

IN THE COURT OF APPEALS OF IOWA

No. 4-592 / 94-369

FILED

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CLERK SUPREME COURT

DAVID SCIESZINSKI,

Plaintiff-Appellant,

vs.

NORTH STAR STEEL COMPANY,

A Corporation and

ROBERT L. BARRETT,

Defendants-Appellees.

Appeal from the Iowa District Court for Muscatine County, David E. Schoenthaler, Judge.

The plaintiff appeals the district court's ruling dismissing his libel action for the defendants' publication of statements regarding the merits of a lawsuit and the timeliness of an ensuing appeal prosecuted by the plaintiff as counsel. **AFFIRMED.**

David Scieszinski, Muscatine, for appellant.

Iris E. Muchmore and Gilda L. Boyer, of Simmons, Perrine, Albright & Elwood, L.L.P., Cedar Rapids, for appellees.

Heard by Donielson, C.J., and Habhab and Cady, JJ.

CADY, J.

The plaintiff, David Scieszinski, appeals the district court's ruling dismissing his libel action against the defendants, North Star Steel Company (North Star) and Robert Barrett. On our review, we affirm the trial court.

Scieszinski, an attorney, represented the estate of Raymond Morgan in a disability discrimination case against Morgan's employer, North Star. After a trial, the district court entered a ruling dismissing the action. The court determined the estate failed to prove disability discrimination in the termination of Morgan's employment. The Morgan estate filed a motion to amend and enlarge which was denied. The court found the motion was untimely.

In December 1990 North Star held a staff meeting. Robert Barrett, the personnel manager at the company plant, reported on the status of the Morgan lawsuit. He made the following statement:

The Morgan Estate v. North Star Steel, Iowa, appeal should be acted on shortly. In this case, the civil court ruled in the Company's favor and the Estate's attorney has chosen to appeal the decision. In addition to the case having no merit, the appeal was filed in an untimely manner according to the Court of Appeals Rules.

The statement was printed in the minutes of the meeting and distributed to management employees, the company security department, and twelve North Star corporate officers.

In December 1992 Scieszinski filed a defamation lawsuit against North Star and Barrett. The petition asserted the December 1990 statement was false and defamatory and damaged his reputation.

In response to the law suit, the defendants filed a motion for summary judgment. They asserted the written statement was true and was not libelous per se. They also asserted the defense of absolute privilege applied. The district court denied the motion for summary judgment.

The defendants subsequently filed an application for adjudication of law points and motion for summary judgment. They reasserted the statement did not constitute libel per se as a matter of law. Scieszinski resisted the motions.

After a hearing, the district court granted the application for adjudication of law points and motion for summary judgment. The court determined as a matter of law the statement could not be construed as libelous per se. Scieszinski filed the instant appeal.

On appeal Scieszinski asserts the statement is libelous per se. He acknowledges that libel per quod is not applicable on the facts of this case. He also claims the language is susceptible to more than one meaning and should, therefore, have been construed by a jury. We review these matters for the correction of errors at law. Iowa R. App. P. 4; Galloway v. Zuckert, 447 N.W.2d 553, 554 (Iowa App. 1989).

I. Libel Per Se

The point of law confronted by the trial court and raised in this appeal is whether the statement in the December 1990 meeting minutes is libel per se. Scieszinski asserts the statement accuses him of neglect and

indifference in his client representation and is an allegation of business incompetence constituting libel per se. We disagree and affirm the trial court's ruling.

Libel includes malicious publications, expressed in writing, tending to injure the reputation of another or to expose the person to public hatred, contempt, or ridicule or to injure the person in the maintenance of his or her business. Vojak v. Jensen, 161 N.W.2d 100, 104 (Iowa 1968). Statements found to be libelous per se are actionable in and of themselves without proof of malice, falsity, or damage. Spencer v. Spencer, 479 N.W.2d 293, 296 (Iowa 1991), cert. denied, 113 S. Ct. 120 (1992). Words are libelous per se, whether true or not, if the court can presume as a matter of law their publication will have a libelous effect. Kelly v. Iowa State Educ. Ass'n, 372 N.W.2d 288, 295 (Iowa App. 1985). For instance, it is libel per se to make published statements accusing a person of being a liar, a cheater, or a thief. Spencer, 479 N.W.2d at 296. Other statements considered libelous per se are those which charge business incompetence or lack of skill in the trade, occupation, profession, or office. Vojak, 161 N.W.2d at 104.

In cases where the courts have found libel per se, the libelous statements direct specific accusations of unlawful, immoral, or unprofessional actions at the defamed person. See Spencer, 479 N.W.2d at 296 (holding statements accusing a person of lying, cheating, and deceit are libelous per

se); Vinson v. Linn-Mar Comm. Sch. Dist., 360 N.W.2d 108, 115 (Iowa, 1984) (finding that accusing a person of falsifying information imputes dishonesty to the person and is libel per se); Kelly, 372 N.W.2d at 296 (finding defendant's statements questioning plaintiff's administrative abilities, stating plaintiff consistently looked, talked and acted foolishly, and questioning whether plaintiff sold mail-order Florida swampland were libelous per se); Vojak, 161 N.W.2d at 105 (finding letters questioning Plaintiff's reliability as a contractor were libel per se because they implied business incompetence and lack of skill).

In this case the statement does not communicate directly or by inference that Scieszinski is negligent, incompetent, or unprofessional in his work as an attorney. The statements merely convey the status of the Morgan lawsuit. They are not directed at Scieszinski nor do they attack, directly or by implication, Scieszinski's professional reputation. They are statements made commonly within the legal profession without implying business incompetence.

The phrase "having no merit" is not necessarily synonymous with "frivolous," nor does it imply an unlawful, unprofessional, or incompetent act. Blacks Law Dictionary defines "merit" as "the substance, elements, or grounds of a cause of action or defense." Black Law Dictionary 989-90 (6th ed. 1990). Courts routinely find the elements for a cause of action are not present without damaging the

reputations of the attorneys who bring these actions. See e.g., State v. Edwards, 507 N.W.2d 393, 399 (Iowa 1993); Luke v. State, 465 N.W.2d 898, 902 (Iowa App. 1990); Welker v. Langtry Farm Partnership, 463 N.W.2d 97, 100 (Iowa App. 1990).

Similarly the phrase, "the appeal was filed in an untimely manner" carries no innuendo that Scieszinski purposefully neglected the case or handled it in an unprofessional manner. It simply states that the notice of appeal was not filed within the thirty-day appeal period. We cannot presume as a matter of law that the defendants' statement will disgrace, degrade, or hold Scieszinski up to public hatred, contempt or ridicule, or cause him to be shunned or avoided. See Haas v. Evening Democrat Co., 252 Iowa 517, 522, 107 N.W.2d 444, 446 (1961). These phrases and the statement as a whole do not rise to the level of libel per se. The trial court correctly dismissed Scieszinski's petition.

II. Ambiguity

Scieszinski also claims the trial court erred in dismissing his petition. He asserts the statement was ambiguous and therefore the question of whether the statement constituted libel per se was an issue for the jury to determine.

The rule is when the language of the publication is unambiguous, the issue of whether the publication is defamatory per se is for the court. If the language is

susceptible to two meanings, including the one ascribed by the complainant, it is for the jury to determine which meaning was conveyed. Vinson, 360 N.W.2d at 116 (citing Berger v. Freeman Tribune Publishing Co., 132 Iowa 290, 295, 109 N.W. 784, 786 (Iowa 1906)).

Here, Scieszinski concludes the language is ambiguous based on the trial court's discussion of the manner in which certain clauses could modify more than one clause within the statement. However, neither of the trial court's interpretations ascribe the same meaning to the statement as Scieszinski does. The trial court never construes the language to imply Scieszinski neglected to properly perform his responsibilities as an attorney. In fact, the court reached the opposite conclusion. It found the language "does not, in and of itself, imply any unlawful, unprofessional, or incompetent act."

Before the jury can decide the issue, the statement must be capable of the meaning asserted by Scieszinski. In this case, the language in and of itself cannot take on the meaning Scieszinski suggests. The meaning of the statement is plain, and it is not libelous per se. We affirm the trial court.

AFFIRMED.