IN THE COURT OF APPEALS OF IOWA

No. 3-1004 / 13-0001
Filed December 5, 2013

PETER VIDAL,
Plaintiff-Appellant,

vs.

RUJUTA VIDAL,
Defendant-Appellee.

DANIELLE VERHOEF,
Plaintiff-Appellant,

vs.

RUJUTA VIDAL,
Defendant-Appellee.

Appeal from the Iowa District Court for Hancock County, Rustin T. Davenport, Judge.

Two plaintiffs appeal from grants of summary judgment to the defendant in an action for defamation. **AFFIRMED.**

Theodore F. Sporer of Sporer & Flanagan, PLLC, Des Moines, for appellants.

Joel T. Yunek of Yunek Law Firm, Mason City, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

Peter Vidal and Danielle Verhoef each appeal from the grants of summary judgment on their respective claims of defamation against Peter's former wife, Rujuta Vidal. Peter and Danielle argue that a fact question exists as to whether Rujuta was entitled to qualified immunity, and that the district court erred in basing its decision on inadmissible hearsay evidence. We affirm.

I. Background Facts and Proceedings.

In 2008, Peter Vidal and Rujuta Vidal were in the middle of a difficult divorce. Peter had twice hired Danielle Verhoef, then a seventeen year old, to babysit the Vidal's nine-year-old daughter, C.V. In October 2008, C.V. informed Rujuta she had seen a nude photograph of Danielle on her father's phone. C.V. also stated Danielle and her father behaved inappropriately toward each other. C.V. forwarded the photograph from Peter's phone to Rujuta. The cell phone photograph is of very poor quality and very dark. It depicts a nude or partially-dressed person with long hair on a couch. It is difficult, if not impossible, to make out the person's face. C.V. identified the person in the photograph as her babysitter, Danielle. Rujuta had seen Danielle briefly on a few occasions and was aware of her appearance. She also believed the figure was Danielle.

Rujuta reported to the City of Garner Police Chief, Thomas Kozisek, what C.V. informed her. On October 16, Kozisek went to Rujuta's residence and spoke to both Rujuta and C.V. They showed Kozisek the picture, and C.V. again identified the indistinct figure as her babysitter, Danielle. Kozisek testified he could not identify the figure but he believed C.V.'s statements. On the same day,

Kozisek met with Danielle's parents. Kozisek informed Danielle's parents that Peter had a picture of a nude or partially-dressed figure on his phone and C.V. identified the picture as their daughter. Danielle's parents did not view the picture at that time but did not believe their daughter was having an inappropriate relationship with Peter. Subsequently, Kozisek downloaded and enlarged the photograph and determined that it was not of Danielle. On October 8, 2010, Peter and Danielle filed separate petitions alleging defamation per se, defamation per quod, intentional infliction of emotional distress, and invasion of privacy (public exposure in a false light). They named as defendants Rujuta, Kozisek, and the City of Garner. On June 27, 2011, the defendants filed motions for summary judgment. The district court granted summary judgment in favor of the defendants on all claims except the invasion of privacy claim. Following motions to amend and enlarge findings, the court also granted summary judgment on the invasion of privacy claims. Peter and Danielle subsequently dismissed their claims against Kozisek and the City of Garner.[1] They appeal only from the grant of summary judgment on the defamation claim against Rujuta, the remaining defendant.

II. Standard of Review.

Appellate review of a summary judgment ruling is for correction of errors of law. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 400 (Iowa 1988). Summary

---

[1] Peter and Danielle also alleged that Kozisek's then-teenaged daughter, Regina, approached Danielle at the high school they attended together and accused Danielle of having a sexual relationship with Peter. In deposition testimony, Regina testified she did not remember any such conversation. These statements and the alleged communication between Kozisek and Regina formed the basis for the claims against Kozisek and the City of Garner.

judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* The burden is on the moving party to show the nonexistence of material facts and to prove the party is entitled to judgment as a matter of law. *Knapp v. Simmons*, 345 N.W.2d 118, 121 (Iowa 1984). A genuine issue of material fact exists if evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). To uphold the district court's summary judgment rulings, we must confirm that no disputed issues of material fact existed to render summary judgment inappropriate, and the district court correctly applied the law to those undisputed facts. *Royce v. Hoening*, 423 N.W.2d 198, 200 (Iowa 1988). We "view the facts in the light most favorable to the party opposing the motion for summary judgment." *Shriver*, 567 N.W.2d at 400. Every legitimate inference that reasonably can be deduced from the evidence is afforded the nonmoving party. *Northup v. Farmland Indus., Inc.*, 372 N.W.2d 193, 195 (Iowa 1985). In ruling on a motion for summary judgment, the court considers the record as it then exists. *Prior v. Rathjen*, 199 N.W.2d 327, 331 (Iowa 1972).

III. Analysis.

Rujuta argues even if her statements were defamatory, they are protected under a qualified privilege. Peter and Danielle contend the district court incorrectly found the statements were privileged and considered inadmissible hearsay evidence. They also contend, if the statements were qualifiedly privileged, Rujuta lost the privilege through abuse. We first decide whether the

district court considered inadmissible hearsay statements; then we decide whether the statements were privileged and whether Rujuta abused the privilege.

A. Hearsay Statements.

Peter and Danielle contend on appeal the district court erred in considering the statements C.V. made to Rujuta because they are hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 5.801(c). C.V.'s statements are not offered to prove the truth of the matter asserted; they are offered to explain Rujuta's subsequent conduct in contacting law enforcement about the photograph.[2] Rujuta also filed a notarized affidavit from C.V. substantially restating everything C.V. initially disclosed. Therefore, C.V.'s statements are not hearsay, and the district court did not err in considering them in its ruling.

B. Existence and Abuse of the Privilege.

A qualified privilege constitutes immunity from liability for defamation. *Kiray v. Hy-Vee*, 716 N.W.2d 193, 199 (Iowa Ct. App. 2006). A qualified privilege exists where (1) the statement is made in good faith; (2) the defendant has an interest to uphold; (3) the scope of the statement was limited to the identified interest; and (4) the statement was published on a proper occasion, in a proper manner, and to proper parties only. *Id.* "A qualified privilege is lost when it is abused." *Barecca v. Nickolas*, 683 N.W.2d 111, 117 (Iowa 2004). Abuse occurs

---

[2] Rujuta's belief in C.V.'s statements motivated her to contact law enforcement, even though the statements were later proved untrue. Rujuta's belief at the time is probative of whether the report to law enforcement was made in good faith, a necessary element of the qualified privilege. *See* section B.

when a defamatory statement is published with actual malice. *Id.* at 118. Actual malice that defeats a qualified privilege occurs when a statement is made with knowledge that it is false or with reckless disregard for its truth or falsity. *Id.* at 121.

At issue in the appeal is whether there is a genuine issue of material fact as to whether Rujuta acted in good faith. The district court found, "There is no evidence that Rujuta acted in bad faith in reporting the claim to the police." Peter and Danielle argue this finding implicitly required them, the nonmoving parties, to establish the absence of good faith rather than requiring Rujuta, the moving party, to establish the presence of good faith. We find this characterization inaccurate. The burden remains on Rujuta to demonstrate there is no genuine issue of material fact that she acted in good faith. Peter and Danielle also argue the record is replete with evidence of Rujuta's bad faith.

Rujuta's deposition testimony was that C.V. had been expressing concerns since January or February 2008 about Peter's conduct toward Danielle. Rujuta was concerned about the picture because Danielle was a minor. She was also concerned about what C.V. was witnessing while with her father and Danielle. She testified she believed at the time the photograph was of Danielle. Peter and Danielle counter that Peter and Rujuta were in an acrimonious divorce and "no one, other than perhaps Rujuta herself, has ever said the image on the cellular device she showed Chief Kozisek even resembled Danielle." However, C.V. did identify the figure as Danielle to both her mother and to Kozisek. Peter and Danielle argue a reasonable trier of fact could have found Rujuta knew the

figure was not Danielle but exploited the situation to gain favor in the dissolution action with Peter. There is no evidence in the record to support such a finding or to generate a fact question. Rujuta testified she contacted police because she believed the figure was Danielle, whom she knew to be a minor, and she was concerned for both Danielle and her own daughter. Peter and Danielle generated no genuine issue of material fact to defeat Rujuta's claim that she acted in good faith.[3]

There is also nothing in the record to support a finding that Rujuta acted with knowledge the statements were false or with reckless disregard for their truth or falsity. She believed the statements she made were true, based on her experience and her daughter's belief. Peter and Danielle raised no genuine issue of material fact that Rujuta abused the qualified privilege. Therefore, the district court correctly found the privilege applied to her statements.

IV. Conclusion.

The district court properly determined there were no genuine issues of material fact as to whether the allegedly defamatory statements were qualifiedly privileged and whether there was an abuse of the privilege. The court correctly determined Rujuta was entitled to judgment as a matter of law. Accordingly, we affirm the district court's grant of summary judgment.

AFFIRMED.

---

[3] Peter and Danielle argue that Rujuta chose to report the allegations to the police chief in the City of Garner, where she lived, rather than in Mason City, where the alleged activities would have occurred. They assert Rujuta was a personal friend of Kozisek's wife, and the decision to report the possible criminal activity to a friend demonstrated a lack of good faith. Such a speculative assertion is not evidence of bad faith.