In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2016

FINANCIAL FIDUCIARIES, LLC and THOMAS BATTERMAN,
Plaintiffs-Appellants,

v.

GANNETT CO., INC.,
Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 19-cv-874 — **Stephen L. Crocker**, *Magistrate Judge*.

ARGUED FEBRUARY 9, 2022 — DECIDED AUGUST 22, 2022

Before FLAUM, BRENNAN, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. This dispute began when a Wisconsin newspaper owned by Gannett Co., Inc. published an article about Thomas Batterman and his business, Financial Fiduciaries, LLC. The article described a judicial proceeding in which several trust beneficiaries successfully removed Batterman as de facto trustee of a $3 million fund. In that proceeding, the court concluded that Batterman violated his fiduciary duties. And although the court did not rule on

whether Batterman committed criminal acts, it ordered him to pay the beneficiaries' litigation expenses because his conduct "amounted to something of bad faith, fraud or deliberate dishonesty."

Batterman promptly sent a retraction letter to the newspaper. A few weeks later, the newspaper revised the article but did not remove it. These revisions did not appease Batterman, who then sued Gannett for defamation. After a series of rulings, the district court entered judgment for Gannett. The court reasoned that the allegedly defamatory statements were substantially true and protected by Wisconsin's judicial-proceedings privilege, which protects publishers that report on court activity. *See* WIS. STAT. § 895.05(1). Batterman asks us to reverse several of the district court's rulings and, ultimately, its judgment. But because the district court decided correctly at each step, we affirm.

I. Background

A. Facts

Gannett owns the Wausau Daily Herald, a local newspaper in central Wisconsin. In August 2018, the Herald published an article titled *Wisconsin financial advisor accused of violating a dead man's trust, mishandling $3 million*. The article portrayed Joseph Geisler as a frugal farmer who, with help from Batterman, created a trust with assets that eventually totaled $3 million. Upon Geisler's death, those funds were to be distributed equally among four beneficiaries: the Catholic Diocese of Superior, Wisconsin; Bruce High School; the Alzheimer's Association; and the American Cancer Society. When Geisler passed away, Batterman, through an entity

called Vigil Asset Management Group ("Vigil"), became trustee and was responsible for administering the trust.

After providing this background, the article relayed the American Cancer Society's allegations. The Herald put it this way:

> [T]he financial adviser Joe Geisler entrusted to administer his trust put that money in jeopardy, according to a lawsuit filed in Marathon County. The adviser, Thomas Batterman of Wausau, is accused of defrauding the charities, committing numerous breaches of trust and conspiring with his fiancée to milk the fund for trustee fees.

The article also included the subheading "[w]hat has been alleged." Under that subheading, the article declared "[a]ccording to accusations and judgments made in the court documents, this is what happened." In the ensuing paragraphs, the article summarized the claims made by the American Cancer Society (later joined by the other beneficiaries) in a petition it filed in state court. The article reproduced the core allegations from that petition:

- Batterman's fiancée, Deborah Richards, worked for the American Cancer Society.
- An email exchange showed an agreement between Batterman and Richards, under which Batterman would disburse the Society's trust money in small annual sums rather than one lump sum.
- According to the Society, Richards profited from this arrangement by obtaining salary

> increases for reaching fundraising goals each year. A large payment, by contrast, would have distorted the charity's expectations for future years and hindered Richards's advancement. Richards claimed her salary increases were random.
>
> - Batterman defended his decision on grounds that a large gift was difficult for the Society to handle, which he said was why he agreed to submit smaller payments.
> - He made this decision unilaterally with his fiancée, a lower-level manager, rather than speaking with Society leadership.
> - As a result, he collected $30,000 in fees for trust administration between Geisler's death and the day he was removed as de facto trustee.

After presenting these allegations, the article opined that "the essence of the charities' case against Batterman" was that "he sought to hold on to Geisler's money for as long as he could in order to profit from it through monthly fees."

The article recounted the state court's ultimate decision to remove Batterman and install a successor trustee, who disbursed all funds immediately, and the court's order requiring Batterman to pay the beneficiaries' legal fees, based on a finding that his conduct "amounted to something of bad faith, fraud or deliberate dishonesty." The Herald also included a quote from the judge overseeing the case: "[S]o much of this litigation could have been avoided had Vigil followed the plain language of the trust, or if it had been attempted to

communicate with the school district or other beneficiaries." (As noted above, the court found that Batterman operated Vigil.)

Several other statements in the article put Batterman in a less than positive light. Under the subheading, "Run-ins with the law," the article told readers about Batterman's two alcohol-related arrests and disclosed that the Securities and Exchange Commission had twice fined him for regulatory violations.[1] Finally, when viewed online, the article contained various "related" hyperlinks. One of those links directed the reader to an article titled, "[f]ive ways to fight elder abuse, financial exploitation."

Batterman demanded that the Herald retract the article.[2] Instead, the newspaper updated it the next month with two important changes. First, it included a new paragraph clarifying that "[a]lthough a judge later found that Batterman had not committed fraud, theft or embezzlement, he ruled that the financial adviser had engaged in multiple acts of 'bad faith' and ordered him to be removed from handling the Geisler trust and to pay part of the charities' legal fees." Second, the revised article added the modifier "criminal" before the noun "wrongdoing" in the following sentence: "Neither Batterman nor Richards has been charged with any criminal wrongdoing in the Geisler case."

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[1] Fin. Fiduciaries, LLC, Release No. 4863, 118 SEC Docket 4501, 2018 WL 1151582 (Mar. 5, 2018); Vigil Asset Mgmt. Grp., Inc., Release No. 1621, 64 SEC Docket 294, 1997 WL 120698 (Mar. 17, 1997).

[2] Under WIS. STAT. § 895.05(2), a person must give a newspaper a "reasonable opportunity" to correct allegedly libelous statements before filing a civil suit.

B. Procedural History

In October 2019, Batterman sued Gannett in federal court for defamation.[3] Gannett moved to dismiss the complaint for failure to state a claim. *See* FED. R. CIV. P. 12(b)(6) Along with its motion, Gannett attached copies of several key documents, including the revised article, court documents from the Geisler trust litigation, and the 1997 SEC order involving Batterman.

The district court set April 6, 2020 as the deadline for amending pleadings and advised the parties: "After that, Federal Rule[] of Civil Procedure 15 applies, and the later a party seeks leave of the court to amend, the less likely it is that justice will require the amendment." The scheduling order also stayed discovery until the court ruled on Gannett's motion to dismiss or until the deadline for amended pleadings arrived, whichever came first.

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[3] The district court had diversity jurisdiction over the lawsuit because Batterman is a Wisconsin resident, Financial Fiduciaries, LLC is owned by a privately held Wisconsin corporation, and Gannett is a Delaware corporation with its principal place of business in Virginia. *See* 28 U.S.C. § 1332. Under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938), we apply state substantive law, including the choice-of-law rules of the forum state, *Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487, 498 (1941). In Wisconsin, "the law of the forum should presumptively apply unless it becomes clear that nonforum contacts are of the greater significance." *Drinkwater v. Am. Fam. Mut. Ins. Co.*, 714 N.W.2d 568, 576 (Wis. 2006). Here, the plaintiffs are domiciled in Wisconsin and the defendant published the article in Wisconsin, so the presumption holds, and Wisconsin law applies. Finally, we have appellate jurisdiction under 28 U.S.C. §§ 636(c)(3) and 1291 because the parties consented to resolution by a magistrate judge in the district court, and this is an appeal from a final decision of that court.

The same day, Batterman moved for summary judgment on liability. With that motion, he filed a "combined response," addressing both Gannett's motion to dismiss and his motion for partial summary judgment. He objected to the version of the article Gannett provided as incomplete because it omitted certain hyperlinks which he thought were defamatory. Batterman attached the online version of the revised article—which included the hyperlinks—and an affidavit explaining that he was unable "to locate a copy of the original publication of the Article." This was pertinent, he continued, because "[t]he original Article contained a video clip which was also defamatory."

Three weeks later, Gannett moved under Federal Rule of Civil Procedure 56(d)(2) for a "continuance to respond to Plaintiff's premature Motion for Summary Judgment as to Liability." Batterman opposed this motion and prefaced his response with a quote: "An old maxim warns: Be careful what you wish for; you might receive it." (quoting *Kalamazoo Cnty. Rd. Comm'n v. Deleon*, 574 U.S. 1104 (2015) (Alito, J., dissenting from denial of certiorari)). In his view, the extrinsic documents Gannett submitted with its motion to dismiss established liability as a matter of law, so there was no reason to delay adjudication. Despite Batterman's objection, the court granted Gannett an extension and reset the deadline for a response brief to "60 days after the court rules on the pending motion to dismiss or [60 days after] June 5, 2020, whichever comes first."

On June 1, 2020, the district court granted in part and denied in part Gannett's motion to dismiss. The court concluded that it could review the extrinsic documents submitted by Gannett, and it took judicial notice of the 2018 SEC order

which Gannett had not provided. It then distilled Batterman's allegations into four statements:

- an implicit statement that Batterman committed criminal acts of fraud, theft, or embezzlement;
- an implicit statement that Batterman committed "elder abuse";
- an explicit statement that Batterman was trustee of the Geisler Trust; and
- an explicit statement that Batterman was "found guilty of wrongdoing by the SEC."

Of these, the district court identified the second—the implicit statement that Batterman committed elder abuse—as the only plausible theory of defamation, and holding that the other statements could not support a defamation claim.

With the bulk of his case dismissed, Batterman sought leave to amend his complaint, three months after the deadline for doing so. He contended, for the first time, that the original article was more defamatory than the revised article because the latter included the clarification that "a judge later found that Batterman had not committed fraud, theft or embezzlement." Batterman declared he could not find the original article, published in August 2018, until June 2020.

The district court denied Batterman's motion. Interpreting that motion as an attempt to amend its scheduling order, *see* FED. R. CIV. P. 16(b)(4), the court held that Batterman failed to establish "good cause," a requirement under that rule. The court noted that Batterman moved for partial summary judgment using the revised article, not the original article, and

thus characterized his motion as an attempt at a "do-over." In the same opinion, the court denied Batterman's motion for partial summary judgment, remarking that it had been "effectively denied" by its ruling on the motion to dismiss.[4]

Gannett then moved for summary judgment on what remained of Batterman's defamation claim—the allegation that the article implicitly stated Batterman committed elder abuse. The district court granted the motion. In particular, the court held that court records rendered an implication that Batterman had engaged in "elder abuse" substantially true.

About one month later, Batterman moved to alter or amend the judgment. *See* FED. R. CIV. P. 59(e). He argued that an email exchange he acquired (via a public-records request) six days before the judgment was entered undermined the district court's rulings. These emails captured a discussion between two prosecutors—a district attorney and an attorney at the Wisconsin Department of Justice. One of them read the article in the Wausau Daily Herald and characterized Batterman's actions as "criminal." This observation, Batterman claimed, contradicted the district court's finding that the

[4] At oral argument, Batterman's counsel claimed that the district court did not resolve Batterman's "cross-motion" for partial summary judgment because Gannett successfully moved under Rule 56(d) to have the deadline for its response delayed. Oral Arg. at 4:13–25. That is incorrect. To begin, Batterman's motion for summary judgment as to liability was not a "cross-motion" because Gannett initially filed a motion to dismiss, not a motion for summary judgment. And the court's order did not moot Batterman's motion for partial summary judgment; it merely extended the deadline for Gannett's response. So, the motion remained active until the court denied it.

article did not reasonably convey to the reader that he committed criminal acts.

The district court denied Batterman's Rule 59(e) motion, reasoning that a discussion between prosecutors did not disturb its finding that the article did not reasonably convey that Batterman committed criminal acts. Moreover, the court explained, "even if some readers understood the published statements as defamatory, the statements are not actionable where the plain and ordinary meaning of the articles is substantially true." Batterman now appeals.

II. Analysis

Batterman sees several errors in the district court's rulings and asks us to reverse and remand this case for "entirely new proceedings." First, he asserts the district court erred when it dismissed the bulk of his case under Rule 12(b)(6). Second, he challenges the district court's denial of his untimely motion for leave to amend. Third, he disputes the district court's grant of summary judgment to Gannett. And fourth, he asserts the district court erred when it denied his Rule 59(e) motion to alter or amend a judgment.

A. Motion to Dismiss

1. *Incorporation-by-reference doctrine*

We begin with the district court's decision to rely on several extrinsic documents. Ordinarily, when adjudicating a motion to dismiss under Rule 12(b)(6), a district court is limited to the allegations in the complaint. *Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1080 (7th Cir. 1997). If a court considers "matters outside the pleadings," the "motion must be treated as one for summary judgment." FED. R. CIV. P. 12(d).

But there is an exception under which a court may consider documents that are (1) referenced in the plaintiff's complaint, (2) concededly authentic, and (3) central to the plaintiff's claim. *General Electric*, 128 F.3d at 1080; *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002); *see also Hecker v. Deere & Co.*, 556 F.3d 575, 582 (7th Cir. 2009). This incorporation-by-reference doctrine prevents a plaintiff from avoiding dismissal by omitting facts or documents that undermine his case. *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012). We review a district court's decision to consider documents under the incorporation-by-reference doctrine for an abuse of discretion. *General Electric*, 128 F.3d at 1081.

Recall that when Gannett moved to dismiss Batterman's case, it attached the revised article, filings from the Geisler trust litigation, and the 1997 SEC order involving Batterman. The district court considered these documents and took judicial notice of the 2018 SEC order. At the time, Batterman objected to one document: the version of the revised article supplied by Gannett. His concern was that it did not contain hyperlinks. So, the court used Batterman's version—the one he submitted with his motion for partial summary judgment.

On appeal, Batterman objects only to the court's reference to the revised article—any objections to the SEC orders or court records are forfeited. *Scheidler v. Ind.*, 914 F.3d 535, 540 (7th Cir. 2019). He argues that "while the [original article] is obviously central to the complaint, and was cited extensively in the complaint, … the [revised article] is a stranger to the complaint. It is not mentioned at all." Thus, Batterman contends, the district court "effectively rewrote [his]

complaint"—a peculiar argument since Batterman moved for summary judgment based solely on the revised article.

In a defamation case, where the published material is central to a plaintiff's allegations, courts routinely look outside the four corners of the complaint to view the entire publication. *See, e.g.*, *Law Offs. of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1126 n.1 (7th Cir. 2022). Here, the complaint referenced the article without specifying that one version was actionable while the other was not. In fact, the complaint recognized that the revised article republished essentially the entire original article, thus it alleged the revised article was defamatory too. And although Batterman contends that the version the court used was not "concededly authentic," this argument misses the mark because he submitted the document to the court. In any event, his arguments pertain to which version of the article should be used for analyzing his defamation claim, not whether the copy submitted by Gannett was inauthentic.

Even if the district court erroneously considered matters outside the pleadings, we must find that the error was reversible. That is, the district court's consideration of extrinsic materials must adversely affect the losing party by depriving him of notice and opportunity to develop the record. *See Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680, 685 (7th Cir. 1994) ("[I]f the district court's decision to grant summary judgment for the directors is correct, its decision to treat the Rule 12(b)(6) motion as one for summary judgment without giving the parties explicit notice was not improper."). Here, any error would be harmless. Before the district court ruled on the motion to dismiss, Batterman moved for summary judgment. This belies the notion that the district court's decision to not convert the motion was harmful—Batterman

himself functionally converted the motion by pressing ahead to the summary-judgment stage. The district court therefore properly rejected his attempt to rewind the litigation.

2. *Merits*

We next consider the district court's decision on the merits. To avoid dismissal, a complaint's factual allegations, taken as true, must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Our review of a district court's dismissal for failure to state a claim is de novo. *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*, 20 F.4th 311, 319 (7th Cir. 2021).

Batterman's complaint contained a table of twenty-one statements he believed were defamatory. The district court ruled that most of these were not actionable. Remember the court's distillation of potentially actionable statements:

- an implicit statement that Batterman committed criminal acts of fraud, theft, or embezzlement;
- an implicit statement that Batterman committed "elder abuse";
- an explicit statement that Batterman was trustee of the Geisler Trust; and
- an explicit statement that Batterman was "found guilty of wrongdoing by the SEC."

On appeal, Batterman discusses only the implicit statements, thus forfeiting any objections he may have as to the explicit statements. *Scheidler*, 914 F.3d at 540. And because the district court ruled in Batterman's favor with respect to the implied statement that he committed elder abuse, we focus on

whether the article falsely implied Batterman committed criminal acts.

Under Wisconsin law, a defamation plaintiff must show that the defendant (1) published (2) a false, (3) defamatory, and (4) unprivileged statement. *See Torgerson v. J./Sentinel, Inc.*, 563 N.W.2d 472, 477 (Wis. 1997). "The 'statement' that is the subject of a defamation action need not be a direct affirmation, but may also be an implication." *Mach v. Allison*, 656 N.W.2d 766, 772 (Wis. Ct. App. 2002) (citing *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 22 (1990)). "If the challenged statements as a whole are not capable of a false and defamatory meaning, or are substantially true, a libel action will fail." *Torgerson*, 563 N.W.2d at 477; *see also Laughland v. Beckett*, 870 N.W.2d 466, 473 (Wis. Ct. App. 2015) ("'Substantial truth' is a defense to a defamation action.").

Publication is undisputed. And if the article did in fact imply Batterman committed criminal acts, that statement would be defamatory,[5] as Gannett recognized at oral argument.[6] So, Batterman must prove only falsity and the absence of privilege.

To resolve those issues, we must first identify what exactly the article implied. After all, it did not directly say that Batterman committed fraud, theft, or embezzlement. In a case of

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[5] Accusing an innocent person of committing a criminal act is traditionally considered defamatory per se. *Teague v. Schimel*, 896 N.W.2d 286, 299 (Wis. 2017). Moreover, such a statement would be defamatory because it "tends to damage one's reputation in the community or to deter other persons from associating with the defamed individual." *Laughland* 870 N.W.2d at 475.

[6] Oral Arg. at 14:13–25.

defamation by implication, the court must decide "whether an alleged defamatory implication is fairly and reasonably conveyed by the words and pictures of the publication." *Mach*, 656 N.W.2d at 778. Batterman contends the article "falsely implied that [he] and Fiduciaries had committed criminal acts." But the district court disagreed on this threshold issue, holding that the article did not reasonably convey to the reader an implication that Batterman committed criminal acts.[7] Indeed, the revised article expressly declared: "Although a judge later found that Batterman had not committed fraud, theft or embezzlement, he ruled that the financial adviser had engaged in multiple acts of 'bad faith' and ordered him to be removed from handling the Geisler Trust to pay part of the charities' legal fees."

By contrast, what the article *did* say was substantially true, and this shields Gannett from liability. *Lathan v. J. Co.*, 140 N.W.2d 417, 420 (Wis. 1966) (noting that a defamatory statement is "not actionable if it is true, since truth is a complete defense"). Batterman bears the burden of proof on this issue,[8] yet as explained below, his allegations fall short.

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[7] Batterman suggests the district court found the article's statements were not "capable of defamatory meaning" as to accusations of fraud, theft, or embezzlement. What Batterman misunderstands is that the district court was resolving a predicate issue: whether a reasonable reader would understand the article to imply that Batterman had committed criminal acts, namely fraud, theft, or embezzlement. The court was not commenting on whether any particular statement was defamatory—merely a component of a defamation claim that is largely undisputed here.

[8] *Mach*, 656 N.W.2d at 772 ("In a defamation action brought by a private figure against a media defendant, the plaintiff has the burden of proving that the speech at issue is false."). This procedural rule avoids a "chilling effect that would be 'antithetical to the First Amendment's

The article said Batterman was *accused* of mishandling funds, committing wrongdoing, and putting Geisler's money in "jeopardy." These statements, as the district court correctly found, were fully supported by court records. They reflected both the charities' allegations and the state court's ultimate finding that Batterman committed what "amounted to something of bad faith, fraud or deliberate dishonesty." The article also prefaced its discussion of Batterman's alleged conduct with, "[w]hat has been alleged," and similar qualifying clauses. Because the article only relayed the court's findings about Batterman's bad faith and dishonesty, its statements were substantially true.

On that basis alone, Batterman's complaint fails to state a claim, at least as it relates to an implication of criminality. But beyond that, the article is covered by Wisconsin's judicial-proceedings privilege, which shelters a newspaper from libel actions based on "a true and fair report of any judicial … proceeding … or of any public statement, speech, argument or debate in the course of such proceeding." WIS. STAT. § 895.05(1). The privilege does not extend to headlines, headings, or "comments added or interpolated in any such report." *Id.*

The parties dispute the scope of Wisconsin's judicial-proceedings privilege, particularly the application of *Ilsley v. Sentinel Co.*, 113 N.W. 425 (Wis. 1907). Batterman leans heavily on *Ilsley*'s remark that there is "no right in the public to know that A charges B with unworthy or criminal conduct, even in

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protection of true speech on matters of public concern.'" *Id.* (quoting *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986)).

court, as a fact by itself; that is mere gossip or scandal." *Id.* at 426.

But *Ilsley* clarified that the

> public at most needs to kn[ow] what its court does, and, since this cannot be intelligibly reported without stating the charges and issues upon which the court's action is based, the latter may be reported also, although as an incidental result the fact of defamatory charges against some individual becomes public to his injury.

Id. Later in the decision, the Wisconsin Supreme Court affirmed the ability of newspapers to summarize the proceedings rather than quote them. *Id.* at 427. The limitation, it explained, was that a reporter may not characterize the allegations in the pleadings as facts. *Id.* The reporter must declare them for what they are: accusations subject to judicial review. *Id.* Under *Ilsley*, Gannett's summary of the Geisler trust litigation falls comfortably within the judicial-proceedings privilege. Gannett was careful to describe the allegations as such, not as facts, and the article provided Batterman's own views throughout.

At oral argument, Batterman's counsel was asked how the news media could ever cover newly filed lawsuits without fearing legal ramifications under his reading of *Ilsley* and § 895.05(1).[9] He responded they could not.[10] This assures us that Batterman's position—that the privilege does not protect news media coverage of newly filed pleadings—is incorrect.

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[9] Oral Arg. at 8:55–9:20

[10] Oral Arg. at 9:25–29

In summary, the district court correctly ruled that the only plausible defamation claim in Batterman's complaint pertained to the implication that he committed elder abuse. The other defamatory statements were substantially true and privileged.

B. Motion for Leave to Amend

In the wake of the district court's ruling on the motion to dismiss, Batterman moved for leave to amend his complaint. He said he acquired an original version of the article, which he had been unable to do earlier. The district court did not allow Batterman to amend his complaint, noting his choice to move for summary judgment with the revised article, and that substituting a different version of the article would not matter. Batterman appeals this ruling so that he may restart the litigation based on the original version of the article.

There is some confusion about which procedural rule applied. The district court used Rule 16's good-cause standard because it perceived Batterman's request as an attempt to modify its scheduling order. That rule provides that a scheduling order "may be modified only for good cause and with the judge's consent." FED. R. CIV. P. 16(b)(4). The district court concluded Batterman had failed to establish "good cause."

But the scheduling order did not need to be modified because it provided that after the deadline for amending pleadings, "Federal Rules of Civil Procedure 15 applies, and the later a party seeks leave of the court to amend, the less likely it is that justice will require the amendment." So, Batterman was not requesting a modification of the scheduling order. He was requesting that the court apply the standard it said it would apply for late amendment requests: Rule 15's "interest

of justice" standard. We agree that the court should have applied Rule 15, not Rule 16. But as discussed below, this error was harmless because Batterman fares no better under Rule 15.

The Federal Rules of Civil Procedure grant district courts "broad discretion to deny leave to amend where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the defendants, or where the amendment would be futile." *Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008) (discussing Rule 15(a)(2)). We review denials of leave to amend for abuse of discretion. *Heng v. Heavner, Beyers & Mihlar, LLC*, 849 F.3d 348, 354 (7th Cir. 2017). But "our review for abuse of discretion of futility-based denials includes de novo review of the legal basis for the futility." *Id.* (internal quotation marks omitted).

Although the district court mistakenly cited Rule 16, its justifications for denying Batterman's motion ultimately support the same outcome under Rule 15. The district court criticized Batterman's attempt to reset the litigation after he submitted the online version of the revised article (with hyperlinks) to the court in his response to Gannett's motion to dismiss and then moved for summary judgment based on that version. Batterman asserts the court merely disapproved of his "litigation strategies." But those strategies included a dispositive motion, on which the court and Gannett spent significant resources. He cannot now escape the consequences of his choice. Batterman's attempt to claim a "mulligan" would cause undue delay and prejudice to Gannett and waste the district court's resources. *See Johnson v. Cypress Hill*, 641 F.3d 867, 873 (7th Cir. 2011).

Moreover, replacing the revised article with the original article would be futile because the differences between the two are immaterial. Most significant is the "insertion," or "disclaimer language," as the parties refer to it. Even without this disclosure (that the state judge did not find Batterman guilty of fraud, theft, or embezzlement), the article was substantially true. It neither reported that Batterman committed a criminal act, nor implied it, because its summary of the Geisler trust litigation always contained qualifying language. The district court correctly denied Batterman's motion for leave to amend.[11]

C. Motion for Summary Judgment

The district court left one path open for Batterman to establish a defamation claim: that a "related" hyperlink falsely implied he committed elder abuse. Gannett moved for summary judgment on this final thread. After considering the materials before it, the court held "that plaintiffs cannot meet their burden of proving that the implication they were involved in 'elder abuse, financial exploitation' is false." In support of its ruling, the court relied on the state court's finding that Batterman breached his fiduciary duties to the Geisler trust, which was created to administer an elderly man's wealth upon his death. "We review de novo a district court's grant of summary judgment, viewing the facts in the light most favorable to the non-moving party." *Ludwig v. United States*, 21 F.4th 929, 931 (7th Cir. 2021).

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[11] The district court also denied Batterman's motion for partial summary judgment. That decision was correct because the bulk of his case had been dismissed under Rule 12(b)(6) and Batterman conceded he did not seek summary judgment on the portion that remained.

We agree with the district court. In the end, Batterman's defamation claim fares no better on the elder-abuse theory than it does on his other theories. Although the district court permitted Batterman to proceed to summary judgment on this issue, the record shows that this implication was substantially true. Mishandling a deceased person's estate may not always constitute elder abuse, but a reasonable jury could not conclude that observing the relationship between Batterman's conduct and elder abuse constituted a false statement.

Another basis for affirming summary judgment is that the implication Batterman committed elder abuse is not reasonably drawn from the words of the article. A "related" article hyperlinked on the sidebar of a webpage is common. Readers understand that the connection between the content of a webpage and "related" hyperlinks is attenuated. Either way, the district court correctly granted summary judgment to Gannett.

D. Motion to Alter or Amend a Judgment

Finally, Batterman asked the district court to amend its judgment based on an email exchange he acquired through a public records request. Batterman claims this exchange "[t]opple[d]" all the district court's rulings as to defamatory meaning.

Federal Rule of Civil Procedure 59(e) allows a court to amend a judgment "no later than 28 days" after its entry, but only "if the petitioner can demonstrate a manifest error of law or present newly discovered evidence." *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). We review Rule 59(e) rulings for an abuse of discretion, although "embedded legal

questions are reviewed de novo." *Avery v. City of Milwaukee*, 847 F.3d 433, 438 (7th Cir. 2017).

Six days before the district court entered its judgment, Batterman obtained results from a public records request, which contained an email exchange. Batterman argues these emails are newly discovered evidence and undermine the district court's analysis. In the emails, an assistant district attorney and an attorney with the Wisconsin Department of Justice discussed the article. One of them commented, "[i]nteresting … [s]ounds criminal to me." To which the other replied, "[t]hat's what I said. … I think there some criminal acts have absolutely happened."

This exchange does not help Batterman. First, we doubt whether these emails constitute "newly discovered evidence" when Batterman obtained them six days before the district court entered its judgment. If the dialogue truly upended the district court's decisions in the way Batterman contends, one would expect more urgency on his part. Instead, he waited over a month after receiving the emails and over twenty days after the district court entered judgment to present the court with this evidence.

But there is a second problem: it is unclear which part of the defamation analysis the emails implicate. Batterman argues that the emails contradict the district court's finding that the article "was not capable of defamatory meaning that Batterman committed criminal acts." Remember that the district court did not express a view on whether such a statement would be defamatory (presumably, it would be). The court held that the article did not reasonably convey the implication that Batterman committed criminal acts.

Even if the emails are understood as evidence to counter that conclusion, they do not undermine the court's ruling. This exchange is between two prosecutors who are trained and commissioned to identify *potential* criminal activity. So, the inferences drawn from these professionals should not be imputed to the article's general audience: the Wausau Daily Herald subscribers. The district court properly denied the Rule 59(e) motion.

* * *

In conclusion, Batterman's defamation claim fails because the article published by Gannett was substantially true and largely protected by the judicial-proceedings privilege. We AFFIRM the district court's judgment.