Filed in District Court
State of Minnesota
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STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1209

Craig Stevenson, et al.,
Appellants,

vs.

Sean Stevenson, et al.,
Respondents.

Filed April 8, 2024
Affirmed
Slieter, Judge

Otter Tail County District Court
File No. 56-CV-20-2928

Cassandra C. Wolfgram, Matthew J. Schaap, Dougherty, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for appellants)

Ross N. Tentinger, Tentinger Law Firm, P.A., Apple Valley, Minnesota (for all respondents); and

Kirsten J. Hansen, Stephen P. Couillard, Stich, Angell, Kreidler & Unke, P.A., Minneapolis, Minnesota (for respondents Sean and Renee Stevenson)

Considered and decided by Slieter, Presiding Judge; Wheelock, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellants challenge the district court's summary-judgment dismissal of their claims for defamation *per se*, intentional infliction of emotional distress, and civil

conspiracy. Appellants argue that the district court misapplied the law and disregarded the existence of genuine issues of material fact as to the elements of each of the claims.

Appellants also challenge the district court's resolution of several of their pretrial motions pertaining to sanctions and discovery, claiming that the district court abused its discretion when it determined those matters.

The district court properly granted summary judgment and it acted within its discretion with its sanctions ruling. And, because we need not address the discovery issues because they are moot, we affirm.

FACTS[1]

In November 2020, appellants Craig Stevenson and Marie Stevenson commenced this tort proceeding, alleging defamation *per se*, intentional infliction of emotional distress (IIED), and civil conspiracy against four current and former relatives based on communications sent by email, text message, and mail.

Appellants, Craig and Marie, are married. Respondent Renee Stevenson is Craig's ex-wife. Respondent Sean Stevenson is the adult son of Craig and Renee. Respondent Ashley Anderson is Sean's partner. Respondent Lisa Stevenson-Allen is Craig's sister.

The record portrays an extensive history of strife and conflict among the parties, illustrating the strained nature of the interpersonal relations from which this case arises.

[1] Because five of the six parties share the same or similar last name, we refer to the individual parties by their first names for clarity. We use appellants to refer to Craig and Marie collectively. Respondents is used when collectively referring to Renee, Sean, Ashley, and Lisa.

From the outset of this litigation, the parties battled over matters pertaining to discovery of evidence.

In September 2021, after respondents produced over 600 pages of emails and text messages, but no text messages sent among themselves, appellants brought motions to compel discovery against Sean, Renee, and Lisa. The motions were denied.

In October 2022, appellants brought multiple motions: for reconsideration of the motion to compel; for sanctions for spoliating evidence; and for amendment of the scheduling order to provide an extension of time for discovery. In December 2022, the district court issued a pretrial order granting in part, denying in part, and reserving relief as to other issues raised.

In June 2023, the district court granted respondents' motion for summary judgment and dismissed appellants' complaint.

Appellants appeal.

DECISION

In our analysis, we first address appellants' arguments that the district court erred by granting a summary-judgment dismissal of Craig's claims for defamation *per se* and Marie's claim for IIED. We then address appellants' assertions that the district court abused its discretion when it resolved their multiple pretrial motions.

I. The district court properly granted summary judgment and dismissed appellants' claims.

On appeal from a grant of summary judgment, an appellate court reviews *de novo* whether there are any genuine issues of material fact and whether the district court erred in

applying the law. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A genuine issue of material fact exists when there is sufficient evidence that could lead a rational trier of fact to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Summary judgment is mandatory when "the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

A. The district court correctly dismissed Craig's defamation *per se* claims.

A plaintiff will not survive a motion for summary judgment brought against his defamation claim unless he produces evidence demonstrating the existence of a genuine issue of material fact as to each element on which he bears this burden of proof. *Rouse v. Dunkley & Bennett, P.A.*, 520 N.W.2d 406, 410-11 (Minn. 1994).

A plaintiff pursuing a defamation claim must prove, in relevant part, that the defendant made "a false and defamatory statement about the plaintiff." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019).

"A defamatory statement is one that tends to harm the plaintiff's reputation and lower him in the estimation of the community." *Jadwin v. Minneapolis Star & Trib. Co.*, 390 N.W.2d 437, 443 (Minn. App. 1986) (citing *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980)). Harm to reputation may be presumed, however, for

claims of defamation *per se*. *Richie v. Paramount Pictures Corp.*, 544 N.W.2d 21, 25 (Minn. 1996).

Statements that "falsely accuse a person of a crime" are defamatory *per se*. *Longbehn v. Schoenrock*, 727 N.W.2d 153, 158 (Minn. App. 2007). For a statement to constitute a false accusation of a crime, "the words need not carry upon their face a direct imputation of crime" so long as they, "in their ordinary acceptance, would naturally and presumably be understood, in the connection and under the circumstances in which they are used, to impute a charge of crime." *Id.* at 158-59 (quotation omitted).

In considering a defamation *per se* claim, the district court is tasked with first determining, as a matter of law, "whether the statements are reasonably capable of carrying a defamatory meaning." *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 307 (Minn. App. 2001). "If the statements are not reasonably capable of conveying" the defamatory meaning that is at issue in the action, then "summary judgment is appropriate." *Id.* at 308. But if a reasonable person would understand the statement as imputing criminal misconduct, then whether the words of the statement were in fact so understood is a question of fact to be decided at trial by the jury. *McKee v. Laurion*, 825 N.W.2d. 725, 732 (Minn. 2013) ("If the words are capable of conveying a defamatory meaning, it is for the jury to decide whether they were in fact so understood.").

Craig brought defamation *per se* claims against Sean and Renee. We first consider Craig's claims against Sean before turning to Craig's claim against Renee.

1. The district court properly dismissed Craig's defamation *per se* claims against Sean.

Craig claims that Sean published defamatory statements accusing him of attempted murder, domestic violence, and theft. Two of the allegedly defamatory statements were made in a July 2019 email, one was made in a July 2019 text message, two were made in an August 2019 text message, and another was made in a June 2020 letter. We consider each in turn.

July 2019 Email

Sean emailed Craig in July 2019. He copied both of his half-sisters (Craig's adult daughters) on the email. Craig alleged that two statements in the email were defamatory *per se* because they falsely accused Craig of domestic violence and/or attempted murder.

In the first statement from the July 2019 email, Sean stated:

> My mother was already afraid for her life, because knowing you, she thought you quite capable of murdering us both.

In the second statement from the July 2019 email, Sean stated:

> It was because she was concerned about Marie's safety. She knew that Marie was scared at the time, just as my mother was before.

The district court concluded that these statements are not defamation *per se* as a matter of law. We agree.

As the district court noted, neither of these statements accuse Craig of committing a crime, and suggesting that someone is capable of committing a crime or that they would commit a crime if presented the opportunity does not amount to defamation *per se*. *See Longbehn*, 727 N.W.2d at 158 (noting that statements are evaluated for defamation *per se*

under a reasonable person standard). Furthermore, contrary to Craig's claim otherwise, his belief that his children understood the email as accusing him of abuse and murder is not the test. "The question of whether a statement's language reasonably conveys a defamatory meaning is one of law," *McKee*, 825 N.W.2d at 731, which focuses on whether a reasonable person in a similar circumstance would understand Sean's email as making an accusation of criminal misconduct, *Longbehn*, 727 N.W.2d at 158.

Relying on *Longbehn*, Craig claims that the district court erred by too narrowly construing the requirements of a defamation *per se* claim by solely focusing on the words uttered. We are not persuaded.

In *Longbehn*, the defamation *per se* statement referred to appellant as "Pat the Pedophile." *Id.* at 157. The jury found defamation *per se*. *Id.* at 158. In affirming the jury's verdict, the supreme court concluded that "in almost every circumstance a reasonable listener would believe that calling a person a pedophile imputes serious sexual misconduct or criminal activity to that person." *Id.* at 159. As we have already stated, Sean uttered no statements here that a reasonable listener would consider as an imputation, direct or indirect, that Craig committed a crime.

July 2019 Text Message

The next statement Craig claims is defamatory *per se* comes from a July 2019 text message Sean sent to his half-sister regarding a conversation he had with Lisa about a book Craig was purportedly writing. Emphasis is added to the portion of the message that forms the basis of Craig's defamation claim.

> Lisa said "the book about Marie[.]" Craig said "I don't know anything about that." That was the extent of what was said about the book. *Lisa was really regretful to me about revealing that, as she was concerned about what Craig might do to Marie (which we all were).* We thought the issue though, was simply going to die there, with Craig simply denying that there ever was a book.

As with the previous statements, no language in this text message alleges a crime. As the district court noted, this statement suggests that Sean and Lisa "had knowledge of facts which would cause them to worry[,] . . . . But they fall well short of actually alleging that Craig has previously committed some identifiable crime or crimes." No reasonable person would read this text message to suggest that Craig committed a crime. *Id.* at 158.

August 2019 Text Message

The next set of statements Craig takes issue with come from an August 2019 text message in which Sean allegedly accused Craig of domestic assault and theft. Emphasis is added to the two statements that Craig claims constitute defamation *per se*.

> My mother is pretty strong. I only remember her crying a few times in my entire life, and those were when I was very young. *One of the few things that brings her to the brink of tears is recalling how she had been betrayed and stolen from like that, by someone she had loved*. She was poor and she was raising me by herself. It wasn't money she could afford to be without. Having now two kids of my own, I don't know how she did it. *I still hoped that Craig hadn't planned to kill us both, but I knew my mother pretty well. She isn't perfect just like anyone else, but this wasn't something she would make up.*

Craig argues that the district court erred by concluding that neither statement alleges a *per se* defamation because they "cannot be viewed in any way other than imputation of

criminal activity." Craig argues that the first statement clearly alleges that he committed theft and the second statement sufficiently imputes murder.

Regarding the first statement involving an allegation of theft, the district court properly observed that Craig admitted that, while he and Renee were married, he removed property that belonged to Renee. "Truth is a complete defense to a defamation action and true statements, however disparaging, are not actionable." *McKee*, 825 N.W.2d at 730 (quotation omitted). The district court correctly concluded that this statement was not, therefore, defamatory *per se*.

In relation to the second statement, as with the July 2019 email, there is no allegation that Craig committed murder. *Longbehn*, 727 N.W.2d at 157-59. At most, as the district court explained, it alleges the existence of a criminal intent, but there is no allegation that Craig attempted murder. Thus, this statement contains no allegation amounting to defamation *per se*.

June 2020 Letter

During summer 2020, Sean mailed three letters to Craig's father-in-law (Marie's father). Craig contends that the first letter contained one statement that is defamatory *per se* because it accused him of domestic abuse against Marie. In the letter, Sean wrote the following: "I don't know if you have the ability to speak with Marie, but due to Craig's history, we have become increasingly concerned about her."

Similar to its analysis of the previous statements, the district court here concluded that no crime of domestic abuse was alleged. We agree. Absent an allegation of the crime

of domestic abuse, no reasonable person would understand the statement as making an accusation or imputing criminal conduct. *Id.* at 158-59.

2. The district court properly dismissed Craig's defamation *per se* claim against Renee.

Craig's claim for defamation *per se* against his former wife, Renee, alleges that her July 2019 email to his daughter contained statements that falsely "suggest that Craig is (or was) imprisoning or abusing Marie and his daughters" and "included allegations that Craig had committed acts of domestic violence and false imprisonment." The relevant portions of the email state the following:

> Even if you wanted to leave your confinement, I doubt that Craig has allowed you the means to do so.
>
> . . . .
>
> So this message is for Craig . . . Don't harass my family (and that includes Lisa) with your lies. And quit lying to your children to keep them in the house.

The district court concluded that this email contains no allegation of domestic violence or false imprisonment. The district court further noted that stating "[e]ven if you wanted to leave your confinement" demonstrates that she was residing with her parents voluntarily. We agree with the district court. As with the other statements, no crime has been alleged. The district court correctly concluded no defamation *per se* was alleged by this email.[2]

[2] Because the conspiracy claim is derivative of the defamation claims against Sean, the district court properly dismissed the conspiracy claim as well.

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B. The district court correctly dismissed Marie's IIED claim.

Marie brought an IIED claim against Sean, alleging that Sean's "conduct of repeatedly contacting Marie's estranged father was extreme and outrageous and passed the boundaries of decency and is utterly intolerable in a civilized society." Specifically, Sean contacted Marie's father three times during the summer of 2020 by mail. Marie claims that Sean knew that his first letter to her father caused her severe emotional distress because she is estranged from her father and the letter contained false statements. Despite knowing that continued contact with Marie's father might induce further emotion distress, Sean wrote to Marie's father two more times.

The elements of IIED "are: (1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) the conduct must cause emotional distress; and (4) the distress must be severe." *Dornfeld v. Oberg*, 503 N.W.2d 115, 117 (Minn. 1993) (citation omitted).

In *Dornfeld*, the Minnesota Supreme Court concluded that "in order to recover for intentional or reckless infliction of emotional distress, the conduct must be 'directed at' a particular third person and the defendant must know of the plaintiff's presence so that the mental effect upon the plaintiff can be anticipated by the defendant." *Id.* at 119-20. As an initial matter, the undisputed facts show that Sean's conduct was not directed at Marie. Sean mailed a letter to Marie's father, not Marie. Moreover, there is nothing in the record indicating that Sean intended on doing anything other than relaying information to Marie's father. The district court, therefore, correctly dismissed Marie's IIED claim.

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II. The district court acted within its discretion by its sanctions ruling.

Appellants raised multiple pretrial issues before the district court including motions to compel discovery, for reconsideration of denials to compel discovery, for amendment to the scheduling order to allow extended time for discovery, and for sanctions for spoliation of evidence. The district court granted some motions, denied others, and reserved others for later consideration. In its order, the district court determined that the "totality of the record" gives "the distinct impression" that appellants' "discovery strategy" has "borne less relation to an attempt to litigate their claims on the merits than it has to an attempt to use the court system to impose burdens upon and exert control over respondents." Appellants claim that the district court abused its discretion in its pretrial rulings.

Our conclusion that summary judgment was properly granted renders all of the discovery-related motions moot, leaving only the sanctions order for this court to consider.

In partially granting appellants' sanctions motion against Sean for spoliation of evidence, the district court found that "Sean lied under oath about deleting text messages." As a sanction, the district court granted appellants' request that Sean reimburse appellants for the cost of obtaining forensic examination of cellphones. The district court denied appellants' request for additional monetary sanctions.

Spoliation occurs when a party has permitted key evidence to be destroyed, whether intentionally or inadvertently, after being on notice that it should be preserved. *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995). District courts have discretion to impose sanctions for spoliation of evidence. *Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011). Whether to impose sanctions, and what kind to impose, depends primarily

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on the nature and extent of prejudice suffered by the opposing party. *Gray v. Comm'r of Pub. Safety*, 918 N.W.2d 220, 226 (Minn. App. 2018).

The district court concluded that appellants had not supported their request for additional monetary sanctions and, thus, considered the requested amount as arbitrary. Because appellants failed to support their request, the district court acted within its discretion by denying appellants' request for additional sanctions.

Affirmed.

MINNESOTA JUDICIAL BRANCH