STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT

TODD L. LEVITT and LEVITT LAW FIRM, P.C.,

Plaintiffs,

v

ZACHARY FELTON,

Defendant.

Case No. 14-11644-NZ

Hon. Paul H. Chamberlain

OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

I. FACTS

On June 2, 2014, plaintiff filed a complaint against defendant, alleging false light, intentional infliction of emotional distress, libel, tortious interference with business relations, defamation per se, business defamation, and unfair competition. Plaintiff's claims arise out of defendant's creation of a Twitter account entitled "Todd Levitt 2.0." Plaintiff became aware of the existence of this account on April 14, 2014. Plaintiff characterizes this Twitter account as an impersonation of him that has caused him damage. Defendant's Twitter handle was @levittlawyer, which is very similar to plaintiff's Twitter handle of @levittlaw. Defendant used the plaintiff's actual picture as his "avatar." He also used the plaintiff's logo as his background on the Twitter page.

Defendant argues that this Twitter account was a parody designed to make light of the plaintiff's marketing strategy, which included referring to himself as a "bad ass" attorney. On plaintiff's own Twitter account, he referred to himself as such and posted several Tweets encouraging the use of alcohol and marijuana. Defendant claims that the Tweets on the Todd Levitt 2.0 Twitter account, like the one that stated, "Partying=Defense Clients[.] Defense Clients=Income[.] If I endorse partying, will my income grow? It's like a Ponzi scheme for lawyers!" were meant to satirize and make fun of plaintiff's Tweets in a humorous way. Defendant's account contained a disclaimer which stated, "A badass parody of our favorite lawyer most likely seen on Main Street." Defendant also posted three Tweets referring to the account as a parody and satire.

On December 12, 2014, defendant filed this motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant argues that his Twitter account was a parody, and so is protected speech under the First Amendment to the United States Constitution. Alternatively, defendant argues that plaintiff is a limited-purpose public figure, and so summary disposition is appropriate because plaintiff is unable to show the actual malice required in order for plaintiff to prevail. This court grants defendant's motion for summary disposition, finding that defendant's Twitter

account constitutes a parody protected by the First Amendment. Therefore, it is unnecessary for this court to reach the issue of whether plaintiff is a public figure.

II. ANALYSIS

MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Thomas v Stubbs*, 218 Mich App 46, 49; 553 NW2d 634 (1996). The court reviewing the motion must consider pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. *Id.* The party responding to a motion for summary disposition must present evidentiary proofs creating a genuine issue of material fact for trial; otherwise, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Finally, the test for an existence of a genuine issue of material fact is whether the record, when looked at in the light most favorable to the non-moving party, leaves open an issue upon which reasonable minds might differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The United States Supreme Court has long recognized that certain types of speech are protected under the First Amendment. *Milkovich v Lorain Journal Co*, 497 US 1, 16; 110 S Ct 2695, 2704; 111 L Ed 2d 1 (1990). One such type of protected speech is parody. *Ireland v Edwards*, 230 Mich App 607, 617; 584 NW2d 632 (1998). The Supreme Court has held that certain statements are protected, even when provable as false, when they cannot reasonably be interpreted as stating actual facts about the plaintiff. *Garvelink v Detroit News*, 206 Mich App 604, 609; 522 NW2d 883 (1994); See also *Milkovich*, 497 US at 20. Such statements, read in context, are not capable of a defamatory interpretation. *Ireland*, 230 Mich App at 617.

In this case, defendant's Twitter account, when considered in context, cannot reasonably be interpreted as anything other than a parody account. First, the language used in defendant's Tweets is an indication that Todd Levitt 2.0 is a parody Twitter account. One Tweet reads, "4/20 = Pot smoking holiday[.] Possession of marijuana = Client[.] Client =Income[.] In the words of Snoop Dogg: smoke weed every day. #InToddWeToke." Another reads, "Partying=Defense Clients[.] Defense Clients=Income[.] If I endorse partying, will my income grow? It's like a Ponzi scheme for lawyers!" It is unlikely that a reasonable person would interpret these Tweets to have been created by an attorney seeking to promote his business. It would be quite foolish for an attorney to outright state by way of self-promotion that he wants college students to drink and use illegal drugs so that he can increase his income by defending them in court. Instead, it is much more likely that a reasonable person would see these Tweets as attempts to ridicule and satirize plaintiff's own Tweets that discuss alcohol and marijuana use.

Second, when defendant's Twitter account is considered in context, particularly considering defendant's multiple disclaimers, the Todd Levitt 2.0 account cannot reasonably be interpreted as anything other than a parody account. The fact that the account is titled "Todd Levitt 2.0" is an initial indication that this is not an original and genuine Todd Levitt Twitter account. Further, defendant included a disclaimer on the account's main page, which stated, "A badass parody of our favorite lawyer most likely seen on Main Street." Additionally, defendant included three separate Tweets reminding any readers that the account was parody or satire. On April 15, 2014, defendant tweeted, "Remember kiddoes, parody accounts are #badass and #lawful." On April 16, 2014, defendant tweeted, "Word of the day for @twebbsays is satire.

Three syllables. Once you get a grasp of the concept a lot of things will start making sense." Finally, on April 22, 2014, defendant tweeted, "A gentle reminder to potential seekers of Todd Levitt: This is not him. This is a parody account. You can find the real Todd(ler) @levittlaw." When Todd Levitt 2.0 is considered in the context of these multiple disclaimers, this court finds that the account cannot reasonably be interpreted as stating actual facts about the plaintiff. *Garvelink*, 206 Mich App at 609.

Defendant's Twitter account, Todd Levitt 2.0, is a parody that is protected under the First Amendment of the United States Constitution. The Tweets were meant to ridicule and satirize plaintiff's social media presence in a humorous way. However, whether defendant succeeded in creating a *humorous* parody is irrelevant for the purposes of the First Amendment. It is clear that Todd Levitt 2.0 cannot reasonably be interpreted as anything other than a parody account. Therefore, it is protected speech under the First Amendment. The record, when looked at in the light most favorable to the plaintiff, does not leave open an issue of genuine material fact for trial. *West*, 469 Mich at 183. Accordingly, this court grants defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

THEREFORE IT IS ORDERED that defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) is granted.

This order resolves the last pending claim and closes the case.

Date: February 19, 2015

Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court