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IN THE
COURT OF APPEALS OF INDIANA

B.C.,	)	
	)	
Appellant/Plaintiff,	)	
	)	
vs.	)	No. 71A03-0905-CV-226
	)	
L.L.,	)	
	)	
Appellee/Defendant.	)	

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
Cause No. 71C01-0703-PL-62

September 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Plaintiff B.C. ("Father") appeals the trial court's order granting summary judgment in favor of Appellee/Defendant L.L. ("Mother"). We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of E.C., born November 26, 1998. At some point, Father and Mother divorced, after which Father was granted sole custody of E.C.

On March 7, 2005, Mother sent an email to the principal at E.C.'s elementary school notifying the principal that E.C. had allegedly told her that Father "touches the front of her bottom and the back of her bottom" and that Father "puts lotion on my front bottom and back bottom lying on top of the bed or when I am standing up on his bed." Appellant's App. p. 152. Upon receiving Mother's email, the principal reported the matter to law enforcement for investigation. During the investigation into Mother's allegations, both Father and E.C. admitted that Father put lotion on E.C.'s body while E.C. lay on the bed. Father told investigators that he applied lotion to E.C.'s body because E.C. suffered from eczema, and E.C. was in pain and her body itched if lotion was not applied. Father also told investigators that he had put medication on E.C.'s private areas when she was younger, but that E.C. no longer required medication on her private areas. The investigators determined that the allegations of sexual abuse were unfounded, and E.C. was returned to Father's care. As a condition to E.C.'s return, Father agreed that he would no longer apply medication to E.C.'s private areas and that if necessary, E.C. would apply the medicine.

On February 28, 2007, Mother filed a motion seeking joint custody of E.C. in Marshall County Superior Court. The Marshall County court conducted numerous hearings

on the matter. On January 4, 2008, the court entered an order denying Mother's request, finding that Mother's ability to control the situation, and not E.C.'s best interest, appeared to be Mother's primary focus. The court additionally found that the "discord between the parties ha[d] extended to the lodging of a false accusation of sexual molestation of [E.C.] by her father in an effort by [Mother] to remove [E.C.] from his custody." Appellant's App. p. 15.

On March 13, 2007, Father filed a complaint for defamation of character alleging that Mother defamed him by sending an email to E.C.'s elementary school principal in which she falsely asserted that Father was sexually molesting E.C. Father and Mother subsequently filed competing motions for summary judgment. On February 23, 2009, the trial court denied Father's request for summary judgment and granted summary judgment in favor of Mother. Father now appeals.

DISCUSSION AND DECISION

> Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. A party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. A factual issue is "genuine" if it is not capable of being conclusively foreclosed by reference to undisputed facts. Although there may be genuine disputes over certain facts, a fact is "material" when its existence facilitates the resolution of an issue of the case.
>
> When we review a trial court's entry of summary judgment, we are bound by the same standard that binds the trial court. We may not look beyond the evidence that the parties specifically designated for the motion for summary judgment in the trial court. We must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. On appeal, the trial court's order granting or denying a motion for summary judgment is

> cloaked with a presumption of validity. A party appealing from an order granting summary judgment has the burden of persuading us that the decision was erroneous.

Newman v. Jewish Cmty. Ctr. Assn. of Indpls., 875 N.E.2d 729, 738-39 (Ind. Ct. App. 2007) (citations omitted), *trans. denied*. A grant of summary judgment may be affirmed upon any theory supported by the designated evidence. *Id*. at 739.

To prevail on a claim of defamation, a plaintiff must prove four elements: (1) a communication with defamatory imputation, (2) malice, (3) publication, and (4) damages. *Id*. Whether a communication is defamatory is generally a question of law for the court, but the determination becomes a question of fact for the jury if the communication is reasonably susceptible to either a defamatory or a non-defamatory interpretation. *Id*. In determining whether a defamatory meaning is possible, we test the effect that the statement is fairly calculated to produce and the impression it would naturally engender in the mind of the average person. *Id*. However, any statement actionable for defamation must not only be defamatory in nature, but also false. *Trail v. Boys and Girls Clubs of N.W. Ind.*, 845 N.E.2d 130, 136 (Ind. 2006).

Father claims that Mother defamed him in an email sent to E.C.'s elementary school principal in March of 2005. Mother's email informed the principal that E.C. allegedly told Mother that Father "touches the front of her bottom and the back of her bottom" and that Father "puts lotion on [E.C.'s] front bottom and back bottom lying on top of the bed or when I am standing up on his bed." Appellant's App. p. 114. Upon receiving Mother's email, E.C.'s principal, believing he had a duty to do so, reported the matter to law enforcement

officials for investigation. During the course of this investigation, both Father and E.C. admitted that Father applied lotion to E.C.'s body and that Father had previously applied medication to E.C.'s private areas. Father explained that he applied lotion to E.C.'s body because she suffered from eczema and was in pain and her body itched if lotion was not applied. Father further explained that although he had previously put medication on E.C.'s private areas, he no longer did so because E.C. no longer required medication on her private areas.

Upon review, we observe that Father did not contest the truth of any of Mother's actual statements but rather the implication arising from those statements that he had sexually molested E.C. In fact, Father admitted that Mother's actual statements were technically true. Although we agree that the inference arising from Mother's statements was undoubtedly defamatory in nature and that nothing in the record indicates that Father had anything but E.C.'s best interests at heart, we conclude that the trial court properly granted summary judgment in favor of Mother given that any statement actionable for defamation must not only be defamatory in nature, but also false.[1] *See Trail*, 845 N.E.2d at 136.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

[1] In reaching this conclusion, however, we emphasize that we certainly do not condone the practice of implying false allegations of sexual abuse under any circumstances. Unfortunately there is some merit in these words attributed to Mark Twain: "A lie can travel halfway around the world while the truth is putting on its shoes."