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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1554**

John Green,
Appellant,

vs.

Greg Kellen,
Respondent.

**Filed May 27, 2014
Affirmed in part, reversed in part, and remanded
Stauber, Judge**

Big Stone County District Court
File No. 06CV12233

Gregory P. Grajczyk, Boos & Grajczyk, L.L.P., Milbank, South Dakota (for appellant)

Ronald R. Frauenshuh, Jr., Ortonville, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and
Kirk, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from a judgment following a bench trial on the issue of damages stemming from appellant's conversion, trespass, and defamation claims, appellant argues that the district court erred by denying his motion for judgment on the pleadings with respect to damages, and concluding that his summary-judgment motion was mooted by

the partial judgment on the pleadings. Appellant also challenges the district court's award of \$2,000 in general reputation damages on his defamation claim, and the court's finding that the evidence of special damages was insufficient to support an award of such damages. We affirm in part, reverse in part, and remand.

FACTS

Appellant John Green and respondent Greg Kellen were friends who shared farming equipment and occasionally stored equipment on each other's property. After the parties had a "falling out," appellant commenced this action against respondent for conversion, trespass, and defamation. Specifically, appellant alleged that respondent refused to allow him to retrieve some farming equipment from respondent's property. Appellant also alleged that (1) respondent "did enter upon a corn field of [appellant's] and take part of the corn crop of [appellant], causing damage to the field at the same time" and (2) respondent has "slandered [appellant] by maliciously spreading false and defamatory statements about [appellant] throughout the community."

After suit was filed by appellant, respondent returned the equipment in question to appellant. Respondent also filed an answer to the complaint, admitting that he converted appellant's property, defamed appellant, and trespassed on appellant's land, causing damage. Based on respondent's answer, appellant filed a motion for judgment on the pleadings and a motion for summary judgment. The district court found that "[b]y virtue of [respondent's] answer," he had "essentially conced[ed] liability and causation on all three counts for conversion, trespass, and defamation." Thus, the court granted appellant's motion for judgment on the pleadings for liability and causation for all three

counts in respondent's complaint. But the court also concluded that because appellant "failed to plead his damages with specificity," his "request for judgment on the pleadings with respect to the issue of damages is denied and must be determined at trial." The court further concluded that "[s]ince the Court has granted [appellant's] motion for judgment on the pleadings, [his] motion for summary judgment is moot."

A bench trial was held on the issue of damages. Following trial, the district court declined to award damages "against [respondent] for any trespass that was committed" because appellant "introduced no evidence as to the damages he sustained as a result of the trespass." The district court also found that some of the equipment returned by respondent to appellant was damaged upon its return, and that the difference in the value of the equipment from its prior condition to its damaged condition was \$2,000. Finally, the district court found that appellant was defamed by respondent, and that appellant "sustained general reputation damages as a result of the defamation in the amount of \$2,000." But the district court found that appellant failed to establish that he was entitled to an award of special damages. The district court then awarded judgment in favor of appellant in the amount of \$2,000 for his conversion claim and \$2,000 for the defamation claim. This appeal followed.

D E C I S I O N

I.

The Minnesota Rules of Civil Procedure provide that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Minn. R. Civ. P. 12.03. In deciding a motion for judgment on the

pleadings, the district court must take the facts alleged in the complaint as true and draw all inferences in favor of the nonmoving party. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We review judgments on the pleadings de novo. *Id.*

Appellant argues that because respondent admitted the allegations in the complaint, “as well as admitting the threshold amount of damages of \$50,200,” respondent’s “admissions are sufficient to support judgment on the pleadings in the amount of \$50,200.” Thus, appellant argues that the district court erred by denying his motion for judgment on the pleadings with respect to the issue of the damages.

The issue raised by appellant is not within the scope of our review. The supreme court has emphasized that an appellate court only has the authority to review orders that “affect” the judgment being appealed under rule 103.04 of the Minnesota Rules of Civil Appellate Procedure. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 918 (Minn. 2009). Where there has been a denial of summary judgment followed by a court trial on the merits, the denial of summary judgment cannot be said to “affect[] the judgment.” *Id.* Although the issue raised by appellant challenges a denial of his motion for judgment on the pleadings, we conclude that the same reasoning is applicable. As the supreme court explained: “Where a trial has been held and the parties have been given full and fair opportunity to litigate their claims, ‘[i]t makes no sense whatever to reverse a judgment on the verdict where the trial evidence was sufficient merely because at summary judgment it was not.’” *Id.* (quoting *Black v. J.I. Case Co., Inc.*, 22 F.3d 568, 572 (5th Cir. 1994)). Therefore, because the parties in this case had a bench trial on the issue of damages, appellant’s request for review of the denial of his pre-trial motion for judgment

on the pleadings with respect to damages is not properly before us. *See id.* at 919 (holding that denial of a motion for summary judgment is not properly within the scope of review on appeal from a judgment entered after trial on the merits).

Appellant also argues that the district court erred by denying his motion for summary judgment as mooted by the partial judgment on the pleadings. But as stated above, a denial of a motion for summary judgment is not properly within the scope of review on appeal from a judgment entered after trial on the merits. *Id.* Here, a judgment was entered after a trial on the issue of damages. Thus, even if the summary-judgment motion was not mooted by the partial judgment on the pleadings, appellant's request for review of the denial of his summary-judgment motion is not properly before this court.

II.

Appellant challenges the district court's award of damages with respect to his defamation claims. "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witness." Minn. R. Civ. P. 52.01. Whether damages are adequate is addressed to the discretion of the district court, whose decision will not be reversed absent most "unusual circumstance[s]." *Fitzer v. Bloom*, 253 N.W.2d 395, 404 (Minn. 1977).

"Defamation is a statement that (1) is false, (2) communicated to someone other than the plaintiff, and (3) harms the plaintiff's reputation or esteem in the community." *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 310 (Minn. 2007). The fundamental basis of a defamation claim is that "one is liable for an unprivileged communication or

publication of false and defamatory matter which injures the reputation of another.” *Matthis v. Kennedy*, 243 Minn. 219, 222-23, 67 N.W.2d 413, 416 (1954). Under defamation law, “a victim of defamation may recover, under proper circumstances, general damages; special damages, including among others, loss of business relationships.” *Wild v. Rarig*, 302 Minn. 419, 447, 234 N.W.2d 775, 793 (1975).

Appellant argues that the district court erred by (1) awarding \$2,000 in general damages because the award was inadequate and (2) declining to award special damages.

A. General damages

“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. Shoenrock*, 727 N.W.2d 153, 158 (Minn. App. 2007). When a statement is defamatory per se, general damages are presumed, and thus a plaintiff may recover without any proof that the defamatory publication caused him or her actual harm. *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

Appellant argues that, because respondent accused him of being a thief, the statements are defamation per se and, therefore, general damages are presumed. Appellant also argues that the general damages award of \$2,000 is “manifestly inadequate” because it fails to consider that the harm from the defamation “is to the ability to engage in relationships with the vast majority of other people who do not yet know you or whether to do business with you.” Thus, appellant argues that the district court abused its discretion by only awarding \$2,000 in general damages.

We agree that the statements made by respondent are defamatory per se because they falsely accused appellant of a crime. As a result, general damages are presumed. But the amount of damages awarded by the fact-finder is discretionary. *See Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986) (stating that a reviewing court will not disturb an award of damages unless the failure to do so would be “shocking or would result in plain injustice”); *see also Stuemppes v. Parke, Davis & Co.*, 297 N.W.2d 252, 259 (Minn. 1980) (stating that appellate courts tend to leave the amount to be awarded in defamation cases to the jury’s discretion); *Blume v. Scheer*, 83 Minn. 409, 412, 86 N.W. 446, 447 (1901) (stating that, in a defamation action, “the amount to be awarded is referred to the discretion of the jury, and the court will not ordinarily interfere unless the amount is so unreasonable and excessive as to be indicative of passion, prejudice, partiality, or corruption of the jury”). And “in the absence of proof, general damages are limited to harm that ‘would normally be assumed to flow from a defamatory publication of the nature involved.’” *Longbehn*, 727 N.W.2d at 162 (quoting Restatement (Second) of Torts § 621 cmt. a (1977)).

Here, the basis for appellant’s defamation claim was that respondent made false statements in the community accusing appellant of stealing some of his seed corn. But the district court found that it was “unclear from the evidence presented at the trial that [appellant’s] reputation in the community was any different after the allegations of the theft than it was before the allegations.” This finding is supported by the record. As a result, the district court’s award of damages in the amount of \$2,000 is reasonable when considering the harm that would normally be assumed to flow from a defamatory

publication of the nature involved. *See Longbehn*, 727 N.W.2d at 162. Therefore, in light of the broad discretion afforded the finder of fact in awarding damages, we conclude that the district court did not abuse its discretion by awarding appellant \$2,000 in general damages.

B. Special damages

Appellant argues that the district court abused its discretion by declining to award him special damages with respect to his defamation claim. A plaintiff may recover special damages if he or she proves that the defamatory publication is the legal cause of any actual and special pecuniary loss. *Stuempges*, 297 N.W.2d at 258-59; Restatement (Second) of Torts § 622 (1977) (“One who is liable for . . . a slander actionable per se . . . is also liable for any special harm legally caused by the defamatory publication.”). “A defamatory publication actionable per se is the legal cause of special harm if ‘it is a substantial factor in bringing about the harm.’” *Longbehn*, 727 N.W.2d at 160 (quoting Restatement (Second) of Torts § 622A(a) (1977)).

Here, appellant claimed that he sustained special damages as a result of the defamation because he was unable to rent farmland from Joel Koustrup, an individual from whom he had rented farmland in prior years. But the district court found that “Koustrup was intentionally vague when pressed for his specific reasons for refusing to rent the property.” As a result, the court could not “find that the refusal of . . . Koustrup to rent land to [appellant] was directly related to the defamatory statements alleged by [respondent] as opposed to any other reputation or information that might have existed in the community relating to [appellant].”

Appellant contends that the district court clearly erred by finding that “evidence of special damages was equivocal.” We agree. As appellant points out, Koustrup repeatedly testified that he decided not to renew appellant’s contract to rent his land because he was concerned about rumors circulating throughout the area that appellant was a thief. Specifically, Koustrup testified that he initially intended to renew the lease with appellant to rent 600 acres of farmland to appellant. In fact, Koustrup testified that he also intended to rent an additional 200 acres of farmland to appellant. But according to Koustrup, he changed his mind after he “heard that [appellant] had been in a lawsuit or accused of taking some property.” Koustrup testified that he heard that appellant had stolen corn and that people repeatedly made comments to him about having “a thief for a renter.” Koustrup further testified that the comments “kept getting worse and worse” and that as a result, he decided not to rent to appellant because he “really didn’t want to get involved with anything personal.” Although Koustrup did not name respondent specifically as the individual who started the rumors and stated that he did not know if the rumors were true, Koustrup testified that he heard that “some person that lived up by [appellant] had accused [appellant]” of stealing corn. And Koustrup admitted that he had never heard anything negative about appellant prior to the accusations that were made by respondent. Koustrup’s testimony was not vague, but instead clearly indicates that his decision to not renew appellant’s lease was based upon the allegations made by respondent that were being spread throughout the community. Based upon Koustrup’s testimony, respondent’s defamation was a substantial factor in bringing about the

termination of the lease. Accordingly, we reverse and remand for a determination of the amount of special damages that were established by appellant.

Affirmed in part, reversed in part, and remanded.