STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1614

Jomari E. Alexander, Sr.,
Appellant,

vs.

Paul Strong, et al.,
Respondents.

Filed June 28, 2021
Affirmed
Gaïtas, Judge

Hennepin County District Court
File No. 27-CV-20-2481

Jomari E. Alexander, Sr., Minneapolis, Minnesota (self-represented appellant)

Timothy J. Carrigan, Jeffrey M. Markowitz, Bradley L. Idelkope, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Jomari E. Alexander, Sr., challenges the district court's summary-judgment dismissal of his defamation claims against respondents Parenting With Purpose (PWP) and Paul Strong. Alexander contends that the district court erred by determining

that the alleged defamatory statements were nonactionable opinions or not supported by admissible evidence. We affirm.

FACTS[1]

PWP is a non-profit organization that provides parenting-education classes to incarcerated parents. Strong is one of its founders. Alexander participated in a PWP class, facilitated by Strong, while he was incarcerated in 2009. Alexander was released from prison a few years later, and he did not have contact with Strong again until they ran into each other at a youth basketball game in 2018.

Alexander and Strong caught up at the game and discussed Alexander's recent endeavors and community involvement, and Strong suggested that Alexander should speak at an upcoming PWP event. The two later discussed the speaking opportunity in more detail, but Alexander ultimately declined the invitation. At the time he declined, Alexander told Strong in a text message that he did so for a variety of reasons, including that he was busy with other engagements and that his limited connection with PWP did not justify being a "poster child" for the organization.

From that point forward, the relationship between the parties soured. Alexander alleges that Strong began a smear campaign against him as retaliation, making derogatory remarks about him on numerous occasions.

[1] For the purposes of summary-judgment review, we review the facts in the record in the light most favorable to Alexander as the nonmoving party. *See Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019).

In September 2019, Alexander and his wife took in a teenaged child from the community due to the child's difficult living situation with his mother. Alexander alleges that while the child was staying with him, Strong and Strong's wife contacted the child's mother and made disparaging remarks about Alexander and his ability to care for the child. The child's mother then reported her son "missing" to police, which Alexander contends was done upon on Strong's recommendation, and the police contacted Alexander and asked him to bring the child back to the mother. Alexander brought the child back. While Alexander was still at the mother's home, she called police to try to have her son arrested.[2] When officers arrived, the mother told them that Alexander and his wife were "bad people," indicating that she had heard this from Strong. At some point, the mother also stated that Strong and his wife told her that Alexander and his wife were a "danger" to the child and would "have [her] child committing crimes for them." After this incident, Alexander and his wife sought and eventually obtained legal custody of the child.

Alexander also asserts that, at some point after the incident at the mother's home, Strong told certain school staff and the child's mother, "we have to protect [the] child from them," referring to Alexander and his wife. Alexander did not hear Strong make this statement and does not know when or where it was made, but he heard about it from the mother, a coach at the school, and the minor child's girlfriend.

[2] Alexander testified during his deposition that the mother "tried to have her son arrested to punish [her son] for basically putting their family business out – telling people outside of their home about what was going on there."

In February 2020, Alexander and Strong had a confrontation at a high school sports game. At the game, Alexander's wife served Strong with paperwork for this lawsuit. Strong became frustrated, and he approached Alexander while yelling, "you threatening me? Are you threatening me. You threatening me?" Alexander laughed in reply. This interaction occurred just outside the gymnasium, and two law-enforcement officers were nearby. The officers intervened, and Alexander told them that Strong was upset about the lawsuit.

Also in February 2020, Alexander filed the complaint in this matter alleging, as relevant here, defamation per se in connection with the remarks allegedly made by Strong. The complaint also asserts that PWP had engaged in "donor fraud," and that Alexander's accusations of donor fraud motivated Strong and PWP's defamatory remarks about him.

Respondents filed an answer, the parties engaged in discovery, and respondents moved for summary judgment. Following a hearing, the district court issued an order granting summary judgment in favor of respondents and dismissing the claims. The district court's rationale for dismissing the defamation claims varied somewhat depending on the specific statement at issue, but the primary reasons for dismissal were that the statements were (1) nonactionable opinions, and/or (2) supported only by inadmissible hearsay. Alexander submitted a request for reconsideration and the district court denied the request.

This appeal follows.

DECISION

Summary judgment is appropriate when a moving party shows, by citing to particular parts of the record, including depositions, documents, affidavits, admissions, and

interrogatory answers, that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01, 56.03(a). "[S]ummary judgment is mandatory against a party who fails to establish an essential element of the claim, if that party has the burden of proof, because this failure renders all other facts immaterial." *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Oct. 16, 2001). Appellate courts review a district court's grant of summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017).

The appellate court must view the evidence "in the light most favorable to the party against whom the summary judgment was granted." *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013). "[I]n order to establish that there is a disputed material fact, the party against whom summary judgment was granted must present specific admissible facts showing a material fact issue." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (quotation omitted).

Where no privilege applies, a plaintiff pursuing a defamation claim must prove four elements:

> (1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

Larson v. Gannett Co., Inc., 940 N.W.2d 120, 130-31 (Minn. 2020) (quoting *McKee*, 825 N.W.2d at 729-30). Whether a statement's language reasonably conveys a defamatory

meaning is a question of law to be determined by the court. *McKee*, 825 N.W.2d at 731-32; *Utecht v. Shopko Dep't Store*, 324 N.W.2d 652, 653 (Minn. 1982).

True statements are not defamatory. *McKee*, 825 N.W.2d at 730 (explaining that "[t]he plaintiff has the burden of proving falsity in order to establish a successful defamation claim"). Statements that are "substantially true," or "supportable interpretations of ambiguous underlying situations," are also not defamatory. *Hunter v. Hartman*, 545 N.W.2d 699, 707 (Minn. App. 1996) (quotations omitted), *review denied* (Minn. June 19, 1996). Neither are statements of pure opinion actionable as defamation, as such statements are protected by the First Amendment. *McKee*, 825 N.W.2d at 733; *see Larson*, 940 N.W.2d at 147. In determining whether a statement is one of fact or opinion, courts consider "(1) a statement's precision and specificity; (2) a statement's verifiability; (3) the social and literary context in which the statement was made; and (4) a statement's public context." *Fine v. Bernstein*, 726 N.W.2d 137, 144 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007). Statements that are "not 'sufficiently factual to be susceptible of being proved true or false'" are not actionable as defamation. *Hunter*, 545 N.W.2d at 706 (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21, 110 S. Ct. 2695, 2707(1990)).[3]

[3] Alexander incorrectly asserts that "statements of opinion may be actionable if the plaintiff is not a public figure." For support, he relies on *Wiessman v. Sri Lanka Curry House, Inc.*, where this court interpreted First Amendment caselaw and determined that private-plaintiff defamation actions are analyzed under Minnesota common law, and "Minnesota common law makes no distinction between 'fact' and 'opinion.'" 469 N.W.2d 471, 473 (Minn. App. 1991). The Minnesota Supreme Court has explained in private-plaintiff cases that postdate *Wiessman*, though, that "[t]he First Amendment protects statements of pure opinion from defamation claims." *McKee*, 825 N.W.2d at 733 (analyzing a defamation action brought by private-plaintiff physician); *see Bebo*, 632 N.W.2d at 739 (analyzing a defamation action brought by a private-plaintiff truck driver); *see also Hunt v. Univ. of Minn.*, 465

Additionally, statements that are mere "rhetorical hyperbole" cannot support a defamation claim. *Id.*

To determine whether a genuine issue of material fact existed for trial, the district court individually analyzed each allegedly defamatory statement referenced in the complaint and Alexander's deposition testimony. The statements at issue, as identified by the district court, are:

> *Statement 1*: Alexander and his wife are "dangerous people" or "bad people."
> *Statement 2*: "They will have your child committing crimes for them."
> *Statement 3*: "You should report your child missing."
> *Statement 4*: "We have to protect this child from them."
> *Statement 5*: "Are you threatening me. You threatening me?"

The district court determined that, as a matter of law, none of the statements were defamatory, as they were either opinions, rhetorical hyperbole, or a prediction of future events. Additionally, the district court determined that the defamation claims regarding statements 1, 2, 3, and 4 necessarily failed because the record contained no admissible evidence that respondents made the statements; Alexander offered only inadmissible hearsay.

N.W.2d 88, 93-94 (Minn. App. 1991) (declaring that the Supreme Court's decision in *Milkovich*, 497 U.S. at 21, 110 S. Ct. at 2707, narrowed, but did not abolish, the constitutional protection of opinions). As explained above, if an opinion is not a "pure opinion," and instead implies a provably false statement, it may be actionable defamation regardless of whether the plaintiff is a public figure. *See McKee*, 825 N.W.2d at 733; *cf. Hunt*, 465 N.W.2d at 94 ("[S]tatements which cannot be reasonably interpreted as stating actual facts, are absolutely protected by the First Amendment.").

On appeal, Alexander argues that the statements are capable of conveying a defamatory meaning and that a jury should decide "whether they were in fact so understood." He also argues that although the evidence he offered to show that respondents made statements 1 through 4 was hearsay, certain exceptions to the rule against hearsay apply.

For the following reasons, we conclude that the statements are not defamatory as a matter of law, and we therefore do not decide whether the supporting evidence is admissible. We address each statement in turn.

***Statement 1*: Alexander and his wife are "dangerous people" or "bad people."**

Alexander's complaint asserts that Strong and his wife contacted the mother of the minor child in Alexander's care and told the mother that her son was staying with "dangerous people." According to Alexander's deposition testimony, however, the exact statement may have been that the child was with "bad people," or that the "child [was] in danger." The district court determined that the distinction is immaterial because, in either event, the alleged statements are nonactionable opinions.

Alexander contends that the "dangerous people" or "bad people" statements conveyed a defamatory meaning because they suggested the existence of a verifiable fact—that he and his wife posed a risk of harm to the child. Respondents counter that calling someone "bad" or "dangerous" is an opinion, and they cite several nonbinding decisions from other jurisdictions that conclude as much.[4]

[4] *See, e.g.*, *Wolberg v. IAI N. Am., Inc.*, 77 N.Y.S.3d 348, 351 (App. Div. 2018) (determining that "[t]he alleged statements that plaintiff was 'dangerous' and had

A statement is not defamatory if it "cannot be reasonably interpreted as stating a fact and . . . cannot be proven true or false." *McKee*, 825 N.W.2d at 733; *see also Hunter*, 545 N.W.2d at 706-07. Here, the characterization of Alexander and his wife as "bad" or "dangerous" is the sort of inherently subjective description that Minnesota courts have held is incapable of being proven true or false. *See McGrath v. TCF Bank Sav., FSB*, 502 N.W.2d 801, 808 (Minn. App. 1993) (holding that the phrase "troublemaker" was too ambiguous to infer underlying facts); *Hunt*, 465 N.W.2d at 94-95 (holding that a comment concerning an individual's "integrity" could not be proven true or false). Alexander does not provide evidence about any other assertions surrounding these statements, as he concedes that he was not there when they were made, does not know who was present, and does not know over what medium they occurred. Without more, these vague, standalone statements about the Alexanders being "bad people" or "dangerous people" cannot be proven true or false. *See* Restatement (Second) of Torts § 566 cmt. c (1977) (explaining that surrounding statements are relevant to the determination of whether a statement is one

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'chutzpah' are expressions of opinion"); *Krasner v. Arnold*, No. W2011-00580-COA-R3-CV, 2011 WL 6885349, at *5 (Tenn. Ct. App. Dec. 28, 2011) (observing that a description of the plaintiff as "dangerous" was a statement of opinion); *Stetter v. Blackpool, LLC*, No. CV-09-1071-PHX-DGC, 2010 WL 1531082, at *1 (D. Ariz. Apr. 15, 2010) (holding that "calling someone a 'bad man' is not an actionable statement of fact that can be proven true or false"); *Donovan v. Whalen*, No. Civ. 05-CV-211-SM, 2005 WL 2979322, at *3 (D.N.H. Nov. 4, 2005) (concluding that a statement that plaintiff was "dangerous" was not actionable when it constituted only a conclusion or inference). As noted, these cases are not binding on this court. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) ("This court is bound by decision of the Minnesota Supreme Court and the United States Supreme Court."); *see also Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (considering foreign caselaw for persuasive value but not as binding authority).

of pure opinion). The district court correctly concluded that the "bad people" or "dangerous people" statements are expressions of opinion rather than verifiable facts and are accordingly not defamatory. *See McKee*, 825 N.W.2d at 733.

***Statement 2*: "They will have your child committing crimes for them."**

Alexander alleges that Strong and his wife also told the child's mother that Alexander and his wife would have the child commit crimes on their behalf. He argues that this statement implied a provable falsity that creates an issue of fact for the jury, and summary judgment was therefore improper.

The district court concluded that this statement was not actionable because it is a prediction of future events. We agree. A prediction of future events is not actionable in defamation because it is not capable of being proven true or false. *Bebo*, 632 N.W.2d at 740 (holding that a "remark that [plaintiff] was going to 'f--- [other drivers] over' is a prediction of a future event and is not a fact capable of verification"). Here, the alleged statement about what Alexander and his wife would have the child do is not capable of verification and is accordingly not actionable defamation. *See id.*

***Statement 3*: "You should report your child missing."**

Alexander next contends that Strong and his wife told the child's mother, at the time the child was staying with Alexander, that she should report the child missing.

This recommendation conveys no defamatory meaning. To be defamatory, a statement must refer to a specific individual, and this statement makes no such reference. *McKee*, 825 N.W.2d at 729-30. The statement is merely the Strongs' alleged opinion about what the mother should do given the child's prolonged absence from the home. Thus, the

district court correctly determined that it does not reasonably convey a defamatory meaning.

***Statement 4*: "We have to protect this child from them."**

Alexander alleges that sometime after his encounter with the child's mother and police, Strong and his wife told the child's mother and certain school staff that the child needed protection from the Alexanders.

This statement, like the statements about Alexander and his wife being "bad" or "dangerous" people, "cannot be reasonably interpreted as stating a fact and . . . cannot be proven true or false." *McKee*, 825 N.W.2d at 733; *see also Hunter*, 545 N.W.2d at 706-07. Again, Alexander testified he did not hear the statement made, and no one present for it testified. The standalone statement expresses an opinion, and the record lacks any context or surrounding language that could give rise to an implication of verifiable facts. *See* Restatement (Second) of Torts § 566 cmt. c (1977). The district court properly determined that the statement is not defamatory as a matter of law.

***Statement 5*: "Are you threatening me? You threatening me."**

Lastly, Alexander alleges that after his wife served Strong with this lawsuit at a basketball game, Strong approached Alexander outside the gymnasium and said "are you threatening me? You threatening me."

These words are not defamatory. As the district court concluded, Strong's alleged comments were expressions of a protected opinion—that Alexander was threatening him with litigation. As the district court explained, "Mr. Strong (who denies Mr. Alexander's account but accepts it as fact for the purposes of this motion) was opining on what he

thought Mr. Alexander was doing with the lawsuit—which was served on Mr. Strong moments before." In this context, where Strong was asserting his perception of Alexander's actions, his statement was a protected opinion.

To the extent that the statement was not a pure opinion, though, it does not support a defamation claim for another reason: the statement appears to be substantially true. "[T]he substantial truth test is broad: if any reasonable person could find the statements to be supportable interpretations of their subjects, the statements are incapable of carrying a defamatory meaning, even if a reasonable jury could find that the statements were mischaracterizations." *Hunter*, 545 N.W.2d at 707 (quotations omitted). Alexander had just served Strong with a lawsuit, so to the extent that Strong was commenting on Alexander threatening him *with litigation*, that statement was a "supportable interpretation[] of [an] ambiguous underlying situation[]." *Id.* (quotation omitted).

Moreover, as the district court concluded, the record does not establish that Strong made the statement to anyone other than Alexander. *See McKee*, 825 N.W.2d at 729-30 (explaining that to prove defamation, the plaintiff must show that the statement was "communicated to someone other than the plaintiff"). While Alexander's testimony indicates that two law-enforcement officers approached them due to the tense interaction, it does not establish that the officers heard any specific statements. The district court therefore did not err by determining that no genuine issue of material fact exists to support a defamation claim regarding this statement.

Affirmed.