

of Christ (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} The issue in this case is whether defendant, ODJFS, is liable to plaintiff, under a theory of respondeat superior, for defamatory statements allegedly made by an employee of the Franklin County Child Support Enforcement Agency (FCCSEA) in taking the steps necessary under the Ohio Revised Code and Ohio Administrative Code to obtain a suspension of plaintiff's driver's license for nonpayment of child support.

{¶5} In support of the motion for summary judgment, defendant submitted the affidavit of Randall Snyder, an employee of the FCCSEA. At a prior proceeding in this case, the court determined that Snyder was not a state employee, that he was not, therefore entitled to civil immunity pursuant to R.C. 2743.02(F) and that the courts of common pleas have jurisdiction over any claims by plaintiff against him.

{¶6} Snyder's affidavit provides:

{¶7} 1. I have been employed by the Franklin county Child Support Enforcement Agency since March of 2001 as a case worker.

{¶8} 2. As part of my job duties as a case worker, I am responsible for monitoring child support accounts and requesting enforcement action when an account becomes delinquent.

{¶9} 3. Christopher J. Wynn is one account that I monitor. Mr. Wynn has currently been ordered to pay \$592.73 per month in support of his child.

{¶10} 4. Mr. Wynn has been delinquent on paying his child support. As of August 12, 2002, Mr. Wynn has a total balance due of \$6,309.54. A true and accurate copy of Mr. Wynn's Account Summary is attached as Attachment A. [Attachment omitted.]

{¶11} 5. Mr. Wynn was notified that the consequences of his non-payment would result in a license suspension. On November 16, 2001, Mr. Wynn was notified that his license would be suspended if he did not pay \$1,513.92 of his total arrears of \$6,191.28. A true and accurate copy of the log of an Archived Notices Detail is attached as Attachment B. [Attachment omitted.]

{¶12} 6. On or about March 19, 2002, I initiated a driver license suspension for Mr. Wynn due to the large amount of arrearage he owed. Mr. Wynn's license was suspended and he was notified on the license reinstatement procedures on that same date. I keep a log of all actions taken in an account in a Running Record Comments. A true and accurate copy of my Running Record Comments for March 19, 2002 is attached as Attachment C. [Attachment omitted.]

{¶13} 7. Mr. Wynn has not complied with the procedures to obtain reinstatement of his drivers license and it remains suspended to this date.

{¶14} 8. At no time during Mr. Wynn's license suspension process and enforcement of child support payments was I employed by the Ohio Bureau of Employment Services.

{¶15} 9. At no time during Mr. Wynn's license suspension process and enforcement of child support payments did I need the approval or consent from the Ohio Department of Jobs and Family Services before initiating the process to have Mr. Wynn's drivers license suspended.

{¶16} 10. The Ohio Department of Jobs and Family Services did not participate in the license suspension process and enforcement of Mr. Wynn's child support payments."

{¶17} In determining whether there is a genuine issue as to any material fact, this court notes that the Tenth District Court of Appeals has stated:

{¶18} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292, 1996-Ohio-107. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1,2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June

28, 2001), Franklin App. No. 00AP-1110.” *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶19} Defendant argues that since it has been determined that Snyder is not an employee of defendant, defendant cannot be held liable to plaintiff for any allegedly defamatory statements made by Snyder. The court agrees.

{¶20} A review of the statutory and administrative code provisions, under which FCCSEA was created and operates, conclusively establishes that defendant had no involvement with plaintiff’s license suspension. Although FCCSEA was created by defendant as part of defendant’s division of child support, the statutory and administrative code provisions authorizing license suspension and setting forth the procedures for taking such action apply to local child support enforcement agencies only. See R.C. 5101.02; Ohio Adm.Code 5101:1-30-01 and R.C. 3123.52. The court can find no relevant provision of the Ohio Revised Code or the Ohio Administrative Code requiring or even authorizing defendant’s participation in the suspension process.

{¶21} Moreover, to survive a motion for summary judgment in a defamation action, plaintiff must make a sufficient showing of the existence of every element essential to maintaining the case. See *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 322, 106 S.Ct. 2548. Based upon Snyder’s unchallenged affidavit and the documents attached thereto, the information communicated to the BMV regarding plaintiff’s child support arrearage was true. See *Vail v. The Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 280, 1995-Ohio-187. (Summary judgment is appropriate in defamation actions because the determination of whether words are defamatory is a question of law to be decided by the court.) Similarly, there is no question that Snyder’s actions were authorized by law. See R.C. 3123.52, et seq. Consequently, even if the statements regarding the existence and amount of plaintiff’s child support arrearage were inaccurate, the communication is protected by qualified privilege. See *Hahn v. Kotten* (1975), 43 Ohio St.2d 237. (“A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege,

would be actionable, and although the duty is not a legal one but a moral or social duty of imperfect obligation.”)

{¶22} Since plaintiff has not responded to the motion for summary judgment, there is no factual dispute as to the existence of the privilege.

{¶23} Furthermore, to the extent that plaintiff asserts other causes of action based upon tort, those claims must also fail as a matter of law, since plaintiff has not produced any evidence upon which reasonable minds could find that the conduct alleged was wrongful.

{¶24} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant, ODJFS, is not liable to plaintiff under any legal theory. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law. Defendant’s motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

{¶25} A non-oral hearing was conducted in this case upon motion for summary judgment filed by defendant, Ohio Department of Job and Family Services. For the reasons set forth in the decision filed concurrently herewith, defendant’s motion for summary judgment is GRANTED and judgment is rendered in favor of defendants. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

Entry cc:

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