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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WILMA SHEARER, Executor of the Estate of ORLEN SHEARER, Deceased,

and

WILMA SHEARER, Individually,

Plaintiffs-Appellants,

vs.

OPAL LEACH and PAUL BOELLING,

Defendants-Appellees.

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87-1676

Appeal from the Iowa District Court for Union County (Cl. 10404), Arthur E. Gamble, Judge.

Plaintiffs appeal the decision of the district court which entered judgment for the defendants on their counterclaims for slander. **AFFIRMED.**

Arnold O. Kenyon II, Creston, for plaintiffs-appellants.

Paul J. Boysen, Jr., Creston, for defendants-appellees.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J. 304

Plaintiffs Orlen and Wilma Shearer appeal the decision of the district court which entered judgment for defendants Opal Leach and Paul Boelling on their counterclaims for slander. Judgment was also entered against the defendants on plaintiffs' claims of nuisance. On appeal, plaintiffs claim the district court erred by failing to conclude that there can be no slander so long as the injured person is the only one who knows of the statement.

Defendant Opal Leach lives next door to plaintiffs Orlen and Wilma Shearer. Defendant Paul Boelling is employed by Leach as a handyman. In 1985, the Shearers decided to refinish their basement. In 1986, a downspout on the Shearer home directed water toward Leach's backyard. Boelling attempted to correct this problem by attaching a spout to Leach's house and diverting the water from her roof directly into the Shearer property, which caused substantial damage to their basement. The downspout dispute, together with other incidents, led to heated arguments between Orlen Shearer and Boelling during which Orlen accused Boelling of having an affair with Leach. Orlen also called Leach an "old bitch" and a "whore" on another occasion.

The Shearers brought this action against Leach and Boelling, claiming that the downspout was a nuisance and caused damage to their property. Defendants counterclaimed, alleging that their reputation had been

slandered by Shearer's statements. The district court determined that plaintiffs proved an actionable nuisance and awarded them $5,446.80 in damages. The court further found that both defendants had proven by a preponderance of the evidence that Orlen intentionally defamed their characters. The court awarded Boelling judgment against Shearer for $500 and awarded Leach judgment against Shearer for $5000.

Plaintiffs claim that the defendants in this case failed to produce evidence establishing the prerequisite publication necessary for a finding of slander. The general rule is that there can be no slander without a publication of the defamatory statements to someone other than the person defamed. "Publication" merely means a communication of the statement to some third person or persons. Royston v. Vander Linden, 197 Iowa 536, 537, 97 N.W. 435, 436 (1924); Restatement (Second) of Torts § 630 (1978). As slander involves damage to reputation, there is no slander as long as only the injured person knows of the statement. The wrongdoer is not ordinarily liable if the injured person repeats the slanderous material or himself communicates it to others. Belcher v. Little, 315 N.W.2d 734, 737 (Iowa 1982) (citing W. Prosser, Law of Torts, § 113 (4th ed. 1971)).

In the case at bar, the record indicates that Orlen's statement to Boelling accusing Boelling and Leach of an affair was made in Wilma Shearer's presence, and we hold that publication was properly found as to this incident, and that both Boelling and Leach's[1] reputations were damaged. Furthermore, in Iowa such a charge of unchastity or immorality of a female is slander per se, and no proof of actual damage is required. Ballinger v. Democrat Co., 203 Iowa 1095, 212 N.W. 557 (1927). We hold that the trial court's determination in this matter is supported by substantial evidence in the record and we affirm the trial court.

AFFIRMED.

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1. We note our disagreement with the trial court that Orlen's additional comments to Leach accusing her of being a "bitch" and a "whore" constituted slander. We believe it is clear from the record here that no third party was present when the comments were made, and thus, the requisite element of publication was lacking.