MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Nikki Garrett,
Appellant-Plaintiff,

v.

Wider Group, Inc.,
Appellee-Defendant.

February 27, 2024

Court of Appeals Case No.
23A-CT-1222

Appeal from the
Marion Superior Court

The Honorable
John M.T. Chavis, II, Judge

Trial Court Cause No.
49D05-2002-CT-8036

Memorandum Decision by Senior Judge Baker
Judges Bailey and Felix concur.

Baker, Senior Judge.

Statement of the Case

[1] Nikki Garrett appeals from the trial court's order granting summary judgment in favor of Wider Group, Inc. (Wider) on her complaint alleging defamation, blacklisting, and tortious interference with a business relationship based on allegations that Wider falsely reported to a prospective employer that she had refused a drug test. The trial court found that Garrett's claims were precluded as a matter of law and granted summary judgment in favor of Wider. The trial court also denied Garrett's motion to compel Wider to comply with certain discovery requests and granted Wider's motion to strike certain exhibits Garrett had tendered. In a subsequent order, the trial court denied Garrett's motion to reconsider the trial court's summary judgment, motion to compel, and motion to strike rulings and Garrett's motion to correct error that was based on newly discovered evidence.

[2] Concluding that genuine issues of material fact exist, making the grant of summary judgment inappropriate and that Garrett's claims are not precluded as a matter of law, we reverse and remand for further proceedings. Because Wider was not entitled to summary judgment on Garrett's claims and we are remanding for further proceedings, we conclude that Garrett's challenges to the

trial court's motion to compel, motion to strike, and motion to correct error rulings are moot and we need not address them.

Facts and Procedural History

Background

[3] Garrett, an experienced CDL-licensed independent truck driver, owned and operated her truck through her company, Wilson Transportation. Wider is an Illinois-based federally regulated motor carrier engaged in the interstate transportation of goods under the authority of the Department of Transportation (DOT).

[4] On March 6, 2019, Garrett, in her company's name, signed a Contractor Equipment Lease Agreement (Operating Contract) with Wider and began working for Wider as an independent contractor. Two days before signing the contract, Garrett submitted to and passed a drug test – a prerequisite to entering the contract. As an independent contractor under the Operating Contract, Garrett set her own schedule and chose the loads she wanted to haul. Regarding renewal and termination, the Operating Contract provided, in relevant part:

> This contract . . . shall remain in full force and effect . . . with automatic renewal following each delivery of freight and the provision of proof of delivery. The acceptance of a load shall be deemed a renewal of this Agreement by [Garrett]. This contract may be terminated by either party for any reason or for no reason at the expiration of the initial or any renewal term by providing

> twenty-four (24) hours[’] *written notice to the other party or by mutual consent*.

Appellant’s App. Vol. II, p. 84 (emphasis added).

[5] While Garrett was contracted to drive for Wider, she was subject to Wider’s drug and alcohol policy, which provided in relevant part that employees and contractors could be drug tested in four instances: pre-employment, post-accident, randomly, and upon reasonable suspicion based on the observations of a trained supervisor. Selection for a random drug test could occur at any time an employee/contractor was, “at work for [the] employer.” *Id.* at 224. The policy provided that the random selection process must ensure that “each driver ha[d] an equal chance of being tested[,]” fifty percent of the average number of driver positions were randomly tested for drugs during the year, and the random tests were “reasonably spaced” throughout the year. *Id.* Once an employee/contractor was selected for a random drug test, the individual was required to proceed immediately to the testing site.

[6] Wider’s drug testing program acknowledgment form that Garrett had signed stated that Wider would notify individuals of selection for a drug test, “*via phone and or email communication*.” Appellant’s App. Vol. II, p. 171. The form stipulated that any test the employee/contractor “fail[ed] to show for” would be reported as “‘refused.’ Refusal = positive result . . . .” *Id.*

Weigh Station Incident And Resignation From Wider

[7] Garrett was supervised by Shawn Miller, Wider's Director of Safety. On March 14, 2019, while traveling from Tennessee to Kentucky, Garrett stopped at a DOT weigh station in Tennessee to fix a flat tire. Garrett attempted to provide DOT personnel with her driver logs, using the electronic logging device (ELD) that Garrett had leased from Wider, but Garrett was unable to do so because the device failed to operate.[1] When Garrett contacted Miller and requested the logs, Miller called her a "stupid f[***]ing woman truck driver" and a "damn liar," and he refused to send the logs. *Id.* at 168. A DOT operative overheard the exchange and personally requested the logs from Miller. However, the operative did not receive the logs from Miller, which resulted in Garrett being placed on a ten-hour hold that prevented her from operating her truck during that time.

[8] Garrett continued to drive for Wider until March 28, 2019. On March 28, Garrett called Ryan Viers, Wider's fleet manager, and Garrett's assigned dispatcher, and told Viers that she was resigning. Garrett did not provide a

---

[1] Regarding electron logging devices, we note the following:

> In 2012, Congress directed the [DOT] to issue regulations to require most interstate commercial motor vehicles to install electronic logging devices (ELDs). ELDs are linked to vehicle engines and automatically record data relevant to the hours of service regulations: whether the engine is running, the time, and the vehicle's approximate location. The devices are intended to improve drivers' compliance with the regulations, to decrease paperwork, and ultimately to reduce the number of fatigue-related accidents. . . . The Federal Motor Carrier Safety Administration, which is part of the [DOT], promulgated the final rule requiring ELDs in 2015.

Owner-Operator Indep. Drivers Ass'n, Inc. v. United States Dep't of Transp., 840 F.3d 879, 883-84 (7th Cir. 2016) (cleaned up), *cert. denied*.

written notice of her resignation. Garrett claims that Viers accepted her resignation. Garrett did not accept any loads from Wider after March 28. Sometime between March 28 and April 1, 2019, Garrett returned to Wider's Illinois office the gas card, ELD, and plate that Wider had provided to Garrett. Wider disputes that Garrett resigned from her employment on March 28, as it did not receive a written notice of resignation from her, and disputes that the parties mutually consented to her resignation.

Random Drug Test

[9] Wider claims that on April 2, 2019, it sent an email to Garrett indicating that she had been selected for a random drug test and that it sent a follow-up email to her on the following day. Garrett did not receive the emails, and Wider did not attempt to contact Garrett by phone. Garrett did not appear for the drug test. According to Wider, it terminated the Operating Contract and, thus, Garrett's employment on April 5, 2019, for her failure to submit to the drug test.

Garrett's Employment With Northridge Express Trucking Company

[10] On March 29, 2019, after having left her employment with Wider, Garrett contacted her previous employer, Northridge Express (Northridge), and sought employment with the company.[2] On April 4, 2019, Garrett passed a pre-employment drug test, and she began working for Northridge on April 6.

---

[2] Garrett had previously worked for Northridge from December 2015 to February 2018.

Between April and July 2019, Garrett transported at least thirty loads for Northridge.

[11] Around June 2019, Northridge conducted a background check on Garrett, using an outside vendor, Midwest Compliance, LLC (Midwest), to perform the service. Midwest, in turn, used Tenstreet, LLC (Tenstreet) – an online platform used to exchange truck driver information – to request certain information from Wider regarding Garrett's employment with Wider.

[12] On June 28, 2019, Wider's email account received an email from Tenstreet with the subject line "Request Received – Nikki Garrett." Appellant's App. Vol. II, pp. 82, 111. The email instructed the recipient to "Navigate to Tenstreet Exchange then Provide a Response and search for Nikki Garrett." *Id.* On July 12, 2019, Miller provided the requested information by filling out an online form (Xchange Report), responding to the questions contained in the Xchange Report, and providing certain information about Garrett's employment with Wider. In response to the question, "Did the employee refuse to be [drug and alcohol] tested[,]" Miller answered, "Yes 04-04-2019." *Id.* at 173. The Xchange Report indicated that Midwest was requesting the information. Northridge's name did not appear on the report.

[13] On July 17, 2019, Garrett's employment with Northridge was terminated. Northridge told her that she "could no longer drive for Northridge" because Northridge had been "informed by [her] previous employer that [she] had

refused to submit to a drug test and therefore, [her] license was not in good standing." *Id.* at 169.

Complaint, Discovery, And Summary Judgment

[14] Garrett filed her complaint against Wider on February 21, 2020, alleging defamation, blacklisting, and tortious interference with a business relationship. In June 2020, Wider filed its answer and counterclaims for replevin and civil conversion, alleging that Garett had failed to return the ELD and registered license plate that Wider had provided to her. The parties then engaged in the discovery process.

[15] On November 30, 2020, Wider filed its motion for summary judgment, arguing that it was entitled to summary judgment on each of Garrett's claims and on both of its counterclaims. On December 23, 2020, Garrett filed her response in opposition to Wider's summary judgment motion, arguing that genuine issues of material fact precluded summary judgment. Garrett also argued that summary judgment was "premature." She contended that discovery was "still on[-]going" and that Wider had "obstructed discovery[.]" *Id.* at 120.

[16] On January 4, 2021, Wider filed a reply to Garrett's response. On January 26, Garrett filed with the trial court a "Motion to Supplement Designation of Evidence Nunc Pro Tunc." Appellant's App. Vol. III, p. 42. Garrett had received an email from DSI Medical Services (DSI), the entity that Wider had contracted with to administer its drug tests, indicating that Garrett had not been selected by Wider for a random drug test. Garrett labeled the email Exhibit 25

and sought the trial court's permission to include it as designated evidence under her original response in opposition to Wider's summary judgment motion. Wider did not file an objection. On February 3, the trial court granted Garrett's motion to supplement her designated evidence. The trial court set the summary judgment matter for a hearing to take place on March 31.

[17] On March 26, 2021, Garrett filed in the trial court a Notice of Filing, stating that she intended to "utilize" at the March 31 summary judgment hearing Exhibit 25, the email from DSI, as well as two additional exhibits, Exhibits 26 and 27.[3] Appellant's App. Vol. III, p. 55. Garrett also noted in her Notice of Filing that she "reserve[d] the right to supplement or otherwise amend the foregoing Exhibits[,]" and that if she "identified any additional exhibits, [Wider] and the Court w[ould] be promptly notified." *Id.* (footnotes omitted).

[18] On March 29, 2021, two days before the summary judgment hearing was to take place, Garrett filed a motion to compel discovery, arguing that Wider had failed to "properly" respond to Garrett's previous discovery requests and had "continued not to conduct discovery in good faith." *Id.* at 67. Garrett asked the trial court to, among other things, compel Wider to "fully and fairly answer

---

[3] Exhibit 26 consisted of the discovery responses that Wider provided in March 2021, for Garrett's third set of discovery requests. Exhibit 27 consisted of an email from the DOT – along with attached materials from the Federal Motor Carrier Safety Administration (FMCSA) – listing frequently asked questions regarding the FMCSA clearinghouse (Clearinghouse), a database that contains information about violations of the DOT controlled substances and alcohol testing program for holders of CDLs. *See* 1 Drug Testing Law Tech. & Prac. § 4:111. Commercial driver's license drug and alcohol clearinghouse.

the Interrogatories, Requests for Production of Documents, and Requests for Admissions identified in" Garrett's motion to compel discovery. *Id.* at 74.

[19] On March 30, 2021, Wider filed a combined response in opposition to Garrett's motion to compel discovery and motion to strike Garrett's Notice of Filing and Garrett's Exhibit 25 – the email from DSI. That same day, Garrett filed a reply to her motion to compel discovery and an objection to Wider's motion to strike. On March 31, the trial court held the hearing on Wider's summary judgment motion.

[20] On July 23, 2021, the trial court issued an order granting Wider's motion for summary judgment as to all of Garrett's claims, granting Wider's motion to strike, and denying Garrett's motion to compel discovery. However, the trial court denied Wider's motion for summary judgment on its counterclaims of replevin and conversion. The trial court's order provided, in relevant part, as follows:

> The Court dispels with the notion that Garrett resigned prior to April 2, 2019[,] as she was required to tender such resignation via written notice which she failed to do. Hence, Garrett remained contracted to Wider and was obligated to submit to the random drug screen. Wider published the fact that Garrett failed to report for the drug screen as Wider is required to do under the Federal Motor Carrier Safety Regulations. The statement published is a true statement and truth is a complete defense to defamation. Secondly, there was no evidence presented that Wider created and circulated a "blacklist", whether by words, writing[,] or any other means, to other carriers that identified Garrett as having some opinion or taking some action contrary to Wider's interests with the wrongful intent to bar Garrett's future

> employment. Lastly, there was no evidence presented that Wider intentionally interfered with a business relationship of which Wider had knowledge. Not only did Wider not have knowledge of any business relationship between Garrett and any subsequent employer, this tort requires some independent illegal action. And defamation does not constitute illegal conduct for the purposes of determining whether one tortuously interfered with a business relationship of another.

Appellant's App. Vol. II, pp. 14-15 (internal citations omitted).

[21] On August 20, 2021, Garrett filed a motion to reconsider the trial court's July 23 order. Garrett also filed a separate motion to correct error, based on newly discovered evidence, that is, correspondence from Midwest and Tenstreet that purported to show that Garrett's refused drug screen was never reported to the FMCSA Clearinghouse and that Wider had blacklisted Garrett. The trial court held a hearing, and on November 18, the trial court denied both motions.

[22] Garrett filed a Notice of Appeal on December 10, 2021. Wider filed a motion to dismiss the appeal on grounds that the trial court's July 23, 2021 order was not a final judgment because it did not dispose of all claims as to all parties. Namely, the trial court had denied summary judgment as to Wider's counterclaims. On May 6, 2022, this Court dismissed Garrett's appeal without prejudice and remanded the case to the trial court for further proceedings.

[23] On April 5, 2023, Garrett filed in the trial court a motion to dismiss Wider's counterclaims. On May 16, 2023, the trial court dismissed the counterclaims without prejudice. This appeal followed.

Discussion and Decision

I. Standard of Review

[24] We review a trial court's summary judgment decision de novo, using the same standard as the trial court. *Griffin v. Menard, Inc.*, 175 N.E.3d 811, 812-13 (Ind. 2021). Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C).

[25] "The moving party bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law . . . ." *Dreaded, Inc. v. St. Paul Guardian Ins. Co.*, 904 N.E.2d 1267, 1270 (Ind. 2009). If the movant satisfies that burden, "the burden then shifts to the non-moving party to designate and produce evidence of facts showing the existence of a genuine issue of material fact." *Id.* "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth . . . ." *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009). "We must construe all factual inferences in favor of the non-moving party, and all doubts as to the existence of a material issue must be resolved against the moving party." *Hale v. SS Liquors, Inc.*, 956 N.E.2d 1189, 1191 (Ind. Ct. App. 2011).

[26] The Indiana Supreme Court has explained, "Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims." *Hughley v. State*, 15 N.E.3d 1000, 1004

(Ind. 2014). As a result, while the non-moving party has the burden on appeal of showing the Court that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure the non-movant was not improperly denied a trial. *Brown by Brown v. Southside Animal Shelter, Inc.*, 158 N.E.3d 401, 405 (Ind. Ct. App. 2020), *adhered to on reh'g*, 162 N.E.3d 1121 (Ind. Ct. App. 2021), *trans. denied*.

[27] A trial court's grant of summary judgment is clothed with a presumption of validity, and the party that lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous. *City of Indianapolis v. Byrns*, 745 N.E.2d 312, 316 (Ind. Ct. App. 2001). On appeal, we are bound by the same standard as the trial court, and we consider only those matters that were designated at the summary judgment stage. *Interstate Cold Storage v. Gen. Motors Corp.*, 720 N.E.2d 727, 730 (Ind. Ct. App. 1999), *trans. denied*. We do not reweigh the evidence, but we liberally construe all designated evidentiary material in the light most favorable to the non-moving party to determine whether there is a genuine issue of material fact for trial. *Estate of Hofgesang v. Hansford*, 714 N.E.2d 1213, 1216 (Ind. Ct. App. 1999). A grant of summary judgment may be affirmed upon any theory supported by the designated materials. *Bernstein v. Glavin*, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000), *trans. denied*.

II. Analysis

[28] Garrett asks this Court to reverse the trial court's grant of summary judgment on each of her claims of defamation, blacklisting, and tortious interference with a business relationship, arguing that she designated evidence that created genuine issues of material fact sufficient to defeat summary judgment for each claim. We address each argument in turn.

II.A. Defamation

[29] We first consider the trial court's grant of summary judgment in favor of Wider regarding Garrett's defamation claim.

> Defamation is that which tends to "injure reputation or to diminish esteem, respect, good will, or confidence in the plaintiff, or to excite derogatory feelings or opinions about the plaintiff." To recover in an action for defamation, "that which caused the alleged defamation must be both false and defamatory." Moreover, a plaintiff must establish the basic elements of defamation: (1) a communication with a defamatory imputation; (2) malice; (3) publication; and (4) damages.

Haegert v. McMullan, 953 N.E.2d 1223, 1230 (Ind. Ct. App. 2011) (citations omitted). Wider is entitled to summary judgment on Garrett's defamation claim if it demonstrates that the undisputed material facts negate at least one element of Garrett's claim. *See Shine v. Loomis*, 836 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. Truth is an absolute defense to a claim of defamation. *See Benson v. News-Sentinel*, 106 N.E.3d 544, 545 (Ind. Ct. App. 2018) ("Truth is a complete defense to defamation.").

[30] Garrett contends that Wider defamed her when it "communicated and/or published an untrue statement . . . [, namely,] . . . that Garrett refused to submit to a drug test." Appellant's Br. p. 21. Wider argues that it is entitled to summary judgment because the statement was true and without malice and, thus, could not "form the basis" for a defamation claim. Appellee's Br. p. 10.

II.A.1 Truth of the Statement

[31] Regarding the truth of the statement, Wider maintains that its designated evidence shows Garrett was still contracted as a driver for Wider as of April 2, 2019, the date Wider allegedly notified Garrett that she needed to submit to a random drug test. Wider argues that Garrett was obligated to submit to the drug test because Wider never received a written notice of resignation from Garrett, as required by the Operating Contract, and Wider had not given "mutual consent."[4] Appellant's Br. p. 13. Wider maintains it reported Garrett's failure to appear for the drug test because it was required to do so under the FMCSA regulations.

[32] However, according to Wider's drug and alcohol policy that Garrett designated as evidence, selection for a random drug test could occur at any time an employee/contractor was, "at work for [the] employer." Appellant's App. Vol. II, p. 224. And, in her affidavit, Garrett stated that she resigned from her

---

[4] As we noted previously, the Operating Contract provided that it could be "terminated by either party for any reason or for no reason at the expiration of the initial or any renewal term by providing twenty-four (24) hours[']*written notice to the other party or by mutual consent*." Appellant's App. Vol. II, p. 84 (emphasis added).

employment relationship with Wider on March 28, 2019, and that she used her cellphone to call Viers, who served as fleet manager and Garrett's assigned dispatcher, and tell Viers that she was resigning. Garrett further stated that Viers attempted to "talk her out of" resigning and that Viers accepted her resignation. *Id.* at 169.

[33] Garrett also designated affidavits from two truck drivers, namely, Lorenzo Lamar and Rich Gelbman, who worked for Wider at the same time as Garrett. Lamar stated in his affidavit that he signed an operating agreement similar to Garrett's and that while employed at Wider, he primarily communicated with his assigned dispatcher by phone, and that the dispatcher "would notify [Shawn] Miller[.]" Appellant's App. Vol. III, p. 18. He further stated that when he resigned from Wider in April 2019, he did so by calling the dispatcher, sending a text message regarding his resignation, then calling the dispatcher a "couple days later" to confirm his resignation. *Id.* at 18. Gelbman stated in his affidavit that he also signed an operating agreement similar to Garrett's and that he, too, primarily communicated with his assigned dispatcher who "would then notify Miller." *Id.* at 20. Gelbman also stated that when he resigned from Wider in March 2019, he did not provide written notice of his resignation but, "rather[,] resigned over the [electronic logging] system by notifying the dispatcher, who in turn notified Miller." *Id.*

[34] The designated evidence demonstrates genuine issues of material fact exist as to Garrett's resignation from Wider and whether she had resigned before being selected for the drug test. Because there exists a material dispute of fact as to

the truth of the statement, which is the defense that Wider relied upon to argue that it was entitled to summary judgment on Garrett's claim of defamation, we conclude that the trial court erred by granting summary judgment to Wider on this basis.

II.A.2 Malice

[35] We now turn to whether Wider is entitled to summary judgment because it negated the malice element of Garrett's defamation claim. Actual malice, as an element of the tort of defamation, exists when the defendant publishes a defamatory statement "with knowledge that it was false or with reckless disregard of whether it was false or not." *Journal-Gazette Co. v. Bandido's, Inc.*, 712 N.E.2d 446, 456 (Ind. 1999) (internal quotation omitted), *cert. denied*. Thus, as part of Garrett's defamation claim, she would be required to show that Wider had published a defamatory statement with knowledge that it was false or with reckless disregard of whether it was false or not.

[36] Wider argues that it did not act with malice when it reported Garrett's failure to submit to the drug screen because "federal regulations" obligated Wider to do so. Appellee's Br. p. 14. On summary judgment, however, Wider bore the burden of negating this malice element.

[37] Wider designated two emails indicating that Miller sent notice to Garrett on April 2 and 3, 2019, directing her to submit to a drug test. However, Garrett stated in her affidavit that she did not receive the emails. And Garrett averred that she and Miller did not communicate by email and that "[a]ll prior

communication had been done through phone." Appellant's App. Vol. II, p. 169.

[38] Garrett stated in her affidavit that on March 14, 2019, while stopped at a weigh station, she had an altercation over the phone with Miller regarding her request for her logs, and Miller called her a "damn liar" and a derogatory name. *Id.* at 168. Garrett stated that neither she nor the DOT operative received her logs and that she was placed on a ten-hour hold that prevented her from operating her truck. Garrett further stated in her affidavit that Miller had a "personal grudge" against her and that she resigned from Wider on March 28, 2019, due to "continued harassment from Miller and the low pay[.]" *Id.* Lamar, Garrett's co-worker, stated in his affidavit that while under contract as a truck driver for Wider, he "had a bad relationship" with Miller and Miller was "routinely dishonest[.]" Appellant's App. Vol. III, p. 18.

[39] While Garrett may not have provided a plethora of designated evidence to support the malice element, Wider has not met its burden of negating the malice element. Garrett's and Lamar's affidavits infer that they both, at best, experienced a difficult working relationship with Miller, and Garrett's affidavit indicates that Miller might have been seeking an opportunity to harm Garrett in some way. Drawing all inferences and resolving all doubts in favor of Garrett, a factfinder could infer that Wider acted with malice when it made the statement. Thus, we find that Garrett's and Lamar's affidavits are sufficient to create a genuine issue of material fact as to whether the statement by Wider was

made with malice. Therefore, the trial court erred when it entered summary judgment for Wider on Garrett's defamation claim.

II.B. Blacklisting

[40] Garrett next contends that the trial court improperly granted summary judgment to Wider on her blacklisting claim. Wider maintains that summary judgment in its favor was appropriate because Wider "complied with its legal obligations" when it reported Garrett's refusal to submit to a random drug test. Appellee's Br. p. 21. And Wider argues that Garrett's allegations of blacklisting "fall well outside the conduct meant to be prohibited by Indiana's blacklisting statute." *Id.*

[41] The relevant portion of the blacklisting statute, Indiana Code section 22-5-3-2 (1993), "create[s] a cause of action for damages resulting from a former employer engaging in blacklisting" and provides as follows:

> If any . . . company, partnership, limited liability company, or corporation in this state shall authorize, allow or permit any of its or their agents to black-list any discharged employees, or attempt by words or writing, or any other means whatever, to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person, or company, said company shall be liable to such employee in such sum as will fully compensate him, to which may be added exemplary damages.

Loparex, LLC v. MPI Release Techs., LLC, 964 N.E.2d 806, 810 (Ind. 2012) (quoting Ind. Code § 22-5-3-2). Our Indiana Supreme Court, in *Loparex*, determined that under Indiana's blacklisting statute, blacklisting includes "the

physical blacklist itself, and a range of related activities aimed at a similar goal as the blacklist, but that perhaps do not include an actual, tangible list." *Id.* at 820.

[42] The Court framed the prohibitions found in the blacklisting statute as

> including impermissible conduct such as: an identification or categorization of past employees based upon their conduct, association, or belief; the transmission or exchange of that information by or between employers in the same industry; and doing so with the wrongful intent to inhibit or prevent a listed employee from obtaining future employment within that industry.

Id. at 821. The Court also considered the history of blacklisting and reasoned that the term

> is best defined as a list of one or more workers, circulated by employers, who are to be refused employment or otherwise marked for special avoidance, antagonism, or enmity, because those workers are reputed to hold opinions or engage in actions contrary to the employers' interests. The act of blacklisting, then—or as the statute says, "to black-list"—would be transmission or distribution of this list from one employer to another, with the wrongful intent of preventing those employees from obtaining future employment within that industry.

Id. at 820-21.

[43] We have determined that genuine issues of material fact exist regarding Garrett's resignation from Wider and, ultimately, the truthfulness of the statement that she refused to submit to a drug test. And we have determined

that genuine issues of material fact exist regarding Garrett's defamation claim, specifically, regarding the malice element. Consequently, we find that there are also genuine issues of material fact as to whether Wider engaged in blacklisting. More specifically, genuine issues of material fact exist as to whether when Wider published the statement to the Xchange Report – where said statement would be accessed by a prospective employer of Garrett – Wider did so with the wrongful intent that Garrett be barred from future employment within the trucking industry. Garrett's affidavit stated that Miller, her supervisor, may have had a grudge against her, and he subjected her to continued harassment. Her designated evidence showed that Miller provided the information regarding Garrett's drug test to the Xchange Report through Tenstreet, an online platform used to exchange truck driver information. Upon this evidence, a factfinder could infer that Wider blacklisted Garrett. Thus, the trial court erred in granting summary judgment to Wider on Garrett's blacklisting claim.

II.C. Tortious Interference With A Business Relationship

[44] Garrett also contends that the trial court erred when it entered summary judgment in favor of Wider on her claim that Wider had tortiously interfered with her business relationship with Northridge. To prove Wider interfered with Garrett's business relationship, Garrett would be required at trial to show: (1) the existence of a valid relationship between Garrett and Northridge; (2) Wider's knowledge of the existence of the relationship; (3) Wider's intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from Wider's wrongful interference with the relationship.

McCollough v. Noblesville Sch., 63 N.E.3d 334, 344 (Ind. Ct. App. 2016), *trans. denied*. "Additionally, our Supreme Court has held that 'this tort requires some independent illegal action.'" *Id.* (quoting *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 291 (Ind. 2003), *cert. denied*). "Defamation, however, does not constitute illegal conduct for the purpose of determining whether one tortiously interfered with the business relationship of another." *McCollough*, 63 N.E.3d at 344 (quotation marks omitted).

[45] Regarding the justification element of the tort, in determining whether a defendant's conduct is justified,

> the Restatement recommends the consideration of the following factors: "(a) the nature of the defendant's conduct; (b) the defendant's motive; (c) the interests of the plaintiff with which the defendant's conduct interferes; (d) the interests sought to be advanced by the defendant; (e) the social interests in protecting the freedom of action of the defendant and the contractual interests of the plaintiff; (f) the proximity or remoteness of the defendant's conduct to the interference; and (g) the relations between the parties." [*Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1235 (Ind. 1994)] (citing Restatement (Second) of Torts § 767 (1977)).

Haegert, 953 N.E.2d at 1234. The lack of justification is established "only if the interferer acted intentionally, without a legitimate business purpose, and the breach is malicious and exclusively directed to the injury and damage of another." *Bilimoria Comput. Sys., LLC v. Am. Online, Inc.*, 829 N.E.2d 150, 156-57 (Ind. Ct. App. 2005). "The existence of a legitimate reason for the

defendant's actions provides the necessary justification to avoid liability." *Id.* at 157.

[46] Wider asserts that Garrett's tortious interference claim fails because Wider was "unaware of the relationship it is alleged to have interfered with, did not engage in illegal action, and was obligated to report Garrett's refused drug screen." Appellee's Br. p. 22. We cannot agree.

II.C.1 Knowledge of the Business Relationship

[47] Garrett's designated evidence demonstrates that there are genuine issues of material fact regarding whether Wider had knowledge of the existence of the relationship between Garrett and Northridge. Garrett designated evidence showing that she is the owner-operator of her truck. The evidence shows that after she resigned from Wider, she began working for Northridge, and she continued to work for Northridge until her employment was terminated upon Northridge obtaining information from Midwest that Garrett had failed to submit to a drug test.

[48] Wider's designated evidence showed specifically that on June 28, 2019, Wider's email account received an email from Tenstreet with the subject line "Request Received – Nikki Garrett." Appellant's App. Vol. II, pp. 82, 111. The email instructed the recipient to navigate to the "Tenstreet Exchange" and "Provide a Response and search for Nikki Garrett." *Id.* Miller filled out the Xchange Report by responding to the questions contained therein requesting information on Garrett's employment with Wider. The Xchange Report indicated that

Midwest was requesting the information. In response to the question of whether the "employee refuse[d] to be [drug and alcohol] tested[,]" Miller answered, "Yes 04-04-2019." *Id.* at 173.

[49] Wider designated the Tenstreet email and the Xchange Report to show that it had "no knowledge of any prospective relationship between Garrett and Northridge and that it "knew only that the vendor, Midwest, sought Garrett's information through the Tenstreet platform." Appellee's Br. p. 23. However, while Wider may not have known that Northridge was the entity requesting employment information for Garrett, Garrett designated evidence showing that Wider received a communication from an online platform used in the trucking industry, requesting certain information regarding Garrett's employment with Wider as an owner-operator truck driver. And George Grkovski, a co-owner of Wider, stated in his affidavit that potential employers of CDL drivers "regularly seek driver employment history before extending an offer of employment[,]" and they do so "through vendors, like Midwest . . . , who in turn seek and exchange driver information through online platforms, like the Tenstreet Xchange." *Id.* at 81-82. Upon this evidence, we conclude that genuine issues of material fact exist as to whether Wider had knowledge of a relationship between Garrett and Northridge.

II.C.2 Illegal Conduct

[50] Likewise, we find that genuine issues of material fact exist as to whether Wider committed an unjustified interference with the relationship between Garrett and Northridge. As we noted previously, a claim for tortious interference requires

some independent illegal action. *McCollough*, 63 N.E.3d at 344. Garrett has alleged that the independent illegal conduct on the part of Wider was blacklisting. And we determined that genuine issues of material fact exist as to whether Wider engaged in blacklisting.

[51] Furthermore, Garrett's designated evidence supports a reasonable inference that when Wider published the statement in the Xchange Report, Wider intentionally, without justification and a legitimate business purpose, interfered with Garrett's business relationship with Northridge, a prospective employer, and did so in a malicious manner directed to injure Garrett.

[52] In sum, we find that genuine issues of material fact regarding whether Wider tortiously interfered with Garrett's business relationship with Northridge prevent the entry of summary judgment in favor of Wider. As such, the trial court erred in granting summary judgment to Wider on this claim.

II.D. Rulings On Other Motions

[53] Lastly, Garrett challenges the trial court's rulings made in conjunction with Garrett's motion to correct error. Specifically, Garrett argues that the trial court abused its discretion by denying her motion to correct error that alleged she had newly discovered evidence. Garrett sought to have the trial court reverse its ruling that denied her motion to compel discovery and granted Wider's motion to strike certain exhibits that Garrett had tendered. However, because we have reversed the trial court's grant of summary judgment to Wider on all of

Garrett's claims and are remanding for further proceedings, we need not address Garrett's challenge to the trial court's motion to correct error rulings.

Conclusion

[54] We conclude the trial court erred in granting summary judgment in favor of Wider on Garrett's claims of defamation, blacklisting, and tortious interference with a business relationship. For the reasons stated above, the judgment of the trial court is reversed, and we remand for further proceedings.

[55] Reversed and remanded.

Bailey, J., and Felix, J., concur.

ATTORNEYS FOR APPELLANT

Taylor J. Ferguson
Andrew Dutkanych, III
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Margaret L. Smith
Darren A. Craig
Katherine M. Slisz
Frost Brown Todd LLP
Indianapolis, Indiana