

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN FRANCIS MAZZAN,
Appellant,
vs.
JUDGE CHUCK WELLER,
Respondent.

No. 49425

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. W. Weller*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting a motion for summary judgment in a defamation action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

We review an order granting summary judgment de novo.¹ Viewing the evidence in a light most favorable to the nonmoving party, summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law.² When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.³

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

²Id.

³NRCP 56(e); See also Wood, 121 Nev. at 730, 121 P.3d at 1030.

A plaintiff alleging defamation must demonstrate (1) a false and defamatory statement made by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence, and (4) actual or presumed damages.⁴ A statement is defamatory if it “would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.”⁵ Generally, whether a statement is defamatory is a question of law.⁶ Only false assertions of fact, not opinion, are actionable.⁷ Thus, exaggerations or generalizations that could be interpreted by a reasonable person as “mere rhetorical hyperbole” are not actionable.⁸

Here, the district court concluded, as a matter of law, that the alleged defamatory statements were statements of opinion, assertions of truthful facts, and were otherwise not defamatory because appellant John

⁴Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002).

⁵K-Mart Corporation v. Washington, 109 Nev. 1180, 1191, 866 P.2d 274, 281-82 (1993), overruled in part on other grounds by Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277 (2005).

⁶Posadas v. City of Reno, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993).

⁷K-Mart Corporation, 109 Nev. at 1192, 866 P.2d at 282.

⁸Pegasus, 118 Nev. at 715, 57 P.3d at 89.

Mazzan's reputation was not lowered in the community's eyes.⁹ Mazzan contends that summary judgment was improperly granted because respondent Judge Chuck Weller's statement about putting Mazzan back in prison is both false and defamatory.¹⁰

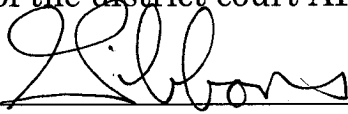
Having reviewed the record and Mazzan's proper person appeal statement, we conclude that, even if Judge Weller's statement that he put Mazzan back in prison is false, the district court properly entered summary judgment in Judge Weller's favor, since the statement was not defamatory as a matter of law. In particular, the statement at issue does not tend to lower Mazzan's reputation in the community or excite derogatory opinions about him; rather, any harm to Mazzan's reputation in the community or any derogatory opinions about him arose from his guilty plea and convictions. Mazzan, in his opposition to the summary judgment motion, presented no evidence that his reputation had been

⁹Mazzan's complaint alleges that he was defamed by Judge Weller's statement, "I put Jack Mazzan back in prison where he belongs." But his opposition to Judge Weller's summary judgment motion was limited to the alleged false assertion that it was Judge Weller who put him back in prison. Even so, the district court analyzed each part of the statement in determining whether to grant Judge Weller's motion.


¹⁰Mazzan also requests that this court order that Judge Weller be prohibited from using government counsel to represent him because the alleged statements were made prior to his election to the bench. We deny Mazzan's request as moot, since Judge Weller is acting in proper person in this matter.

further harmed due to Judge Weller's alleged statement.¹¹ Accordingly, summary judgment was proper, and we

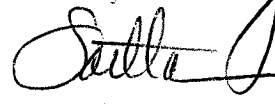
ORDER the judgment of the district court AFFIRMED.


_____, J.

Gibbons


_____, J.

Cherry


_____, J.

Saitta

cc: Hon. Patrick Flanagan, District Judge
John Francis Mazzan
The Honorable Chuck Weller, District Judge
Washoe District Court Clerk

¹¹On appeal, Mazzan contends that his personal survey of Reno/Sparks citizens revealed that many residents would not have known about his case had it not been for Judge Weller's comment. However, Mazzan's incarceration and criminal history is public information that was widely reported by the media. Thus, Mazzan's assertion that Judge Weller's comment tarnished Mazzan's reputation is without merit.