, 215 Mich.App. 198, 202; 544 N.W.2d 727 (1996). This Court's "task is to review the record evidence, and all reasonable inferences drawn from it, and

decide whether a genuine issue regarding any material fact exists to warrant a trial." Id.

B. ANALYSIS

A successful claim for defamation requires:

1) a false and defamatory statement concerning the plaintiff, 2) an unprivileged communication to a third party, 3) fault amounting to at least negligence on the part of the publisher, and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. [Rouch v Enquirer & News of Battle Creek Mich, 440 Mich. 238, 251; 487 N.W.2d 205 (1992).]

In pertinent part, MCL 600.2911 provides:

(1) Words imputing a lack of chastity to any female or male are actionable in themselves and subject the person who uttered or published them to a civil action for the slander in the same manner as the uttering or publishing of words imputing the commission of a criminal offense.

(2)(a) Except as provided in subdivision (b), in actions based on libel or slander the plaintiff is entitled to recover only for the actual damages which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.

* * *

(7) An action for libel or slander shall not be brought based upon a communication involving a private individual unless the defamatory falsehood concerns the private individual and was published negligently. Recovery under this

provision shall be limited to economic damages including attorney fees.

This Court has explained that:

Under subsection 7, if the publication of the defamatory falsehood is negligent, a private plaintiff must prove economic damages but cannot recover for injuries to feelings. Under subsection 2(a), however, if a private plaintiff proves actual malice, the plaintiff is entitled to, among other things, actual damages to reputation or feelings. [Glazer v Lamkin, 201 Mich.App. 432, 437; 506 N.W.2d 570 (1993)].

"To show actual malice, plaintiffs must prove that the defendant made the statement with knowledge that it was false or with reckless disregard of the truth." Id. at 438.

In Maria Viggers's motion for summary disposition, she argued that sworn testimony of University employees showed that her statements did not have anything to do with the University's decision to rescind the job offer. Further, the University suspended Viggers's visa application process after being notified that ALPAC was pursuing a green card on Viggers's behalf at the same time. The process was again suspended due to the human resources employee's workload and her inability to access the proper forms. As a result, Maria Viggers contended that Viggers failed to demonstrate that her statements caused any damages. She also contended that Viggers could not show malice because she made the statements while she was suffering from a psychotic break with reality.

In response, Viggers did not "set forth specific facts at the time of the motion showing a genuine issue for trial." Lowrey v LMPS & LMPJ, Inc, 500 Mich. 1, 8; 890 N.W.2d 344 (2016). He did not provide any evidence to demonstrate that the University rescinded the job offer or suspended the visa process because of Maria Viggers's statements. Thus, Viggers failed to show that the statements caused any economic damages. Glazer, 201 Mich App at 437. In addition, he did not provide any evidence showing that Maria Viggers, who was undisputedly committed to a psychiatric facility during the period when she made some of the statements, made the statements with actual malice. Although Viggers contends that the time and effort Maria Viggers put into finding the contact information for University employees shows that she acted with malice or that she did not suffer from a mental illness, the petition requesting her hospitalization stated that she was "paranoid and delusional." Specifically, Maria Viggers believed that her husband, Viggers, and the government were "attempting to take control of her life by watching her through the T.V., following her, tapping her phones and crawling through her attic." Based on the evidence submitted to the trial court, Viggers has not shown that Maria Viggers "made the statement[s] with knowledge that it was false or with reckless disregard of the truth."2 As such, the trial court properly granted summary disposition.3

III. DISCOVERY

A. STANDARD OF REVIEW

Next, Viggers argues that the trial court erred in denying him discovery on a number of issues. "This Court reviews rulings on motions to compel discovery for an abuse of discretion." Cabrera v Ekema, 265 Mich.App. 402, 406; 695 N.W.2d 78 (2005).

B. ANALYSIS

1. SPOUSAL PRIVILEGE

Viggers contends that the trial court erred in denying him discovery related to his father. In pertinent part, MCL 600.2162 provides:

(1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).

Here, the trial court properly concluded that the marital privilege applied. Viggers acknowledged that Maria Viggers and his father were married. Furthermore, none of the exceptions listed in MCL 600.2162(3) apply in this case. We note that whether Maria Viggers committed a "personal wrong or injury" against Viggers's father as required in MCL 600.2162(3)(d) had no bearing on Viggers's defamation claim against her. Therefore, the trial court did not abuse its discretion in concluding that the spousal privilege did apply and that Viggers's father was excused from being deposed.

2. ATTORNEY-CLIENT PRIVILEGE

Next, Viggers contends that the trial court improperly denied discovery of five redacted

e-mails from the University based on the conclusion that those documents were protected by the attorney-client privilege. "Whether the attorney-client privilege may be asserted is a legal question that this Court reviews de novo." Reed Dairy Farm v Consumers Power Co, 227 Mich.App. 614, 618; 576 N.W.2d 709 (1998). Once this Court determines "whether the attorney-client privilege is applicable to the facts of [the] case, [this Court] must then determine whether the trial court's order was proper or an abuse of discretion." Id.

The attorney-client privilege attaches to direct communication between a client and his attorney as well as communications made through their respective agents. The scope of the attorney-client privilege is narrow, attaching only to confidential communications by the client to his advisor that are made for the purpose of obtaining legal advice. Where an attorney's client is an organization, the privilege extends to those communications between attorneys and all agents or employees of the organization authorized to speak on its behalf in relation to the subject matter of the communication. [Id. at 618-619 (citations omitted).]

At the outset, Viggers does not appear to argue that the trial court improperly concluded that the attorney-client privilege applied to the redacted e-mails at issue. Instead, Viggers contends that the e-mails are subject to an exception to the attorney-client privilege. Furthermore, the original (unredacted) e-mails are not included in the lower court file, and Viggers has not filed a

motion requesting them pursuant to MCR 8.119(I)(6).4

At a motion hearing before the trial court, the University argued that even if the information on the redacted e-mails was directly relevant to Viggers's claim, it was protected as communications between a lawyer and client for the purpose of obtaining legal advice. The University allowed the trial court to review the e-mails in camera. After review, the trial court concluded that the e-mails contained conversations between University employees and their lawyer regarding hiring and firing decisions, which were protected by the attorney-client privilege. Because Viggers does not allege that the trial court's determination that the e-mails were protected by the attorney-client privilege was in error, because the e-mails were not included in the lower court record and Viggers did not file a motion requesting them, and because the trial court reviewed the e-mails in camera before making its determination, we cannot conclude that the trial court's decision to preclude discovery of these e-mails was an abuse of discretion. See Reed Dairy Farm, 227 Mich App at 618.

3. E-MAIL HEADER INFORMATION

Finally, Viggers argues that the trial court erred in denying discovery of Maria Viggers's e-mail header information. In the trial court and on appeal, he contends that he is entitled to the e-mail header information because he believes that she did not provide all e-mails relating to him. However, as discussed above, Maria Viggers

admitted she made the communications. Additionally, whether she violated a personal protection order is irrelevant to Viggers's claims that her communications damaged him. Further, Maria Viggers also provided all e-mails she sent involving Viggers during discovery in the trial court. As a result, we do not believe that the trial court abused its discretion in ordering that Maria Viggers manually provide e-mails pertaining to Viggers instead of ordering that she sign a consent form to allow her Internet service provider to provide her e-mail header information to Viggers.

Affirmed. As the prevailing party, Maria Viggers may tax costs. MCR 7.219(A).

/s/Mark J. Cavanagh
/s/Patrick M. Meter
/s/Michael J. Kelly

FootNotes

1. Because the parties share a surname, we will refer to plaintiff as "Viggers" and defendant as "Maria Viggers."

2. We note that, according to the petition for involuntary committal, it appears that Maria Viggers actually believed the allegations she made against Viggers were true.

3. At the summary disposition motion hearing, Viggers also argued that defamation per se did not require a showing of economic damages. Accusations of criminal activity "constitute defamation per se and are actionable even in the absence of an ability to prove actual or special damages." Burden v Elias Bros Big Boy

Restaurants, 240 Mich.App. 723, 728; 613 N.W.2d 378 (2001). However, Viggers did not allege defamation per se in his complaint. He also did not request leave to amend his complaint in the trial court to include a claim of defamation per se, and the trial court did not consider this claim when it addressed the motion for summary disposition. Therefore, this claim was not properly raised in the trial court. "As a general rule, issues that are not properly raised before a trial court cannot be raised on appeal absent compelling or extraordinary circumstances." People v Gant, 445 Mich. 535, 546; 520 N.W.2d 123 (1994). Therefore, we decline to address this argument further.

4. MCR 8.119(I)(6) states:

Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

Court of Appeals, State of Michigan

ORDER

Mark J. Cavanagh
Presiding Judge
Patrick M. Meter
Michael J. Kelly
Judges

Alfonso Ignacio Viggers v Maria De La Merced Viggers
Docket No. 332481
LC No. 15-000799-CZ

The Court orders that the motion for reassignment to another trial judge upon completion of the appellate review is DENIED.

July 25, 2017

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF WASHTENAW

Case No. 15-799-CZ
Honorable Carol Kuhnke

ALFONSO IGNACIO VIGGERS,

Plaintiff,

vs

MARIA DE LA MERCED VIGGERS,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT

At a session of the Court held in the Washtenaw County Courthouse in the City of Ann Arbor on March 27, 2017

PRESENT: HONORABLE CAROL KUHNKE,
Circuit Judge

On March 16, 2016, the Court granted defendant's motion for summary disposition on all of plaintiff's claims.[1] Plaintiff filed a Motion to Vacate Summary Disposition, which this Court construed as motion for reconsideration and denied. Plaintiff has now filed a Motion for Relief from Judgment pursuant to MCR 2.612(C)(1). For the reasons stated below, plaintiff's motion is denied.

MCR 7.208(A) provides that after a claim of appeal is filed, the trial court may not set aside or amend the judgment or order appealed from

except by order of the Court of Appeals, by stipulation of the parties, after a decision on the merits in an action in which a preliminary injunction was granted, or as otherwise provided by law. Plaintiff filed a claim of appeal on April 12, 2016, and that appeal remains pending in the Court of Appeals. The relief plaintiff seeks in his motion for relief from judgment, if granted, would require amending or setting aside the order granting summary disposition for defendant, which is the order from which plaintiff has appealed. This Court, therefore, has no authority to grant plaintiff's present motion.

Plaintiff's Motion for Relief from Judgment is denied.

/s/Carol Kuhnke P55348
Circuit Court Judge

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[1]The court ruled from the bench on defendant's motion for summary disposition at a hearing held on March 16, 2016. Although the court recorder's note indicates that an order was signed on that date, no such order appears in the court file or register of actions. Plaintiff filed a claim of appeal from the order on April 29, 2016.

Several post-judgment motions were filed and decided after the March 16, 2016, hearing, including plaintiff's "motion to vacate summary disposition" (order signed March 23, 2016); defendant's motion for taxation of costs (heard April 27, 2016, and order signed May 18, 2016); and plaintiff's motion to compel the return of a

FOIA from (heard and order signed on May 18, 2016).

Plaintiff filed the present Motion for Relief from Judgment on March 2, 2017. In reviewing the file and register of actions, it became apparent that either an order granting summary disposition was not presented to the Court for signature, or that the order was never entered into the court file. For this reason, the Court issued an order granting the motion for summary disposition nunc pro tunc to the date the last order (granting plaintiff's motion to compel) was filed with the Court (the Court did not make the order effective March 16, 2016, because, not knowing at that time whether plaintiff had yet filed a claim of appeal or whether the Court of Appeals would reject it for lack of jurisdiction, it wished to avoid prejudicing plaintiff's ability to pursue a timely appeal).

22nd JUDICIAL CIRCUIT
WASHTENAW COUNTY TRIAL COURT

ALFONSO IGNACIO VIGGERS,
Plaintiff,
vs.
MARIA DE LA MERCED VIGGERS
Defendant.

Case No.: 15-799-CZ
Judge: Hon. Carol Kuhnke

MOTION FOR RELIEF FROM JUDGMENT
MCR 2.612(C)(1)(b)-(c)

Newly discovered evidence unearths Defendant's fraud on the court in obtaining the ruling of March 16, 2016. Accordingly, Plaintiff moves pursuant to MCR 2.612. This court does not currently have jurisdiction over the instant action. Therefore, this court is urged not to violate MCR 7.208(C) again, which it recently did on February 7, 2017.

1. This court granted Defendant's motion for summary disposition on March 16, 2016. Shortly afterwards, the court denied Plaintiff's motion to vacate its order, whereby the court merely argued that it had ruled on the matters "directly or by implication"[Order dated March 24, 2016, page 3.].

2. Defendant continued violating the Personal Protection Order ("PPO") 15-941-PH against her,

which is what happens when a court deliberately leaves criminals unpunished while disregarding the clear and convincing proof of Defendant's unlawful acts against Plaintiff.

3. On September 16, 2016, Defendant violated the PPO again, but she forgot to conceal her phone number as the source of her harassing calls to Plaintiff. With evidence thereof, Plaintiff commenced criminal contempt proceedings against Defendant.

4. In response to the criminal contempt proceedings in 15-941-PH, Defendant reiterated the entirety of her false accusations[Exhibit A, page 2.] against Plaintiff she has been making since 2015.

5. Case 15-250-MI was closed on July 29, 2015, and therefore Defendant cannot continue laying the blame for her unlawful acts on her pretext of mental illness. Case law in accompanying brief supports a finding of malice as to the crimes Defendant incurred in 2015.

6. Furthermore, Defendant's recent, explicit "openness"[Exhibit B.] to have contact with Plaintiff is utterly inconsistent with Defendant's ongoing calumnies and the alleged "psychotic breaks" by which Defendant keeps defrauding and manipulating this court.

7. Defendant's husband (aka Plaintiff's father, "the father"), petitioned a PPO (16-2913-PH) against Plaintiff at about the same time Defendant reiterated her calumnies. The father made fraudulent misrepresentations[Exhibit A, pages 10-12.] akin to those made by Defendant.

8. The father is not mentally ill, and yet he and Defendant utter the same type of calumnies to unlawfully inflict harm on Plaintiff. Therefore, Defendant cannot lay the blame for her crimes on her pretext of mental illness.

9. In his unlawful purpose against Plaintiff, the father submitted in 16-2913-PH a number of records from Dawn Foods (the father's former workplace). The Dawn Food records include "anonymous" letters which bear striking resemblance to the allegations and threats that Defendant made to employees of the University.

10. Plaintiff could not obtain any of this newly discovered evidence sooner because the court systematically ruled against Plaintiff on the hearings for discovery motions.

11. MCR 2.612 entitles Plaintiff to move in light of the new evidence within a year of the entry of the order at issue, and the Court Rule does not prescribe a deadline for hearing or ruling on the motion at issue. Since Plaintiff appealed the ruling of March 16, 2016, it would be improper for this court to rule sua sponte on the motion while jurisdiction is in the Court Of Appeals ("COA").

12. Coincidentally, in its nunc pro tunc order of February 7, 2017, this court made the false statement that "no order granting the motion for summary disposition, however, has been issued"[Exhibit C, page 3.]. further evidencing this court's troubling inclination to deny proved facts. Even if the trial court's statement were truthful, this court's nunc pro tunc order is in

violation of MCR 7.208(C), since the record was transmitted to the COA in July of 2016.

13. Whereas MCR 7.216(A)(4) relies on the COA's discretion on whether or not to expand the record on appeal, MCR 7.208 clearly prohibits the trial court to make rulings and to alter the record while the jurisdiction is in the COA. Also the trial court is bound to comply with the Michigan Court Rules.

14. Upon completion of appellate review, Plaintiff will schedule a hearing in this court. Meanwhile and henceforth, Plaintiff urges this court will abide by the law and finally serve the ends of justice.

WHEREFORE, Plaintiff requests that, upon completion of the appellate review, this court GRANT the instant motion.

Respectfully submitted,

/s/Alfonso Ignacio Viggers

BRIEF

The provisions in MCR 2.612(C)(1)(b) and (c) allow Plaintiff to move this court to revisit its rulings in light of the newly discovered evidence and Defendant's fraud adduced therefrom. The newly discovered evidence meets the four requirements, as listed in SMDA v. American Ins. Co., 243 Mich.App. 647, 655; 625 N.W.2d 40 (2000), for reversal of this court's rulings: (1) The newly discovered evidence consists of allegations and documents that the father and Defendant surprisingly filed in court on November 28 and 30,

2016, respectively; (2) rather than being cumulative, the new evidence independently and conclusively dismantles Defendant's pretext of mental illness, and also is tantamount to a waiver/estoppel of protective relief that the lower court granted on the father and non-party Dawn Foods[Dawn Foods argued that any disclosure is subject to the father's consent. See Exhibit D (transcript of 2/3/2016, page 5, lines 24-25).]; (3) the new evidence is likely to change the result (that is, in a truthful court of justice) because this court decided Defendant's motion for summary disposition based on the deficient grounds of Defendant's mental illness, coupled with an improper argument about the University of Michigan's credibility; and (4) during discovery, Plaintiff diligently pursued evidence that would have included the newly discovered records and which this court precluded by systematically ruling against Plaintiff. When intrinsic fraud is dependent upon newly discovered evidence, such intrinsic fraud should warrant relief from judgment if it could not have been discovered and rebutted by the exercise of due diligence. See Stallworth v. Hazel, 167 Mich. App. 345, 356; 421 N.W.2d 685 (1988). Defendant and the father recently volunteered the records at issue[With the exception of the Register Of Actions of 15-250-MI, which is included hereby for purposes of context.] as part and result of their ongoing, unlawful acts against Plaintiff: to wit, (1) aggravated stalking and (2) intentional false statements in support of a petition for a PPO (MCL 600.2950a(24)), respectively. The recent acts by Defendant and the

father disprove this court's pretense that Defendant's mental illness in and of itself "negates malice".

The Court Of Appeals currently has jurisdiction over the instant action. The newly discovered evidence surfaced while appellate review is pending. Reconciling MCR 2.612 with MCR 7.208 is problematic. See Dean & Longhofer, Michigan Court Rules Practice (4th ed), Author's Commentary, § 2612.20, pp. 487-488[Relevant part quoted in http://publicdocs.courts.mi.gov:81/opinions/final/coa/20000801_c207234(0065)_207234.opn.pdf] (proposing that "the trial court could indicate its intention to grant the motion upon remand, and the remand could then be obtained from the appellate court under MCR 7.211(C)"). Here, the trial court's pattern of contravening Plaintiff's rights makes Plaintiff skeptic that the trial court will cooperate in the manner proposed in Dean. Even if this court now has a benign inclination, Plaintiff's appeal seeks to reverse other rulings made by this court.

While Plaintiff adhered to the Court Rules when attempting to expand the record on appeal with the new evidence, this court saw fit to enter a nunc pro tunc order which violates MCR 7.208(C)[Since the record was transmitted to the COA in July of 2016.] not only in terms of belatedness, but also from the fact that the record has been altered without giving to Plaintiff prior notice "and an opportunity for a hearing on the proposed correction", MCR 7.208(C)(2)[Moreover,

Exhibit C disproves the inaccuracies of the nunc pro tunc order.]. At completion of the appellate review it will be clear whether or not the instant motion is moot, whereas a premature denial of the instant motion would be another instance of excess of jurisdiction. See Genesee Prosecutor v. Genesee Circuit Judge, 386 Mich. 672, 681; 194 N.W.2d 693 (1992) ("The writ of prohibition is a common-law remedy designed to prevent the excesses of jurisdiction. It is a proper remedy where the court exceeds the bounds of its jurisdiction or acts in a matter not within its jurisdiction"). See also Green v. Soap Company, 33 Mich. App. 74; 189 N.W.2d 729, n.15 (1971) ("Notice and hearing, or an opportunity to be heard, is essential to a decision upon the merits. Any other conclusion could well give rise to serious injustice", citing Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319, 320 (1956)).

MCR 2.612(C)(2) only directs that an MCR 2.612 motion (not its hearing or ruling therefor) be filed within one year of the entry of the order appealed. Absent a Court Rules deadline for a hearing or ruling of Plaintiff's motion, MCR 7.208 is controlling, and Plaintiff expects that this time the trial court will abide by it[The trial court's entry of the nunc pro tunc order on February 7, 2017, is in violation of MCR 7.208(C), as explained in paragraph 12 of the instant motion.]. Plaintiff will schedule the hearing for this motion upon completion of the appellate review.

I. DEFENDANT FRAUDULENTLY INTERPOSED HER PRETEXT OF

MENTAL ILLNESS TO EVADE LIABILITY IN COURT.

a. Defendant's Own Allegations Are Fatal to Her Pretext of Mental Illness.

The instant action arose, in part[Complaint (filed on 8/7/2015).], from the multitude of false, malicious, and defamatory statements which Defendant uttered against Plaintiff since March of 2015. An issue brought on appeal is this court's failure to properly scrutinize the legal sufficiency of Defendant's argument of mental illness.

Defendant's Mental Illness Proceedings, 15-250-MI, were closed on July 29, 2015. The newly discovered evidence shows that, fourteen months later, Defendant persists making false and nefarious statements about Plaintiff. On November 30, 2016, Defendant alleged in this trial court[Exhibit A, page 2 et seq.]: "Everything that I have said that [Plaintiff] has done to me is true", besides repeating many of her false accusations from 2015. Defendant's renewed allegations are relevant to the matter of Defendant's actual malice, thereby entitling Plaintiff to the recovery of substantial damages. See Pitts & Collard, L.L.P. v. Schechter, 369 S.W.3d 301,331 (defendant's repetition of false and defamatory accusations about plaintiff's dishonest, unethical, and illegal behavior supports a finding of malice). Since the only difference between Defendant's statements in Spring of 2015 and her recent repetitions is the status of her Mental Illness proceedings, it follows that Defendant's mental illness is immaterial to the unlawful activity for which she is sued. This

solves whatever doubts ever existed as to Defendant's intent. Clearly, Defendant acted with actual malice and this court ought to judge in conformity therewith. See Hope-Jackson v. Washington, 311 Mich. App. 602; 877 N.W.2d 736, ,748-749, 751 (2015):

"Where the defamatory publication is maliciously published, the person defamed may recover substantial damages even where no special damages could be shown [...]. [W]here there is defamation per se, the presumption of general damages is well settled." (internal citations omitted).

Thus, even under the fictitious idea that "Defendant did not harm Plaintiff's employment situation and prospects", the trial court's decision on March 16, 2016, is harmful, reversible error from the standpoint of substantial damages. See Burden v. Elias Bros. Big Boy Restaurants, 240 Mich. App. 723; 613 N.W.2d 378, 383 (2000) ("plaintiffs alleged defamation per se, the damages for which are presumed, and the trial court erred in granting summary disposition to defendant with regard to the issue of damages").

Moreover, Defendant's recent contradiction defeats her counsel's pretext of "psychotic breaks due to mental illness". On December 15, 2016, the court in 15-941-PH asked[Exhibit B.] Defendant "[I]s there any reason you have to have communication with [Plaintiff]?". Defendant's response was "[...] and yeah, I mean if [Plaintiff] wants to talk to me, I talk to him". As a reminder to this court, Defendant fraudulently imputed to

Plaintiff several kinds of crimes including -but not limited to- hacking, spying, taping her "showering, naked and having sex", taping Defendant's daughters, larceny, and destruction of personalty[Pltf's Mot. for Summ. Judgment, Exhibit C pp. 1-3, 5, 9, 11; and Exhibit D, p. 1 (filed on 9/22/2015).]. If Defendant's turpid statements were the result of her "psychotic breaks with reality"[Def's Mot. for Summ. Disposition, page 5 (filed on 2/24/2016).] -as her counsel insisted in this lawsuit- Defendant would show no inclination whatsoever to talk with Plaintiff, more so when Defendant reaffirmed her calumnies as recently as November of 2016. But, here, Defendant's free statement that "yeah, I mean if [Plaintiff] wants to talk to me, I talk to him" is fatal to her defective pretexts of Defendant's mental illness and her psychotic breaks. It is time for this court to realize that Defendant willfully incurs erratic conduct in her attempt to "leave the door open" to situations from which she could further embroil people. Given the ongoing, untenable acts of a criminal like Defendant, it will be unconscionable if the trial court -whether explicitly or by devising new pretexts- continues to subjugate justice despite the newly discovered evidence.

b. The Father's Statements Disprove The Materiality of Defendant's Mental Illness in the Instant Action.

Since the father has never been subjected to mental illness proceedings, his false accusations in 16-2913-PH against Plaintiff are in and of

themselves fatal to Defendant's argument of mental illness. For instance, the father's recent allegation[Exhibit A, page 10.] that "[Plaintiff] is hacking me, tracking me all the time physically, electronically, or by third parties" has an undeniable similarity with the false accusations that Defendant has been uttering before, during, and upon conclusion of her Mental Illness proceedings. If Defendant's calumnies against Plaintiff were product of Defendant's alleged psychotic break with reality, only Defendant -and not the father- would falsely accuse Plaintiff of committing those same felonies.

The father and Defendant proceeded against Plaintiff on November 28 and 30, 2016, respectively. Since the father swore to the truth of his allegations at the time he filed 16-2913-PH, his statements therein are indistinguishable from testimony under oath. Defendant and the father presumably lived together at the time in question, whence the the synchronicity suggests that their acts are concerted. That circumstantial evidence indicates that Defendant procured (the father's) perjured testimony, thus reflecting Defendant's consciousness of guilt as to her unlawful activity toward Plaintiff since 2015. See People v. Lytal, 119 Mich. App. 562, 575; 326 N.W.2d 559 (1982) (Actions by a defendant such as procuring perjured testimony may be considered as evidence of guilt).

During the bench conference[Exhibit D (12/16/2015).] on December 16, 2015, Plaintiff endured pressure to voluntarily dismiss the

instant action "or else he might end up in a worse position if the case went to trial", followed by Defendant's reproach[Def's. Mot. for Summary Disposition, p. 5 (filed on 2/24/2016).] for instituting the Complaint (for instance, "Plaintiff has vindictively taken advantage [of] Defendant during her state of mental illness [...] with the instant defamation case"), when in fact Defendant and her counsel clearly knew that the argument mental illness is but a fraudulent pretext devised to deny actual malice. See Lytal, supra at 575:

"[A] party's falsehood or other fraud in the preparation and presentation of his cause [...] is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit" (internal citations omitted).

Regardless of the judiciary's bias for or against a party (Defendant and Plaintiff, respectively), Defendant clearly defrauded the court through her arguments of mental illness and psychotic breaks with reality. The recent acts by Defendant and the father leave this court with no reasonable grounds to insist on denying Defendant's actual malice in matters of the instant lawsuit. By doing so this court would continue disgracing the appearance of justice.

II. THE FATHER'S PROTECTIVE RELIEF IS VACATED BY ESTOPPEL.

The last paragraph of Plaintiff's Complaint reads "Plaintiff does not know whether [the]

father was knowledgeable, complicit[,] or negligent as to Defendant's actions". In spite of that, this court cited spousal privilege to prevent Plaintiff from conducting any and all discovery on the father. Plaintiff raised on appeal that abuse of discretion because spousal privilege cannot reasonably encompass the entire scope of the subpoena served upon the father. See Kelly v. Allegan Circuit Judge, 382, Mich. 425, 428; 169 N.W.2d 916 (1969) (allowing testimony as to matters not covered by a privilege).

Now the father by his own acts has waived the protective relief this court granted to him in December of 2015[Order entered on 1/6/2016.]. On November 28, 2016, the father deliberately injected himself into Plaintiff's cause of action by utterances of which the substance overlaps -in time and scope- Defendant's false and defamatory statements leading to the instant lawsuit. Upon the father's impliedly waiver of the protective relief, Plaintiff now is entitled to conduct discovery on the father (more so on matters outside of what spousal privilege actually covers, Kelly, supra). Therefore, the father should be estopped from asserting the protective relief that he by his own acts and free will has relinquished. As the Michigan Supreme Court stated in Kelly, supra at 427:

"There are some circumstances, however, wherein justice requires that a person be treated as though he had waived a right where he has done some act inconsistent with the assertion of

such right and without regard to whether he knew he possessed. This is the doctrine of estoppel."

The doctrine of estoppel also applies to Defendant's marital communications with the father. In the same document where Defendant alleges "Everything that I have said that [Plaintiff] has done to me is true", she stated[Exhibit A, page 3.] "The [Defendant] and the [Plaintiff's] father we both agree in that was the [Plaintiff] hacking and messing with me and my electronic devices and email" (emphasis added, syntax and grammar defects in original). Defendant's disclosure of the "gist" of marital communications partially waives her marital communications privilege. At the very least, Plaintiff is entitled to elicit details as to what the father allegedly agrees with Defendant in regard to Plaintiff.

III. THE FATHER'S DISCLOSURE OF THE DAWN FOODS RECORDS ENTITLES PLAINTIFF TO CONDUCT FURTHER DISCOVERY THEREOF.

The newly discovered Dawn Foods records prove that Defendant's (methods of) tortious interference with others' business relations predates -by years- her mental illness. Dawn Foods stated to this court that one venue for the production of records is the father's authorization for it. In light of the father's deliberate disclosure of the Dawn Foods records and their resemblance with Defendant's acts, this court should compel the father to consent to the disclosure to Plaintiff of the rest of them as applicable.

Plaintiff's rationale for his discovery on nonparty Dawn Foods is well known to this court[Exhibit D (2/3/2016).]. On January 20, 2016, this court stated[Exhibit D (1/20/2016).] to Plaintiff "[T]o the extent that you are already pursuing discovery, I won't stop you in that process". The trial court said it immediately after learning that Plaintiff was pursuing discovery on Dawn Foods, inter alia. By February 3, 2016, the trial court had a change of heart and the judge disavowed the statement she made to Plaintiff barely two weeks earlier. This court thereby precluded discovery on Dawn Foods. The court's pretext of "prior act evidence"[Exhibit D (2/3/2016).] falls short of legal principles, since MRE 404(b)(1) states that "[e]vidence of other crimes, wrongs, or acts [...] may, however, be admissible for other purposes such as [...] opportunity, intent, preparation, scheme, plan, or system in doing an act". See also People v. Mardlin, 487 Mich. 609, 615; 790 N.W.2d 607 (2010) ("Evidence relevant to a noncharacter purpose is admissible under MRE 404 even if it also reflects on a defendant's character."). Evidence of uncharged crimes may be admissible for another purpose. People v. Morris, 139 Mich. App. 550, 557; 362 N.W.2d 830 (1984).

It was wrong for this court to speculate[Exhibit D (2/3/2016).] that "I believe, that you're trying to impermissibly use other act evidence to prove your case and I agree that the discovery should not be had for that reason". To be able to make an informed ruling, the trial court

would have to review in camera the records at issue. See People v. Sabin, 463 Mich. 43; 614 N.W.2d 888, 897 (2000) ("The probative value of other acts evidence and its true potential for prejudice is often unclear until the proofs are actually presented", emphasis added, citing People v. VanderVliet, 444 Mich. 52, 90-91; 508 N.W.2d 144 (1993)).

Now in a bizarre attempt to falsely incriminate Plaintiff, the father submitted in 16-2913-PH a number of records dating back to the father's employment at Dawn Foods. The Dawn Foods records show Defendant's intrusion in the father's work environment and include a number of "anonymous" letters with threats to Dawn Foods employees. Dawn Foods terminated the father few months later, notwithstanding the father's seven years of employment there. The wording in those "anonymous" letters notoriously resembles the uneducated and disarranged writing style palpable in Defendant's communications to the FBI and to the University of Michigan in 2015, when Defendant was committed to sabotaging Plaintiff. Moreover, the "anonymous" letters to Dawn Foods contain threatening and alarming statements[Exhibit A, pages 16-20, 24.] such as "Watch out for what could come next in this company", "Hope you are protecting your family from a vicious dog as Smith", "[Moore] is next in line", "big scandal is coming to take place very soon","Your name is about to be stained". These statements present an undeniable similarity with Defendant's statements to the University in 2015:

"Mr. Robben [...] you might end up in a very bad situation", and the time when a University employee reported: "[Defendant] mentioned that [...] we will be sorry if we hire [Plaintiff]. [Defendant] mumbled somethings [sic] that was incoherent but it sounded like a veiled threat of some sort. [...] [Defendant] said 'bad things will happen to us' " (emphasis added, internal quotation marks in original[Pltf's Mot. for Summ. Judgment, Exhibit D, end of page 1 and beginning of page 2 (filed on 9/22/2015).]). Given such analogies, it is not surprising that Plaintiff's employer either said or was instructed to "inform" that the employer "received direct threats from [Plaintiff]", and that the employer reported the alleged incidents within six hours of PPO 15-941-PH being served upon Defendant on July 21, 2015. In Sabin, supra at 899, the Supreme Court of Michigan clarified that:

"evidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme or system. [...] Logical relevance is not limited to circumstances in which the charged and uncharged acts are part of a single continuing conception or plot" (emphasis added, internal citations omitted).

This court would be effective in fact-finding if it assessed similarities and circumstantial evidence as palpable from records that ensue during the development of events, instead of

merely relying on ex post facto depositions (with all their contradictions and evasiveness) and cherry-picking of the evidence to force a specific ruling.

With the newly discovered Dawn Food records, further scrutiny on Dawn Foods is simultaneously supported by the doctrine of chances insofar as it serves to elicit the employer's/client's reaction to Defendant's unlawful interference. The idea underlying the doctrine of chances is that similar results do not usually occur through abnormal causes. People v. Wright, 283 Or. App. 160, 165 (2016) (quoting Wigmore, 2 Evidence). Defendant's creepy emails and the "anonymous" communications to Dawn Foods employees date from late April to October of 2012. The father was terminated in December of that year. In the instant action, Defendant began harassing the University employees in March of 2015, and within four months the University severed relations with Plaintiff. Further discovery should elicit what other communications Defendant sent to Dawn Foods and the University in the months preceding the termination of the father and Plaintiff, respectively. Even if there are no additional communications, it is noteworthy that each employer/client waited for some months prior to terminating its renown employee/consultant of several years. The similarities tend to prove that Defendant had a more direct impact than what the University is willing to admit in severing its relations with Plaintiff. See People v. Robbins, 45

Cal. 3d 867, 880; 755 P.2d 355; 248 Cal. Rptr. 172 (1988):

"[T]he recurrence of a similar result (here in the shape of an unlawful act) tends [...] to negative accident [...] or good faith or other innocent mental state, and tends to establish [...] the presence [...] of criminal intent accompanying such an act" (emphasis added).

Simply put: To a reasonable mind, Plaintiff's repetition of a proverb in two emails during negotiations with his employer do not -and cannot- reasonably induce a greater sense of alarm than Defendant's confrontational and overtly threatening messages to the University of Michigan, Dawn Foods, and (arguably) Plaintiff's employer. Justice would be served if this court abandoned its pattern and tactics of depriving Plaintiff of discovery and, more important, of the remedies that would make him whole.

FINAL REMARKS

Trial courts are entrusted with the ascertainment of the truth and the application of the law. This court will never admit it, but it improperly chose sides and has been incessantly showing to Plaintiff that he won't be granted the remedies for the wrongs made to him. The irony of such judicial blockage is that Defendant, as embroiling, rogue and incoherent as she is, personifies the ability to manipulate the court in ways that further discredit the court's position and image. This court knowingly left Defendant's unlawful acts unpunished, and now the newly discovered evidence reflects some aspects of why

deprivation of justice is wrong. Impunitas continuum affectum tribuit delinquendi (4 Coke, 45. Impunity confirms the disposition to commit crime, Black Law Dictionary). Moreover, Defendant's scienter, the father, has recently emerged to perjure and replicate Defendant's wrongs against Plaintiff. Impunities semper ad deteriora invitat (5 Coke, 109. Impunity always invites to greater crimes, Id.). Thus, it is not mere coincidence that Plaintiff has grown distrustful of the trial court. The newly discovered evidence, by the instant MCR 2.612 motion, gives this court the opportunity to mend its departure of the law and of the principles of justice.

The newly discovered evidence demonstrates through additional, independent grounds that Defendant's false and defamatory publications were made with actual malice. Defendant's argument of mental illness cannot account for (1) her renewed calumnies against Plaintiff; (2) the father's voluntary involvement with similar, unfounded accusations against Plaintiff; and (3) the chilling effect that Defendant causes when she intrudes in people's workplace. Here, Defendant's argument of mental illness and psychotic break with reality was interposed fraudulently, whence MCR 2.612 entitles Plaintiff to have the rulings of March 16, 2016, (and of other hearings) amended.

WHEREFORE, Plaintiff requests this court will GRANT the instant motion and

- VACATE its exoneration of Defendant, irrespective of appellate review;

- ORDER Defendant to reimburse Plaintiff the court costs which Defendant was granted on April 27, 2016;

- FIND that Defendant was granted the Motion for Summary Disposition through fraud on court;

- FIND that Defendant's defamatory publications were made with actual malice;

- ALLOW Plaintiff to conduct discovery on the father as per the doctrine of estoppel; and

- COMPEL the father to authorize Dawn Foods a full disclosure of records to Plaintiff.

Respectfully submitted,

/s/Alfonso Ignacio Viggers

Court of Appeals, State of Michigan

ORDER

Alfonso Ignacio Viggers v Maria De La Merced Viggers

Docket No. 332481

LC No. 15-000799-CZ

Michael J. Talbot, Chief Judge, acting under MCR 7.211(E)(2), orders:

The motion for reconsideration of this Court's order of January 20, 2017 is DENIED.

Feb 21 2017

Court of Appeals, State of Michigan

ORDER

Alfonso Ignacio Viggers v Maria De La Merced Viggers

Docket No. 332481

LC No. 15-000799-CZ

Michael J. Talbot, Chief Judge, acting under MCR 7.211(E)(2), orders:

Plaintiff/Appellant's Motion to Expand Record and For Additional Issues on Appeal is DENIED. The supplemental brief that was filed with the motion is returned with this order.

JAN 20 2017

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

Case No. 15-799-CZ
Honorable Carol Kuhnke
ALFONSO IGNACIO VIGGERS,
Plaintiff,
vs
MARIA DE LA MERCED VIGGERS,
Defendant.

ORDER DENYING PLAINTIFF'S MOTION TO VACATE SUMMARY DISPOSITION

At a session of the Court held in the Washtenaw County Courthouse in the City of Ann Arbor on March 23, 2016

PRESENT: HONORABLE CAROL KUHNKE, Circuit Judge

On March 16, 2016, the Court granted defendant's motion for summary disposition on all of plaintiff's claims. Plaintiff has filed a Motion to Vacate Summary Disposition. For the reasons stated below, plaintiff's motion is denied.

In his motion, plaintiff asks the Court to "reverse its ruling made on March 16 of 2016, as it departs from the standard of review from summary dispositions..." Plaintiff's motion is, despite its title, a motion for reconsideration, and, as such, is governed by MCR 2.119(F).

MCR 2.119(F). which governs motions for reconsideration, provides:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

The language of the rule is not a restriction or limitation on a court's ability to reconsider a previous opinion, Fets Engineering Co v Ecco Systems, Inc, 188 Mich App 362; 471 NW2d 85 (1991), vacated on other grounds, 439 Mich 977; 483 NW2d 619 (1992), and a court has the discretion to correct any of its decisions that contain a serious error, to preserve judicial economy and to minimize costs to the parties, Prentis Family Foundation v Barbara Ann Karmanos Ctr Inst, 266 Mich App 39, 52; 698 NW2d 900 (2005); Smith v Sinai Hosp of Detroit, 152 Mich App 716, 723; 394 NW2d 82 (1986). The "palpable error" language of the MCR 2.119(F) denotes a general rule but is not mandatory; circuit courts are not required to find palpable error to grant a motion for reconsideration. People v Walters, 266 Mich App 341, 350-351; 700 NW2d 4241 (2005).

A party's failure to present evidence, an argument or to cite available legal authority to support its position on the motion of which

reconsideration is sought, however, does not create or constitute palpable error by which the court and the parties have been misled. A court has the discretion to deny reconsideration when such an omission is the basis for the motion. [(citing cases)]

Plaintiff's motion merely presents the same issues, arguments, and evidence on which the Court ruled, directly or by implication, when it decided defendant's motion for summary disposition. While the Court has the discretion to grant reconsideration even absent a finding that it was misled by palpable error, is not persuaded that plaintiff has demonstrated that reconsideration would lead to a different conclusion. That plaintiff strenuously disagrees with the Court's application of the standard of review applicable to motions brought under MCR 2.116(C)(10) does not, in and of itself, constitute grounds for reconsideration. Plaintiff's motion is denied.

/s/Carol Kuhnke P55348
Circuit Court Judge

STATE OF MICHIGAN
22nd JUDICIAL CIRCUIT - WASHTENAW COUNTY TRIAL COURT
CIVIL DIVISION

Case No. 15-799-CZ
Honorable Carol Kuhnke
ALFONSO IGNACIO VIGGERS,
Plaintiff,
vs
MARIA DE LA MERCED VIGGERS,
Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the City of Ann Arbor, County of Washtenaw, State of Michigan, on MAR 16 2016

PRESENT HON: /s/Carol Kuhnke

Defendant's Motion for Summary Disposition is granted for the reasons set forth on the record.

IT IS SO ORDERED.

This Order resolves the last pending claim and closes the case.

/s/Carol Kuhnke P55348
Circuit Court Judge

Transcript of the hearing on March 16, 2016 (excerpt starting from page 15, line 16).

THE COURT: Thank you.

In this case the Plaintiff alleges that Defendant made statements to Plaintiff's Employer which caused Plaintiff's Employer to rescind a job offer and to stop processing -- or to stop working toward an alien work visa for the Plaintiff.

The Plaintiff has the burden of demonstrating that the Defendant's statements caused damage and that the statements were made with malice.

The evidence in this case is clear to me that the statements made by the Defendant did not cause any damage to the Plaintiff; it was things other than, and possibly more than one thing, bit I -- I believe that it was things other than the statements of Defendant that caused the University to rescind the job offer and to stop processing an immigrant visa for the Plaintiff.

Plaintiff also can't show that the statements were made with malice. The Plaintiff dwells upon the complexity that the Defendant devoted to contacting people with respect to -- I'm sorry, with respect to Plaintiff. And that is not at all inconsistent with the mental illness that Defendant undeniably suffered at the time the statements were made. The fact that the Defendant was in -- was a patient in a psych ward at the University of Michigan and identified herself as such when she called lends the

University credibility to the University's claim that they discredited her comments and that the decisions were made with respect to Mr. Viggers without any consideration given to the phone calls that were made by Ms. Viggers.

For those reasons, I will grant the motion for summary disposition.

MR. FINLEY: I do have a --

MR. VIGGERS: You Honor --

MR. FINLEY: -- proposed order, Your Honor.

THE COURT: Would you present it, please?

MR. FINLEY: Thank you.

Permission for Plaintiff to sign it, approval only as to form.

It simply states --

THE COURT: You can present it in the meantime, too.

MR. FINLEY: Yes, Your Honor.

MR. VIGGERS: Your Honor, before this -- I am not claiming that Defendant was the only culprit of the situation and adverse actions. But I demonstrated that she caused the suspension of my hire process.

I think it is a big injustice to ignore the 15 pages I submitted.

THE COURT: I disagree that that's been demonstrated, and in fact the evidence tends so far in the other direction that I believe that summary disposition is the appropriate result.

MR. VIGGERS: You Honor --

THE COURT: That's my ruling.

MR. VIGGERS: I --

THE CLERK: All rise

MR. FINEY: Thank you for your time, Judge.

MCL 600.2162 (excerpts)

600.2162 Husband or wife as witness for or against other.

Sec. 2162.

(1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).

* * *

(3) The spousal privileges established in subsections (1) and (2) and the confidential communications privilege established in subsection (7) do not apply in any of the following:

* * *

(d) In a cause of action that grows out of a personal wrong or injury done by one to the other or that grows out of the refusal or neglect to furnish the spouse or children with suitable support.

MCL 750.157a (excerpt)

750.157a Conspiracy to commit offense or legal act in illegal manner; penalty.

Sec. 157a.

Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty

of the crime of conspiracy punishable as provided herein:

(a)Except as provided in paragraphs (b), (c) and (d) if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of $10,000.00 may be imposed.

MCL 750.209

750.209 Offensive or injurious substance or compound; placing with intent to injure, coerce, or interfere with person or property; violation; penalties.

Sec. 209.

(1) A person who places an offensive or injurious substance or compound in or near to any real or personal property with intent to wrongfully injure or coerce another person or to injure the property or business of another person, or to interfere with another person's use, management, conduct, or control of his or her business or property is guilty of a crime as follows:

(a) Except as otherwise provided in subdivisions (b) to (e), the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(b) If the violation damages the property of another person, the person is guilty of a felony punishable by imprisonment for not more than 20

years or a fine of not more than $15,000.00, or both.

(c) If the violation causes physical injury to another individual, other than serious impairment of a body function, the person is guilty of a felony punishable by imprisonment for not more than 25 years or a fine of not more than $20,000.00, or both.

(d) If the violation causes serious impairment of a body function to another individual, the person is guilty of a felony punishable by imprisonment for life or for any term of years or a fine of not more than $25,000.00, or both.

(e) Except as provided in sections 25 and 25a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.25 and 769.25a, if the violation causes the death of another individual, the person is guilty of a felony and shall be imprisoned for life without eligibility for parole and may be fined not more than $40,000.00, or both.

(2) A person who places an offensive or injurious substance or compound in or near to any real or personal property with the intent to annoy or alarm any person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $3,000.00, or both.

MCL 750.410a (excerpt)

750.410a Conspiring to commit person to institution for mental incompetents deemed felony.

Sec. 410a.

Any person who shall conspire with another person or persons to commit any person to an institution for mental incompetents without just and reasonable grounds therefor shall be deemed guilty of a felony.

MCL 750.540 (excerpt)

750.540 Use of electronic medium of communication; prohibited conduct; violation as felony; penalty; definitions.

Sec. 540.

(1) A person shall not willfully and maliciously cut, break, disconnect, interrupt, tap, or make any unauthorized connection with any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network, or a telephone.

(2) A person shall not willfully and maliciously read or copy any message from any telegraph, telephone line, wire, cable, computer network, computer program, or computer system, or telephone or other electronic medium of communication that the person accessed without authorization.

(3) A person shall not willfully and maliciously make unauthorized use of any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network, or telephone.

(4) A person shall not willfully and maliciously prevent, obstruct, or delay by any means the sending, conveyance, or delivery of any authorized communication, by or through any telegraph or

telephone line, cable, wire, or any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network.

(5) A person who violates this section is guilty of a crime as follows:

(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $1,000.00, or both.

(b) If the incident to be reported results in injury to or the death of any person, the person violating this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

(6) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, 47 USC 230, and includes voice over internet protocol services.

MCL 768.21a

768.21a Persons deemed legally insane; burden of proof.

Sec. 21a.

(1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness as defined in section 400 of the mental health code, 1974 PA 258, MCL 330.1400, or as a result of having an intellectual disability as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b, that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or having an intellectual disability

does not otherwise constitute a defense of legal insanity.

(2) An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances.

(3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

MCR 2.612(C) (excerpts)

(C) Grounds for Relief From Judgment.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

* * *

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

* * *

(2)The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. Except as provided in MCR 2.614(A)(1), a motion under this subrule does not affect the finality of a judgment or suspend its operation.

MCR 7.216(A) (excerpt)

Rule 7.216 Miscellaneous Relief

(A) Relief Obtainable. The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just:

(1) exercise any or all of the powers of amendment of the trial court or tribunal;

(2) allow substitution, addition, or deletion of parties or allow parties to be rearranged as appellants or appellees, on reasonable notice;

(3) permit amendment or additions to the grounds for appeal;

(4) permit amendments, corrections, or additions to the transcript or record;

(5) remand the case to allow additional evidence to be taken;

(6) draw inferences of fact;

(7) enter any judgment or order or grant further or different relief as the case may require;

(8) if a judgment notwithstanding the verdict is set aside on appeal, grant a new trial or other relief as necessary;

(9) direct the parties as to how to proceed in any case pending before it;

MRE 404(b)(1)

Rule 404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(b) Other crimes, wrongs, or acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It

may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Dean & Longhofer, Michigan Court Rules Practice (4th ed), Author's Commentary, § 2612.20, pp 487-488 (excerpt reproduced at http://publicdocs.courts.mi.gov:81/opinions/final/coa/20000801_c207234(0065)_207234.opn.pdf):

The effect of a pending appeal on the power of the trial court to grant relief under MCR 2.612(C), however, creates problems. MCR 7.208(A) provides that, after a claim of appeal is filed or leave to appeal granted, the trial court may not set aside or amend the judgment or order appealed from except by order of the court of appeals, by stipulation of the parties, or otherwise provided by law. Yet the time for filing a motion seeking relief from the judgment continues to run while the case is pending on appeal. This leads to undesirable complications, either requiring a party seeking relief from judgment to present its grounds first to the appellate court, which may then remand the case to the trial court if the grounds are well taken, or requiring the motion to be filed in the trial court while the appeal is pending although the court cannot act upon it until the case is remanded. Under the latter approach, the trial court could indicate its intention to grant the motion upon

remand, and a remand could then be obtained from the appellate court under MCR 7.211(C).

REFERENCES TO THE RECORD OF THE CASE

1. Pl. Mot. to Extend Discovery Deadline, Exh. A, page 3 (filed Feb. 8, 2016).

2. Pl. Mot. For Summ. Judgment, Exh. B-D (filed Sep. 22, 2015).

3. Pl. Mot. for Summ. Judgment, Exh. D (filed Sep. 22, 2015); see also Pl. Resp. to Df. Mot. for Posting Bond and Gatekeeping Order, Exh. B (filed Dec. 11, 2015).

4. Pl. Mot. to Extend Discovery Deadline, Exh. A, page 6 (filed Feb. 8, 2016).

5. Pl. Application for Leave to Appeal , Exh. 3, pages 3-4 (filed Sep. 8, 2017, in the Michigan Supreme Court).

6. Pl. Supp. Mot. To Extend Discovery Deadline, Exh. E (filed Feb. 17, 2016).

7. Pl. Mot. to Extend Discovery Deadline, Exh. A, page 10 (filed Feb. 8, 2016).

8. Dep. transcr. of Ms. Ranno, pages 37 (lines 16-25) and 38 (lines 1-6).

9. Pl. Resp. to Request for Admissions, Exh. C (filed Jan. 8, 2016).

10. Pl. Mot. to Extend Discovery Deadline, Exh. A, page 12 (filed Feb. 8, 2016).

11. Pl. Complaint, Exh. D (filed Aug. 7, 2015).

12. Df. Affirmative Defenses (filed Sep. 16, 2015).

13. Pl. Supp. Mot. to Extend Discovery Deadline, Exh. D (Def.'s 2nd objection) (filed Mar. 9, 2016).

14. Subpoena duces tecum (filed Aug. 11, 2015).

15. Pl. Reply in Support of Pl Mot. [for Summ. Judgment] Exh. A (filed Oct. 14, 2015).

16. Pl. Response to Counsel's Pleadings [Def.'s Mot. to compel Discovery and for Sanctions] Exh. A (filed Nov. 17, 2015).

17. Pl. Mot. to Extend Discovery Deadline, pages 8-10, 12 (Feb. 8, 2016).

18. Pl. Complaint, Exh. B (filed Aug. 7, 2015); see also Pl. Mot. For Summ. Judgment, Exh. D (filed Sep. 22, 2015); .

19. Pl. Resp. to Df. Mot. for Posting Bond and Gatekeeping Order, Exh. E (excerpt of the deposition transcript of Lukeland Gentles) (filed Dec. 11, 2015).

20. Pl. Mot. to Show Cause to Nonparty University of Michigan, Exh. B (filed Dec. 28, 2015).

21. Transcr. of the hearing on Jan. 6, 2016, pages 9 (lines 18-25), 10 (lines 1-2), 16 (lines 21-25), 17 (lines 5-6).

22. Transcr. of the hearing on Feb. 24, 2016, page 14 (lines 1-10); Transcr. of the hearing on Mar. 16, 2016, pages 12 (line 25) and 13 (lines 1-7).

23. Pl. Application for Leave to Appeal, Exh. 2 (filed Sep. 8, 2017, in the Michigan Supreme Court).

24. Pl. Mot. for Reassignment to Another Trial Judge upon Completion of the Appellate Review, Exh. A, pages 3 and 7-11 (filed on Jul. 21, 2017, in the appellate court).

25. *Id.*, Exh. F.

26. Pl. Response to Mot. to Excuse Father Deponent, Exh. E (filed Dec. 18, 2015)

27. Pl. Mot. to Extend Discovery Deadline, Exh. A, page 11 (filed Feb. 8, 2016).

28. Pl. Mot. to Extend Discovery Deadline, Exh. A, pages 6-7 (filed Feb. 8, 2016).

29. Id., pages 13-15.

30. Pl. Resp. to Mot. to Excuse Father Deponent, Exh. B (filed Dec. 18, 2015).

31. Pl. Mot. to Extend Discovery Deadline, Exh. A, pages 6-7, 10-11 (filed Feb. 8, 2016).

32. Pl. Mot. For Summ. Judgment, Exh. D (filed Sep. 22, 2015).

33. Pl. Mot. to Extend Discovery Deadline, Exh. A, pages 8-9 (filed Feb. 8, 2016).

34. Dep. transcr. of Ms. Ranno, page 14 (lines 8-13).

35. Pl. Supp. Mot. To Extend Discovery Deadline, Exh. G, page 1 (filed Feb. 17, 2016).

36. Dep. transcr. of Ms. Ranno, pages 28 (lines 20-25) and 29 (lines 1-8).