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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0317**

Gabrielle Huson, et al.,
Appellants,

vs.

Benilde-St. Margaret's School, et al.,
Respondents.

**Filed September 17, 2018
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-16-16162

Lee A. Hutton, III, Barnes & Thornburg LLP, Minneapolis, Minnesota (for appellants)

Samuel J. Nelson, Thomas B. Wieser, Meier, Kennedy & Quinn, Chartered, St. Paul,
Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Benilde-St. Margaret's School suspended one of its hockey standouts, Gabrielle Huson, for two days, concluding that she hosted a party where students drank alcohol. The suspension prevented her from attending part of the school's varsity hockey tryouts. Gabrielle and her mother sued the school, alleging that its student handbook constituted a

contract that the school breached by suspending Gabrielle after an inadequate investigation, that the school violated Gabrielle's due process rights, and that the school defamed both of them. The district court dismissed the Husons' lawsuit at summary judgment and denied their motion to amend the complaint. The Husons argue on appeal that disputed factual issues prevent summary judgment, and they question the district court's jurisdiction to deny their motion to amend the complaint. We hold that the student handbook is not a contract and makes no promise of any disciplinary procedure, that the Husons failed to allege a defamatory statement and present evidence that Benilde-St. Margaret's made any statement with actual malice, and that the district court had jurisdiction to decide the Husons' complaint-amendment motion. We therefore affirm.

FACTS

Gabrielle Huson was a sophomore hockey player at Benilde-St. Margaret's School during the 2016–2017 academic year. In November 2016, Assistant Principal Seborn Yancy heard from a teacher that photographs on social media depicted students drinking alcohol at a party at the Husons' home the previous weekend. Yancy investigated whether Gabrielle had violated the school's policy prohibiting hosting a party where alcohol is present.

Yancy promptly met separately with two students pictured in the photographs. Each admitted to drinking alcohol. Yancy's notes indicate that one of these students offered to provide names of others attending the party and protested, "It's not fair, if I get in trouble and they don't." That student gave Yancy a list of 33 other sophomores who attended.

Yancy also met with Gabrielle Huson. The facts here are somewhat in dispute. According to Yancy, Gabrielle admitted that alcohol was present at the party but said that the students drinking the alcohol attended a different school and that she tried to stop students from drinking and kicked some offenders out. When Yancy intimated that Gabrielle had violated the student handbook, he says that Gabrielle became upset and said, “I’m not just any other student. I have too much to lose,” referring apparently to her ability to qualify for a college athletic scholarship.

School administrators exchanged text messages expressing concern about whether they could show that Gabrielle knew that alcohol was present at the party. The school suspended Gabrielle that day.

The next morning, Gabrielle’s mother, Christina Huson, met with school administrators and later sent an email saying that Gabrielle denied ever telling Yancy that she knew anyone was drinking at the party. Yancy met with other students who attended the party, and many denied seeing alcohol. He questioned some of them about whether they had been in a group discussion during which the Husons coached students to deny having seen alcohol. Yancy doubted some of the students because their answers seemed prepared. According to Yancy, one student said that she had heard that the Husons had indeed contacted students to coach their responses. And he says that another disclosed receiving an email from Gabrielle’s mother about the investigation. Christina Huson has denied contacting any students and says that Gabrielle merely told other students to email her “a statement about if they were there and if there was drinking happening.”

The Husons moved the district court for a temporary restraining order to prevent the suspension from taking effect. They alleged that Gabrielle's suspension rested only on rumors, violated Benilde-St. Margaret's student handbook, and jeopardized Gabrielle's academic and athletic prospects. They immediately also filed a six-count civil complaint, alleging breach of contract, procedural and substantive due process violations of the United States and Minnesota Constitutions, defamation by compelled self-publication, defamation, and defamation per se. The district court denied the Husons' restraining-order motion, and the parties conducted discovery.

Benilde-St. Margaret's moved for summary judgment. The Husons opposed the motion and moved the district court for leave to amend their complaint to add a claim of sex discrimination. While the litigation was ongoing, Gabrielle was selected to play on Benilde-St. Margaret's varsity hockey team, and she missed no games during the season. But the school did not accept her enrollment for her next, junior year.

The district court granted Benilde-St. Margaret's summary-judgment motion on all counts. And it also denied the Husons' request for leave to amend their complaint.

The Husons appeal.

D E C I S I O N

The Husons challenge the district court's grant of summary judgment on their breach-of-contract and defamation claims. Summary judgment is appropriate when there is no genuine issue of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. We review de novo the district court's summary judgment decision. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170

(Minn. 2010). A genuine issue of material fact exists and requires reversal if a rational trier of fact, considering the record as a whole, could find for the party against whom summary judgment was granted. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We first consider whether any material facts prevent summary judgment against the Husons' breach-of-contract or defamation claims, and then we address their argument that the district court improperly denied their motion to amend the complaint.

I

The Husons challenge the dismissal of their breach-of-contract claims, arguing that the school's student handbook creates an enforceable contract that it breached by suspending Gabrielle without following the disciplinary procedures that the handbook outlines. To prove a breach of contract, one must first have a contract. *See Briggs Transp. Co. v. Ranzenberger*, 217 N.W.2d 198, 200 (Minn. 1974) (identifying, among other elements necessary to prove a claim of breach of contract, the formation of a contract). A contract has not formed without an offer, an acceptance of the offer, and consideration for its enforceability. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 626–27 (Minn. 1983). At the threshold, we observe that no Minnesota court has held that the handbooks of private schools generally constitute contracts between the school and the student. We are likewise unaware of any Minnesota case in which the language of any particular school's handbook was held to constitute such a contract. And focusing on Benilde-St. Margaret's handbook, the Husons' complaint, their briefing to the district court, their briefing to this court, and their oral argument to this court, we must conclude that the Husons have chronically failed to identify any handbook language that satisfies the

requisite elements of a contract. We have also examined the handbook, and we see none. Without identifying any language that constitutes a contract, the Husons have no legal basis on which to claim any breach of contract.

Failing to identify any terms that form a contract expressly, the Husons instead offer general references to the handbook and ask us to infer contract-creating terms. It is true that we have recognized that a student may assert a breach-of-contract claim against a private educational institution when a private school fails to provide “specifically promised educational services” it describes in its promotional materials. *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 472–74 (Minn. App. 1999). But unlike the plaintiff in *Alsides*, the Husons do not ask us to infer that the school, which enters into contracts for paid educational services generally, is bound by its promotional materials to provide some specific category of educational services based on promotional enticements that “specifically promised” anything. The Husons seek a greater stretch. They cite language in the handbook laudably describing Benilde-St. Margaret’s general expressions of commitment to providing a positive educational environment and to preventing and punishing chemical abuse. They also cite the school’s warning that “[a]ny student who is determined to have violated [the] Alcohol and Drug Policy” is subject to punishment. From these general statements, the Husons ask us to infer that the school has made an enforceable promise not to impose discipline on any student until after it determines that a student has violated the school’s chemical-abuse policy, and that it will make that determination only after some type of formal investigation. This is too far of a reach. The handbook nowhere puts these alleged restrictions on the school or makes promises to abide by them. Nothing in the handbook

prevents the school from disciplining a student for perceived drug or alcohol offenses in addition to those that are specifically described in the handbook. And nothing in the handbook defines any particular procedure the school must follow before it decides to discipline a student.

The Husons suggest that a jury, not the district court, should be allowed to consider whether a contract exists. It is true that “when the issues are in doubt the existence and terms of a contract are questions for the factfinder.” *McEwen v. State Farm Mut. Ins.*, 281 N.W.2d 843, 845–46 (Minn. 1979). But here the issue of contract formation is not in doubt. We hold that the breach-of-contract claim fails as a matter of law because the Husons failed to proffer any handbook language from which a jury might reasonably conclude that the school made an enforceable promise.

The Husons insist that they were treated unfairly because Benilde-St. Margaret’s did not actually determine whether Gabrielle knew that alcohol was at the party before disciplining her. The Husons point to the text message exchanged among the administrators, apparently after at least one school official determined that Gabrielle should be suspended, which stated, “We will have to make the determination about whether we think she knew or not based on the accounts from other kids (we will not be telling her that).” As a matter of law, the argument is unavailing because general complaints of unfairness do not establish a breach of contract when no contract exists. As a more practical matter, the policy described in the handbook might not be as demanding as the text message suggests. A student violates the alcohol policy when she supplies alcohol at any time, and the term “supply” includes “hosting a party in which alcohol . . . is present.” So even if

school officials doubted whether they could prove that Gabrielle knew alcohol was present, the handbook suggests that she may have violated the policy if alcohol was present, whether or not she knew it was present. Again, no contract regulating the substance or process of the school's disciplinary scheme exists, so we do not explore whether the Husons' party actually constituted a punishable policy violation.

Also concerning procedural fairness, the Husons add that the school's discipline lacked the necessary components of due process protected by the state and federal constitutions and that the district court improperly rejected the constitutional due process claims alleged in their complaint. But we do not consider arguments for reversal that were not raised in an appellant's principal brief. *Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013), *review denied* (Minn. Mar. 18, 2014). And the Husons attempt to raise the issue about the district court's constitutional holding only in their reply brief on appeal, not in their principal brief. Not only did their principal brief contain no citations to constitutional cases or constitutional provisions, it argued specifically only that "a genuine issue of material fact exists as to whether Benilde provided [Gabrielle] Huson with sufficient notice of the allegations against her and opportunity to be heard *in accordance with the handbook*." (Emphasis added). Likewise the Husons have not raised any claims of due process in educational discipline sounding under common-law principles. *See Abbariao v. Hamline University School of Law*, 258 N.W.2d 108, 112–13 (Minn. 1977) (explaining that requirements imposed by the common law on private universities that seek to discipline students mirror those imposed by the due process clause on public universities). We have therefore confined our review to whether a rational trier of fact could

find that Benilde-St. Margaret's discipline process breached any enforceable contract it made with the Husons. We hold that it could not.

II

We turn to whether the Husons have identified a genuine issue of material fact to support their claim that Benilde-St. Margaret's defamed them. They have not. To establish a *prima facie* claim of defamation, a plaintiff must show that the defendant made a false and unprivileged statement to a third party, damaging the plaintiff's reputation in the community. *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 673 (Minn. 2003). But the Husons point to no specific allegedly defamatory statement at all. They again offer only generalizations and characterizations. Under the well-settled rule requiring specific pleading of defamatory language, the Husons' failure is fatal to their defamation claim:

[I]t is well settled that the specific words which have been published must be set out. It is not sufficient to merely state the effect of the language, or that the publication was of a certain defamatory tenor and import. The plaintiff cannot content himself with drawing his own inference from the words published, and then allege such inference, without apprising the defendant of the words of which he complains.

American Book Co. v. Kingdom Pub. Co., 73 N.W. 1089, 1090 (Minn. 1898). This old rule of law requiring specific defamatory language to be pleaded in the complaint survives still under the relaxed, notice-pleading rules. *See, e.g., Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 538 (Minn. App. 1997), *review denied* (Minn. June 11, 1997) ("Finally, the other allegedly defamatory statements were not contained in Benson's complaint. As such, the statements were beyond the scope of his claim."). The Husons' complaint, discovery

responses, briefing to the district court, and briefing to this court on appeal fail to offer a single, quoted, allegedly defamatory statement by anyone.

The Husons' general assertion characterized in their brief is that Benilde-St. Margaret's falsely stated that Gabrielle violated the handbook by hosting a party where alcohol was present, that Christina Huson willingly hosted a party at her home where minors were consuming alcohol, and that Christina Huson coached students on what to say when questioned by Yancy. The Husons do not attribute these statements—if these concepts were ever reduced to statements—to anyone in particular. They quote no one. We have carefully considered the record, and we do not know precisely what was allegedly said, who allegedly said it, to whom it was allegedly said, how it was allegedly said, or when it was allegedly said. Because the pleadings allege only broad characterizations rather than any specific defamatory statement, the Husons' defamation claim cannot survive summary judgment.

The Husons argue that Gabrielle herself may be compelled to make a defamatory statement against herself. Under the doctrine of compelled self-publication, a defendant is liable for putting the plaintiff in a position to make a self-defaming statement if the defendant knows or should know “of circumstances whereby the defamed person has no reasonable means of avoiding publication.” *Lewis v. Equitable Life Assurance Soc. of the U.S.*, 389 N.W.2d 876, 888 (Minn. 1986). For example, when an employer discharges an employee under the employer's false assertion that the employee has engaged in gross insubordination, that “former employer in a compelled self-publication case may be held liable as if it had actually published the defamatory statement directly to prospective

employers” if the employee must answer the question of why she was discharged from that employment. *Id.* at 889. The Husons argue that Gabrielle will be similarly compelled to report on college applications that she was suspended for hosting a party where alcohol was present.

The school and the Husons argue about whether the claim is too speculative to avoid dismissal in that the claim merely assumes that Gabrielle will apply to, and be rejected by, a college that requires her to disclose a two-day suspension. We need not address whether the Husons have presented sufficient evidence on that dispute because the Husons’ defamation-by-self-publication claim falls under Benilde-St. Margaret’s qualified privilege. A defamatory statement may be privileged if it is made on a proper occasion, with a proper motive, and on reasonable grounds. *Elstrom v. Indep. Sch. Dist. No. 270*, 533 N.W.2d 51, 55 (Minn. App. 1995), *review denied* (Minn. July 27, 1995). “Reasonable grounds can exist if a person has valid reasons for believing a statement, even though the statement later proves to be false.” *Id.* When a school administrator’s statements are based on an investigation, reasonable grounds for making the statements exist. *Id.* Flawed or not, the school’s suspension rested on an investigation of some substance. This supports the privilege.

The Husons correctly argue that a qualified privilege can be lost if it is abused, and they contend that Benilde-St. Margaret’s abused its qualified privilege. To defeat the defense of qualified privilege, the plaintiff must show that the defendant’s actual malice led to the statement. *Stuempges v. Park, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980). While actual malice is generally a question for the jury, *id.*, no genuine issue of material

fact as to actual malice exists unless the evidence would support the finding that the defendants entertained serious doubts as to the truth of the defamatory statement, *Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W.2d 476, 488 (Minn. 1985). The Husons assert that Yancy laughed after Gabrielle complained about the possible adverse effects that her suspension would have on her hockey career and insisted that she should receive special treatment. This, they maintain, is proof of the school's malice. We assume for the sake of summary judgment that Yancy laughed. His laughter in this situation does not present a genuine issue of material fact as to whether Benilde-St. Margaret's acted with actual malice by suspending Gabrielle. Proving actual malice requires, among other things, a showing that the defendant had serious doubts about the truth of the allegedly defamatory statement. *Elstrom*, 533 N.W.2d at 56. It is therefore not enough that Yancy expressed some insensitivity toward Gabrielle or even amusement in her punishment. The Husons have identified no evidence that anyone responsible for suspending Gabrielle for violating the school's alcohol policy had any serious doubts that she hosted a party where alcohol was present. Yancy reported that party attendees told him they saw alcohol there. And, although Gabrielle submitted her own deposition testimony contradicting Yancy's account by denying she had personally seen any alcohol, the Husons offered no admissible evidence to contradict Yancy's recounting of what other students reported. Because the Husons presented no evidence that anyone at the school who was involved in the decision to suspend Gabrielle actually knew any statement about Gabrielle was false or had serious doubts about any statement's truthfulness, the district court rightly granted summary judgment against the claim of defamation by compelled self-publication.

III

The Husons argue that the district court improperly denied their motion to amend their complaint to add a gender-discrimination claim on the contention that boys were given favorable treatment and not suspended for similar infractions. According to the Husons, the district court lacked jurisdiction to deny their amendment motion. We review claims of subject-matter jurisdiction and personal jurisdiction de novo. *State v. Losh*, 755 N.W.2d 736, 739 (Minn. 2008) (subject-matter jurisdiction); *Volkman v. Hanover Invs., Inc.*, 843 N.W.2d 789, 794 (Minn. App. 2014) (personal jurisdiction). The Husons maintain that the district court had no jurisdiction to deny their motion to amend because the district court had already granted Benilde-St. Margaret's motion for summary judgment by the time it addressed the amendment motion.

We reject the argument that the district court had no jurisdiction to deny the motion to amend. A district court retains jurisdiction until it enters judgment and the judgment becomes final. *See N. Star Int'l Trucks, Inc. v. Navistar, Inc.*, 837 N.W.2d 320, 322–23 (Minn. App. 2013). Under this framework, for example, a district court retains jurisdiction and may even amend its prior orders until the order becomes final. *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 906 (Minn. 1998). In this case, no judgment had yet been entered on the summary judgment order, let alone become final, when the district court decided the Husons' motion to amend. The district court's order granting the school's summary judgment motion did not divest the court of jurisdiction to decide the Husons' pending motion to amend.

The Husons cite the 1953 supreme court opinion of *Love v. Anderson* in maintaining that the district court had no jurisdiction to decide their motion to amend their complaint after deciding summary judgment against them. 61 N.W.2d 419, 420 (Minn. 1953). Their reliance on *Love* is misplaced. In *Love*, the defendants filed a motion to dismiss the plaintiff's fraud complaint, which the supreme court described as "ambiguous, incoherent, contradictory, and largely unintelligible," for failure to state a claim. *Id.* at 421. The plaintiff had also filed his own motion for summary judgment, and he argued on appeal that the district court was bound to have decided that motion as well. The *Love* court rejected the argument, stating, "The granting of defendant's motion to dismiss the action ended the action. Thereafter the court was without jurisdiction to render any judgment either for or against the plaintiff other than to enter judgment of dismissal." *Id.* The Husons attempt to unmoor the *Love* holding from its berth. Neither the supreme court nor this court has ever extended the operative statement in *Love* to forbid a district court from resolving issues that remain viable after it has made a dispositive decision on other issues. The *Love* plaintiff's motion for summary judgment was necessarily entirely resolved by the district court's order dismissing all of his claims under the defendant's competing dispositive motion; so in that case, any decision either for or against *Love*'s summary judgment motion was, in a literal sense, outside the district court's authority on the jurisdictional ground of mootness. By contrast here, the Husons' motion to amend the pleading was not mooted by summary judgment because the attempted amendment ostensibly raised claims that were factually and legally independent of the claims dismissed by the district court's summary judgment order.

It is true that appellate decisions have repeatedly declared that complaint “amendments should be freely granted, except where to do so would result in prejudice to the other party.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *Metro Bldg. Cos., Inc. v. Ram Bldgs., Inc.*, 783 N.W.2d 204, 210 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010) (“The district court should liberally grant motions to amend when justice requires and doing so will not result in prejudice to the adverse party.”) (Quotation omitted)). But we take no position on the question of whether the district court abused its discretion by denying the Husons’ motion to amend their complaint. This is because on appeal the Husons have challenged only the district court’s authority to deny their motion to amend based on the jurisdiction of the court, not the propriety of the district court’s exercise of its discretion based on the substance of their motion.

Affirmed.

A handwritten signature in blue ink, appearing to read "Kevin G. Row". The signature is fluid and cursive, with a large initial "K" and a stylized "R".