

*This opinion is nonprecedential except as provided by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
A22-0365**

John P. Norusis,
Appellant,

vs.

John Goodfellow, et al.,
Defendants,

Peter Reich, et al.,
Respondents,

Andrew Kramer, et al.,
Respondents,

Larry Whitaker et al.,
Respondents.

**Filed August 15, 2022
Affirmed
Florey, Judge***

Washington County District Court
File No. 82-CV-21-1444

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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Considered and decided by Ross, Presiding Judge; Frisch, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant challenges the summary-judgment dismissal of his defamation claims against respondents, arguing that the district court erred by concluding that appellant's claims had no merit and abused its discretion by denying appellant's motion for leave to amend his complaint. Because we see no error and no abuse of discretion in the district court's decisions, we affirm.

FACTS

Respondents Andrew and Karen Kramer, Anne and Peter Reich, and Larry and Mary Whitaker are residents of properties adjacent to or near a property on Pine Cone Trail (the property) in the City of Marine on St. Croix (the city). In 2018, appellant John P. Norusis purchased the property, which he used for short-term rentals and events until the city enacted an ordinance prohibiting that use. Norusis brought an action, 82-CV-20-3974, against the city disputing the ordinance.

A private driveway to another Pine Cone Trail property crosses Norusis's property, and the residents of that property, John Goodfellow and Kirsten Vadheim, had an easement to use the driveway for themselves and their invitees. Norusis disputed their use of the easement and brought an action, 82-CV-21-1370, against them. Norusis also told people

walking along the easement that they were trespassing and brought actions against the alleged trespassers, including Andrew and Karen Kramer, 82-CV-21-1045.

In 2020, several residents, including Mary Whitaker, complained about Norusis to a Marine on St. Croix City Council member who is also a police officer in another jurisdiction. The council member investigated and provided some information and advice on dealing with Norusis to respondents.

Norusis then brought an action against the council member, 82-CV-20-4275, alleging that he had used law-enforcement databases to obtain information on Norusis and had interfered with Norusis's prospective customer relationships. In his response to Norusis's interrogatories, the council member said that Anne Reich and Mary Whitaker had told him that: (1) "Norusis was physically and verbally threatening them," (2) "they were aware that Norusis has a violent criminal history," (3) Anne Reich had received a "cease and desist" letter from Norusis requesting them to stop walking on the easement, and (4) the two women "were shaking and crying while talking to . . . [the council member] about . . . Norusis." The council member also said that the women were concerned because Norusis had "physically confronted residents and non-residents . . . walking along Pine Cone Trail, informing them that they were trespassing on his property and threatening legal action" and because "residents felt physically threatened by . . . Norusis due to his behavior during these encounters being perceived as physically aggressive in both body language and tone of voice."

In April 2021, based on the council member's responses to the interrogatories, Norusis brought this action against respondents, claiming defamation and tortious

interference with prospective business advantage.¹ The defamation claim was based on statements allegedly made by some or all of the respondents that: (1) Norusis had physically and verbally threatened them and others, (2) Norusis had a violent criminal history, (3) Norusis was a violent criminal, and (4) Norusis had physically confronted residents and non-residents of Pine Cone Trail who were walking along Pine Cone Trail.

Anne Reich was deposed in September 2021. Her deposition responses caused Norusis to move to amend his complaint by adding further facts supporting the defamation claim and a claim for punitive damages. In November 2021, respondents moved for summary judgment.

A hearing was held on the parties' motions in December 2021. Although Norusis's claims in this action were based solely on what the council member said in his responses to interrogatories in Norusis's action against him, the council member did not appear at the hearing because he was unavailable. At the hearing, the parties agreed with the district court that it made sense to address respondents' summary-judgment motion before Norusis's motion to amend his complaint and that Norusis's claim of tortious interference with prospective business advantage was not actionable.

The district court asked Norusis's attorney to identify the allegedly defamatory statements and those who had made them. Norusis's attorney replied, "We've learned during discovery, that it was [only] Anne Reich and Mary Whitaker that those statements

¹ Norusis also brought this action against John Goodfellow and Kirsten Vadheim. Goodfellow and Vadheim settled with Norusis and were dismissed prior to the summary-judgment hearing. They take no part in this appeal.

are attributable to,” and agreed when asked if the only two statements under consideration were that Norusis “has physically and verbally threatened [respondents] and others” and “has physically confronted residents and non-residents of Pine Cone Trail while walking along Pine Cone Trail.”²

After the hearing, the district court granted respondents’ motion for summary judgment, denied Norusis’s motion to amend, and awarded respondents their “reasonable costs and disbursements.” Norusis challenges both the grant of summary judgment, arguing that the district court erred by viewing the facts in the light most favorable to respondents and by resolving factual disputes, and the denial of his motion for leave to amend his complaint, arguing that it was an abuse of discretion.

DECISION

I. Grant of Summary Judgment

A grant of summary judgment is reviewed de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Summary judgment may be granted “when there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. A genuine issue of material fact exists when there is sufficient evidence regarding an essential element [of the claim] to permit reasonable persons to draw different conclusions.” *St. Paul Park Ref. Co. v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2020) (citations and quotations omitted). A genuine issue of

² The defamation claims as to statements that Norusis had a violent criminal history and was a violent criminal were dismissed because the statements were true: he had previously pleaded guilty to or been convicted of crimes of violence.

material fact is presented only when there is “sufficient evidence to allow reasonable persons to reach different conclusions on the issue.” *BFI Waste Sys. of N. Am., LLC v. Bishop*, 927 N.W.2d 314, 323 (Minn. App. 2019). Summary judgment will be affirmed if it can be sustained on any grounds. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995) (citation omitted), *rev. denied* (Minn. Feb. 13, 1996). The evidence is reviewed in the light most favorable to the nonmoving party. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). However, the nonmoving party “may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulated evidence that might be developed at trial, or metaphysical doubt about the facts.” *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004).

A. The statement that Norusis physically and verbally threatened Anne Reich, Mary Whitaker, and others

Norusis argues first, as he argued to the district court, that by telling the council member that Norusis had verbally and physically threatened them, Anne Reich and Mary Whitaker were falsely accusing Norusis of the crimes of terroristic threats under Minn. Stat. § 609.713, subd. 1 (2020), or assault under Minn. Stat. § 609.02, subd. 10 (2020), and therefore the statement was defamation per se. “Statements are defamatory per se if they falsely accuse a person of a crime, of having a loathsome disease, or of unchastity, or if they refer to improper or incompetent conduct involving a person’s business, trade, or profession.” *Longbehn v. Schoenrock*, 727 N.W.2d 153, 158 (Minn. App. 2007).

The district court concluded that:

Norusis has not proven that the statement is capable of being defamatory *per se* . . . [because it] is too vague to rise to the

level of assault and terroristic threats, nor is it a false statement about his business, trade or professional conduct. Mary Whitaker and Anne Reich never reported assault or the threats to the police. . . . A reasonable person would also not hear the phrase “physical and verbal threats” and understand that to mean Norusis committed an assault or made terroristic threats.

Norusis relies on *Wilkes v. Shields*, 64 N.W. 921, 921 (Minn. 1895) (holding that “[a] publication which charges the plaintiff with being ‘a dangerous, able, and seditious agitator’ is . . . actionable per se”), and argues that “[t]he false statements in *Wilkes* are eerily similar to the false statements by [respondents].” But *Wilkes* is distinguishable. First, it concerned a printed statement and directly quoted the author’s language. Here, as the district court noted, the allegedly defamatory per se statement was not a direct quotation.³ Second, *Wilkes* observed that the challenged language charged a person

with being a disturber of public tranquility, and guilty of acts tending to the breach of public order, all of which is inimical to good society and the highest and best interests of the people . . . [and] make[s] the person therewith charged an object of public distrust, reproach, and contumely.

Id. The unquoted statement of two women to a fellow citizen about a neighbor does not rise to this level. Norusis’s reliance on *Wilkes* is misplaced.

Because Norusis’s defamation per se argument fails, he must show that the statement harmed his reputation in the community and provide direct evidence of that harm. See *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013) (stating that one of

³The district court added that, “[i]n viewing the evidence in the light most favorable to [Norusis], the [district c]ourt will analyze these statements at face value, but there is a good argument to be made that [Norusis] mischaracterized what Mary Whitaker and Anne Reich said.”

the four elements of a defamation claim is that the statement must tend to harm the complainant's reputation and lower the complainant in the estimation of the community);⁴ *Bebo v. Delander*, 632 N.W.2d 732, 739 (Minn. App. 2001) (stating that, for a defamation claim to be actionable, complainants must also prove that they have suffered actual damages), *rev. denied* (Minn. Oct. 16, 2001). The district court concluded that Norusis had neither shown that the statement harmed his reputation nor provided direct evidence of any harm.

[He] did not identify specific customers that he lost directly because of the alleged defamatory statement. There must be a causal connection between the statements and reputation. . . . He admitted he does not know why [one customer] didn't follow up with him, and there is no evidence that she decided not to do business with Norusis due to anything [Anne Reich or Mary Whitaker] had said. . . . [T]here is no evidence that [another customer] lost contact with Norusis because of any defamatory statements.

Norusis asserts in his brief that "the unrefuted evidence in the record was that [he] had a proven record of garnering substantial business . . . , but because of . . . defamation, his reputation was harmed and lowered in the estimation in the community and he suffered a one-year loss of net income totaling \$595,000," but he offers only evidence of his lost income, not of the causation of the loss. There is no basis to overturn the summary judgment granted as to this statement.

⁴ The other three elements are that the statement must have been communicated to someone other than the complainant, the statement must be false, and the recipient of the statement must reasonably understand that it refers to a specific individual. *Id.* at 729-30.

B. The statement that Norusis physically confronted residents and non-residents of Pine Cone Trail, who felt physically threatened

The district court noted that “[t]his statement would fall into the category of defamation by implication,” or “truthful statements that imply defamatory content.” Defamation by implication “occurs when a defendant (1) juxtaposes a series of facts to imply a defamatory connection between them or (2) creates a defamatory implication by omitting facts.” *Metge v. Cent. Neighborhood Improvement Ass’n*, 649 N.W.2d 488, 498 (Minn. App. 2002), *rev. dismissed* (Minn. Oct. 15, 2002).

Norusis argues that, because “[a] physical confrontation implies violence, a fight, or some kind of physical touching,” and there is no evidence that he “touched or was otherwise physical with any individuals on Pine Cone Trail,” the statement cannot be true. The district court rejected Norusis’s argument and concluded that, to a reasonable person, the words “physical confrontation” would not imply “a violent confrontation or anything more than a dispute between neighbors” and supported this position by Anne Reich’s testimony that, to her, physical confrontation meant “simply . . . stopping someone in an aggressive way for a conversation.”

The district court further concluded that the statement is substantially true and is supported with Norusis’s own testimony that he had interactions with numerous individuals walking on Pine Cone Trail, informed them that they were trespassing, threatened legal action against them for trespassing, and pursued legal claims for trespassing. This defamation claim on this statement was also defeated by the lack of evidence that Norusis’s reputation had suffered.

There was no error in granting summary judgment as to this statement.

II. Denial of Motion to Amend

A district court's denial of a motion to amend may be reversed only for an abuse of discretion. *Copeland v. Hubbard Broad., Inc.*, 526 N.W.2d 402, 405 (Minn. App. 1995), *rev. denied* (Minn. Mar. 29, 1995). Although Minn. R. Civ. P. 15.01 provides that leave shall be "freely given," a district court "may . . . properly deny a motion to amend when it would serve no useful purpose." *Bridgewater Tel. Co. v. City of Monticello*, 765 N.W.2d 905, 915 (Minn. App. 2009). Norusis moved for leave to amend his complaint by adding two statements that he alleged were defamatory and a claim for punitive damages.

A. Allegedly defamatory statements

The first statement was that some respondents called Norusis "belligerent." The only respondent found to have used the word was Peter Reich. During his deposition, he said, "[M]y wife felt that [Norusis] was belligerent and aggressive to her. She came in the house and was crying. She felt threatened and intimidated." When asked if Norusis had threatened physical harm against him other than verbally, he answered, "By dint of his overall belligerence and aggressiveness and hostility, he frightens people, including me, and especially my wife, and makes us afraid." When asked if Larry or Mary Whitaker had told him Norusis was belligerent, Peter Reich said, "Yes, in different words"; when asked what words they used, he answered, "I don't remember, but the sense was very much the same."

There is no evidence that Anne Reich ever said Norusis was belligerent. Andrew Kramer, when asked if Peter Reich had told him Norusis was belligerent, said "No," and

when asked the same question about Anne Reich, said “I don’t recall her using that exact term” and added, “but the general meaning of that in terms of somebody that has a belligerent disposition, yes, she has mentioned that she believes he is that way toward her sometimes.”

As the district court noted, saying someone is belligerent “amounts to name-calling.” Relying on the Restatement (Second) of Torts § 566 cmt. e (1977), the district court added that “people often engage in name calling without any real intent to make a defamatory assertion, and it is properly understood by reasonable listeners to amount to nothing more.” Amending Norusis’s complaint to add the statements of how various people felt as a result of his belligerence would have served no purpose; the motion to add them was properly denied. *See Bridgewater*, 765 N.W.2d at 915.

The second statement Norusis wanted to add was that Anne Reich told other defendants, including Karen Kramer, that “she felt threatened by Norusis,” about which she had testified during her deposition.

Q. Has anybody ever told you they felt physically threatened by Mr. Norusis?

A. Yes.

Q. Who?

A. Karen Kramer.

....

Q. When did Karen Kramer tell you she felt physically threatened by Mr. Norusis?

A. I don’t know.

....

Q. Did . . . Karen Kramer explain to you why she felt physically threatened by Mr. Norusis?

A. His manner is aggressive. It’s intimidating.

Q. Is that your testimony, or is that what Karen Kramer told you?

A. She said—I don't recall exactly, but I think—yeah.

Q. . . . [A]re you testifying that you believe Mr. Norusis is aggressive and intimidating or that Karen Kramer told you Mr. Norusis is intimidating and aggressive?

A. I feel intimidated.

Q. And why is it that you feel intimidated by Mr. Norusis?

A. Most interactions have been tense, which is a surprise in a neighborhood where people tend to be friendly.

. . . .

Q. I want to go back to the questions and close off what Karen Kramer had talked to you about. . . . Did Ms. Kramer actually use the words "aggressive" and "intimidating"?

A. Not that I recall.

Q. So when Ms. Kramer told you that she felt physically threatened, did she explain to you why?

A. Just body language I guess. I don't know.

Q. Did she describe to you what she meant by body language as to why she felt physically threatened by Mr. Norusis?

A. No.

Q. How many times has Ms. Kramer told you she felt physically threatened by Mr. Norusis?

A. Once.

. . . .

Q. Other than Karen Kramer, are you aware of any residents feeling physically threatened by Mr. Norusis?

A. Yes.

Q. Who else?

A. My husband.

. . . .

Q. Other than Charlie Anderson, Mary Whitaker, and your husband, who else have you told that you felt threatened by Mr. Norusis?

A. I don't recall.

Q. Well, have you told John Goodfellow and Kitsi Vadheim you felt threatened by Mr. Norusis?

A. We talk as neighbors, yes.

Q. My question is, though, not just talking as neighbors –

A. I can't think of every single, you know, I'm sorry, it's a—I cannot answer that specifically.

Q. Okay. . . .

A. Yes, [I] felt threatened, but not this physical thing. I mean, threatened, yes.

....

Q. Did you tell Karen Kramer that you felt threatened by Mr. Norusis?

A. Probably. We're friends.

Q. Did you tell Larry Whitaker that you felt threatened by Mr. Norusis?

A. Yes.

Q. Did you tell Mary Whitaker that you felt threatened by Mr. Norusis?

A. Yes. We're all neighbors.

Q. Did Mary Whitaker tell you she felt threatened by Mr. Norusis?

A. I don't recall.

The district court stated that “Norusis bases his motion [for leave to amend] on Anne Reich’s testimony that on one occasion, she believed Karen Kramer told her that she felt physically threatened by Norusis.” The district court concluded that “Anne Reich’s statement [that she felt threatened by Norusis] and her conversation with Karen Kramer cannot purposefully support Norusis’s defamation claim” because the statement “is not grounded in facts or factual connotations that could be proven false.” We agree; statements of how people felt are statements of opinion, not of fact.

Finally, adding a claim for punitive damages to Norusis’s complaint would have required “clear and convincing evidence that the acts of [respondents] show[ed] deliberate disregard for the rights or safety of others.” *See* Minn. Stat. § 549.20, subd. 1(a) (2020). To meet that standard, a defendant must either know facts or intentionally disregard facts that create a high probability of injury to others and either deliberately proceed to act in conscious or intentional disregard of the high degree of probability of injury to others or deliberately proceed to act with indifference to the high probability of injury to others. *Id.*, subd. 1(b) (2020). Norusis argues that, by stating that he committed crimes they knew

never happened, Anne Reich and Mary Whitaker falsely accused him of a crime, and “[f]alsely accusing someone of a crime is the quintessential definition of intentionally disregarding the high probability that it will injure the other’s reputation.” But Norusis has shown neither injury to his reputation nor, as the district court noted, “any evidence suggesting [Anne Reich and Mary Whitaker] had the requisite state of mind to deliberately disregard Norusis’s rights or safety.” There was no basis for awarding Norusis punitive damages against them.

The district court did not abuse its discretion in denying Norusis’s motion for leave to amend his complaint.

Affirmed.