IN THE COURT OF APPEALS OF IOWA

000115

No. 8-011 / 97-0134
Filed March 27, 1998

FILED
MAR 27 1998
CLERK SUPREME COURT

MARLYS FLOYD,
Appellant,

vs.

LARRY MEYER,
Appellee.

Appeal from the Iowa District Court for Benton County, Thomas M. Horan, Judge.

Plaintiff Marlys Floyd appeals a jury's verdict awarding no damages for defendant's libel and slander. **AFFIRMED.**

Larry J. Thorson and Douglas C. Meyer of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

Webb L. Wassmer and James A. Gerk of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

STREIT, J.

Plaintiff Marlys Floyd appeals the jury verdict of no damages after the jury found the defendant Larry Meyer had per se defamed the plaintiff. Because substantial evidence supports the jury verdict, we affirm. By cross-appeal defendant contends the issue of punitive damages should not have been submitted to the jury. Because no prejudice resulted from submission of the instruction, we affirm.

I. Background Facts & Proceedings.

Marlys Floyd filed an action against Larry Meyer, a board member of her ex-employer, Keystone Nursing Care Center. Marlys Floyd had been employed as an administrator at Keystone until 1981. Over twelve years later, she wrote a letter to *The Cedar Valley Daily Times* newspaper in Vinton complaining of the persistent rumors of "embezzlement" and about her leaving her employment at Keystone. The paper contacted Meyer, a Keystone board member, and asked about the letter. Meyer said Floyd was "crazy" and "the directors could have sent her to jail for improperly appropriating money." She claims she was libeled when these statements were published in a local newspaper.[1] Meyer denied making the statements and alleged truth as a defense.

Following trial, the jury found in favor of Floyd on her claims for libel and slander per se but failed to award any damages. The district court entered judgment

---

[1] This statement of her being "crazy" was not printed in the paper after Meyer asked it not be printed.

in favor of Floyd and taxed costs against Meyer. Floyd filed a motion for new trial claiming the verdict for zero damages was inadequate. The motion was denied. The court also denied Meyer's motion for judgment notwithstanding the verdict. Floyd appeals and Meyer cross-appeals.

II. Adequacy of Damages.

Floyd asserts a new trial should have been granted due to the inadequacy of the damages awarded by the jury. We review the denial of a motion for new trial for correction of errors at law. Iowa R. App. P. 4. However, when the motion is based on a discretionary ground, we review for an abuse of discretion. *Id.* A ruling on a motion for new trial based on the adequacy of the jury verdict is reviewed for an abuse of discretion. *Smith v. Air Feeds, Inc.* 556 N.W.2d 160, 165 (Iowa App. 1996).

If a jury verdict is not supported by sufficient evidence and substantial justice was not accomplished by the verdict, a new trial may be granted. *Delaney v. Sand*, 1997 WL 442690, at *3 (Iowa App. 1997). It is not controlling that the evidence at trial may justify a higher damage award. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996). "The key question is whether after examining the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties." *Id.*

Floyd contends the jury's damage award did not effectuate substantial justice. She argues because the statements made by Meyer were slander and libel per se, she

was not obligated to prove damages, but that damages naturally flow from the per se defamatory statements.

Floyd is correct in asserting that slander and libel per se are actionable without proof of harm. *Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994). Statements actionable without proof of malice, falsity, or special harm fall within the category of slander "per se." *Spencer v. Spencer*, 479 N.W.2d 293, 296 (Iowa 1991). "An attack on the integrity and moral character of a party is [slanderous] per se." *Vinson v. Linn-Mar Community Sch. Dist.*, 360 N.W.2d 108, 115-16 (Iowa 1984). Slanderous imputations affecting a person in his or her business, trade, profession, or office are also actionable without proof of actual harm. *Lara,* 512 N.W.2d at 785. However, Floyd is mistaken in her assertion that damages are required after a finding of slander or libel per se. Damages may not be awarded based solely on defamatory statements, but are limited to the natural and probable consequences evidenced to flow from the defamatory statements. *See id.*

To recover in an action for defamation, a plaintiff must ordinarily prove some sort of cognizable injury, such as injury to reputation. *Johnson v. Nickerson*, 542 N.W.2d 506, 513 (Iowa 1996). Hurt feelings alone cannot serve as the basis of a defamation action. *Id.* Floyd did not lose a job or job prospect as a result of the defamatory statements. Her relationship with her family did not change. She suffered no physical injury as a result of the defamation. She incurred no medical expenses. She did not prove the defamation caused damage to her reputation or her standing in

the community. Floyd's hurt feelings are not sufficient to serve as the basis of her defamation action.

It was reasonable for the jury to find no damages under these circumstances. The jury's decision that damages were not warranted is precisely the type that is within the province of the jury. *See Foggia*, 543 N.W.2d at 891. The findings are supported by substantial evidence on the record. *See id.* Unable to find an abuse of discretion, we affirm the trial court's denial of a new trial based on an allegation of inadequate damages.

III. Instruction on Punitive Damages.

Floyd contends the jury was improperly instructed she needed to prove actual malice to be awarded punitive damages. Meyer argues there was not substantial proof of actual malice, therefore, the punitive damage issue should not have been submitted to the jury.

We review for correction of errors of law. Iowa R. App. P. 4; *Beyond the Garden Gate, Inc. v. Northstar Freeze-Dry Mfg., Inc.*, 526 N.W.2d 305, 308 (Iowa 1995). Jury instructions should be submitted to the jury if they are supported by the pleadings and substantial evidence in the record and are correct statements of the law. *Duncan v. City of Cedar Rapids*, 560 N.W.2d 320, 325 (Iowa 1997); *Collister v. City of Council Bluffs*, 534 N.W.2d 453, 454 (Iowa 1995). When weighing the sufficiency of the evidence to support a requested instruction, we view the evidence in a light most favorable to the party seeking the instruction. *Duncan,* 560 N.W.2d at 325.

A showing of actual malice is required when the defamatory statements involve a matter of public concern. *Johnson*, 542 N.W.2d at 511. When a private figure plaintiff seeks punitive damages for defamatory statements she does not need to prove actual malice. *Id.* Rather, her burden is to show the conduct of the defendant in making the defamatory statements was in willful and wanton disregard for her rights. *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 144 (Iowa 1996). The evidence to support an award must be clear, convincing, and satisfactory. Iowa Code § 668A.1(1)(a). Conduct is willful and wanton when a person intentionally acts in disregard of a known or obvious risk so great that it is highly probable harm will follow. *Wilson*, 558 N.W.2d at 144.

Meyer did not contact *The Cedar Valley Daily Times* to make statements about Floyd. He was contacted by the newspaper publisher and had only a five-to-ten-minute conversation with him. There is no evidence he intended to hurt Ms. Floyd. In talking with the reporter about the twelve-year-old incident, there is no evidence Meyer conducted himself in disregard of a known or obvious risk so great as to make it highly probable Floyd would be harmed. Meyer told the reporter, "he would just as soon . . . [the incident] stay in the past, not to be dredged up again." There simply is not evidence of actual malice or willful and wanton conduct by Meyer in the record. Regardless of whether Floyd's claim was one of public interest or Floyd was regarded as a private figure, the issue of punitive damages should not have been submitted to the jury. The evidence was insufficient to submit the issue of punitive damages to the

000121

jury. However, because no punitive damages were awarded, no harm resulted to Meyer from submission of the instruction. Because no harm resulted, we affirm the trial court.

IV. Entrance of Judgment in Favor of Floyd.

Meyer argues the court erred in entering a judgment for Floyd rather than him after the jury found Floyd was not entitled to damages. The entrance of judgment for the plaintiff was not error. To prevail in an action for slander a plaintiff must prove *either* that the published statement was slanderous per se *or* that the publication caused actual harm to the plaintiff's reputation. *Lara*, 512 N.W.2d at 785 (emphasis added). The plaintiff in this case proved slander and libel per se. Because she proved per se defamation claims, she did not need to prove actual damages to prevail on her claim.

Even if the trial court had erred in entering a judgment for the plaintiff, the defendant has not shown prejudice resulted from the error. Ordinarily errors against a party are cured by a verdict favorable to the party. *Mills v. Guthrie County Rural Elec. Coop.*, 454 N.W.2d 846, 848 (Iowa 1990). The judgment was favorable to the defendant in that he was not required to pay damages to the plaintiff. The judgment entered in the plaintiff's favor is affirmed.

AFFIRMED.