

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Tareq R. Jabr,	:	
Plaintiff-Appellant,	:	
v.	:	No. 16AP-26 (Ct. of Cl. No. 2015-00605)
Ohio Department of Taxation,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 30, 2016

On brief: *Tareq R. Jabr*, pro se. **Argued:** *Tareq R. Jabr*.

On brief: *Michael DeWine*, Attorney General,
Christopher L. Bagi and *James P. Dinsmore*, for appellee.
Argued: *Christopher L. Bagi*.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶ 1} Plaintiff-appellant, Tareq R. Jabr, appeals a judgment of the Court of Claims of Ohio that granted the motion of defendant-appellee, the Ohio Department of Taxation ("Department"), for judgment on the pleadings. For the following reasons, we affirm.

{¶ 2} On June 25, 2015, Jabr filed a complaint against the Department.¹ The complaint alleged that the Department had falsely accused Jabr of selling tobacco products with the intent to avoid paying tax, a violation of R.C. 5743.60. The complaint also alleged that the Department had installed an electronic tracking device on Jabr's

¹ We construe the complaint to consist of the handwritten "Form Complaint," as well as the three typed pages filed with and attached to the "Form Complaint."

motor vehicle without his knowledge. Based on these allegations, Jabr asserted claims for slander and invasion of privacy.

{¶ 3} Jabr attached to his complaint a copy of an April 14, 2015 entry issued by the Franklin County Municipal Court. That entry granted the Department's application for authorization to install and use an electronic tracking device on Jabr's motor vehicle. The entry stated that a Department agent had certified to the court that there was probable cause to believe that Jabr was using his motor vehicle to distribute tobacco products with the intent to avoid payment of tax.

{¶ 4} The Department answered Jabr's complaint and moved for judgment on the pleadings. In a judgment dated January 6, 2016, the trial court granted the Department's motion.

{¶ 5} Jabr now appeals the January 6, 2016 judgment, and he assigns the following errors:

I.The trail court erred in granting the defs, the dept of taxation, of ohio , motion on the pleadings, because there was a serious, injury done to tareq jabr the plaintiff, in this case that was not mentioned in the , court of claims, judgement, entry. Your honors of the court.

II.Also the defs, did a lot of illegal things to mr. tareq jabr the plaintiff, in this case your honors.

III.The trial court erred in granting , defs, motion on the pleadings, because theres, no price, on a persons health, and there wrongfull acts of , injury, harm in many ways, your honors.²

{¶ 6} Jabr's three assignments of error are interrelated, so we will address them together. By these assignments of error, Jabr argues that the Court of Claims erred in granting the Department judgment on the pleadings. We disagree.

{¶ 7} Civ.R. 12(C) permits parties to move for judgment on the pleadings. In reviewing such a motion, a trial court construes the material allegations of the complaint and all reasonable inferences drawn from those allegations in favor of the non-moving party. *Rayess v. Educational Comm. for Foreign Med. Graduates*, 134 Ohio St.3d 509,

² We quote Jabr's assignments of error verbatim, without correcting the spelling, punctuation, or grammatical errors.

2012-Ohio-5676, ¶ 18. A trial court must grant the motion if it finds that, beyond a doubt, the plaintiff can prove no set of facts in support of its claim or claims to relief. *Id.* "Thus, Civ.R. 12(C) requires a determination that no material factual issues exist and that the movant is entitled to judgment as a matter of law." *Id.*, quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996). Appellate courts apply the de novo standard of review to decisions granting judgment on the pleadings. *Id.*

{¶ 8} Slander is a form of defamation and occurs when a person's spoken words defame another. *Gilson v. Am. Inst. of Alternative Medicine*, 10th Dist. No. 15AP-548, 2016-Ohio-1324, ¶ 37. To establish a claim for defamation, a plaintiff must show that: (1) the defendant made a false statement of fact, (2) the statement was defamatory, (3) the statement was published, (4) the plaintiff suffered injury as a proximate result of the publication, and (5) the defendant acted with the requisite degree of fault in publishing the statement. *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, ¶ 77. The third element—the publication of a false and defamatory statement—"is an essential element to liability for defamation." *Hecht v. Levin*, 66 Ohio St.3d 458, 460 (1993). Publication occurs when a defendant communicates a false and defamatory statement to a person or persons other than the person defamed. *Id.*

{¶ 9} Here, Jabr alleged in his complaint that the Department slandered him when it falsely accused him of selling tobacco products with the intent to avoid payment of the accompanying tax. The complaint contains no allegation that the Department published this accusation to anyone other than Jabr. However, Jabr attached to his complaint an exhibit from which we can infer that a Department agent discussed Jabr's allegedly illegal sale of tobacco products with another person. That exhibit—the municipal court entry—indicates that a Department agent informed a municipal court judge that there was probable cause to believe that Jabr was distributing tobacco products with an intent to avoid paying the tax.

{¶ 10} We recognize that a statement alleging probable cause is not exactly the same as an outright accusation of illegal conduct. Nevertheless, we will presume for purposes of the Department's motion that the agent's statement was false and defamatory, and that by making the statement to the court, the agent published the statement. Despite these presumptions, Jabr's slander claim fails.

{¶ 11} " 'Upon certain privileged occasions where there is a great enough public interest in encouraging uninhibited freedom of expression to require the sacrifice of the right of the individual to protect his reputation by civil suit, the law recognizes that false, defamatory matter may be published without civil liability.' " *M.J. DiCorpo, Inc. v. Sweeney*, 69 Ohio St.3d 497, 505 (1994), quoting *Bigelow v. Brumley*, 138 Ohio St. 574, 579 (1941). These privileged occasions include judicial proceedings. *Id.* Thus, "[a] statement made in a judicial proceeding enjoys an absolute privilege against a defamation action as long as the allegedly defamatory statement is reasonably related to the proceeding in which it appears." *Hecht*, 66 Ohio St.3d at 460.

{¶ 12} Here, the Department agent made the statement at issue during the course of a judicial proceeding to obtain authorization to place an electronic tracking device on Jabr's motor vehicle. A governmental agent must demonstrate probable cause in order to obtain such authorization. *United States v. Jones*, ___ U.S. ___, 132 S.Ct. 945 (2012); *State v. Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021. Consequently, the Department agent's statement was reasonably related to the judicial proceeding in which he made the statement. That statement, therefore, is entitled to an absolute privilege, which defeats Jabr's slander claim.

{¶ 13} We next turn to Jabr's claim that the Department invaded his privacy. Ohio law recognizes four types of invasion of privacy: (1) the unwarranted appropriation or exploitation of one's personality; (2) the publicizing of one's private affairs with which the public has no legitimate concern; (3) the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities; and (4) the publicizing of a matter concerning another that places the other before the public in a false light. *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451, ¶ 15, 61. Here, Jabr alleges that the Department invaded his privacy by attaching an electronic tracking device to his motor vehicle. By this allegation, Jabr arguably alleges a claim for the third type of invasion of privacy—a wrongful intrusion into another's private activities.

{¶ 14} " 'One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable

person.' " *Sustin v. Fee*, 69 Ohio St.2d 143, 145 (1982), quoting Restatement of the Law 2d, Torts, Section 652B (1977). To recover for a wrongful intrusion, a plaintiff must establish that the defendant intruded in a wrongful manner, so as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. *Roe v. Heap*, 10th Dist. No. 03AP-586, 2004-Ohio-2504, ¶ 82.

{¶ 15} Here, a facially valid court order authorized the Department's installation and use of an electronic tracking device on Jabr's motor vehicle. Because the Department acted under the aegis of a facially valid court order, none of its actions were wrongful. Consequently, Jabr cannot state a claim for invasion of privacy under the wrongful intrusion theory.

{¶ 16} We recognize the hardship that Jabr has suffered as a result of the Department's actions. However, to recover in a court of law for that hardship, Jabr must establish a legal cause of action. As we have explained above, Jabr has not established claims for slander or invasion of privacy. Accordingly, we overrule Jabr's assignments of error.

{¶ 17} For the foregoing reasons, we overrule the three assignments of error, and we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and BRUNNER, JJ., concur.
