



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00790-CV

Margaret **HOSSEINI**,
Appellant

v.

Christine **HANSEN**, Bonnie Poe, Sarah Christian Hany, and Tracy Ross,
Appellees

From the 81st Judicial District Court, Wilson County, Texas
Trial Court No. 16-02-0055-CVW
Honorable W.C. Kirkendall, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Beth Watkins, Justice

Delivered and Filed: March 20, 2019

REVERSED AND REMANDED

Appellant Margaret Hosseini sued appellees Christine Hansen, Bonnie Poe, Sarah Christian Hany, and Tracy Ross for several causes of action, including defamation. After the jury returned a verdict in favor of Hosseini, the trial court granted appellees' motion for judgment notwithstanding the verdict ("JNOV"). On appeal, Hosseini argues the trial court erred in granting appellees' motion as to her defamation claim because the evidence was legally sufficient to support the jury's findings. We reverse the trial court's judgment as to Hosseini's defamation claim and remand the cause to the trial court for proceedings consistent with this opinion.

BACKGROUND

Hosseini runs a tax preparation business and advertises those services on Facebook. She is also a primate trainer and owner who runs several online communities that provide resources about primates and works with the Legislature to advocate for primate ownership. On Facebook, she visits pages that interest her, particularly pages regarding primates, and came across a disturbing page promoting bestiality, which was posted by a group to which several of the appellees belonged. Hosseini reported the page to Facebook authorities, who removed it.

According to Hosseini, because she reported the disturbing page, appellees posted threats and false statements on her personal and business Facebook pages. Hosseini sued appellees and two other Facebook users, Margaret D. Rice and Nancy Wireman, alleging thirteen causes of action, including defamation and stalking, and seeking damages, a temporary restraining order, and temporary and permanent injunctive relief. Hosseini alleged the defendants posted libelous statements on her Facebook page, and because of these statements, her tax business decreased in value and she suffered a loss of reputation. The trial court granted a temporary restraining order and scheduled a hearing on the merits.

At trial, Hosseini identified a Facebook post that threatened, “B**** I will kill your family.” She explained that some of the posts identified her daughter by name and included photos of Hosseini, her daughter, and their home. As a consequence, when her daughter takes evening classes, Hosseini or her husband meet their daughter outside of the classroom so she can quickly get into the car. Hosseini further testified her husband obtained a concealed handgun license because of these threats.

Hosseini testified that appellees raised money online to pay the bail of anyone willing to enter her business and punch her. She explained that she received threatening phone calls on her cell phone, and that she and her staff received threatening phone calls at their business locations.

Because they took those threats seriously, Hosseini and her husband installed tinted windows at the tax preparation offices so they could see out, but no one could see in.

Hosseini explained that in some of the Facebook posts, appellees called her a thief¹ and a Muslim, suggesting she should be deported. The trial court admitted approximately 300 Facebook screen shots, many of which contained manipulated photos of Hosseini as a terrorist, a Muslim, a lesbian, the wicked witch of the west, and a pile of feces. She also introduced photos appellees posted of her daughter and her husband, as well as their hurtful comments about Hosseini's daughter's weight. She recounted that they posted twelve pages of information identifying her family members, associates, and social media friends. Appellees also targeted Hosseini's social media contacts and encouraged them to remove themselves from her social media groups. Those efforts were successful—according to Hosseini, membership in one of her social groups dwindled from 700 to 200 members as a result of appellees' efforts.

According to Hosseini's evidence, appellees made accusations that she: (1) had been convicted of welfare and check fraud, (2) had been raided by the IRS; and (3) had posted her tax clients' social security numbers on Facebook. They also posted these accusations on her Google business page. During peak tax season, appellees sent a news crew to Hosseini's San Antonio tax preparation office to investigate their allegations that Hosseini had stolen a monkey and violated a court order to return it. Appellees posted about it on social media and shared the news stories about it. Hosseini testified she had to explain to her staff and clients that she did not steal a monkey, there was no court order, and the news team was acting on false information. The jury

¹ In some of the posts, appellees alleged that Hosseini had stolen a sick monkey named Latoya from the Arizona Animal Sanctuary. The record reflects that the sanctuary was caring for Latoya after her original owner, appellee Bonnie Poe, surrendered her to its care. Hosseini learned about the sick monkey through the sanctuary's Facebook posts explaining that it was having difficulty finding medical treatment for Latoya. Hosseini paid the sanctuary \$5,000 to purchase Latoya so she could obtain medical care for the monkey in Texas. Three days after the sanctuary transferred the monkey to Hosseini's possession, Latoya died.

heard how the tax preparation business lost income, and how Hosseini was forced to close one of her three business locations.

The jury found in Hosseini's favor as to her defamation claim against appellees and her stalking claim against Hansen, Poe, and Hany. The jury awarded Hosseini \$200,000 for injury to her past reputation, \$75,000 for injury to her future reputation, \$20,000 for her past mental anguish, and \$20,000 for her future mental anguish. Appellees moved for JNOV, arguing the evidence was legally insufficient to support the verdict. As to Hosseini's defamation claim, appellees argued there was no evidence: (1) they published any defamatory statements or (2) their conduct caused damages, including mental anguish damages. The trial court granted the motion for JNOV without specifying the grounds. Hosseini appealed only the defamation portion of the judgment.

ANALYSIS

On appeal, Hosseini argues the trial court erred in granting the JNOV as to her defamation claim. According to Hosseini, more than a scintilla of evidence supported each element of her defamation claim. Appellees argue, however, Hosseini did not preserve her legal sufficiency complaint, or in the alternative, the trial court did not err because the evidence was legally insufficient to support the jury's verdict.

Standard of Review

We review a judgment notwithstanding the verdict under a legal sufficiency standard of review. *Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 830 (Tex. 2009). Under this standard, we consider the evidence in the light most favorable to the verdict and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). It is the jury's province to evaluate witness credibility and determine the weight to attach to testimony. *Id.* at 819. So long as the evidence falls within the zone of reasonable disagreement, we may not substitute our judgment for that of the jury. *Id.* at 822. If the evidence viewed in this

light presents more than a scintilla of competent evidence to support the jury's finding, then judgment notwithstanding the verdict is improper. *See id.* at 823, 827. When, as here, the trial court grants a motion for judgment notwithstanding the verdict without stating the ground relied on, we must uphold the trial court's ruling if any of the grounds stated in the motion would uphold the judgment. *Fort Bend Cnty. Drainage Dist. v. Sbrusch*, 818 S.W.3d 392, 394 (Tex. 1991).

Applicable Law

To prevail on a defamation claim, the plaintiff must prove the defendant (1) published a false statement, (2) that was defamatory concerning the plaintiff, (3) with negligence regarding the truth of the statement — if the plaintiff is a private individual, and (4) the defendant's actions proximately caused the plaintiff's damages. *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015); *Cullum v. White*, 399 S.W.3d 173, 181 (Tex. App.—San Antonio 2011, pet. denied). A statement is defamatory if it injures a person's reputation and exposes the person to public hatred, contempt, ridicule, or financial injury or impeaches any person's honesty, integrity, virtue, or reputation. TEX. CIV. PRAC. & REM. CODE ANN. § 73.001.

Application

We begin our analysis by addressing appellees' argument that Hosseini did not preserve her legal sufficiency complaint because she failed to object to the trial court's final judgment. We disagree. The granting or denial of a judgment notwithstanding the verdict preserves error regarding the legal sufficiency of the evidence. *See, e.g., Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 220 (Tex. 1992). Hosseini's legal sufficiency challenge is, therefore, properly preserved.

Moving to the substantive argument, appellees' motion for JNOV was premised on two grounds: (1) there was no evidence they published the statements, and (2) there was no evidence the statements caused Hosseini damages, including mental anguish damages. Beginning with the

first ground, appellees argued the evidence was insufficient as to the publication element of Hosseini's defamation claim because there was no evidence a third person "read and understood" the postings. We disagree.

Defamatory statements are published if they are "communicated orally, in writing, or in print to some third person who is capable of understanding their defamatory import and in such a way that the third person did so understand." *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 579 (Tex. 2017) (internal quotations omitted). Here, appellees' Facebook postings were communicated in writing on Hosseini's Facebook page and those posts were "liked" and "shared" by numerous users. *See id.* In addition, Facebook users other than appellees and Hosseini commented on appellees' postings. Accordingly, when viewing the evidence in the light most favorable to the verdict, we conclude the jury could have reasonably inferred from the activity on Facebook that the postings were communicated in writing or print to a third person who was capable of understanding, and did understand, their defamatory import. *See id.* We therefore hold the evidence is legally sufficient to establish the element of publication.

Turning to the second ground in appellees' motion, appellees argued there was no evidence of a causal connection between the Facebook postings and Hosseini's damages. Again, we disagree.

Whether a plaintiff must prove the existence and amount of damages caused by the defamatory statement depends on whether the defamation claim is defamatory per se or defamatory per quod. *Cullum*, 399 S.W.3d at 181 (dividing defamation claims into two categories, each requiring different levels of proof for damages). As opposed to defamation per quod, if an alleged statement is categorized as defamatory per se, general damages are presumed without requiring specific evidence of harm to the plaintiff's reputation. *Id.* Thus, a plaintiff may recover general damages, including damages for injuries to reputation and mental anguish, without proof of injury.

Id.; *Fox v. Parker*, 98 S.W.3d 713, 726 (Tex. App.—Waco 2003, pet. denied) (stating that in defamation per se claims, “there need be no inquiry in the charge about whether there was a defamation or about ‘proximate cause’ and injury.”). A statement is considered defamatory per se if the statement injures a person in his office, profession, or occupation; charges a person with the commission of a crime; imputes sexual misconduct; or accuses one of having a loathsome disease. *Hancock v. Variyam*, 400 S.W.3d 59, 66 (Tex. 2013); *Cullum*, 399 S.W.3d at 183.

Here, Hosseini produced evidence that appellees published statements on her Facebook page that she was a thief, i.e., that she stole a monkey. This statement alleges the commission of a crime. *See* TEX. PENAL CODE ANN. § 31.03 (elements of theft). The jury also heard evidence that appellees published statements on Hosseini’s Facebook portraying her as being convicted of check and welfare fraud, which also impute the commission of a crime. *See id.*; *id.* § 32.41 (elements of issuance of bad check); *see also Terry v. State*, 397 S.W.3d 823, 829 (Tex. App.—Houston [14th Dist.] 2013, pet. ref’d) (recognizing welfare fraud is properly charged under general theft statute). Appellees also published these allegations as reviews on the Google page for Hosseini’s tax business. Those statements injured Hosseini in her profession — the jury heard testimony that she lost clients and was forced to close one of her locations. Accordingly, we hold the statements appellees published were defamatory per se, so general damages are presumed. *See Hancock*, 400 S.W.3d at 66-67; *Cullum*, 399 S.W.3d at 183.

To the extent appellees contended the damages were not supported by the evidence, we also disagree. Although general damages may be presumed in a defamatory per se case, a plaintiff cannot recover damages awarded unless the awards are supported by the evidence. *Anderson v. Durant*, 550 S.W.3d 605, 618 (Tex. 2018). Reputation damages are recoverable if the evidence shows a loss. *Id.* at 621. The evidence must show “that people believed the statements and the plaintiff’s reputation was actually affected.” *Id.* Reputation damages are not susceptible to precise

calculation, and “the jury has discretion to estimate the amount that will reasonably compensate the plaintiff.” *Id.* Again, Hosseini testified she lost clients and employees at her tax office — and those losses were continuing — as a result of the defamatory statements posted and shared in the community. Hosseini also testified she lost business opportunities when existing clients took their business elsewhere after reading the posts, forcing her to close a branch of her tax business. Further, she testified that membership in her social media networks had dwindled as a result of appellees’ actions. We hold this evidence to be legally sufficient to support the jury’s award of injury to reputation — past and future — damages. *See id.*

A damage award for mental anguish is sufficient when the record contains “direct evidence of the nature, duration, and severity of [the plaintiff’s] mental anguish.” *Id.* at 618. Evidence of a “substantial disruption in the plaintiff’s daily routine” or “high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger” is sufficient to support an award of mental anguish. *Id.* at 619. Here, Hosseini testified she was frightened because she received threats at her home and office due to the Facebook posts. Hosseini explained she lives in fear and installed security systems in her office and home as a result. The threats were so serious her husband obtained a license authorizing him to carry a concealed handgun out of fear. Hosseini further testified she or her husband pick up her daughter after her college evening classes because of fear generated as a result of appellees’ publications. Hosseini added she takes medicine to keep her calm and refuses to leave her home at night alone. When asked about the future, Hosseini testified she has lost her joy and trust in people, adding she cannot find peace. She further testified she was terrified and that feeling “continues day and night, seven days a week, 365 days a year.” We hold such evidence is legally sufficient evidence of mental anguish, both past and future.² *See*

² We are mindful of the standard of review in this legal sufficiency challenge, which requires us to review the evidence in the light most favorable to the jury’s verdict and prohibits us from substituting our judgment for that of the jury,

id. (holding testimony of disruption in daily life, inability to sleep, and treatment for anxiety and depression as sufficient to establish mental anguish damages); *see also Bentley v. Bunton*, 94 S.W.3d 561, 604-05 (Tex. 2002) (holding testimony of stress, loss of sleep, time worrying, and changed behavior as sufficient evidence of mental anguish damages).

CONCLUSION

Based on the foregoing, we hold the trial court erred by granting appellees' motion for judgment notwithstanding the jury's verdict on Hosseini's defamation claim. Accordingly, we reverse the trial court's judgment as to Hosseini's defamation claim and remand the cause to the trial court for entry of judgment in accordance with the jury's verdict as to Hosseini's defamation claim.

Beth Watkins, Justice

especially in evaluating witness credibility and assessing damages. *See Tanner*, 289 S.W.3d at 830; *City of Keller*, 168 S.W.3d at 822.