

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A25-0502**

Kimberly Hamson, et al.,  
Appellants,

vs.

The Foothills Christian Academy Society of Backus, MN, et al.,  
Respondents.

**Filed October 20, 2025  
Reversed and remanded  
Harris, Judge**

Cass County District Court  
File No. 11-CV-24-475

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Considered and decided by Connolly, Presiding Judge; Schmidt, Judge; and Harris, Judge.

**NONPRECEDENTIAL OPINION**

**HARRIS**, Judge

Appellant student challenges the summary-judgment dismissal of her defamation claim against respondents, a private school and its principal, contending that the principal's statements were not protected by qualified privilege as a matter of law. Because there is a genuine issue of material fact as to whether the qualified privilege operates to defeat the

defamation claim, we determine that the district court erred by granting summary judgment in favor of respondents. Accordingly, we reverse and remand.

## FACTS

This case concerns the summary-judgment dismissal of a complaint by appellant-student Rebecca-Kay Hamson<sup>1</sup> against her former school, respondent The Foothills Christian Academy Society of Backus (Foothills), and its principal, respondent Blair Ecker, for defamation. Hamson asserted that Ecker made defamatory statements about her during a school meeting<sup>2</sup> related to grade-changing incidents, which she did not attend. The district court granted summary judgment, determining that, although there were genuine issues of material fact concerning whether the statements were defamatory, Foothills and Ecker were protected by a qualified privilege as a matter of law. The following facts derive from the evidence in the summary-judgment record and are framed in the light most favorable to the appellants as the nonmoving parties.<sup>3</sup>

Hamson was enrolled as a student at Foothills, a private school, for the 2021-2022 academic year. At that time, Foothills used a password-protected computer grading system to track student assignments and grades. Some teachers and administrators could only

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<sup>1</sup> Appellant Kimberly Hamson is the student's mother. References to "Hamson" refer to the student.

<sup>2</sup> In the record, this gathering is referred to by multiple terms including "group sessions," "assembly," "disciplinary assembly," and "assembly of students." For ease of reading, we will refer to it in this opinion as a "school meeting."

<sup>3</sup> See *Schroeder v. Simon*, 985 N.W.2d 529, 535-36 (Minn. 2023) ("In evaluating a grant of summary judgment, we must view the evidence in the light most favorable to the nonmoving party." (quotation omitted)).

unlock assignments, review student progress, and grade work, while other teachers and administrators could also change or override grades.

During the school year, a teacher's aide learned that students were logging into the system using a teacher's credentials and changing their grades. Hamson's former teacher also noticed that Hamson's assignments were being modified in the system. The teacher's aide "conducted an in-depth investigation on every student within [the] high school classroom" to discover when the grades were being overridden, and by whom. This investigation took place on April 4, 9, and 11, 2022. During this investigation, the teacher's aide gathered "strong evidence" that several students, including Hamson, used a former teacher's account to access the system and change their grades. Ecker confronted Hamson, and she admitted that she altered her grades.

On April 5, before the investigation was complete, Ecker held a school meeting to confront some of the students suspected of being involved in changing their grades. The group included students and faculty members of the school, but it did not include Hamson because her parents had removed her from Foothills. Hamson estimated that approximately 17 people were present at the school meeting. Ecker characterized this gathering as a "group session" that is "a normal session as part of the [school's] process and is designed in the form of discipline/assembly."

During this school meeting, Ecker made several statements that Hamson asserts were defamatory. Hamson claims that "[t]he entire speech" was defamatory and included several illustrative examples in the summary-judgment record. Among other statements, Ecker said:

We can be mad at [Hamson]. I would be mad at myself if I were you guys for being a part of a scheme with somebody with a poor IQ. Okay? And that's what I mean. Sitting around the table planning a bank heist, and you've got . . . a special ed [student] sitting across the table. Maybe it's time to get up and go, pick a new crew. Okay?

Ecker also referred to Hamson as one of the “ringleaders” of the grade-changing scheme and insinuated that she had been expelled for her conduct. Ecker does not dispute that he made these statements.

In March 2024, Hamson filed a defamation complaint against Foothills and Ecker. She asserted that Ecker made these statements “knowing they were false.” And she further alleged that the statements were “repeated throughout the community,” and had a “severe and negative impact” on her wellbeing.

Foothills and Ecker filed an answer generally denying her claims and asserting as an affirmative defense that they were “immune from [Hamson’s] claims” or, in the alternative, that their statements were protected by qualified privilege. Foothills and Ecker subsequently moved for summary judgment, asserting that there were no genuine issues of material fact and that Hamson’s claims should be dismissed as a matter of law.

Following a hearing, the district court granted summary judgment in favor of Foothills and Ecker. The district court acknowledged Hamson’s argument that Ecker, due to his position as the principal of the school, “knew or should have known that the statements regarding [Hamson] having a low IQ and special education were false.” And it further reasoned that Ecker’s accusations against Hamson “could certainly harm [her] reputation regarding her intelligence among her peers” and were “therefore capable of a

defamatory meaning.” Based on this reasoning, the district court expressly determined that Hamson raised a genuine issue of material fact concerning whether Ecker’s statements were false and defamatory. But the district court also determined that Ecker’s statements were protected by qualified privilege and that, without a showing of actual malice, Hamson could not prevail on her defamation claim. The district court dismissed Hamson’s complaint. Hamson appeals.

### DECISION

Hamson argues that the district court erred by granting summary judgment against her on her defamation claim. Summary judgment is proper if the moving party shows, by citing to specific 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). A genuine issue of material fact exists “when reasonable persons might draw different conclusions from the evidence presented.” *Hanson v. Dep’t of Nat. Res.*, 972 N.W.2d 362, 372 (Minn. 2022) (quotation omitted). “[O]n a motion for summary judgment, the facts and the reasonable inferences to be drawn from those facts must be resolved in [the nonmoving party’s] favor.” *Staub v. Myrtle Lake Resort*, 964 N.W.2d 613, 620 (Minn. 2021) (emphasis omitted). Summary judgment is a “blunt instrument,” and “should be employed only where it is perfectly clear that no issue of fact is involved.” *Donnay v. Boulware*, 144 N.W.2d 711, 716 (Minn. 1966). As such, “[a]ny doubt as to whether issues of material fact exist is resolved in favor of the party against whom

summary judgment was granted.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

On appeal, we “review a grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Minnesota Laws. Mut. Ins. Co. v. Bradshaw & Bryant L. Off. PLLC*, 19 N.W.3d 206, 215 (Minn. App. 2025) (quotation omitted), *rev. denied* (Minn. June 17, 2025). In doing so, we “view the evidence in the light most favorable to the nonmoving party.” *Schroeder*, 985 N.W.2d at 535-36.

To prevail on a defamation claim, the complainant “must prove that the defendant made: (a) a false and defamatory statement about the plaintiff; (b) in an unprivileged publication to a third party; (c) that harmed the plaintiff’s reputation in the community.” *Johnson v. Freborg*, 995 N.W.2d 374, 384 (Minn. 2023) (quotation omitted), *cert. denied*, 144 S. Ct. 819 (2024). The plaintiff alleging defamation must prove each element to succeed on a defamation claim. *Bebo v. Delander*, 632 N.W.2d 732, 739 (Minn. App. 2001), *rev. denied* (Minn. Oct. 16, 2001).

Here, Ecker acknowledged in his affidavit that he made statements about Hamson, as referenced in her complaint, to a group of students and faculty members at Foothills when Hamson was not present. These statements included, among other things, that Hamson had “a poor IQ,” was a “special ed [student],” acted as the “ringleader” of the cheating scheme, and was expelled for cheating. The district court reasoned that based on Ecker’s position as the principal of the school, his statements regarding Hamson’s intelligence could “certainly harm [h]er reputation regarding her intelligence among her

peers.” *Cf. McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013) (noting that true statements are not defamatory). The district court determined that there were “genuine issues of material fact as to whether or not these statements are defamatory,” but determined that qualified privilege attached to the statements.

**I. The district court erred in granting summary judgment as a matter of law based on qualified privilege.**

If a plaintiff proves the elements of defamation, a defendant may argue that a privilege “operate[s] to defeat a defamation claim.” *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019); *see also Frankson v. Design Space Int’l*, 394 N.W.2d 140, 143 (Minn. 1986) (noting that qualified privilege may be raised as an affirmative defense). Minnesota law recognizes two types of privileges as defenses against defamation claims: absolute privilege and qualified privilege. *Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014). Only the existence of a qualified privilege is at issue in this case. Whether a privilege applies is a question of law that we review de novo. *Kuelbs v. Williams*, 609 N.W.2d 10, 16 (Minn. App. 2000), *rev. denied* (Minn. June 27, 2000).

For qualified privilege, a statement “must be made in good faith, on a proper occasion, with a proper motive, and upon reasonable or probable cause.” *Larson v. Gannett Co.*, 940 N.W.2d 120, 131 (Minn. 2020). Qualified privilege is based on the premise that “statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory.” *Abdul-Haqq v. LaLiberte*, 985 N.W.2d 357, 362 (Minn. App. 2023) (quoting *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997)), *rev. denied* (Minn. May 16, 2023). The supreme court has identified a number of

circumstances in which an otherwise defamatory statement is protected by qualified privilege. *Id.* These instances include:

an employer's good-faith statements about a former employee in a requested character reference, statements made in relation to an employer's investigation into employee misconduct, an employer's communication to a former employee of the reasons for the employee's discharge, bad credit references from lending institutions, and [certain statements made in relation to child-abuse allegations].

*Id.* (citations omitted). Qualified privilege also extends to “a good faith report of suspected criminal activity to law enforcement officials,” *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 557 (Minn. App. 1994), *rev. denied* (Minn. Feb. 14, 1995), and statements made by local governing bodies such as city councils or county boards, *Zutz v. Nelson*, 788 N.W.2d 58, 63 (Minn. 2010). The party asserting qualified privilege bears the burden to establish its applicability. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980) (“[O]nce the defendant has demonstrated the existence of a conditional privilege, the burden shifts to plaintiff to prove that the privilege has been abused, which is generally a question for the jury.”).

Hamson argues that Ecker's statements were not made in good faith, on a proper occasion, with a proper motive, and upon reasonable or probable cause. Hamson's complaint does not allege that the school acted improperly by holding a school meeting but argues that the comments made about her at the school meeting were defamatory. Foothills contends “that Ecker had more than a good faith reason to confront the students at an assembly regarding their and Hamson's cheating at the school.” The district court determined that qualified privilege attached to Ecker's statements because he was a school

administrator making a statement based upon the school's investigation into cheating allegations, and reasonable grounds supported his statements. We conclude that there is a genuine issue of material fact that precludes summary judgment.

The statements made by Ecker to a group of students and faculty members at Foothills fail to meet all the requirements to be protected by qualified privilege as a matter of law. We acknowledge that Ecker contends that he made the statements in good faith and with a proper motive. But at the summary-judgment stage of the proceedings, we consider the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving party. *Staub*, 964 N.W.2d at 620. At the district court, Hamson maintained that Ecker's motivation to accuse her of having a poor IQ, receiving special-education services, being expelled, and being the ringleader of the cheating scandal was not in good faith; rather it was a desire to cover up his wrongdoings in a longstanding cheating scandal in an attempt to preserve Foothills's integrity. She seems to argue that the negative light in which Hamson was cast in the statements, combined with the timing and self-serving nature of the statements, create a genuine issue of material fact regarding Ecker's motive to defeat summary judgment in favor of Foothills. Hamson presented evidence that: (1) Ecker knowingly made the false statements about her to cover up a long-term cheating scandal; (2) Ecker had knowledge of cheating issues for years before the current allegation; (3) Ecker knowingly gave students passwords and access to grading; and (4) Ecker made the statements about Hamson after her mother involved the school board. This is evidence, viewed in the light most favorable to Hamson, from which a fact-finder could conclude that Ecker's statements were not made in good

faith, on a proper occasion, with a proper motive, and upon reasonable or probable cause. Therefore, a genuine issue of material fact exists, and the district court erred in granting summary judgment as a matter of law on qualified-privilege grounds.

**II. The district court erred in its determination that the record does not contain evidence of common-law malice sufficient to overcome qualified privilege because whether Ecker acted with common-law malice is fact-specific and should be resolved by a jury.**

Hamson next contends that there is a genuine dispute of material fact regarding whether she can prove Ecker acted with malice. Generally, “[o]ne who makes a defamatory statement will not be held liable if the statement is published under circumstances that make it qualifiedly privileged and if the privilege is not abused.” *Bol*, 561 N.W.2d at 149. “A qualified privilege is abused and therefore lost if the plaintiff demonstrates that the defendant acted with actual malice.” *Lewis v. Equitable Life Assur. Soc. of the U.S.*, 389 N.W.2d 876, 890 (Minn. 1986). “Actual malice” in this context requires a showing “that the defendant made the statement from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff.” *Stuempges*, 297 N.W.2d at 257 (quotation omitted).<sup>4</sup> This is sometimes referred to in caselaw as “common-law malice.” *Id.* at 256.

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<sup>4</sup> Caselaw distinguishes between “actual malice” and “common-law malice.” Actual malice involves media defendants as articulated in *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). This standard “is proper only when a media defendant is involved.” *Stuempges*, 297 N.W.2d at 258. The common-law understanding of actual malice, by contrast, requires the plaintiff to demonstrate “that the defendant made the statement from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff.” *Id.* at 257 (quotation omitted). The common-law understanding of actual malice is used here.

Foothills argues that Ecker “had more than a good faith reason to confront the students at an assembly regarding their and Hamson’s cheating at the school.” And it argues that the record contains no evidence of malice. Hamson argues that the determination of whether Ecker acted with common-law malice is fact-specific and should be resolved by a jury. We agree with Hamson.

“While the initial determination of whether a communication is privileged is a question of law for the court to decide, the question of whether the privilege was abused is a jury question.” *Lewis*, 389 N.W.2d at 890. However, the totality of the evidence must support a finding of malice before the matter may be submitted to a jury. *See Harvet v. Unity Med. Ctr., Inc.*, 428 N.W.2d 574, 579 (Minn. App. 1988) (“[W]here the totality of the evidence did not support a finding of malice, the matter should not have been submitted to the jury.”); *see also Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 922 (Minn. 2009) (stating that malice becomes a jury question if the plaintiff’s evidence, viewed in the light most favorable to the plaintiff, could lead a reasonable jury to conclude the defamatory statements were made with malice).

Common-law malice may be proven “by evidence extrinsic to the statement or by evidence intrinsic to the statement.” *Bahr*, 766 N.W.2d at 920 (quotations omitted). Hamson argues that evidence in the summary-judgment record could support a finding of malice. In her affidavit, Hamson maintained that Ecker made insensitive comments about her intelligence, which led her peers to believe that she had a low-IQ. She also asserted that Ecker told people she had been expelled for her actions, which he knew to be untrue because she left the school by her own choice. As to a possible motive, Hamson asserted

that cheating had been an “ongoing” problem for years and that the principal placed the blame on her to avoid accountability. A former Foothills school-board member and athletic director echoed this statement in her affidavit, noting that cheating had been a problem almost from the beginning of her involvement with the school. The board member stated that “[i]t was not just normal cheating where kids try to get answers from each other, but students having passwords to see all of the online test answers.” Hamson claimed that the “ordeal negatively impacted [her] mental health” and damaged her reputation among her peers, the town, and her religious community.

It is true that unsupported allegations are not sufficient to demonstrate the existence of a genuine issue of material fact. *See Harvet*, 428 N.W.2d at 579. However, evidence in the summary-judgment record, when viewed in the light most favorable to Hamson, presents a legally sufficient evidentiary basis for the jury to conclude that Ecker’s statements that Hamson had a “poor IQ,” was a “special ed” student, and was expelled were driven by an improper motive. Generally, “[m]alice cannot be implied from the statement itself.” *Bol*, 561 N.W.2d at 150. Looking beyond the statements, the record shows that Ecker made the statements during a school meeting in front of other students and faculty, and that these statements were potentially damaging to the student’s reputation. Here, Hamson presented sufficient evidence to raise a jury question regarding whether the defamatory statements were made with common-law malice. *See Buchanan v. Minn. State Dep’t of Health*, 573 N.W.2d 733, 738 (Minn. App. 1998) (recognizing that a party’s motive in making a defamatory statement “is generally a question of fact”), *rev.*

*denied* (Minn. Apr. 30, 1998). Accordingly, the district court erred in granting summary judgment because there is a genuine issue of material fact on common-law malice.

We conclude that the district court erred in ruling that a qualified privilege applied as a matter of law to Ecker's statements because, when viewing the evidence in the light most favorable to Hamson, there are genuine issues of material fact as to whether Ecker's statements were made in good faith, on a proper occasion, with a proper motive, and upon reasonable or probable cause. Moreover, the district court erred in its determination that the record does not contain evidence of common-law malice sufficient to overcome qualified privilege because based on the record in this case, whether Ecker acted with common-law malice is fact-specific and should be resolved by a jury. We therefore reverse the grant of summary judgment on Hamson's defamation claim against Foothills and Ecker and remand to the district court for further proceedings consistent with this opinion.<sup>5</sup>

**Reversed and remanded.**

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<sup>5</sup> Hamson raised additional arguments in her reply brief related to the disclosure of personal, non-public information at the school meeting. Because Hamson did not raise these arguments in her complaint or to the district court, we do not consider them. *See In re Application of Otter Tail Power Co.*, 942 N.W.2d 175, 181 n.5 (Minn. 2020) (noting that an appellant may not raise an issue for the first time in a reply brief); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (concluding that a reviewing court may only consider issues that were presented to and considered by the district court).