

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1055**

Jomari E Alexander, Sr.,
Appellant,

Majestic Dreams Holding Co., Plaintiff,

vs.

Laurie Ball, Respondent.

**Filed June 1, 2021
Affirmed
Bryan, Judge**

Scott County District Court
File No. 70-CV-19-17264

Jomari E. Alexander, Sr., Minneapolis, Minnesota (pro se appellant)

Jeffrey M. Markowitz, William J. McNulty, Bradley L. Idelkope, Arthur Chapman,
Kettering, Smetak and Pikala, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's decision to grant summary judgment and dismiss his defamation claim. We conclude that because the statements are substantially true, the district court did not err in granting summary judgment.

FACTS

In August 2019, respondent Laurie Ball hired appellant Jomari Alexander and his company, Majestic Dreams Holding Co., to perform work on a townhome she had purchased. Alexander offered Ball certain discounts and agreed to paint the ceilings, laundry room, and bathroom, as well as make other improvements, such as replacing light fixtures. Alexander began painting, and Ball purchased a bathroom light for \$100 which Alexander installed for \$250. Shortly after, a dispute arose between the parties. Ball was unhappy with the quality of Alexander's work, and Alexander felt Ball was being unreasonable in her behavior and demands. Alexander sent Ball an invoice but Ball refused to pay. Alexander then informed Ball that he would revoke the offered discounts and enforce the contract in court if Ball continued to refuse to pay. Ball sent Alexander photos of the areas that were either not painted or painted incorrectly, and the parties continued to discuss the possibility of going to court. Alexander eventually agreed to repaint and address Ball's concerns, but warned Ball that if she was disrespectful to him, he would revoke her discounts for "creating a hostile work environment." Alexander repainted and remedied the areas of concern, and Ball paid him for the work he completed.

Ball then posted the following online review:¹

We hired Painting Simplified. I was contacted immediately and they started immediately the following week to paint our new townhome that we just purchased. Seemed very nice couple [sic]. From start to finish it took almost a month to complete. The owner was sick so it took longer than planned. The team included [Alexander (the owner), his wife], and their son. They were hired to paint my popcorn ceilings and my

¹ Majestic Dreams Holding Co. sometimes does business as Painting Simplified.

laundry room. I also was going to hire them to repaint my garage but now have decided we will do it ourselves. *Along with that I had them replace a bathroom light (which cost me \$350 to do and I even bought the light), replace a toilet and replace the inside fixture of another toilet, replace six electric cans with new ones (\$360), and a few minor repairs.* The following week I returned to our townhome where my ceilings were very spotty and streaked where they had painted. They said their son was just learning and would fix it up to make it right. After they left I was cleaning my cupboards and saw so many spots that were either not painted or as they said didn't cover because they were trouble spots because of the normal wear and tear of cooking in a kitchen. In short it took at least two more times to get it right but it was almost through going to court. *They said I was a hostile person because I refused to pay them the remainder of the bill even though the ceilings as pictured showed they were not done correctly. They also threatened to charge me more for work that they promised to do in the first place saying they had to come back to make it right.* I told them it should have been done right from the first time. One of the things they did when they touched up is used two different whites. That was not my problem that was their mistake. However it became my problem and I was being hostile because I refused them to pay them until it was done correctly. I never ever raised my voice but told them that I was very frustrated with the workmanship and quality of work. Also my laundry room was done so poorly. No effort by their son to even stretch his arms to try to get behind anything such as a furnace or water softener where there were at least six inches behind to reach it. [Alexander] did come back and fix my ceilings and repainted the areas in my laundry room. That's after the fact he threaten to [sic] take me to court and I said I would be happy to show the judge the workmanship of the painting. He did come back and I paid the bill and happy to be done with them.

(Emphasis added.)

On October 11, 2019, Alexander filed a complaint against Ball alleging that the online review amounted to defamation per se.² Both parties moved for summary judgment. In relevant part, the district court considered three statements from the review.³ The district court determined that the statement “[a]long with that I had them replace a bathroom light (which cost me \$350 to do and I even bought the light)” is substantially true because the entire job cost \$350 and Ball did buy the light. The district court determined that the statement “[t]hey said I was a hostile person” is substantially similar to stating that Ball “created a hostile work environment,” which Alexander acknowledged saying. The district court also determined that the statement “[t]hey also threatened to charge me more for work that they promised to do in the first place saying they had to come back to make it right” is substantially true because Alexander did threaten to revoke discounts. The district court

² Alexander later amended his complaint to include Majestic Dreams Holding Co. as a plaintiff. On appeal, Alexander attempts to appear pro se on behalf of himself and Majestic Dreams. But Minnesota Rule of Civil Appellate Procedure 143.06 requires that all briefs, motions, notices, and petitions filed with this court be signed by a licensed attorney with the exception that self-represented litigants may sign only for themselves. Minn. R. Civ. App. P. 143 advisory comm. cmt. (2016). Additionally, “[i]t is well settled under Minnesota common law that a corporation must be represented by an attorney in legal proceedings.” *Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307, 309 (Minn. 2005). Because Alexander is not a licensed attorney, we limit this appeal to Alexander’s personal claims.

³ The district court considered seven statements from the review, but Alexander’s principal brief concerns only three of those statements. We need not address the other statements. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) (discussing the principle that issues not raised or argued in an appellant’s principal brief cannot be raised in a reply brief); *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) (“If an argument is raised in a reply brief but not raised in an appellant’s main brief, and it exceeds the scope of the respondent’s brief, it is not properly before this court and may be stricken from the reply brief.”), *review denied* (Minn. Feb. 26, 2003).

concluded that no question of fact remained regarding the truth of any of the three statements and granted summary judgment in Ball's favor.

Alexander then moved for reconsideration and the district court granted the request. In its following order, the district court explained that, under the substantial truth test, statements are incapable of carrying a defamatory meaning if any reasonable person could find the alleged defamatory statements to be supportable interpretations of what was actually stated. The district court applied the substantial truth test and declined to change its decision. Alexander appeals.

DECISION

Alexander argues that the district court erred when it determined that the three statements in question are true. Because the statements in questions are reasonable interpretations of undisputed facts, we agree with the district court that the statements are substantially true and incapable of carrying a defamatory meaning.

Among other elements, a plaintiff pursuing a defamation claim must prove that the defendant made "a false and defamatory statement about the plaintiff." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019); *see also McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013) ("The plaintiff has the burden of proving falsity in order to establish a successful defamation claim."). "Truth is a complete defense to a defamation action and true statements, however disparaging, are not actionable." *McKee*, 825 N.W.2d at 730 (quotation omitted). "If the statement is true in substance, minor inaccuracies of expression or detail are immaterial," and "do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge is justified." *Id.* (citations omitted). We apply the

“substantial truth test” to determine whether a statement is true in a defamation action. See *id.*; *Bebo v. Delander*, 632 N.W.2d 732, 740 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). Under that test, a statement that has multiple interpretations is not defamatory, if one reasonable interpretation of the statement is substantially true:

A commentator who advocates one of several feasible interpretations of some event is not liable in defamation simply because other interpretations exist. Consequently, remarks on a subject lending itself to multiple interpretations cannot be the basis of a successful defamation action because as a matter of law no threshold showing of “falsity” is possible in such circumstances. See *Bose Corp. v. Consumers Union*, 466 U.S. 485, 512-13, 104 S. Ct. 1949, 1966, (1984) (allegedly defamatory criticism of speaker system in consumer magazine not actionable because criticism was “‘one of a number of possible rational interpretations’ of an event ‘that bristled with ambiguities’ and descriptive challenges for the writer”) (quoting *Time, Inc. v. Pape*, 401 U.S. 279, 290, 91 S. Ct. 633, 639, 28 (1971)); *Washington [v. Smith]*, 893 F. Supp. [60,] 64 [(D.D.C. 1995)] (allegedly defamatory assessment in sports preview magazine of plaintiff’s coaching ability inactionable because “[r]easonable minds can interpret the statistics [interpreted by commentator] differently”).

Hunter v. Hartman, 545 N.W.2d 699, 707 (Minn. App. 1996), *review denied* (Minn. June 19, 1996). “[T]he substantial truth test is broad: if any reasonable person could find the statements to be supportable interpretations of their subjects, the statements are incapable of carrying a defamatory meaning, even if a reasonable jury could find that the statements were mischaracterizations.” *Id.* (quotation omitted).

Summary judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “[S]ummary judgment is mandatory against a party who fails to establish an essential

element of the claim, if that party has the burden of proof, because this failure renders all other facts immaterial.” *Bebo*, 632 N.W.2d at 737. We review the district court’s grant of summary judgment de novo “to determine whether genuine issues of material fact exist and whether the district court correctly applied the law.” *McKee*, 825 N.W.2d at 729. In addition, “the question of whether a statement is substantially accurate is one of law for the court.” *Jadwin v. Minneapolis Star & Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

In this case, Alexander argues that the district court erred because he believes that a question of fact exists regarding whether each of the three statements is true or false. We are not convinced. Alexander’s argument does not recognize the substantial truth test, and contrary to his argument, we cannot apply a different test. Moreover, we discern no genuine issues of material fact in applying the substantial truth test; each of the three challenged statements is substantially true. We address each statement in turn.

In her review, Ball commented that “[a]long with that I had them replace a bathroom light (which cost me \$350 to do and I even bought the light).” Alexander does not dispute that Ball paid him \$250 to install a light and that the light cost her an additional \$100 to purchase. Instead, Alexander argues that the statement is defamatory because one possible interpretation of the true statement is false. Specifically, Alexander argues that the statement could be interpreted to mean that Ball paid Alexander \$350 to install the light in addition to the cost of the light, which would be false. Applying the proper test, the statement is substantially true because a reasonable person could conclude that Ball spent \$350 to replace the light. In other words, because a “reasonable person could find [Ball’s]

statements to be supportable interpretations of their subjects, the statements are incapable of carrying a defamatory meaning.” *Hunter*, 545 N.W.2d at 707 (quotations omitted).⁴

Ball also made the statement that Alexander “said I was a hostile person because I refused to pay them the remainder of the bill even though the ceilings as pictured showed they were not done correctly.” Alexander claims this statement is false because he did not call her “a hostile person,” but instead told her that she created a hostile environment.⁵ Again, we disagree. The distinction between calling someone a particular kind of person and saying that that person creates that particular kind of environment is a minor difference. *See Jadwin*, 390 N.W.2d at 441 (“If the statement is true in substance, inaccuracies of expression or detail are immaterial.”). The two statements are substantially similar such that a reasonable person could interpret a claim that Alexander called Ball a hostile person as consistent with a claim that Alexander told Ball that she created a hostile environment.

Last, Ball commented that “[t]hey also threatened to charge me more for work that they promised to do in the first place saying they had to come back to make it right.”

⁴ While the substantial truth test is dispositive, we also note that this statement is not defamatory. “In order for a statement to be defamatory, it must tend to harm the plaintiff’s reputation and lower him in the estimation of the community.” *McKee*, 825 N.W.2d at 731. “Whether a defamatory meaning is conveyed depends upon how an ordinary person understands the language used in the light of surrounding circumstances.” *Id.* (quotation omitted). “The question of whether a statement’s language reasonably conveys a defamatory meaning is one of law.” *Id.* Alexander stated that charging \$350 to install the light was very reasonable by industry standards. Charging someone a reasonable price does not harm Alexander’s reputation or lower him in the estimation of the community.

⁵ Ball argues that because she interpreted Alexander’s statement as calling her a hostile person, her statement is pure opinion protected by the First Amendment. *See Hunter*, 545 N.W.2d at 707. We need not decide whether calling someone hostile is a statement of opinion because saying that someone called another person hostile is a statement of fact.

Alexander asserts that this statement is false because he says he only threatened to revoke a previously promised discount; he did not threaten to increase the cost of his work. The distinction made by Alexander is not sufficient to raise a question of fact regarding the truth of Ball's statement. Revoking a discount is one way that Alexander could increase the charged amount for his work. Because Ball's statement is a supportable interpretation of the undisputed fact, it does not substantially deviate from the truth.

The district court properly applied the law, and we affirm its decision to grant Ball's motion for summary judgment of Alexander's defamation claims.

Affirmed.