

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL S. MEYER,
Appellant,
vs.
RICHARD N. JOHNSON,
Respondent.

No. 49943

FILED

MAR 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a defamation matter. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

This case revolves around an email transmission. Respondent sent an email to everyone in his contact list, including appellant, notifying them that he had a new email address. Appellant had blocked respondent's previous email address and claims that he notified respondent that he did not want any further contact with respondent; respondent denies that appellant ever made such a request. After receiving the email, appellant wrote a reply email, which included profanity and other derogatory comments, and sent the reply to everyone who had received respondent's initial email. Appellant stated that sending the reply to everyone was accidental. After a bench trial, the district court concluded that one statement within the email was defamatory and awarded damages to respondent.

Appellant challenges the district court's judgment holding that a portion of an email he sent was defamatory and awarding damages. Appellant argues that the alleged defamatory statement was true or constituted an opinion and was therefore not actionable. Appellant further asserts that the award of damages was improper because the statement was not per se defamation and respondent failed to properly

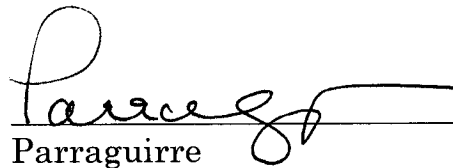
plead or prove special damages. Respondent argues that the district court properly found that the statement was defamatory and false and that the damages awarded were proper.

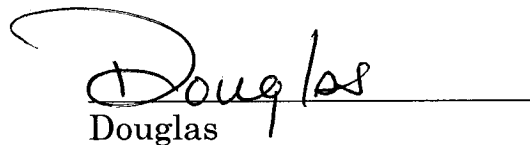
Defamation occurs when a person publishes a false statement of fact. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). Statements of opinion are not actionable as defamation. Id. In order to establish defamation, a party must prove four factors: that there was a false statement about them, that it was published to a third party without privilege, that there was fault on the part of the publisher, and that it was either a per se defamation or that the defamation caused special harm. Lubin v. Kunin, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001). While the determination of whether a statement is defamatory is generally a question of law, when there are different possible constructions of the statement, one of which is defamatory and the other not, the determination of whether it is defamatory is left to the fact finder. Id. at 111, 17 P.3d at 425-26. Additionally, the question of whether a statement is true or false is a question of fact to be decided by the fact finder. K-Mart Corporation v. Washington, 109 Nev. 1180, 1193, 866 P.2d 274, 283 (1993), receded from on other grounds by Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277 (2005). This court will not disturb the district court's findings of fact if they are supported by substantial evidence. Whitemaine v. Aniskovich, 124 Nev. ___, ___, 183 P.3d 137, 141 (2008).

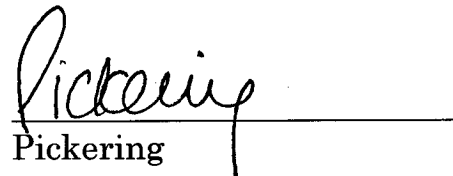
Having reviewed the briefs and appendices on appeal, we affirm the district court's conclusion that the only actionable portion of the email is the statement, "you steal my marketing plan," as this is the only statement of fact within the email. We also affirm the district court's finding that this statement was false, as there was substantial evidence to support the conclusion. Id.

Appellant argues that even if there was an actionable defamatory statement, damages were not proper because it was not defamation per se and respondent failed to plead or prove special damages. We affirm the district court's conclusion that the defamatory statement was per se defamatory. There are four types of defamatory per se statements: "(1) the imputation of a crime; (2) the imputation of having a loathsome disease; (3) imputing the person's lack of fitness for trade, business, or profession; and (4) imputing serious sexual misconduct." K-Mart Corporation, 109 Nev. at 1192, 866 P.2d at 282. The record supports the district court's finding that the statement that respondent stole appellant's marketing plan dealt with respondent's fitness for business or profession, and it therefore constitutes defamation per se. As a result, respondent did not need to plead or prove special damages. Id. Once defamation per se was found, the district court had the discretion to assess reasonable damages based on the evidence presented. Id. The amount of damages awarded was reasonable. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Valerie Adair, District Judge
Ara H. Shirinian, Settlement Judge
Longabaugh Law Offices
Carl M. Joerger
Eighth District Court Clerk