

REVERSE AND REMAND; Opinion Filed November 19, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00395-CV

**PILAR SANDERS, Appellant
V.
DEION SANDERS, Appellee**

**On Appeal from the 429th Judicial District Court
Collin County, Texas
Trial Court Cause No. 429-04718-2014**

MEMORANDUM OPINION

Before Justices Schenck, Smith, and Garcia
Opinion by Justice Schenck

Pilar Sanders appeals from a summary judgment granted in favor of appellee Deion Sanders on his claim for defamation. In four issues, Ms. Sanders¹ challenges whether the trial court erred in concluding Mr. Sanders had conclusively established the liability and damages elements of his claim, as well as the trial court's rulings sustaining Mr. Sanders's objections to Ms. Sanders's summary judgment evidence. We reverse and remand this case for further proceedings. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

¹ The record indicates that appellee is also known as Pilar Love El Dey. As she is referred to as Pilar Sanders in the final judgment appealed, we will refer to her as Ms. Sanders.

BACKGROUND²

Mr. Sanders is a former player in the National Football League and a member of the Pro Football Hall of Fame. He was married to Ms. Sanders. After concluding his NFL career, Mr. Sanders became a commentator on the NFL Network, and he and his children were the subject of a television program called “Deion’s Family Playbook” on the Oprah Winfrey Network (OWN). He also endorsed products.

The Sanderses divorced in 2013. Mr. Sanders later sued his ex-wife for defamation per se, alleging that, after the divorce, she made statements on social media, in online videos, and on a national television news program, indicating that Mr. Sanders had physically abused her and their children, had attempted to murder her, and had kidnapped at least one of their children. Mr. Sanders alleged these statements damaged his reputation and caused him economic damages. In addition to the defamation lawsuit, he filed motions to enforce and to modify the terms of the divorce decree. The trial court consolidated the family-law and defamation cases. He moved for summary judgment as to liability on his defamation claim. At the beginning of the consolidated trial, the court announced it was carrying the motion

² The trial court granted Mr. Sanders’s unopposed motion to seal Ms. Sanders’s objections to summary judgment evidence, special exceptions, and response to motion for summary judgment. This Court is required to hand down a public opinion explaining our decision based on the record. *See* TEX. R. APP. P. 47.1, 47.3; *Sanders v. Sanders*, No. 05-16-00248-CV, 2017 WL 3712167, at *1 (Tex. App.—Dallas Aug. 29, 2017, no pet.) (mem. op.). We cannot fulfill this duty without describing, to some extent, the pleadings, evidence, findings, and judgment in the case. “To the extent we include any sensitive information in this memorandum opinion, we do so only to the degree necessary to strike a fair balance between the parties’ interest in keeping portions of the record confidential and our responsibilities to the public as an appellate court.” *See Sanders*, 2017 WL 3712167, at *1.

for summary judgment during the trial. At trial, the parties presented evidence regarding the motions pending in the family-law case and the damages amounts claimed in the defamation case. On the last day of the trial, the court granted the motion for summary judgment as to Ms. Sanders's liability on the defamation claim. The trial court also announced damages awards related to the defamation claim.

Ms. Sanders appealed the summary judgment to this Court in *Sanders v. Sanders*, No. 05-16-00248-CV, 2017 WL 3712167, at *1–2 (Tex. App.—Dallas Aug. 29, 2017, no pet.) (mem. op.). Although she brought five issues challenging that judgment, a panel of this Court addressed only her second issue, namely that the trial court erred by granting summary judgment because Mr. Sanders failed to establish conclusively Ms. Sanders's negligence or malice regarding the truthfulness of her statements. We reversed the trial court's judgment and remanded the cause to the trial court.

Two years after our prior panel opinion, Mr. Sanders filed his second motion for summary judgment. Ms. Sanders responded, and both parties filed objections to the other's summary judgment evidence. After considering the motion on written submission, the trial court granted the motion and ordered that he recover damages, including \$200,000 for injury to his character and reputation and special and consequential damages in the amount of \$2,774,500, itemized as follows: (1) cancellation of reality television program with OWN resulting in damages in the amount of \$500,000, (2) termination of two endorsement contracts with Van Heusen

and GMC resulting in damages in the amount of \$2,000,000, (3) reduction in the amount to be paid by the NFL Network resulting in damages in the amount of \$200,000, and (4) investigation defense costs resulting in damages in the amount of \$74,500.

DISCUSSION

The standard for reviewing a traditional summary judgment is well established. *See Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985). The movant has the burden of showing that no genuine issue of material fact exists and that he or she is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). In deciding whether a disputed material fact issue exists precluding summary judgment, evidence favorable to the nonmovant will be taken as true. *Nixon*, 690 S.W.2d at 549. Every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in its favor. *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005). We review a summary judgment de novo to determine whether a party’s right to prevail is established as a matter of law. *Dickey v. Club Corp.*, 12 S.W.3d 172, 175 (Tex. App.—Dallas 2000, pet. denied).

To prevail on a defamation claim, the plaintiff must prove the defendant (1) published a statement, (2) that was defamatory concerning the plaintiff, (3) while acting with either actual malice, if the plaintiff is a public official or a public figure, or negligence if the plaintiff is a private individual, regarding the truth of the

statement, and (4) the plaintiff suffered damages or the statements were defamatory per se. *Sanders*, 2017 WL 3712167, at *2.

I. Liability

Mr. Sanders's summary judgment motion and Ms. Sanders's appeal raise two questions necessary to address: liability and damages.³ In a previous stage of this litigation, we answered there was not a basis for summary judgment on liability because Mr. Sanders failed to carry his burden to establish that element. *See Sanders*, 2017 WL 3712167, at *5. On remand, Mr. Sanders filed a second motion for summary judgment, adding evidence he had not included in the first motion. This case could thus present an issue for law-of-the-case doctrine purposes of whether and how many times a party may move for summary judgment after remand for failure to meet his or her burden in the trial court. Generally, under the law-of-the-case doctrine, all determinations necessary to the disposition of the earlier appeal are foreclosed from re-examination on a subsequent appeal. *Carruth v. Henderson*, 606 S.W.3d 917, 923 n.4 (Tex. App.—Dallas 2020, no pet.). In this case, we prefer to avoid answering this question and the related questions of whether the jury's verdict on custody or the trial court's interlocutory determination

³ Although generally a defamation per se claim does not require proof of damages, when, as here, the plaintiff seeks more than nominal damages, he must present evidence of the existence and amount of his damages. *See Brady v. Klentzman*, 515 S.W.3d 878, 886 (Tex. 2017).

in the protective order⁴ resolved as a matter of law the issues now said to be before us.⁵ Instead, we will now pretermite these questions and address whether Mr. Sanders conclusively established general and special damages.

II. Damages

In her fourth issue, Ms. Sanders urges the trial court erred in awarding general and special damages, claiming there was no evidence to support the amounts of damages awarded. The trial court awarded actual damages to Mr. Sanders's character and reputation caused by Ms. Sanders's defamation per se in the amount of \$200,000 and special and consequential damages caused by Ms. Sanders's defamation per se in the amount of \$2,774,500, itemized as follows: (1) cancellation of reality television program with OWN resulting in damages in the amount of \$500,000, (2) termination of two endorsement contracts with Van Heusen and GMC resulting in damages in the amount of \$2,000,000, (3) reduction in the amount to be

⁴ The protective order entered during the divorce proceedings finding neither spouse had committed family violence by its nature is a preliminary determination without the benefit of finality or the right to a determination by a jury that might affect its preclusive effect on later proceedings. See TEX. FAM. CODE ANN. § 82.009(b), (c) (providing protective orders rendered against parties in suits for dissolution of marriage or affecting parent-child relationship may not be appealed until final orders entered on dissolution of marriage or child support or possession of or access to the subject children); *Roper v. Joliffe*, 493 S.W.3d 624, 634 (Tex. App.—Dallas 2015, pet. denied) (holding no right to jury trial in protective order proceedings because *inter alia* purpose of statute to provide expedited procedure for victims of domestic violence, not to correct past wrongs or establish liability). But, we prefer to avoid addressing whether the protective order would have that preclusive effect in this case. Cf. *Roper*, 493 S.W.3d. at 637 (concluding record on appeal did not support conclusion appellant was denied due process in protective order proceedings).

⁵ The collateral estoppel arguments made by Mr. Sanders are that the jury by awarding sole custody to him must have determined he did not engage in any of the conduct alleged in Ms. Sanders's challenged statements and that the trial court's findings in the protective order entered during the divorce proceedings have a similar preclusive effect. Whether those conclusions require presentation of all the evidence heard by the jury at trial or the trial court in the protective order hearing are questions we pretermite at this stage.

paid by the NFL Network resulting in damages in the amount of \$200,000, and (4) investigation defense costs resulting in damages in the amount of \$74,500.

Damages, however, are not always an essential element of defamation, but if the statement is defamatory per se, as here,⁶ then nominal damages may be awarded without proof of actual injury because mental anguish and loss of reputation are presumed. *Brady v. Klentzman*, 515 S.W.3d 878, 886 (Tex. 2017). Indeed, a plaintiff may vindicate his or her name and obtain nominal damages without evidence of actual injury. *See id.* But because Mr. Sanders sought and obtained actual damages for loss of reputation (general damages) and for economic loss (special damages), he must present evidence of the existence and amount of these damages. *See id.*

As support for his damages to his reputation, Mr. Sanders provided excerpts of his own testimony from a bench trial conducted in 2015 on the consolidated family-law and defamation cases. When asked how much he would quantify his damages for his reputation and character, Mr. Sanders answered at least a million dollars, but when asked for more specific facts to quantify his damages, he pointed to fees he paid to attorneys to defend him in the NFL's investigation, cancelled contracts, and that generally being called "an abuser, a murderer, an attempted murderer, kidnapper, and all that [is] damaging when you're a public figure." When

⁶ As the alleged statements are accusations that Mr. Sanders committed crimes against Ms. Sanders and their children, they are defamatory per se. *See In re Lipsky*, 460 S.W.3d 579, 596 (Tex. 2015) (listing accusing someone of a crime as an example of defamatory per se).

questioned who had told him his reputation was damaged, Mr. Sanders averred no one had approached him, saying he did not believe anyone would have the audacity to tell him his reputation or character had been damaged. He further denied his valuation was subjective but his only support for his valuation was to refer to contracts he testified had been cancelled after Ms. Sanders published her accusations. But again, he did not testify that anyone told him the contracts were cancelled because of her statements' effect on his reputation.

Mr. Sanders also testified that at least some of the postings were reported in the media, but showing that the community was aware of and discussed the defamatory statements is not enough to establish lost reputation damages; instead, there must be evidence people believed the statements and the plaintiff's reputation was actually affected. *See Brady*, 515 S.W.3d at 887. Mr. Sanders points to social media posts made in response to Ms. Sanders's statements as evidence her posts were believed, but he also testified that one of the accounts was an alias of Ms. Sanders's, thus creating fact issues as to whether Ms. Sanders's statements were believed and Mr. Sanders's reputation was affected. We conclude the foregoing is insufficient to conclusively establish the reputation damages awarded.

As for the special damages awarded, Mr. Sanders's support similarly fails to conclusively establish the amounts. In contrast with general damages, which are awarded for the plaintiff's noneconomic injuries caused by the defamation, special damages are for economic injuries and consist of the actual pecuniary losses that

flow directly from the defamation. *See Innovative Block of S. Tex., Ltd. v. Valley Builders Supply, Inc.*, 603 S.W.3d 409, 425 (Tex. 2020). Although Mr. Sanders testified as to OWN cancelling his show, the termination of his endorsement contracts with Van Heusen and GMC, and the reduction in the amount the NFL paid him, he could not explain how he knew those losses occurred because of Ms. Sanders's statements, rather than for any other unrelated reason. Thus, he failed to establish how those losses flowed directly from the defamation. *See id.*

As for the investigation defense costs award of \$74,500, Mr. Sanders's attorney testified:

With regard to all of the dealings with the NFL, the Oprah Network, and the defense of Mr. Sanders with regard to all of the allegations by Ms. Pilar Sanders in the fall of 2014, I incurred attorney's fees on his behalf in the amount of \$74,500.

Mr. Sanders also testified he hired that attorney to represent him in the investigations by Child Protective Services ("CPS") and OWN. However, the summary judgment record includes a letter from the NFL implying their investigation began because of Mr. Sanders's involvement in an April 23, 2012 domestic dispute at his residence, in which law enforcement was called to the scene. Similarly, the record includes a letter from CPS indicating their investigation was conducted pursuant to a report made on October 8, 2014. The evidence of social media postings made by Ms. Sanders indicates those posts were made in July and September of 2014. Further, the videos offered as exhibits do not indicate when they were published.

Accordingly, we conclude there is a fact issue as to whether the investigation defense costs flowed directly from the complained of statements.

We hold Mr. Sanders did not conclusively establish his general and specific damage award amounts. Accordingly, we sustain Ms. Sanders's fourth issue.

Moreover, having reviewed and reversed a summary judgment on Mr. Sanders's defamation claim for the second time, we are satisfied there is a fact question in this case not appropriate for summary judgment.

CONCLUSION

Because liability was contested, damages were unliquidated, and the amounts of damages were not established conclusively, we reverse and remand this case for new trial. *See* TEX. R. APP. P. 44.1(b).⁷

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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⁷ As alluded to in our discussion *supra*, we pretermitted our discussion of Ms. Sanders's first three issues: (1) whether Mr. Sanders's motion was supported by competent evidence, (2) whether Mr. Sanders's motion sufficiently established the element of liability, and (3) whether the trial court erred by sustaining Mr. Sanders's objections to Ms. Sanders's evidence. *See* TEX. R. APP. P. 47.1.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

PILAR SANDERS, Appellant

No. 05-20-00395-CV V.

DEION SANDERS, Appellee

On Appeal from the 429th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 429-04718-
2014.

Opinion delivered by Justice
Schenck. Justices Smith and Garcia
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant PILAR SANDERS recover her costs of this appeal from appellee DEION SANDERS.

Judgment entered this 19th day of November 2021.