COURT OF APPEALS
DECISION
DATED AND FILED

JUNE 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 98-0760-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

WARREN L. BLAKSLEE D/B/A ACCESSORIES FOR LIVING,

PLAINTIFF-PETITIONER,

RONALD QUESENBERRY D/B/A CLASSIC AUTO TRIM,

PLAINTIFF-APPELLANT,

V.

GENERAL MOTORS CORPORATION, RICK KALISH AND MICHAEL DODGE,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Ronald Quesenberry appeals from the trial court's order dismissing his action against General Motors Corporation (GM) and two of its employees, Rick Kalish and Michael Dodge. The issues are: (1) whether Quesenberry's defamation claim was properly dismissed; and (2) whether Quesenberry's claim for tortious interference with contract was properly dismissed. This case was submitted to the court on the expedited appeals calendar. *See* RULE 809.17, STATS. We affirm.

According to the facts pled in Quesenberry's complaint, GM has established a program to reimburse persons with hearing loss for devices installed in their cars to alert them to the approach of on-coming emergency vehicles. Quesenberry works for G & G Sales and is a regional distributor of the E.A.R.S. alerting device, selling them in Wisconsin, Iowa and Illinois. Warren Blakslee is a distributor working within Quesenberry's territory, selling the devices in Wisconsin.

To solicit customers, Blakslee identified purchasers of new GM vehicles who might qualify for the mobility program. Blakslee then informed the purchaser about the program, sold the device to the purchaser and applied to GM for reimbursement.

Kalish, a GM general manager, took exception to Blakslee's business practices, particularly the active solicitation of past GM customers. He sent a memo to all Oldsmobile retailers, service managers and business managers in the Milwaukee area warning them that Accessories for Living, Blakslee's company, "has a major scam going on and all Oldsmobile retailers are to stop participating in reimbursing orders for this service." The memo explained that Blakslee "obtains new car delivery information from the State of Wisconsin and

solicits these owners for a free hearing test," informing owners that "they need this siren alert device and he can install the device and get them a complete refund." Only Blakslee and his company, Accessories for Living, were mentioned in the memo, not G & G or Quesenberry. As a result of the memo and other subsequent communications between GM supervisors Kalish and Dodge and their dealerships, GM removed Blakslee from eligibility for participation in the mobility program.

Quesenberry and Blakslee brought this action against GM, Kalish, and Dodge for defamation and tortious interference with contract. GM moved to dismiss for failure to state a claim. The trial court dismissed Quesenberry's claims for defamation and tortious interference with contract. The trial court also dismissed Blakslee's claim for tortious interference with contract.[1] Quesenberry appeals.

Quesenberry first argues that the trial court should not have dismissed his action for defamation. Although he was not specifically named in the memo, Quesenberry argues that he was indirectly identified because only he and Blakslee had previously contacted recipients of the memo on behalf of Accessories for Living.

A motion to dismiss a complaint for failure to state a claim upon which relief may be granted tests the legal sufficiency of the pleading. *See* ***Evans v. Cameron***, 121 Wis.2d 421, 426, 360 N.W.2d 25, 28 (1985). In deciding a motion to dismiss for failure to state a claim, the court is required to accept as true all facts properly pled by the plaintiff. *See* ***Bartley v. Thompson***, 198 Wis.2d 323,

[1] The trial court's order is nonfinal as to Blakslee because one of his claims remains pending. Therefore, that part of the trial court's order is not currently before this court.

331-32, 542 N.W.2d 227, 230 (Ct. App. 1995). A claim should not be dismissed unless no relief can be granted under any set of facts that the plaintiff could prove. *See* ***id.***, 198 Wis.2d at 332, 542 N.W.2d at 230. This presents a question of law that we review *de novo*. *See* ***id.***, 198 Wis.2d at 331, 542 N.W.2d at 230.

Accepting all the facts pled in the complaint as true, we conclude that Quesenberry has not stated an action for defamation. A defamatory communication must identify the person defamed either expressly or by reasonable inference. *See* ***Ogren v. Employers Reinsurance Corp.***, 119 Wis.2d 379, 382, 350 N.W.2d 725, 727 (Ct. App. 1984). The memo did not identify Quesenberry or G & G by name. The specific product Quesenberry distributes, the E.A.R.S. alerting device, is not mentioned in the memo. There is no adequate connection between the statements in the memo and Quesenberry to support a defamation action. The defamation claim was properly dismissed.

Quesenberry next argues that the trial court improperly dismissed his claim for tortious interference with contract. In order to state a claim for tortious interference with contract, a plaintiff must allege: (1) that there is a prospective contractual relationship; (2) that the defendant knows of the existence of the relationship; (3) intentional acts on the part of the defendant to disrupt the relationship; (4) that the relationship is actually disrupted; and (5) that the plaintiff is damaged by those acts. *See* ***Anderson v. Regents of Univ. of California***, 203 Wis.2d 469, 490, 554 N.W.2d 509, 518 (Ct. App. 1996).

The complaint did not sufficiently allege any actual or potential contractual relationship between Quesenberry and the GM dealerships and customers. Quesenberry has not pointed to anything that would afford him a reasonable expectation that Blakslee's customers would continue to be reimbursed

by GM for purchasing the products. There is a missing link between Quesenberry's sales of these products through his distributors, one of whom is Blakslee, and GM's decision not to reimburse people for having purchased one of Blakslee's products. As for Quesenberry's contractual or potential contractual relationship with Blakslee and G & G Sales, there is no allegation in the complaint that those relationships were actually disrupted. *See* ***id.*** (in order to state a claim for tortious interference with contract, a plaintiff must allege that the relationship was actually disrupted). The claim for tortious interference with contract was properly dismissed.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.