

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Thursday the 27th day of February, 2014.*

Tareq Salahi, Appellant,

against Record No. 130116
Circuit Court No. CL12000090-00

DD Entertainment, LLC, Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Warren County.

Upon consideration of the record, brief, and argument of counsel for the appellant, the Court is of opinion that there is error in the judgment of the circuit court.

On February 13, 2012, Tareq Salahi ("Tareq") filed a complaint in the Circuit Court of Warren County alleging outrageous conduct/intentional infliction of emotional distress, conspiracy to defame, tortious interference with a contract expectancy, unjust enrichment, and defamation against DD Entertainment, LLC ("DD Entertainment") and others. The defendants demurred on all counts.

At a hearing held on April 9, 2012, Tareq conceded that the demurrers were well founded and sought leave to amend his complaint. As a result, the circuit court sustained the demurrers, but granted Tareq's leave to amend.

On April 30, 2012, Tareq filed an amended complaint. In the amended complaint, Tareq added two new causes of action against DD Entertainment, specifically Counts III and IV.

In Count III of the amended complaint, Tareq alleged tortious interference with contract against DD Entertainment. Specifically,

Tareq alleged that he and his ex-wife, Michaele Salahi ("Michaele") had:

entered into a verbal at will contract whereby they would partner in the entertainment business and would appear on reality television shows, television talk programs, and other entertainment media for the purpose of promoting their entertainment partnership, which became known as "The Salahis," the profits from which would be used for their mutual benefit.

According to the amended complaint, DD Entertainment was aware of this business partnership, as it entered into a contract with "The Salahis" and procured additional projects for "The Salahis." Tareq further alleged that DD Entertainment used improper means to interfere with his entertainment partnership with Michaele "by encouraging Michaele Salahi to leave [Tareq] and become [Neal] Schon's adulterous mistress, in violation of [Code §] 18.2-365." Additionally, Tareq alleged that DD Entertainment "used improper means to interfere with [Tareq's] contractual relationships with Michaele Salahi by breaching its fiduciary duty to pay [Tareq] sums of money it was holding which [Tareq] earned from entertainment engagements of 'The Salahis,' and by 'enhancing its own business which . . . specializes in "remaking the public image of people - especially mistresses of celebrities.'"

In Count IV of the amended complaint, Tareq alleged that DD Entertainment had breached its contract with "The Salahis" by "wrongfully paying some or all of the monies it was holding for the benefit of [Tareq] to Michaele Salahi."

DD Entertainment demurred to the amended complaint. After hearing argument on the matter, the circuit court sustained the

demurrer. Specifically, the circuit court ruled that Counts III and IV are barred by Code § 8.01-220. The circuit court further ruled that, with regard to Counts III and IV, Tareq had failed to allege any conduct on behalf of DD Entertainment, Inc. sufficient to give rise to the claims asserted.

In his appeal to this Court, Tareq argues that the circuit court erred in (1) failing to grant him leave to amend; (2) holding that Count III was barred by Code § 8.01-220; (3) finding that Count III failed to state a viable claim; and (4) finding that Count IV failed to state a viable claim.

As an initial matter we note that, although Tareq's Code § 8.01-220 argument addresses both Counts III and IV, his assignment of error regarding that ruling only addresses Count III. Consequently, Tareq's allegations of error concerning the circuit court's rulings on Count IV are limited to whether the circuit court erred in ruling Count IV failed to state a viable claim.

It is well settled that a party who challenges the ruling of a lower court must, on appeal, assign error to each articulated basis for that ruling. Manchester Oaks Homeowners Ass'n v. Batt, 284 Va. 409, 422, 732 S.E.2d 690, 698 (2012) (citing United Leasing Corp. v. Thrift Ins. Corp., 247 Va. 299, 307-08, 440 S.E.2d 902, 907 (1994)). We cannot review the ruling of a lower court when the appellant does not assign error to every legal basis given for it. Id. The circuit court ruled that Code § 8.01-220 barred Count IV. Therefore, we must determine if that unappealed ruling legally supports the circuit court's decision on the demurrer, even if Count IV states a viable claim.

Therefore, with regard to Count IV, our review is limited to an examination of whether the circuit court's Code § 8.01-220 determination "provides a sufficient legal foundation for the ruling" as to Count IV. Id. We do not review the correctness of this determination, only whether it would provide a sufficient independent basis to affirm the circuit court's ruling. Id. at 422-23, 732 S.E.2d at 698. In the present case, the circuit court's determination that Code § 8.01-220 is a bar to Count IV would provide an independent basis to affirm the circuit court's decision. Accordingly, we will affirm the circuit court's judgment sustaining the demurrer as to Count IV.¹

With regard to Count III, however, the circuit court erred in granting the demurrer. This Court has recognized that Code § 8.01-220 only bars an action where the plaintiff's alleged injuries were due to the effect that the defendant's conduct had upon the plaintiff's marriage. McDermott v. Reynolds, 260 Va. 98, 103, 530 S.E.2d 902, 904 (2000). Furthermore, an action where the plaintiff's injuries would be compensable independent of the plaintiff's marital status is not barred. Doe v. Zwelling, 270 Va. 594, 599, 620 S.E.2d 750, 752-53 (2005). Thus, this Court has made it clear that the touchstone is whether the cause of action would

¹ Similarly, we do not consider the circuit court's refusal to grant leave to amend with regard to Count IV. Having failed to challenge the circuit court's determination that Count IV was barred by Code § 8.01-220, under the law of the case doctrine, Tareq has waived his right to subsequently challenge that determination. See Miller-Jenkins v. Miller-Jenkins, 276 Va. 19, 26, 661 S.E.2d 822, 826 (2008). Thus, no matter how skillfully Tareq amends his complaint with regard to Count IV, that claim is still barred by Code § 8.01-220.

exist "even if the plaintiff were unmarried." Id. at 599, 620 S.E.2d at 752.

Taking the amended pleading in the present case as true, which we must do when reviewing the grant of a demurrer, Augusta Mut. Ins. Co. v. Mason, 274 Va. 199, 204, 645 S.E.2d 290, 293 (2007), it is clear that Tareq's alleged injuries were independent of his marital status. Indeed, it is clear that the contractual relationship at issue in Count III of the amended complaint is the business relationship between Tareq and Michaele, as the damages sought by Tareq are the lost profits that would have been generated by Tareq and Michaele as "The Salahis."

Similarly, the circuit court erred in finding that Count III failed to state a viable claim. In his amended complaint, Tareq made sufficient allegations to support a claim for tortious interference with contract.

The elements required for a prima facie showing of the tort are: (i) the existence of a valid contractual relationship or business expectancy; (ii) knowledge of the relationship or expectancy on the part of the interferor; (iii) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (iv) resultant damage to the party whose relationship or expectancy has been disrupted.

Durette Bradshaw, P.C. v. MRC Consulting, L.C., 277 Va. 140, 145, 670 S.E.2d 704, 706 (2009) (citing Chaves v. Johnson, 230 Va. 112, 120, 335 S.E.2d 97, 102 (1985)).

Furthermore,

when a contract is terminable at will, a plaintiff, in order to present a prima facie case of tortious interference, must allege and prove not only an intentional interference that caused the termination of the at-will contract, but also that the defendant employed "improper methods."

Duggin v. Adams, 234 Va. 221, 226-27, 360 S.E.2d 832, 836 (1987) (quoting Hechler Chevrolet v. General Motors Corp., 230 Va. 396, 402, 337 S.E.2d 744, 748 (1985)) (emphasis omitted).

Here, Tareq alleged the existence of a valid contractual relationship between himself and Michaelae relating to their entertainment partnership as "The Salahis." He claimed that DD Entertainment was aware of the contract between Tareq and Michaelae and that DD Entertainment interfered with the contract by encouraging Michaelae to leave Tareq. Tareq further alleged that DD Entertainment used numerous improper means. Specifically, Tareq alleged that DD Entertainment encouraged Michaelae to engage in an illegal act (i.e., "adultery") and that it breached its fiduciary duty by paying only Michaelae the money DD Entertainment was holding for both Tareq and Michaelae and by unjustly enriching itself at the expense of Tareq and Michaelae's entertainment partnership.

Finally, Tareq claimed that, as a result of DD Entertainment's actions, he lost income from at least three specific contracts. Thus, it is evident that Tareq's amended complaint contained sufficient allegations to support a prima facie case for tortious interference with a contract against DD Entertainment.

For these reasons, we will affirm in part and reverse in part the judgment of the circuit court, and remand this case for further proceedings.

This order shall be certified to the said circuit court.

JUSTICE McCLANAHAN, concurring in part and dissenting in part.

While I concur in the Court's judgment affirming the trial court's decision to grant the demurrer as to Count IV of the amended complaint, I dissent from the Court's judgment reversing the trial court's decision to grant the demurrer as to Count III.

In my view, Count III does not state a viable claim for tortious interference with contract. Tareq alleges that DD Entertainment tortiously interfered with the business partnership between Tareq and Michaele by (1) encouraging Michaele to commit adultery and (2) paying to Michaele sums of money that were owed to the partnership. To the extent Count III is based on Tareq's claim that DD Entertainment interfered with the partnership by encouraging Michaele's adultery, I believe it is barred by Code § 8.01-220. With regard to Tareq's claim that DD Entertainment interfered with the partnership by paying sums owed to the partnership directly to Michaele, I do not believe these facts allege the use of improper methods. Furthermore, this claim does not allege sufficient facts to show how DD Entertainment's conduct caused the termination of the partnership.

A. Encouragement of Adultery

As this Court has held, Code § 8.01-220² bars actions based on conduct that would support a claim for alienation of affection. McDermott v. Reynolds, 260 Va. 98, 101-02, 530 S.E.2d 902, 903-04 (2000). In so holding, we recognized that "when the General Assembly enacted Code § 8.01-220, it manifested its intent to abolish common law actions seeking damages for a particular type of conduct, regardless of the name that a plaintiff assigns to that conduct." Id. at 101, 530 S.E.2d at 903. Therefore, "we consider the conduct alleged in the plaintiff's [complaint]," when "determining whether an action is barred by Code § 8.01-220." Id. at 101, 530 S.E.2d at 903-904 (emphasis added).

According to the amended complaint, DD Entertainment tortiously interfered with the partnership "by encouraging Michaele Salahi to leave [Tareq] and become Defendant Schon's adulterous mistress."³ "This alleged conduct is precisely the type of conduct that the General Assembly intended to exclude from civil liability when it enacted Code § 8.01-220." Id. at 102, 530 S.E.2d at 904. Furthermore, the cause of action could not exist "if the plaintiff

² Code § 8.01-220(A) provides, in pertinent part, that "no civil action shall lie or be maintained in this Commonwealth for alienation of affection."

³ Although the majority concludes that encouragement of adultery constitutes improper methods because adultery is an illegal act, DD Entertainment did not commit the adultery and, thus, is not alleged to have committed an unlawful act. Nevertheless, to the extent that the encouragement of adultery would satisfy the requirement of improper methods, as I explain herein, I believe the claim is barred by § 8.01-220.

were unmarried," since his claim is based on the allegation that DD Entertainment encouraged Michaele to commit adultery, an allegation that he could not make unless he were married to her.⁴ Doe v. Shomer Zwelling, 270 Va. 594, 599, 620 S.E.2d 750, 752 (2005). Therefore, I would conclude that Tareq's claim for tortious interference is barred by Code § 8.01-220 to the extent it is based on DD Entertainment's alleged encouragement of Michaele's adultery.⁵

B. Breach of Fiduciary Duty

The remaining improper method relied upon by Tareq to support his claim of tortious interference is what he characterizes as "breach of fiduciary duty." Specifically, he alleges that DD Entertainment paid to Michaele funds earned from entertainment engagements of the partnership. However, these facts do not support an allegation of the use of improper methods. Proceeds earned by the partnership are the property of the partnership. See Code § 50-

⁴ This does not mean, of course, that all claims for tortious interference with a contract between spouses are precluded by Code § 8.01-220. Rather, it is the claim that the encouragement of adultery constituted tortious interference that implicates this statute. Clearly, the allegation that DD Entertainment paid funds to Michaele that were owed to the partnership is not barred by § 8.01-220. However, for the reasons I state in Part B, I do not believe this is a legally sufficient claim.

⁵ It should also be noted that there are no allegations linking DD Entertainment's conduct in encouraging the adultery to the termination of Tareq's business partnership with Michaele. If we are to simply assume that the adultery led to the termination of the marriage, which necessarily ended the business partnership, this lends further support to the conclusion that Tareq's claim could not exist if he were unmarried.

73.89. And each partner is an agent of the partnership. See § 50-73.91. Consequently, the claim that DD Entertainment paid funds earned by the partnership to Michaele, a partner, does not allege the use of improper methods. See Dunn, McCormack & MacPherson v. Connolly, 281 Va. 553, 560, 708 S.E.2d 867, 871 (2011).

Even if these facts did sufficiently allege improper methods, Tareq has not set forth facts showing how the payment to Michaele of funds due the partnership caused her to terminate the partnership with Tareq. In fact, to say that DD Entertainment's breach of fiduciary duty to Tareq caused Michaele to terminate her partnership is a non sequitur. There is an obvious disconnect between these allegations, and Tareq has not alleged any facts that would supply a rational connection between them. In reviewing a trial court's judgment sustaining a demurrer, we will consider only reasonable inferences from the facts. See McDermott v. Reynolds, 260 Va. at 100, 530 S.E.2d at 903.⁶

For these reasons, I would hold that Count III does not state a viable claim for tortious interference with a contract.

⁶ The majority states that Salahi is also alleging "unjust enrichment" as a separate act of improper means. Although there is no express allegation of unjust enrichment in Count III, to the extent Salahi is impliedly alleging that DD's withholding of funds and paying them to Michaele forms the basis for a separate act of improper means under a theory of unjust enrichment, my analysis is equally applicable. The funds were allegedly earned by the partnership and constituted property belonging to the partnership. Therefore, paying them to Michaele could not be construed as improper, and in any event, could not logically have caused Michaele to terminate her partnership with Salahi.

Accordingly, I would affirm the judgment of the circuit court in its entirety.⁷

A Copy,

Teste:

Pat L Hamington

Clerk

⁷ I would further hold that the trial court did not abuse its discretion in failing to grant further leave to amend. See Kimble v. Carey, 279 Va. 652, 662, 691 S.E.2d 790, 795-96 (2010) (decision whether to grant leave to amend rests with sound discretion of trial court).