# STATE OF MICHIGAN

# COURT OF APPEALS

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| ROMAN VAYSMAN,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>November 17, 2009 |
| v | No. 287398<br>Oakland Circuit Court |
| NONNA SHANE, RITA SLUTSKER, IOSIF SLUTSKER,<br><br>Defendants-Appellees. | LC No. 2008-089571-NI |

Before: Hoekstra, P.J., and Murray and M. J. Kelly, JJ.

PER CURIAM.

In this suit for damages arising out of allegedly false reports of criminal activity, plaintiff Roman Vaysman appeals as of right the trial court's orders dismissing his claims and awarding attorney fees to defendants. On appeal, we must determine whether the trial court properly dismissed Vaysman's claims under MCR 2.116(C)(8) and, if proper, whether the trial court erred when it dismissed the claims with prejudice. We must also determine whether the trial court erred when it ordered Vaysman to pay defendants' attorney fees as a sanction for filing a frivolous lawsuit. We conclude that there were no errors warranting relief. For that reason, we affirm.

## I. Basic Facts and Procedural History

Vaysman and defendant Nonna Shane were divorced in November 2005. After the divorce, Vaysman and Shane shared custody of their minor son, Jonathan. Under the terms of the divorce, Vaysman and Shane were not to call each other, were not to enter the other's home, and were to exchange Jonathan at a local public library.

In March 2005, even before Shane's divorce from Vaysman, Shane's father, defendant Iosif Slutsker (Mr. Slutsker), filed a request for a personal protection order (PPO) against Vaysman. In the request, Mr. Slutsker alleged that Vaysman repeatedly called him and verbally abused him and, in one incident, punched him in the head. He also claimed that Vaysman chased him down with his car and stated that Vaysman accused him of destroying his marriage and threatened to destroy Mr. Slutsker and his family. In April 2005, after a hearing on the request, the trial court signed an order prohibiting Vaysman from approaching, contacting, confronting, or threatening Mr. Slutsker for one year.

In March 2006, Shane requested a PPO against Vaysman. In her request, Shane stated that Vaysman had repeatedly called her, threatened her, harassed her, and even chased her in his car when she was walking. Shane also described incidents where Vaysman engaged in aggressive and threatening behavior against her, including several incidents during parenting exchanges. Shane explained that, although Vaysman had been threatening her throughout the divorce process, she only recently requested a PPO because she was finally able to obtain the support of third-party witnesses, who were willing to aver to the events about which she complained. In November 2006, the trial court determined that Shane's request should be granted and signed an order prohibiting Vaysman from threatening to kill or injure Shane. The order remained in effect through May 1, 2007.

On May 21, 2007, Shane reported an incident allegedly involving Vaysman to the police. According to the police report, Shane stated that on May 17, 2007, she and her parents were walking with Jonathan, who was riding a bike, along a residential road near Shane's home when she heard a car accelerating. Shane told the investigating officer that Vaysman was driving the car and that she thought he would have hit her and her father had they not jumped out of the way. Shane also told the investigator that she did not believe that Vaysman intended to hit Jonathan, but that she thought Vaysman wanted to frighten them with his reckless driving. When asked whether Vaysman had a reason to be near her home, Shane stated that Vaysman did not have a reason to be there, but has in the past driven around the block over and over again when he sees that her father is visiting. She indicated that it was her opinion that he does this in order to get an opportunity to confront her father.

The investigating officer interviewed Shane's parents in June 2007. Mr. and Mrs. Slutsker provided statements largely corroborating Shane's description of the incident. In her report, the officer stated that Shane's parents stated that it was their opinion that Vaysman was trying to intimidate and harass them by driving by at a high speed.

The investigating officer spoke with Jonathan on the same day as she spoke with Mr. and Mrs. Slutsker. The officer indicated that Jonathan told him that his father had asked him if he had spoken to the police yet and told Jonathan that he was not the person driving the car because he was in Chicago on business. The officer then asked Jonathan about what he saw on the day at issue and Jonathan stated that he "saw his dad's car coming fast down the road." Jonathan stated that he was certain that it was his dad and that he thought his dad was trying to "run over his mom."

In August 2007, the prosecutor issued a warrant for Vaysman's arrest on the basis of these statements. The prosecutor charged Vaysman with felonious assault and, as an alternate charge, reckless driving. See MCL 750.82 and MCL 257.626.

Shane requested another PPO against Vaysman based on the incident at issue. After a hearing on the request, the trial court concluded that Vaysman posed a credible threat to Shane and granted Shane's request for a PPO. The trial court signed the order on November 15, 2007. The order prohibited Vaysman from engaging in a variety of activities including following, approaching, or contacting Shane. The order remained in effect until November 2008.

In February 2008, Vaysman sued Shane and Mr. and Mrs. Slutsker. Vaysman alleged that defendants each made statements to the police accusing Vaysman of engaging in a criminal

offense; namely, driving his car at a high rate of speed toward defendants. For his first two counts, Vaysman alleged that these statements amounted to defamation (count I) and that defendants acted in "concert" (count II) with regard to the allegations made in the first fourteen paragraphs of his complaint. Vaysman also alleged counts for malicious prosecution (count III), abuse of the criminal process (count IV), and intentional infliction of emotional distress (count V).

In a letter dated April 4, 2008, defendants' trial counsel informed Vaysman's counsel that he believed that Vaysman's complaint failed to state a single valid claim and asked that the complaint be voluntarily dismissed. Defendants' trial counsel stated that, if the complaint were not voluntarily dismissed, he would make a dispositive motion and seek sanctions for the frivolous suit.

On April 14, 2008, defendants moved for summary disposition. In their motion, defendants primarily relied on MCR 2.116(C)(8), but also cited MCR 2.116(C)(10) as an alternate basis for granting relief. Defendants argued that, as pleaded, each of Vaysman's claims were fatally deficient. With regard to the defamation claim, defendants stated that the allegedly defamatory communications were to police officers and, for that reason, were absolutely privileged. Defendants also noted that Vaysman failed to plead that the criminal proceeding against him had terminated in his favor and failed to identify an act that would amount to an abuse of process. Defendants also argued that defendants' reports to the police were not the kind of extreme and outrageous conduct that could support a claim for intentional inflectional of emotional distress. Finally, defendants argued that Vaysman's claim for "concert of action" must be dismissed along with the other claims, because it cannot survive absent an underlying separate and actionable tort. Defendants also argued that Vaysman's complaint was part of a continuing effort to harass defendants and met each of the definition of a frivolous suit stated under MCL 600.2591(1). For that reason, defendants asked the trial court to order Vaysman to pay their costs and attorney fees.

In response, Vaysman argued that defendants' communications to the police were not privileged if they did not believe the statements to be true—that is, he argued that defendants had to have a good faith belief in the accuracy of their statements. He also admitted that, as to defendants' motion, the criminal action had not terminated in his favor. Nevertheless, he argued that the trial court should take defendants' motion under advisement and await the outcome of the criminal proceedings. Vaysman also argued that defendants' actions in causing him to become the subject of a criminal investigation did amount to the intentional infliction of emotional distress. Finally, Vaysman stated that his "concert of action" claim should survive because his other claims were properly alleged.

The trial court held a hearing on July 9, 2008. At the hearing, Vaysman's trial counsel admitted that the criminal proceedings against Vaysman had not yet been completed and for that reason the malicious prosecution and abuse of process claims were "not exactly ripe." However, Vaysman's counsel stated that she did not want to proceed piecemeal and asked that the trial court to take the matter under advisement for "a few short weeks" until the criminal matter was resolved. Vaysman's trial counsel also argued that defendants did not believe that their allegations were true and so were not entitled to an absolute privilege.

After hearing the arguments, the trial court concluded that Vaysman's complaint failed to state any claims upon which relief could be granted. The court determined that defendants' communications to the police were absolutely privileged, and for that reason could not support a claim for defamation. The court also noted that Vaysman's complaint did not allege that the criminal proceedings had terminated in his favor and did not identify an irregularity within the scope of the proceeding. For those reasons, it determined that the complaint failed to state claims for malicious prosecution and abuse of process. The trial court also concluded that, as pleaded, defendants' acts did not rise to the level necessary to support an intentional infliction of emotional distress. Finally, the court determined that the concert of action claim could not survive the dismissal of the other claims. For these reasons, the court granted defendants' motion for summary disposition. The trial court entered an order dismissing Vaysman's complaint in its entirety on the same day.

Vaysman moved for reconsideration of the trial court's opinion on July 23, 2008 and defendants moved for costs and attorney fees on July 30, 2008.

The trial court held a hearing on defendants' motion for costs and attorney fees on August 6, 2008. At the hearing, the trial court found that Vaysman's complaint was frivolous and awarded defendants $12,030.36 in costs and attorney fees. The court entered an order awarding the costs and fees and denying Vaysman's motion for reconsideration on the same day.

In August 2008, after the trial court denied Vaysman's motion for reconsideration, the prosecutor moved to enter an order of nolle prosequi in the criminal action against Vaysman and the circuit court granted the motion.

This appeal followed.

## II. Summary Disposition Under MCR 2.116(C)(8)

### A. Standard of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Chen v Wayne State University*, 284 Mich App 172, 200; 771 NW2d 820 (2009). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint considering the allegations in the pleadings alone. *Feyz v Mercy Memorial Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). "When a challenge to a complaint is made, the motion tests whether the complaint states a claim as a matter of law, and the motion should be granted if no factual development could possibly justify recovery." *Id.*

### B. Defamation

In order to state a claim for defamation, a plaintiff must allege that the defendant made "(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod)." *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). For his first count, Vaysman alleged that defendants' "accusations" that he acted "in the manner set forth and that he committed a crime" were false.

He also alleged that defendants "published the remarks to third parties with knowledge of the falsity of the statements or in reckless disregard of their truth or falsity" and asserted that the publication was not privileged and amounted to defamation per se. These allegations were insufficient to state an actionable claim for defamation.

The allegations underlying a claim for defamation must be stated with particularity: the allegations must identify the particular defamatory words about which the plaintiff complains and must allege where, when, and to whom the publication was made. *Ledl v Quick Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984); *Hernden v Consumers Power Co*, 72 Mich App 349, 356; 249 NW2d 419 (1976); see also *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 52-57; 495 NW2d 392 (1992) (discussing the purpose behind the requirement that claims for defamation must be pleaded with specificity). As pleaded under the first count, Vaysman's complaint does not actually identify to whom defendants made the allegedly defamatory statements. Rather, Vaysman merely alleges that the statements were made to "third parties."[1] Similarly, the introductory allegations incorporated under his defamation claim also do not identify a single person to whom the defendants allegedly made any defamatory statement. Instead, the allegations relate that each defendant at some point "reported to the Farmington Hills Police Department" that Vaysman had been "involved in a criminal offense, to wit: that he drove his car at a high rate of speed directly toward" defendants. Moreover, to the extent that the reference to the police department could be said to identify police officers as the parties to whom the publication occurred, any allegedly defamatory statements made to police officers in their official capacity would not support a claim for defamation.[2]

In Michigan, communications that are absolutely privileged are not actionable as defamation even when spoken with actual malice. *Kefgen v Davidson*, 241 Mich App 611, 618; 617 NW2d 351 (2000). Thus, even if defendants maliciously published false statements about Vaysman, if subject to an absolute privilege, the statements would not support a claim for defamation. *Oesterle v Wallace*, 272 Mich App 260, 264; 725 NW2d 470 (2006). Our Supreme Court has noted that the absolute privilege generally applies to legislative and judicial proceedings, acts of state, and acts done in the exercise of military and naval authority. *Timmis v Bennett*, 352 Mich 355, 364; 89 NW2d 748 (1958). The absolute privilege applies to those public proceedings because "'it is considered as a matter of public policy for the general welfare that persons should be permitted to express their views more freely and fearlessly than in regard to private matters or persons.'" *Id.* (citation omitted). As such, if a person makes a statement

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[1] We reject Vaysman's claim that this statement was sufficient to survive summary disposition under MCR 2.116(C)(8) because it leaves open the possibility that he might learn through discovery that defendants made defamatory statements about him to a non-police third party. To conclude otherwise would be to ignore the requirement that actions for defamation must be pleaded with specificity. *Ledl*, 133 Mich App at 589; *Hernden*, 72 Mich App at 356.

[2] In his complaint, Vaysman also referred to three exhibits that purportedly more fully and specifically "set forth" the nature of the defamatory statements made by defendants. However, there are no exhibits attached to the complaint in the lower court record.

during one of the listed proceedings and the statement is relevant, material, and pertinent to that type of proceeding, the statement will be absolutely privileged. *Sanders v Leeson Air Conditioning Corp*, 362 Mich 692, 695; 108 NW2d 761 (1961).

In many jurisdictions, a person who makes a statement to law enforcement officers in order to initiate or further a criminal investigation is only entitled to qualified immunity for those statements. See *Fridovich v Fridovich*, 598 So2d 65, 66-69 (Fla, 1992) (discussing the policy arguments in favor of an absolute privilege for communications to law enforcement officers and listing jurisdictions that apply qualified immunity to such statements). In those jurisdictions, a plaintiff may assert a claim for defamation, even though the defendant published the allegedly defamatory statements to a law enforcement officer, if the defendant made the statement with actual malice. *Id.* at 67. However, other jurisdictions treat such statements as absolutely privileged. See *Morris v Harvey Cycle and Camper, Inc*, 392 Ill App 3d 399, 404-406; 911 NE2d 1049 (2009). In the jurisdictions applying an absolute privilege to statements made to law enforcement officers, the courts generally extend the absolute privilege to the statements on the grounds that the initiation and investigation of potential criminal conduct constitutes the earliest stages of a judicial proceeding. See *McGranahan v Dahar*, 119 NH 758, 769; 408 A2d 121 (1979) (adopting the rule that "treats both formal and informal complaints and statements to a prosecuting authority as part of the initial steps in a judicial proceeding," which are entitled to absolute immunity from an action for defamation). As the court in *McGranahan* explained, the extension of absolute privilege to statements made to law enforcement officers encourages the reporting of wrongful activities without depriving the falsely accused of a remedy:

> The law does not, and should not, allow recovery in tort by all persons accused of crimes and not convicted. There is no guarantee in our society that only guilty persons will be accused and arrested. Except in extreme cases, for which malicious prosecution or abuse of process are adequate remedies, a person wrongfully accused of a crime must bear that risk, lest those who suspect wrongful activity be intimidated from speaking about it to the proper authorities for fear of becoming embroiled themselves in the hazards of interminable litigation. [*Id.* (citation omitted).]

Michigan follows those jurisdictions that extend an absolute privilege to statements made to law enforcement officers in order to initiate or further an investigation. See *Shinglemeyer v Wright*, 124 Mich 130, 239; 82 NW 887 (1900) (holding on public policy grounds that a letter to detectives investigating a theft was absolutely privileged); *Flynn v Boglarsky*, 164 Mich 513, 516-517; 129 NW 674 (1911) (holding that a letter to a police magistrate, wherein various persons accused neighbors of being disturbers of the peace, quarrelsome and disorderly, and a general nuisance, was absolutely privileged because it was pertinent and material to the desired investigation); see also *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619; 396 NW2d 809 (1986) (recognizing that Michigan extends an absolute privilege over communications to law enforcement officers). For that reason, we must conclude that Vaysman's complaint does not state an actionable claim for defamation. Vaysman did not specifically identify the persons to whom defendants published allegedly defamatory statements, but did imply that defendants published defamatory statements to law enforcement officers at the police station. But even if defendants' did make reports to law enforcement officers that were completely false and maliciously made, those statements were nevertheless absolutely privileged. *Hall*, 153 Mich

App at 619. Therefore, those statements could not serve as the basis for a defamation claim. *Oesterle*, 272 Mich App at 264. The trial court did not err when it dismissed Vaysman's claim for defamation.

C. Concert of Action

A concert of action claim requires proof that the defendants acted tortiously pursuant to a common design. *Cousineau v Ford Motor Co*, 140 Mich App 19, 32; 363 NW2d 721 (1985) citing *Abel v Eli Lilly & Co*, 418 Mich 311, 338; 343 NW2d 164 (1984). Thus, in order to sustain a claim for concert of action, the plaintiff must allege the commission of an actionable underlying tort.

In his claim for concert of action, Vaysman alleged that defendants "engaged in [the] concerted activities described in paragraphs 1-14" and that, as a result of those concerted activities, he sustained damages. The only tort alleged in the cited paragraphs was Vaysman's defamation claim.[3] Because Vaysman failed to state a claim for defamation on which relief could be granted, his claim based on a concert of action to commit defamation must also fail.

D. Malicious Prosecution and Abuse of Process

In order to state a claim for malicious prosecution, a plaintiff must show that the criminal proceedings terminated in his or her favor. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 21; 672 NW2d 351 (2003). In the present case, Vaysman did not allege that the criminal prosecution against him had terminated in his favor. Indeed, at the hearing concerning defendants' motion for summary disposition, Vaysman's counsel admitted that the criminal proceedings against Vaysman had not yet been resolved. Because Vaysman did not and could not allege that the criminal proceedings against him had terminated in his favor, the trial court properly dismissed that claim under MCR 2.116(C)(8).

In order to establish a claim for abuse of process, the plaintiff must plead and prove "(1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981). The initiation of a suit is not itself actionable as an abuse of process; rather, the plaintiff must prove an improper use of process after the commencement of the proceeding. *Id.* at 31. In his complaint, Vaysman did not allege that defendants caused the prosecutor to make an improper use of any judicial process within the criminal proceeding against him. See *Id.* at 30 n 18, citing 3 Restatement Torts, 2d, § 682, comment a, p 474 (noting that it is the use of process within a judicial proceeding for a purpose other than what the process was designed to accomplish that creates liability). Rather, Vaysman alleged that defendants abused the criminal process by initially making false statements to law enforcement officers and then repeating those statements throughout the investigation. These allegations were insufficient to establish his claim for abuse of process.

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[3] For this reason, we reject Vaysman's contention that this claim would survive if any of his other claims were improperly dismissed.

E. Intentional Infliction of Emotional Distress

In order to prevail on a claim of intentional or reckless infliction of emotional distress, a plaintiff must prove four elements: (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602; 374 NW2d 905 (1985). "Liability for such a claim has been found only where the conduct complained of 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." *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). It is initially the trial court's duty to determine whether particular conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. *Lewis v LeGrow*, 258 Mich App 175, 197; 670 NW2d 675 (2003). However, where reasonable minds may differ, "whether a defendant's conduct is so extreme and outrageous as to impose liability is a question for the jury." *Id.*

In his claim for the intentional infliction of emotional distress, Vaysman alleged that defendants' engaged in extreme and outrageous conduct when they gave allegedly false statements to law enforcement officers. However, the nature of the accusations against Vaysman—even if false—do not rise to the level of outrageous. As pleaded in his complaint, Vaysman merely alleged that defendants accused him of driving his car at a high rate of speed in their direction. These statements were not, as a matter of law, sufficiently extreme or outrageous to support a claim of intentional infliction of emotional distress. Therefore, the trial court did not err when it dismissed Vaysman's claim under MCR 2.116(C)(8), even if for a different reason. See *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).

F. Dismissal With Prejudice

Vaysman also argues that the trial court erred when it dismissed his claims with prejudice. Specifically, Vaysman argues that, to the extent that the trial court dismissed his claims because the criminal case had not yet resolved, it should have dismissed his claims without prejudice so that he could bring them after the resolution of his criminal case. Although Vaysman frames this issue by asserting that his claims were not yet ripe, we note that only Vaysman's claim for malicious prosecution was affected by the fact that the criminal proceedings against Vaysman had not yet resolved. Each of the other claims failed as a matter of law for independent reasons. Moreover, once the trial court determined that Vaysman failed to state a claim for malicious prosecution, it properly dismissed even that claim with prejudice. *ABB Paint Finishing, Inc v Nat'l Union Fire Ins Co of Pittsburg*, 223 Mich App 559, 563; 567 NW2d 456 (1997).

When Vaysman elected to file a claim premised on malicious prosecution before the resolution of the criminal proceeding against him, he took the risk that his claim would be dismissed with prejudice under MCR 2.116(C)(8) before the criminal proceeding could conclude. Had he wished to avoid that possibility, Vaysman should have waited to bring his malicious prosecution claim until after the criminal action had resolved. Even if he assumed that the criminal proceeding would resolve quickly and that he would be able to amend his complaint to state a claim for malicious prosecution, once he realized that the criminal proceedings were going to take longer than he anticipated to resolve, Vaysman could have moved for voluntary dismissal in order to avoid dismissal with prejudice under MCR 2.116(C)(8). See *ABB Paint*

*Finishing, Inc*, 223 Mich App at 564-565 (noting that the trial court could have granted plaintiff's motion for voluntary dismissal rather than granting defendant's motion for summary disposition under MCR 2.116(C)(8), but that it could not choose to grant defendant's motion under MCR 2.116(C)(8) without prejudice in order to permit plaintiff to refile the claim later). However, Vaysman did not move to voluntarily dismiss his malicious prosecution claim. Instead, his trial counsel essentially admitted that defendants' were entitled to summary disposition under MCR 2.116(C)(8) when she stated that this claim was "not exactly ripe" and asked the trial court to take defendants' motion under advisement "for a few weeks" while the criminal proceeding progressed to its conclusion. Vaysman's trial counsel's hope that the criminal proceedings would resolve in his favor within the next few weeks was not an adequate basis for refusing to consider defendants' motion. Once defendants made a proper motion under MCR 2.116(C)(8), the trial court had a duty to consider the motion on its merits. MCR 2.116(I)(1) ("If the pleadings show that a party is entitled to judgment as a matter of law . . . the court shall render judgment without delay."). The trial court did not err in dismissing Vaysman's claims with prejudice.

## III. Sanctions for a Frivolous Suit

Vaysman next argues that the trial court erred when it found that he filed a frivolous suit and ordered him to pay defendants' costs and attorney fees as a sanction. This Court reviews for clear error a trial court's finding that an action is frivolous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

In their motion for summary disposition, defendants argued that Vaysman's complaint was frivolous and asked the trial court to order sanctions under MCL 600.2591(1). Once defendants moved for sanctions under the statute, the trial court had to award the sanctions if it found that Vaysman's suit was frivolous. MCL 600.2591(1). An action is frivolous if (1) the primary purpose in initiating the action was to "harass, embarrass, or injure" the prevailing party, or (2) the party bringing the action had no reasonable basis to believe the facts underlying his or her position were true, or (3) the legal position of the party bringing the action was devoid of arguable legal merit. MCL 600.2591(3)(a)(i)-(iii).

Under the facts of this case, we cannot conclude that the trial court clearly erred when it found that Vaysman's complaint was frivolous. As stated above, Vaysman's complaint failed to state any claim upon which relief could be granted and the deficiencies in those claims were obvious. Thus, Vaysman's claims were plainly devoid of arguable legal merit. MCL 600.2591(3)(a)(iii).

Further, there is record evidence from which the trial court could conclude that Vaysman brought his suit in order to harass defendants. MCL 600.2591(3)(a)(i). Defendants presented evidence during summary disposition that they had a long history of problems with Vaysman, but Vaysman failed to present any of this background information in his complaint. Likewise, the timing of Vaysman's suit—before the merits of the criminal proceeding could be ascertained and not too long after Shane and Mr. Slutsker sought personal protection orders—permits an inference that Vaysman brought his suit for an improper purpose. This conclusion is further bolstered by the fact that Vaysman's trial counsel submitted more than 300 interrogatories to Shane, which included numerous irrelevant questions.

Given this evidence, we cannot conclude that the trial court erred when it found that Vaysman's suit was frivolous under MCL 600.2591(1).

## IV. Motion for Reconsideration

Finally, Vaysman argues that the trial court erred when it denied his motion for reconsideration. Specifically, Vaysman argues that the trial court should have granted the motion for reconsideration given the new evidence that the criminal investigation had resolved in his favor, that he passed a polygraph exam, and in light of the fact that an investigator had concluded that Jonathan was "coached" by his mother to lie. This Court reviews a trial court's decision on a motion for reconsideration for an abuse of discretion. *Woods v SLB Property Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008).

In order to warrant relief, the party moving for reconsideration must generally do more than present the same issues already ruled on by the court: the moving party must demonstrate that the court and parties were misled by a palpable error and that correction of the error results in a different disposition. MCR 2.119(F)(3). In his motion for reconsideration, Vaysman essentially raised the exact same issues that he had already presented in his response to defendants' motion for summary disposition. The only difference was that, on reconsideration, Vaysman attached reports that he claimed showed that defendants were not being truthful when they made the allegedly defamatory reports to law enforcement officers. However, it appears from the record that Vaysman could have presented this same evidence to the trial court in support of his position at summary disposition. And a trial court does not abuse its discretion when it denies a motion for reconsideration that rests on legal theories or evidence that could have been presented before the original order. *Woods*, 277 Mich App at 630. Moreover, this evidence did not alter the fact that defendants' statements—even if false—were absolutely privileged and, for that reason, could not support a claim for defamation or concert of action to commit defamation. *Hall*, 153 Mich App at 619. Likewise, this evidence did not alter the fact that Vaysman (1) did not and could not plead that the criminal prosecution had resolved in his favor at the time of either motion, (2) failed to plead a single improper use of process, and (3) failed to allege acts sufficiently extreme and outrageous to support a claim for intentional infliction of emotional distress. Thus, this evidence did not demonstrate that the court or parties had been misled by a palpable error. MCR 2.119(F)(3).

The trial court did not abuse its discretion when it denied Vaysman's motion for reconsideration.

There were no errors warranting relief.

Affirmed. As the prevailing parties, defendants may tax costs under MCR 7.219(A).

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly