STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT

TODD L. LEVITT,

Plaintiff,

Case No.
15-12317-NZ

v

Hon. Paul H. Chamberlain

GORDON M. BLOEM, KENNETH JAMES SANNEY, JAMES MARTIN FELTON, ANGELA FELTON, and JOHN and/or JANE DOES 1 through 5, all of whose names are unknown,

Defendants.
_____/

John J. Devine, Jr. (P12724)
Attorney for Plaintiff

John C. Schlinker (P43188)
Attorney for Defendant Bloem

Jon J. Schrotenboer (P34452)
Attorney for Defendants Felton and Sanney

OPINION AND ORDER ON DEFENDANT GORDON BLOEM'S MOTION FOR SUMMARY DISPOSITION AND DEFENDANTS KENNETH SANNEY, JAMES FELTON, AND ANGELA FELTON'S MOTION FOR SUMMARY DISPOSITION

I. FACTS

Plaintiff filed a complaint against defendants Gordon Bloem, Kenneth Sanney, James Felton and the Morning Sun Defendants on April 23, 2015, alleging libel and slander, false light, civil conspiracy, and intentional infliction of emotional distress. The Morning Sun defendants appealed this court's decision denying their motion for summary disposition. This case was stayed pending the Court of Appeals decision. The Court of Appeals ultimately reversed this court's decision and the Morning Sun Defendants were dismissed from this case. The stay was lifted on July 10, 2017, and this court subsequently granted plaintiff's motion to add Angela Felton as a party.

In 2014, Zachery Felton created a parody Twitter account called "Todd Levitt 2.0." As a result, plaintiff sued Zachery Felton, who was represented in that lawsuit by Gordon Bloem. Said lawsuit was dismissed by this court after a finding that the parody account was protected free speech under the First Amendment to the United States Constitution. The Court of Appeals upheld this court's dismissal.

Soon after plaintiff filed the lawsuit against Zachery Felton, in June 2014, there was an incident outside plaintiff's CMU campus law office. Defendants James Felton and Kenneth Sanney walked past plaintiff and a verbal altercation occurred. Defendants allege that, as they walked past plaintiff, plaintiff took a few steps toward them, began glaring at them, and leaned toward them in a threatening way. Mr. Sanney muttered under his breath, "What a clown." Plaintiff then began shouting obscenities at Mr. Felton and Mr. Sanney. A few minutes into the exchange, Mr. Felton began recording the incident with his phone.

Defendants subsequently made a police report and gave a copy of the audio recording to Officer Browne with the Mt. Pleasant City Police Department. Mr. Felton also gave a copy of the recording to his wife, defendant Angela Felton, as well as others who approached him and asked for a copy. Mr. Felton estimates that he gave the recording to about 10 to 12 people. Mr. Sanney also got a copy of the audio recording that he then gave to an employee at CMU. On June 11, 2014, a copy of the audio recording was posted to the website SoundCloud and a link to the SoundCloud file was posted on the website Reddit. When Mr. Sanney and Mr. Felton became aware of these postings, Mr. Sanney contacted both websites and informed then that James Felton, the owner of the audio file, did not consent to the audio file being shared online. Both websites removed it. The defendants deny editing the audio recording or posting the audio recording online, and defendants further deny having any knowledge of who did post the audio recording.

Defendant Angela Felton denies distributing the audio recording in any way. Ms. Felton admits to going to the police with concerns for the safety of her son, Zachery Felton, after Mr. Levitt directed tweets at Zachery that Ms. Felton believed were threatening. Ms. Felton was afraid that someone would act on these allegedly threatening tweets and cause harm to her son. Ms. Felton provided law enforcement with copies of Mr. Levitt's tweets, as well as a copy of a Google search of how many parody Twitter accounts are in existence and a few copies of other parody accounts. However, Ms. Felton was concerned that she was not being taken seriously by law enforcement, and so she also provided a copy of these documents to the campus newspaper CM Life.

The Morning Sun published an article on February 19, 2015 about this court's dismissal of plaintiff's claims against Zachery Felton. Defendant Gordon Bloem, who had represented Zachery Felton in that matter, is quoted as saying, "We are glad to see the judge found what we knew all along, that this is protected free speech." The article further stated:

> Bloem said Felton's legal team will be talking to their client and discussing next steps. Bloem said they feel some of the media techniques Levitt has used to market himself, including creating a top lawyer prize he then awarded to himself, are unethical according to the guidelines that govern the legal profession. It's possible they may pursue those issues with the attorney grievance committee.

Plaintiff alleges claims of libel and slander, false light, civil conspiracy, and intentional infliction of emotional distress against defendants Bloem, Sanney, James Felton, and Angela Felton. Defendants filed motions for summary disposition pursuant to MCR 2.116(C)(10). This court heard oral arguments on defendants' motions on January 8, 2017. This court grants defendants' motions for summary disposition.

II. ANALYSIS

A. Defendant Bloem's Motion for Summary Disposition

The claims alleged against defendant Gordon Bloem are Count I: Libel and Slander, Count II: Intentional Infliction of Emotional Distress, Count VI: Civil Conspiracy, and Count VII: False Light. Defendant requests this court to grant summary disposition in defendant's favor as to all claims pursuant to MCR 2.116(C)(10). MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Thomas v Stubbs*, 218 Mich App 46, 49; 553 NW2d 634 (1996). The court reviewing the motion must consider pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. *Id.* The party responding to a motion for summary disposition must present evidentiary proofs creating a genuine issue of material fact for trial; otherwise, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Finally, the test for an existence of a genuine issue of material fact is whether the record, when looked at in the light most favorable to the non-moving party, leaves open an issue upon which reasonable minds might differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

First, defendant argues that the allegedly defamatory statements made by defendant are protected by the First Amendment. An action for defamation requires a plaintiff to show four elements: "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 a special harm caused by publication." *Rouch v Enquirer and News of Battle Creek*, 440 Mich 238, 251 (1992). In assessing claims for defamation, courts must "ensure against forbidden intrusions into the field of free expression and…examine the statements and circumstances under which they were made to determine whether the statements are subject to First Amendment protection." *Northland Wheels Roller Skating Ctr, Inc v Detroit Press, Inc*, 213 Mich App 317, 322 (1995).

Plaintiff alleges that Mr. Bloem made defamatory statements about plaintiff to the Morning Sun, which were published in a February 19, 2015 article written by Lisa Yanick-Jonaitis. Defendant argues that these statements are protected by the First Amendment because they are true. The relevant article was about this court's grant of summary disposition in Mr. Levitt's prior case against Zachery Felton. This court found that Zachery Felton's parody Twitter account was protected free speech, and this finding was affirmed by the Michigan Court of Appeals. Therefore, defendant's statement, "We are glad to see the judge found what we knew all along, that this is protected free speech," is clearly not defamatory because it is true.

The article also stated that Mr. Bloem had a concern that some of Mr. Levitt's media techniques may be unethical and was considering pursuing this with the Attorney Grievance Commission. The article stated that Mr. Bloem's concerns stemmed from Levitt's creation of a top lawyer prize he then awarded to himself. Plaintiff's previous claims against the Morning Sun Defendants in this case were based upon this February 19, 2015 article. The Michigan Court of Appeals found that the article did not defame plaintiff, finding that, "the facts of this case demonstrate that plaintiff admitted that he commission the topcollegelawyers.com website and created the College Lawyer of the Year award to generate profits. [Todd Levitt] further

conceded that he established the criteria for the award, chose the persons who comprised the committee that selected the award recipient, won the award, and then broadcast this as an accomplishment on a marketing website." *Levitt v Digital First Media*, No 330946 (May 16, 2017). The Court of Appeals ultimately found the claim that Mr. Levitt created an award and then awarded it to himself was substantially true. Subsequently, as he stated to the Morning Sun, Mr. Bloem did file a grievance against Mr. Levitt with the Attorney Grievance Commission. Because all of Mr. Bloem's statements reported in the February 19, 2015 Morning Sun article are true, these statements are not defamatory.

Plaintiff alleges that Mr. Bloem has made numerous other defamatory statements about him. These alleged statements are described in plaintiff's response to defendant's motion and are supported by several exhibits, including copies of emails sent by Mr. Bloem and copies of deposition transcripts.

Plaintiff alleges that Mr. Bloem publicized a claim from a CMU student that Mr. Levitt was giving out extra credit to his students who followed him on Twitter without knowing whether it was true. In his deposition, Mr. Bloem testified that a student complained to him about Mr. Levitt's extra credit practices. (Bloem Deposition, page 11). In 2013, in the hallways of the courthouse, Mr. Bloem was conversing with prosecuting attorney Stuart Black and attorney William Shirley about the "allegation that had been made." *Id.* at 11-12. Mr. Bloem testified that he did not know whether the allegation was true, and that he was seeking to find out the truth when he asked Mr. Levitt about the allegation at the same time he was discussing it with the other attorneys. *Id.* If a statement cannot be reasonably interpreted as stating actual facts about the plaintiff, it is protected by the First Amendment. *Milkovich v Lorain Journal Co*, 497 US 1, 20 (1990). Mr. Bloem's testimony shows that he was not stating as a fact that Mr. Levitt gave extra credit to students who followed him on Twitter, but was instead discussing it as an allegation about which he was trying to find out the truth. At the same time that he was discussing the allegation with two other attorneys, he also discussed it with Mr. Levitt himself. Because this allegation was not made as a factual statement, it is privileged.

Plaintiff also alleges that Mr. Bloem reported to Mr. Felton that plaintiff did not keep his students in class long enough based solely on a comment from William Shirley without verification as to its truth. However, the cited lines from Mr. Bloem's deposition transcript (line 23 on page 22 through line 11 on page 23) do not show that Mr. Bloem repeated this claim to anyone other than Mr. Levitt himself. Mr. Bloem testified, "It was pointed out to me, again, by Mr. Shirley who had a class in the near vicinity of Mr. Levitt that Mr. Levitt's three-hour class would go for 15 to 20 minutes every evening – or once a week. And that was as long as he kept his class." (Bloem Deposition, page 22-23). When Mr. Bloem was asked what he did about that information, he stated, "Nothing." *Id.* at 23. Mr. Bloem admitted that this was part of his discussion with Mr. Levitt in the courthouse, but did not admit to discussing it with anyone else. *Id.* There is no evidence that this statement was communicated to a third party, which is one of the elements plaintiff must prove in an action for defamation.

Plaintiff also alleges that Mr. Bloem told Mr. Felton that plaintiff gave extra credit to his students to follow him on Twitter and agreed to cancel class if he got a certain number of followers on Twitter. Plaintiff attached an email from Mr. Bloem to Mr. Felton listing these two allegations as "rumors" that Mr. Bloem was "in the process of trying to confirm." Again, if a statement cannot be reasonably interpreted as stating actual facts about the plaintiff, it is protected by the First Amendment. *Milkovich*, 497 US at 20. The email to Mr. Felton cannot be reasonably interpreted as stating actual facts about the plaintiff because Mr. Bloem clearly

indicated that he did not know whether these allegations were true and that he was in the process of trying to confirm them. Therefore, the statements in the email are privileged.

Plaintiff also alleges that Mr. Bloem responded to Mr. Sanney being "fine with the prosecutor just dropping everything" about the audiotaped incident with Mr. Levitt in an email by stating, "Yea, but I am not dammit..." Plaintiff attached Mr. Bloem's email containing this statement. However, this is a statement about Mr. Bloem's feelings about a case being dropped. This is not a false and defamatory statement concerning plaintiff.

Plaintiff also alleges that Mr. Bloem gave out copies of the audio recording of the incident between Mr. Felton, Mr. Sanney, and Mr. Levitt. Mr. Bloem testified that he gave copies to "some people" because "people were curious." (Bloem Deposition, page 45). The audio recording features plaintiff speaking and shouting obscenities at Mr. Felton and Mr. Sanney. Plaintiff alleges that the recording was edited, but has failed to provide any documentary evidence in support of this claim. Further, plaintiff has failed to provide any documentary evidence showing anything false or defamatory about this recording. In fact, when asked at his deposition, Mr. Levitt himself could not explain why the audio was defamatory, stating, "I can't answer that right now. I don't know. I have to think about that for a minute." (Levitt Deposition, page 57-58). Because the audio was a recording of plaintiff speaking, it is not false or defamatory, and so Mr. Bloem's distribution of the recording cannot be defamatory.

Plaintiff's response to defendant's motion also makes allegations regarding the information that was provided by Mr. Bloem to the Attorney Grievance Commission. Plaintiff's complaint fails to address the grievance in association with the claim for defamation. The only mention of the grievance in the claims against Mr. Bloem is in the claim for Civil Conspiracy, where the grievance is mentioned only to allege that Mr. Bloem used Mr. Felton's recording to file a grievance.

Under MCR 9.125, a person is absolutely immune from suit for statements and communications transmitted solely to the Attorney Grievance Commission. However, plaintiff alleges that this immunity has been lost because Mr. Bloem disclosed portions of his grievance to others and not "solely" to the Attorney Grievance Commission. The Court of Appeals held in a recent unpublished case that because "the specific purpose and intent of MCR 9.125 is to grant people immunity from suit arising out of their statements and communications transmitted to the AGC...if a person sends the statements and communications to individuals or entities outside the privileged arena, the immunity is lost." *Kelley v Peet*, No. 326669, 2016 WL 757546 at 4 (Mich Ct App February 25, 2016). Despite plaintiff's argument that Mr. Bloem no longer has immunity under MCR 9.125, plaintiff states that the "main thrust" of his claims against Mr. Bloem is not his communication with the Attorney Grievance Commission but Mr. Bloem's communications with others. For example, Mr. Bloem included the audio recording of the incident that occurred between Mr. Felton, Mr. Sanney and Mr. Levitt with the grievance, and Mr. Bloem also admits to distributing copies of that audio recording to others. As established, the distribution of the audio recording was not defamatory. Further, the other statements made by Mr. Bloem that were identified in plaintiff's response likewise do not support an action for defamation.

Finally, plaintiff alleges that it was defamatory when Mr. Bloem provided the Attorney Grievance Commission with a copy of a YouTube video of a skit plaintiff participated in. It is unclear what the nature of this skit is. However, plaintiff admits that he participated in the skit, which was publicly available on YouTube. It is unclear how distributing a publicly available video of a skit in which plaintiff participated could be construed as false or defamatory. Plaintiff has failed to present evidentiary proofs creating a genuine issue of material fact for trial on

plaintiff's defamation claim. Therefore, defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) is granted as to Count I: Libel and Slander.

Plaintiff has also brought a claim of intentional infliction of emotional distress against Mr. Bloem. In order to maintain an action for intentional infliction of emotional distress, a plaintiff must show the following elements: (1) extreme and outrageous conduct, (2) intent or recklessness by the defendant, (3) causation, and (4) severe emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602 (1985).

Regarding the first element, the Michigan Court of Appeals has stated:

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' *Warren v June's Mobile Home Vill & Sales, Inc*, 66 Mich App 386, 390-91; 239 NW2d 380 (1976).

The allegedly extreme and outrageous conduct on the part of Mr. Bloem is the same conduct that plaintiff alleged was defamatory in Count I. However, this court found that Mr. Bloem's statements and the distribution of the audio recording of Mr. Levitt were not actionable as libel and slander. Mr. Bloem made several statements about Mr. Levitt that were not defamatory, were not published to third parties, or were protected by the First Amendment. Such conduct does not satisfy the extreme standard set forth by the Michigan Court of Appeals. *Id.* Plaintiff has failed to present evidentiary proofs creating a genuine issue of material fact for trial on whether Mr. Bloem's conduct was extreme and outrageous. Accordingly, summary disposition pursuant to MCR 2.116(C)(10) is appropriate as to Count II: Intentional Infliction of Emotional Distress.

Plaintiff also brought a claim of false light against Mr. Bloem. In order to maintain an action for false light, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. *Duran v Detroit News*, 200 Mich App 622, 631-632; 504 NW2d 715 (1993). The only statements made by Mr. Bloem that were broadcast to either the public in general or a large number of people were his statements which were included in the February 19, 2015 Morning Sun article. As held by the Michigan Court of Appeals, this article was substantially true. Therefore, Mr. Bloem's statements did not attribute to Mr. Levitt characteristics, conduct, or beliefs that were false or place Mr. Levitt in a false position. Plaintiff has failed to raise a genuine issue of material fact as to plaintiff's claim for false light, and so defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) is granted as to Count VII: False Light.

The final claim against Mr. Bloem is a claim of civil conspiracy. However, a claim of civil conspiracy must be based upon an underlying actionable tort. *Cleary Trust v Edward-*

Marlah Muzyl Trust, 262 Mich App 485, 507 (2004). Because no other actionable tort remains, summary disposition should also be granted as to Count VI: Civil Conspiracy.

B. Defendants Kenneth Sanney, James Felton, and Angela Felton's Motion for Summary Disposition

Plaintiff's claims alleged against Mr. Felton and Mr. Sanney are Count III: Intentional Infliction of Emotional Distress, Count IV: Intentional Interference with Business Expectancy, and Count V: Civil Conspiracy. The claims alleged against Angela Felton are Count VIII: Intentional Interference with Business Expectancy, Count IX: Civil Conspiracy, and Count X: Intentional Infliction of Emotional Distress. Defendants request this court to grant summary disposition pursuant to MCR 2.116(C)(10) as to all counts.

In order to maintain an action for intentional interference with Business Expectancy, a plaintiff must prove the following elements:

> (1) The existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. *Health Call v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 90 (2005).

Plaintiff marketed his practice to CMU students. Mr. Levitt testified that his practice consisted of 80% students and related CMU clients. (Levitt Deposition, page 25). Plaintiff claims that Mr. Sanney and Mr. Felton interfered with his business by distributing the audio recording of the altercation that occurred between the three of them during which plaintiff shouted obscenities at the defendants. This recording was ultimately posted on the Internet. Defendants deny posting the recording themselves and deny having any knowledge of who did post the recording. The defendants admit that they distributed the recording to others. Additionally, when the defendants made a police report about the incident, a copy of the recording was provided to the police. Further, Mr. Felton provided a copy of the recording to plaintiff's Dean at CMU.

Ms. Felton denies distributing the recording to anyone. Plaintiff alleges that Ben Solis told him that Ms. Felton gave a copy of the recording to CM Life. (Levitt Deposition, page 7-8 and 53-54). However, when Mr. Solis was deposed, he denied receiving the recording from Ms. Felton and denied ever telling Mr. Levitt that this had occurred. (Solis Deposition, page 12, 16). Ms. Felton testified that she distributed to law enforcement and CM Life copies of plaintiff's own tweets, as well as a copy of a Google search of how many parody Twitter accounts are in existence and a few copies of other parody accounts. (Angela Felton Deposition, pages 15-16). She initially gave this information to law enforcement because she alleges that she was concerned for the safety of her son, Zachery Felton after Mr. Levitt directed tweets at Zachery that Ms. Felton believed were threatening. Ms. Felton was afraid that someone would act on these allegedly threatening tweets and cause harm to her son. However, Ms. Felton was concerned that she was not being taken seriously by law enforcement, and so she also provided a copy of these documents to the campus newspaper CM Life. Plaintiff claims that Ms. Felton also

provided CM Life with a copy of a grievance filed with the Attorney Grievance Commission against Mr. Levitt. However, Ms. Felton denies this. Mr. Solis testified that CM Life received a packet containing the grievance anonymously through the mail. (Solis Deposition, page 20). Mr. Solis testified that he did not know who sent the packet to CM Life. *Id.* Additionally, the information Ms. Felton admits providing to CM Life was personally delivered, not sent through the mail. (Angela Felton Deposition, page 15-16).

Plaintiff has failed to produce any evidence showing that the distribution of the audio recording to Mr. Levitt's Dean, law enforcement, or CM Life actually caused interference with a business expectancy. While Mr. Felton admits to providing a copy of the recording to Mr. Levitt's Dean and admits that plaintiff appeared in a negative light in the recording, plaintiff's complaint does not allege any interference with his teaching position at CMU. It is simply alleged that defendants interfered with his law practice which specialized in representation of CMU students. Plaintiff fails to show how providing the Dean with a copy of the recording interfered with plaintiff's law practice. Additionally, even if plaintiff had alleged interference with his teaching position at CMU, it would not be supported by the evidence because Mr. Levitt resigned from his teaching position prior to the incident with Mr. Felton and Mr. Sanney and prior to the parody Twitter account created by Zachery Felton. Defendants provided the court with an email from Mr. Levitt to his boss Richard Divine sent on March 31, 2014, stating, "I am sending you this email as notice that after this semester I will not be in a position to teach."

While defendants deny posting the audio recording on the Internet, they admit to distributing the recording to other individuals who were interested. This distribution eventually led to a person or persons unknown posting the recording on SoundCloud and Reddit where it was freely accessible to the public.

When the conduct allegedly causing business interference is a defendant's utterance of negative statements concerning a plaintiff, privileged speech is a defense. *Lakeshore Cmty. Hosp. v Perry*, 212 Mich App 396, 401-02 (1995). The audio recording features plaintiff speaking and shouting obscenities at defendants. Plaintiff alleges that the recording was edited, but has failed to provide any documentary evidence in support of this claim. Further, plaintiff has failed to provide any documentary evidence showing anything false or defamatory about this recording. In fact, when asked, Mr. Levitt himself could not explain why the audio was defamatory, stating, "I can't answer that right now. I don't know. I have to think about that for a minute." (Levitt Deposition, page 57-58). Because the distributed audio was a recording of plaintiff speaking, it is not false or defamatory. The same goes for the tweets Ms. Felton distributed to law enforcement and CM Life. These tweets were published by plaintiff on Twitter. Therefore, Ms. Felton's distribution of them is not false or defamatory. Plaintiff has failed to establish a genuine issue of material fact as to his claim for Intentional Interference with Business Expectancy.

Plaintiff also claims Intentional Infliction of Emotional Distress. In order to maintain an action for intentional infliction of emotional distress, a plaintiff must show the following elements: (1) extreme and outrageous conduct, (2) intent or recklessness by the defendant, (3) causation, and (4) severe emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602 (1985). Regarding the first element, the Michigan Court of Appeals has stated:

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of

> aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' *Warren v June's Mobile Home Vill & Sales, Inc*, 66 Mich App 386, 390-91; 239 NW2d 380 (1976).

The allegedly extreme and outrageous conduct on the part of defendants is their distribution of the audio recording and tweets to other individuals, law enforcement, and CM Life. Plaintiff failed to show that this conduct was defamatory. Defendants' conduct consisted of distributing to others tweets that plaintiff himself published on Twitter and an audio recording of plaintiff participating in an altercation that occurred in public on CMU's campus. Such conduct does not satisfy the extreme standard set forth by the Michigan Court of Appeals. *Id.* Plaintiff has failed to present evidentiary proofs creating a genuine issue of material fact for trial on whether defendants' conduct was extreme and outrageous. Accordingly, summary disposition pursuant to MCR 2.116(C)(10) is appropriate as to plaintiff's claims for intentional infliction of emotional distress.

Plaintiff also claims Civil Conspiracy. A claim of civil conspiracy must be based upon an underlying actionable tort. *Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 507 (2004). Because no other actionable tort remains, summary disposition should also be granted as to plaintiff's claims of Civil Conspiracy.

C. Requests for Sanctions

Defendants have requested this court to award sanctions based on plaintiff's responses to their motions. First, Mr. Bloem requests sanctions because plaintiff's response was untimely. MCR 2.116(G)(1)(a)(ii) states that any response to a motion for summary disposition must be filed and served at least 7 days before the hearing. The hearing on defendants' motions for summary disposition was initially scheduled for January 4, 2018. December 28, 2017 was 7 days prior to said hearing date, but the courthouse was closed on that date for New Year's Eve. Plaintiff filed and mailed copies of his responses on the next date the courthouse was open, January 2, 2018. It appears that plaintiff's delay in filing and service was due to the holiday, and so this court declines to award sanctions for the untimely responses.

Mr. Sanney, Mr. Felton, and Ms. Felton also request sanctions based upon plaintiff's response pursuant to MCR 2.114(E). Defendants allege that plaintiff's brief contains multiple misrepresentations and inaccuracies. Plaintiff's counsel clearly has a different view of the facts than defendants. Plaintiff's counsel's interpretation is all part of advocacy for his client. This court finds that plaintiff's counsel was not trying to hide anything or mislead the court because he cited to the deposition transcripts and attached to his brief copies of said transcripts. It was easy for the court to separate fact from argument by referring to the deposition transcripts. This court denies defendants' requests for sanctions.

THEREFORE IT IS ORDERED that defendant Gordon Bloem's motion for summary disposition pursuant to MCR 2.116(C)(10) is granted.

IT IS FURTHER ORDERED that defendants Kenneth Sanney, James Felton, and Angela Felton's motion for summary disposition pursuant to MCR 2.116(C)(10) is granted.

IT IS FURTHER ORDERED that defendants' requests for sanctions are denied.

IT IS FURTHER ORDERED that the respective defendants shall supply this court with an order dismissing this case pursuant to these rulings, at which time the case will be closed.

Date: January 9, 2018

Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court

Proof of Service Email to Schlaufer & DenBraber
✓ mail ✓ atty box ___ personal
Date: 1/9/18 Signature: