

OHIO COURT OF APPEALS, FIRST APPELLATE DISTRICT, HAMILTON
COUNTY

Hilty v. Donnellon McCarthy Ents., Inc.

2026-Ohio-434 · No. C-240418 · Decided February 11, 2026

SUMMARY

The Ohio First District Court of Appeals reversed the Hamilton County Court of Common Pleas judgment in favor of Donnellon McCarthy Enterprises, Inc. The court held that the alleged defamatory statements about Grant Hilty were not protected by qualified privilege and that actual malice was therefore not required, while also concluding that Hilty's breach-of-contract claim was not wholly derivative of defamation. The court remanded for judgment on the defamation claim, a damages trial, and further proceedings on the contract and tortious-interference claims.

CASE DETAILS

COURT	Ohio Court of Appeals, First Appellate District, Hamilton County
WRITING FOR THE COURT	Per Curiam; Kinsley, P.J.; Moore, J.; Bock, J.
JURISDICTION	Ohio Court of Appeals, First Appellate District, Hamilton County
DECIDED	February 11, 2026
DOCKET	C-240418
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed after a jury trial and the Hamilton County Court of Common Pleas entered judgment for DME on defamation, breach of contract, and tortious-interference claims. DME filed a cross-assignment of error challenging the denial of summary judgment without filing a cross-appeal.
STANDARD OF REVIEW	Questions of law, including the existence of qualified privilege and whether a claim is derivative, are reviewed de novo. Evidentiary rulings are reviewed for abuse of discretion and material prejudice. The appellate court also applied harmless-error principles to the qualified-privilege error as to statements on which the jury independently found no actionable injury or occurrence.
PRECEDENTIAL VALUE	published and precedential

PARTIES

Grant Hilty, Modern Office Methods, Inc. v. Donnellon McCarthy Enterprises, Inc.

TOPICS

defamation

breach of contract

intentional interference with contract

appellate procedure

harmless error

PRACTICE AREAS

Defamation

Contract law

Tortious interference

Appellate procedure

Evidence

QUESTIONS PRESENTED

1. Whether DME's statements to its clients about former employee Hilty were protected by qualified privilege.
2. Whether the trial court improperly instructed the jury that Hilty had to prove actual malice to prevail on defamation.
3. Whether Hilty's breach-of-contract claim under the nondisparagement agreement was derivative of his defamation claim.
4. Whether Hilty's and MOM's tortious-interference claims were derivative of the defamation claim and could proceed after Hilty prevailed on defamation.
5. Whether the trial court properly excluded unpleaded statements, testimony lacking personal knowledge, and evidence concerning an unidentified caller.
6. Whether DME's cross-assignment of error was cognizable without a notice of cross-appeal.

HOLDINGS

1. The statements to DME's clients were not protected by qualified privilege because they did not concern or further a mutual business interest between DME and its clients. The trial court improperly applied the privilege based solely on an employer-employee relationship that no longer existed and did not exist between DME and the recipients.
2. Because qualified privilege did not apply, Hilty was not required to prove actual malice. The jury had already found all essential elements of defamation in Hilty's favor as to the Connors statements, so Hilty was entitled to judgment on liability and a trial on damages.
3. Hilty's breach-of-contract claim under the nondisparagement agreement was not derivative of his defamation claim. The claims protect different interests, and the contract prohibited a broader range of disparaging or impugning communications than defamation law.
4. Hilty's and MOM's tortious-interference claims were derivative of Hilty's defamation claim. However, because Hilty prevailed on defamation, the trial court could not dismiss the tortious-interference claims solely because they were derivative; those claims were remanded for further proceedings.
5. The trial court properly excluded Harrington's statements as a basis for defamation because Hilty's complaint did not identify or provide the substance of those alleged defamatory statements. The absence

of those statements from the complaint did not bar their use as a basis for the breach-of-contract claim, which was adequately pleaded by alleging a valid contract, nonperformance, and damages.

6. The exclusion was proper because Hilty lacked personal knowledge of what DME told Keesee and Begley; his proposed testimony was based on what those witnesses told him rather than firsthand observation.
7. The trial court did not abuse its discretion in excluding the email and testimony concerning the Tanner Griffin incident because Hilty could not definitively identify the caller and the trial court reasonably could conclude that the evidence would create ambiguity or confusion.
8. DME's cross-assignment of error seeking to change the trial court's order was not cognizable because DME did not file a notice of cross-appeal.

KEY QUOTATIONS

"Statements falling outside the scope of the parties' mutual business interest are therefore excluded from the qualified privilege." (¶ 44)

"Absent the actual-malice requirement, the jury determined all of the essential elements of defamation in Hilty's favor on the basis of the Conners statements." (¶ 52)

"This covers a wider range of communication than defamation does." (¶ 61)

"A plaintiff suing for defamation cannot merely state the cause of action and do no more." (¶ 67)

FACTUAL BACKGROUND

Grant Hilty formerly worked for Donnellon McCarthy Enterprises selling copier services and office equipment, then joined DME competitor Modern Office Methods. Hilty and DME had previously entered into a settlement agreement containing a mutual nondisparagement provision. DME employees allegedly made disparaging and defamatory statements about Hilty to prospective MOM customers, including Angela Conners, who testified that a DME manager called Hilty a thief and said he wrote incorrect contracts. The jury found that the Conners statements occurred, were false, and proximately injured Hilty, but found no actual malice because the trial court improperly required proof of that additional element.

PROCEDURAL HISTORY

Hilty and Modern Office Methods sued DME for defamation, breach of a mutual nondisparagement agreement, and tortious interference. The trial court denied cross-motions for summary judgment, made various evidentiary and legal rulings during a five-day jury trial, required Hilty to prove actual malice, and treated the contract and tortious-interference claims as derivative of defamation. The jury found that the Conners statements occurred, were false, and injured Hilty, but found no actual malice; it therefore returned judgment for DME. The appellate court reversed and remanded, ordering judgment for Hilty on liability for defamation, a damages trial, and further proceedings on the contract and tortious-interference claims.

DISPOSITION

REMAND INSTRUCTIONS

Enter judgment for Hilty on liability for the defamation claim based on the Conners statements and conduct a trial on damages. Conduct a trial on Hilty's breach-of-contract claim limited to the Conners statements, Harrington statements, and the Quigley 'piece of shit' comment, subject to unresolved factual issues. Permit Hilty's and MOM's tortious-interference claims to proceed in light of Hilty's success on the defamation claim, and determine the impact of that success and the available relief. Proceed consistently with the opinion.

CASES CITED

- Hill v. Ohio Dept. of Rehab. and Corr., 2021-Ohio-561, ¶ 17 (10th Dist.)
- Hahn v. Kotten, 43 Ohio St.2d 237, 243, 245-248 (1975)
- Jacobs v. Frank, 60 Ohio St.3d 111, 118 (1991)
- McLean v. Robertson, 2016-Ohio-2953, ¶ 16 (1st Dist.)
- State v. Wilson, 2010-Ohio-2767, ¶ 4 (1st Dist.)
- A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council, 73 Ohio St.3d 1, 8, 15 (1995)
- Tharp v. Hillcrest Baptist Church, 2022-Ohio-4695, ¶ 46 (10th Dist.)
- Evelyn v. Carlon Co., Div. of Indian Head, Inc., 4 Ohio St.3d 163, 165 (1983)
- Gaumont v. Emery Air Freight Corp., 61 Ohio App.3d 277, 289 (2d Dist. 1989)
- Turner v. Wolf, 1999 Ohio App. LEXIS 5881, *9 (1st Dist. Dec. 10, 1999)
- Jurczak v. J&R Schugel Trucking Co., 2003-Ohio-7039, ¶¶ 41-44 (10th Dist.)
- Mills Van Lines, Inc. v. Prudential Real Estate & Relocation Servs., 2011-Ohio-3833, ¶¶ 2-3, 7-8, 18, 21 (8th Dist.)
- Georgalis v. Ohio Turnpike Comm., 2010-Ohio-4898, ¶¶ 28, 31 (8th Dist.)
- Lail v. Madisonville Child Care Project, Inc., 55 Ohio App.3d 37, 40 (1st Dist.)
- Bender v. Durrani, 2024-Ohio-1258, ¶ 91 (1st Dist.)
- Morton v. Continental Cas. Ins. Co., 2004-Ohio-7126, ¶ 34 (1st Dist.)
- Messmore v. Monarch Machine Tool Co., 11 Ohio App.3d 67, 68-69 (9th Dist. 1983)
- William Powell Co. v. OneBeacon Ins. Co., 2020-Ohio-5325, ¶ 47 (1st Dist.)
- Woods v. Sharkin, 2022-Ohio-1949, ¶¶ 48, 61 (8th Dist.)
- Shifflet v. Thompson Newspapers (Ohio), Inc., 69 Ohio St.2d 179, 184 (1982)
- Ohio Sav. Bank v. H. L. Vokes Co., 54 Ohio App.3d 68, 76 (1989)
- Spring Motors Distribs. v. Ford Motor Co., 98 N.J. 555, 579-581 (1985)
- Corporex Dev. & Constr. Mgmt. v. Shook, Inc., 2005-Ohio-5409, ¶¶ 6, 10
- Bradigan v. Strongsville City Schools, 2007-Ohio-2773, ¶ 29 (8th Dist.)
- Ma v. Cincinnati Children's Hosp. Med. Ctr., 2023-Ohio-1727, ¶ 15 (1st Dist.)

- Olthaus v. Niesen, 2023-Ohio-4710, ¶ 1 (1st Dist.)
- Ilboudo v. Cincinnati Metro. Hous. Auth., 2025-Ohio-1386, ¶ 8 (1st Dist.)
- Bansal v. Mt. Carmel Health Sys., 2011-Ohio-3827, ¶ 40 (10th Dist.)
- Martin v. Wegman, 2019-Ohio-2935, ¶ 8 (1st Dist.)
- Dudee v. Philpot, 2019-Ohio-3939, ¶¶ 46-50 (1st Dist.)
- Gilman v. Physna, LLC, 2021-Ohio-3575, ¶ 17 (1st Dist.)
- State v. Criswell, 2024-Ohio-6173, ¶ 20
- Bonacorsi v. Wheeling & Lake Erie Ry. Co., 2002-Ohio-2220
- Dublin City School Dist. Bd. of Edn. v. Franklin Bd. of Revision, 1997-Ohio-327, ¶ 12
- Colerain Twp. Bd. of Trustees v. Bench Billboard Co., 2020-Ohio-4684, ¶ 14 (1st Dist.)
- State v. McCoy, 2005-Ohio-4262, ¶ 8 (9th Dist.)
- Blakemore v. Blakemore, 5 Ohio St.3d 217, 219 (1983)
- Johnson v. Abdullah, 2021-Ohio-3304, ¶ 39
- State v. Wilcox, 2021-Ohio-2282, ¶¶ 7-8 (1st Dist.)