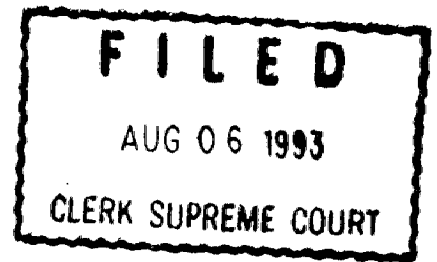


IN THE COURT OF APPEALS OF IOWA

No. 3-261 / 92-1360



REBECCA D. PRED,

Appellant,

000149

vs.

KRAGIE/NEWELL ADVERTISING, INC., JACK KRAGIE and
LIZ NEWELL,

Appellees.

Appeal from the Iowa District Court for Polk County,
Robert A. Hutchison, Judge.

Pred appeals a district court ruling granting
defendants' motion for summary judgment on libel and
slander count. **AFFIRMED.**

John Conger and David S. Wiggins of Wiggins & Anderson,
P.C., West Des Moines, for appellant.

John R. Sandre of Smith, Schneider, Stiles, Wimer,
Hudson, Serangeli, Robinson, Mallaney, Shindler, Scalise &
Sandre, P.C., Des Moines, for appellees.

Heard by Schlegel, P.J., Hayden, J., and McCartney,
S.J.*

*Senior Judge from the 2nd judicial district serving on
this court by order of the Iowa Supreme Court.

HAYDEN, J. 000450

Plaintiff Rebecca Pred appeals the district court's grant of defendants' summary judgment motion in this libel and slander per se action. We affirm.

Pred worked as a production manager for Kragie/Newell Advertising, Inc. (Kragie/Newell). During the spring of 1990 the Iowa Department of Economic Development (IDED) contacted Kragie/Newell for assistance in printing brochure inserts to promote Iowa. Kragie/Newell initially awarded the printing contract to Cara Communications, Inc., a local printer. After Cara Communications resigned, Pred allegedly conferred with Liz Newell on how to proceed with the search for another printer. Pred eventually awarded the contract to a Texas firm pursuant to a bidding process allegedly authorized by Newell.

The award of the contract to a foreign corporation caused substantial controversy and unfavorable press. According to Pred, she was publicly blamed by Kragie/Newell for awarding the contract to the Texas firm. Pred was terminated in September 1990.

Pred filed an amended petition against Kragie/Newell, Jack Kragie, and Liz Newell. Plaintiff alleged breach of contract, wrongful discharge, outrageous conduct, intentional interference with prospective business advantage, intentional interference with contractual relations, libel and slander per se against defendants. The district court dismissed the wrongful discharge claim on the basis of defendants' motion to dismiss.

On August 10, 1992, the district court dismissed the remaining counts pursuant to defendants' motion for summary judgment.

Pred only appeals the grant of summary judgment on the libel and slander count. This claim is based solely on matters contained in two newspaper articles. Pred contends the newspaper articles, taken as a whole, place the whole blame on her for the bidding problems on the IDED contract. Pred claims even if some of the statements were substantially true, they created an inference of business incompetence and conveyed a defamatory meaning. She also argues even if some of the alleged defamatory statements were attributed to third parties, they must have originated from one of the defendants. Pred claims the origin of the statements was a jury question.

The Iowa Supreme Court has established the standards for determining whether summary judgment is appropriate in a defamation case.

Summary judgment is proper when there is no genuine issue of fact and the moving party is entitled to the judgment as a matter of law. The burden of showing the nonexistence of a material fact is upon the moving party. While an adverse party generally cannot rest upon his pleadings when the moving party has supported his motion, summary judgment is still not proper if reasonable minds could draw different inferences and conclusions from the undisputed facts. In this respect, summary judgment is functionally akin to a directed verdict; every legitimate inference that reasonably can be afforded the nonmoving party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved.

Behr v. Meredith Corp., 414 N.W.2d 339, 341 (Iowa 1987) (citations omitted); see also Jones v. Palmer Communications, Inc., 440 N.W.2d 884, 889 (Iowa 1989).

"Summary judgment is afforded a unique role in defamation cases. . . Judges have a responsibility to determine whether 'allowing a case to go to a jury would, in the totality of the circumstances, endanger first amendment freedoms.'" Jones, 440 N.W.2d at 889 (citations omitted). "It is for the court to determine whether the words are capable of a defamatory meaning, and for the jury to determine whether they were so understood." Kiner v. Reliance Ins. Co., 463 N.W.2d 9, 14 (Iowa 1990) (citing Brown v. First Nat'l Bank, 193 N.W.2d 547, 552 (Iowa 1972)); see also Palmer v. Women's Christian Ass'n, 485 N.W.2d 93, 97 (Iowa App. 1992) (court holding evidence was insufficient on terminated employee's defamation claim to generate a jury question).

In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), the United States Supreme Court, in discussing the standards for summary judgment in defamation cases, applied Federal Rule of Civil Procedure 56, which is virtually identical to the Iowa rule. In making a summary judgment decision, the Court said, a judge must perform "the threshold inquiry of determining whether there is a need for a trial--whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Id. at 249, 106 S. Ct. at 2511, 91 L. Ed. 2d at 213.

Behr, 414 N.W.2d at 341.

The issue on appeal is whether there is a genuine issue of material fact that would give rise to a cause of action against Kragie/Newell upon a claim of libel and slander per se. Pred's libel and slander claim is based on the following two statements:

[1] Kragie-Newell later discovered what happened, and the ad agency is scrambling to find an Iowa printer to do most of the work.

[2] However, there was a conflict between the Kragie-Newell production manager and officials of Ringier, causing the printer to back out of the contract.

In determining whether the summary judgment was proper in this case, we must look to the totality of the circumstances to determine whether allegedly libelous statements are actionable. Jones, 440 N.W.2d at 891. Plaintiff maintains the articles taken as a whole, place the fault or blame for the bidding problems on her and infers she was terminated for business incompetence. Pred claims the first statement is false because her employers had the same knowledge. She contends the second statement is false because no conflict existed.

In a defamation action, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248, 106 S. Ct. at 2510, 91 L. Ed. 2d at 211; see Behr, 414 N.W.2d at 341; Junkins v. Branstad, 421 N.W.2d 130, 132 (Iowa 1988). We must determine whether any facts have been presented over which a reasonable difference of opinion could exist that

would affect the outcome of the case. Jones, 440 N.W.2d at 889 (citing Behr, 414 N.W.2d at 341).

In her affidavit, Pred asserts the only persons with the knowledge to provide the press with the information contained in the newspaper articles were Liz Newell, Jack Kragie, or Kragie/Newell. Her assertion is merely a conclusory statement and fails to specifically address the two statements at issue in this case. The nonmoving party must, by affidavits or otherwise, set forth specific facts showing there is a genuine issue for trial. Iowa R. Civ. P. 237(e). A party resisting a summary judgment motion may not rest upon the mere allegations or denials in her pleading. Id. The resistance must set forth specific facts which constitute competent evidence showing a prima facie claim. Prior v. Rathjen, 199 N.W.2d 327, 330 (Iowa 1972). The standard for summary judgment "provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson, 477 U.S. at 248, 106 S. Ct. at 2510, 91 L. Ed. 2d at 211. Pred has not presented facts showing the two statements are attributable to defendants. According to the newspaper article, the first statement was attributed to Anita Walker, who was a spokesperson for the IDED, and the second statement was attributed to an employee of Cara Communications. The newspaper articles did not name plaintiff by name.

Pred's statement, without specific facts, is not sufficient to generate a genuine issue of material fact. Pred has failed to present facts over which a reasonable difference of opinion could exist that could affect the outcome of the case. The district court properly granted defendants' motion for summary judgment regarding the slander and libel per se count. We affirm the decision of the district court.

Costs of this appeal are assessed to Pred.

AFFIRMED.