

IN THE SUPREME COURT OF THE STATE OF NEVADA

DR. LORI IRISH,
Appellant,
vs.
DONALD PARKER, INDIVIDUALLY;
AND MERRYHILL SCHOOL OF
NEVADA, INC., A NEVADA
CORPORATION, D/B/A MERRYHILL
SCHOOLS,
Respondents.

No. 38978

FILED

OCT 07 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal of a district court order dismissing a defamation complaint filed by Dr. Lori Irish against Merryhill School of Nevada, Inc. and its principal and manager, Donald Parker.

In her original complaint, Irish alleged that Parker, in his official capacity as principal, verbally published false and defamatory statements about Irish in the presence of students, parents and teachers. Parker allegedly told another teacher that Irish was "crazy" and a "danger to her son," a student at the school.

"To prevail on a defamation claim, a party must show publication of a false statement of fact that causes damage."¹ "As a general rule, only assertions of fact, not opinion, can be defamatory."² "However, expressions of opinion may suggest that the speaker knows

¹K-Mart Corporation v. Washington, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993) (citing Wellman v. Fox, 108 Nev. 83, 86, 825 P.2d 208, 210 (1992), cert. denied, 506 U.S. 820 (1992)).

²Id.

certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false.”³ “However, even if the statements were defamatory, a plaintiff must also show special damage as a part of a prima facie case of ordinary slander.”⁴

“[I]n an ordinary slander action, special damages must be proven, as an element of the cause of action, before any recovery will be allowed the plaintiff.”⁵ “Special damages are quantifiable monetary losses that flow directly from the injury to reputation caused by the defamation, e.g., loss of business.”⁶

However, “[c]ertain classes of defamatory statements are considered so likely to cause serious injury to reputation and pecuniary loss that these statements are actionable without proof of damages.”⁷ “The four types of slander historically designated as defamatory per se are false statements made involving: (1) the imputation of a crime; (2) the imputation of having a loathsome disease; (3) the imputation that the person is not fit for a particular trade, business, or profession; and (4) the imputation of serious sexual misconduct.”⁸ “No proof of any actual harm

³Id. at 1192, 866 P.2d at 282; see also Milkovich v. Lorain Journal Co., 497 U.S. 1, 13 (1990).

⁴Id.; see also Branda v. Sanford, 97 Nev. 643, 637 P.2d 1223 (1981).

⁵Id. at 1194, 866 P.2d at 283 (citing Branda, 97 Nev. at 646, 637 P.2d at 1225).

⁶Id. (citing Branda at 647, 637 P.2d at 1226); see NRS 41.335.

⁷Id. at 1192, 866 P.2d at 282.

⁸Id.; see also Carey v. Piphus, 435 U.S. 247, 262 n.18 (1977); Branda, 97 Nev. at 646, 637 P.2d at 1225.

to reputation or any other damage is required for the recovery of damages for these four kinds of slander.”⁹ “Otherwise stated, proof of the defamation itself is considered to establish the existence of some damages, and the jury is permitted, without other evidence, to estimate their amount.”¹⁰

Irish did not offer facts to support the claim that Parker’s comments were defamatory per se. During the district court proceedings, Irish argued that the comment that she was crazy would have the inherent effect of damaging her business and referred to herself as “Dr. Irish.” However, nothing in the record, her pleadings, or her brief indicates what business or profession she is engaged in that would be damaged. Irish further argues that the “danger to her son” remark infers that she has committed criminal misconduct involving her son. Similarly, this claim was unsupported in the record or pleadings and cannot reasonably be extended to impute the commission of a crime or serious sexual misconduct. Irish’s claims do not rise to the level of defamation per se.

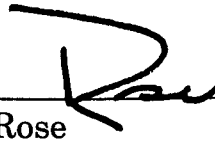
The district court cautioned Irish when granting her leave to amend her first two complaints that a plea for special damages must be included in her amended complaint. Irish mentioned special damages in her second amended complaint, but did not do so with the specificity


⁹Id. (citing W. Page Keeton et al., Prosser & Keeton on the Law of Torts § 112, at 788 (5th ed. 1984)).


¹⁰Id. at 1192-93, 866 P.2d at 282 (quoting Prosser & Keeton § 112, at 788).

required by NRCP 9(g).¹¹ Therefore, because Irish did not state a claim for defamation upon which relief could be granted, the district court was within its discretion to dismiss Irish's claim with prejudice pursuant to NRCP 12(b)(5). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Rose

 _____, J.
Leavitt

 _____, J.
Maupin

cc: Hon. Michael L. Douglas, District Judge
Joseph Y. Hong
Dickerson, Dickerson, Consul & Pocker
Clark County Clerk

¹¹NRCP 9(g) provides, "[w]hen items of special damage are claimed, they shall be specifically stated."