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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 20-0563

RICHARD BAUER, Individually and as Trustee for the KENDALL BAUER TRUST,

Plaintiff-Appellant

vs.

BRADLEY R. BRINKMAN,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT
OF WOODBURY COUNTY
HONORABLE JEFFREY A. NEARY, DISTRICT COURT JUDGE
THIRD JUDICIAL DISTRICT OF IOWA

APPELLEE BRADLEY R. BRINKMAN'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT CORRECTLY GRANTED BRINKMAN'S MOTION FOR SUMMARY JUDGMENT AND DENIED BAUER'S MOTION FOR PARTIAL SUMMARY JUDGMENT FINDING THAT THE TERMS PIECE OF SHIT AND SLUMLORD USED IN THE CONTEXT OF THIS CASE WAS NONACTIONABLE DEFAMATION.

Authority

Bierman v. Weier, 826 N.W.2d 436 (Iowa 2013)

Hlubek v. Pelecky, 701 N.W.2d 93 (Iowa 2005)

Huegerich v. IBP, Inc., 547 N.W.2d 216 (Iowa 1996)

Johnson v. Nickerson, 542 N.W.2d 506 (Iowa 1996)

Jones v. Palmer Communications, Inc., 440 N.W.2d 884 (Iowa 1989)

Suntken v. Den Ouden, 548 N.W.2d 164, 169 (Iowa App. 1996)

Yates v. Iowa W. Racing Ass'n, 721 N.W.2d 762, 771 (Iowa 2006)

ROUTING STATEMENT

Transfer of this case to the Iowa Court of Appeals is warranted as this case presents issues that require the application of existing legal principles, which have been upheld by this Court repeatedly in the past including in *Jones v. Palmer Communications, Inc.,* 440 N.W.2d 884, 892 (Iowa 1989). Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This is an appeal by Richard Bauer (Individually and as Trustee for the Kendall R. Bauer Trust) Plaintiff/Appellant (hereinafter "Bauer") from the District Court's Ruling on Plaintiff's Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment (hereinafter the "Ruling") entered on March 20, 2020 in the District Court for Woodbury County, Iowa, the Honorable Judge Jeffrey A Neary, presiding.

The original petition in this matter was filed by Bauer on March 14, 2019. (Petition.) Bradley Brinkman (hereinafter "Brinkman") filed his Answer on March 29, 2019. Discovery was conducted including depositions.

Bauer filed his Motion for Partial Summary Judgment on January 10, 2020. Brinkman filed his Motion for Summary Judgment on January 31, 2020. The District Court, after hearing oral argument and considering the parties' written submissions, entered the Ruling on March 20, 2020. The Ruling dismissed Bauer's claims against Brinkman, in their entirety.

On April 2, 2020, Bauer filed his Notice of Appeal. (Notice of Appeal). Bauer appealed to the Supreme Court of Iowa from the "final judgment."

STATEMENT OF THE FACTS

Brinkman adopts the Trial Court's Statement of Facts from the Ruling on pages 1-2 as outlined in Bauer's brief.[1] (App. at 7-8.) Brinkman won't repeat them for the sake of brevity.

Brinkman also asks this Court to consider that he considers Kathy Lynch, a friend of his and they have children in the same high school class. Brinkman was aware of Bauer's disputes with the City of Sloan and Kathy Lynch related to her business. (App. at 427, depo. pg. 29.) Lynch began operating Pet Perfect, LLC across the street from Bauer's apartments. It is a dog grooming and boarding business. (*Id.*) The dispute got so heated that Bauer filed a lawsuit against the City of Sloan to try and shut down Pet Perfect, LLC claiming the City of Sloan was not enforcing its zoning ordinances. Bauer also installed video surveillance cameras at his apartment that were aimed at Pet Perfect, LLC, apparently to annoy and harass Pet Perfect. (App. at 446, depo. pg. 69.)

Brinkman had seen the posts that Kathy Lynch, and her adult daughter, Gabbie Lynch, had made on Facebook about Bauer and the dispute between Bauer

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[1] Bauer lists "Additional Undisputed Facts" in his brief on pages 11-26. These were submitted to the District Court for its consideration at the time of the summary judgment proceedings. There is no evidence that the District Court "ignored some important undisputed facts" as claimed by Bauer on page 12 of his brief.

and Kathy Lynch. (App. at 419-420.) Several third parties responded including Brinkman when he posted,

> It is because of shit like this that I need to run for mayor! Mr. Bauer, you sir are a PIECE OF SHIT!!! Let's not sugar coat things here people, Kathy Lynch runs a respectable business in this town! You sir are nothing more than a Slum Lord! Period. I would love for you to walk across the street to the east of your ooh so precious property and discuss this with me!

(App. at 101.) Although Brinkman did not initiate the Facebook thread, Bauer filed suit against him and others.

There is no actionable defamation against Brinkman, as the District Court held.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT BAUER DOES NOT HAVE A COGNIZABLE DEFAMATION CLAIM AGAINST BRINKMAN.

PRESERVATION OF ERRORS

Brinkman agrees with Bauer's statement on the preservation of errors.

STANDARD OF REVIEW

This Court reviews a District Court's entry of summary judgment for correction of errors at law. An entry of summary judgment will be affirmed when the entire record establishes that there is no genuine issue of material fact. *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005).

Bauer's defamation claims raise a variety of legal issues, but he cannot establish his right to recovery against Brinkman as a matter of law. The District Court so held correctly.

1. Freedom of Speech

Bauer's cause of action relates to statements made by Brinkman in a Facebook post thread. In that post, Brinkman expressed his opinions regarding a dispute that had arisen between Bauer and Kathy Lynch, who was attempting to open a new dog grooming business that Bauer was against. Brinkman was posting matters of opinion, which makes his speech constitutionally protected both by the United States Constitution and by the Iowa Constitution.

The Iowa Constitution, Article I, Section 7 of the Iowa Constitution provides:

> *Every person may speak, write, and publish his sentiments on all subjects,* being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted. Iowa Const. art. I, § 7 (emphasis added).

"Opinion is absolutely protected under the First Amendment." *Jones v. Palmer Communications, Inc.,* 440 N.W.2d 884, 891 (Iowa 1989). This Court has

adopted various factors to determine whether a statement is fact or opinion. *Id.* These are:

1. The precision and specificity of the statement;
2. The verifiability of the statement; and
3. The literary context in which the statement was made.

Id.

Brinkman had a constitutionally protected right to offer his opinions regarding the controversy Bauer had started with Kathy Lynch. While Brinkman concedes that this right is not without limitation, the words used by Brinkman do not constitute defamation. This is even more certain in the context of a Facebook post and thread. Just as the District Court found, Bauer has not established as a matter of law that Brinkman abused his rights to freedom of speech.

2. Hyperbole and Name Calling

"It should be understood that Internet blogs, message boards, and chat rooms are, by their nature, typically casual expressions of opinions." *SI03, Inc. v. Bodybuilding.com, LLC,* 2008 WL 11348458, * 8 (D. Idaho 2008) citing *Doe v. Cahill,* 884 A.2d 451, 465 (Delaware 2005)(emphasis added). In general, not all insulting, annoying, or name-calling statements are defamatory. Statements which are merely annoying or embarrassing or no more than rhetorical hyperbole or a vigorous epithet are not defamatory. Similarly, nasty epithets, however vitriolic, are not libelous. Words that are mere name-calling or found to be rhetorical hyperbole or are employed only in a loose, figurative sense have been

deemed nonactionable. 50 Am.Jur.2d *Libel and Slander* 159, at 449 (1995) (emphasis added). It has been further stated:

> The common law has always differentiated sharply between genuinely defamatory communications as opposed to obscenities, vulgarities, insults, epithets, name-calling, and other verbal abuse. No matter how mean or vulgar, such language is not defamatory. It is not defamatory, for example, to call someone a "bastard," or a "son of a bitch," or an "idiot." No matter how obnoxious, insulting, or tasteless such name-calling, it is regarded as a part of life for which the law of defamation affords no remedy.

Suntken v. Den Ouden, 548 N.W.2d 164, 169 (Iowa App. 1996) (citing Rodney A. Smolla, *Law of Defamation* § 4.03, at 4–12 (1995)).

The context of the statements is an important factor in the analysis of the two statements at issue. S*ee, e.g., Huegerich v. IBP, Inc.,* 547 N.W.2d 216, 221 (Iowa 1996) ("In determining what the third person understands, the defamatory statement must be viewed in the context of the surrounding circumstances and within the entire communication."). Facebook is an internet based social media outlet. The posts that were being made about Bauer by Brinkman followed a number of other posts that related to the controversy Bauer started when he initiated a campaign to stop a local woman, Kathy Lynch, from opening a dog boarding/grooming business in Sloan. Bauer became the target of people who clearly did not agree with his decision to go after Kathy Lynch and her business. The overall tone of the posts demonstrates that they were not intended to be factual

statements, but instead the offering of opinions with the type of "name-calling" and hyperbole that does not constitute defamation as a matter of law.

The fact the statements were posted on Facebook has to be part of the analysis in this case. In *McGlothlin v. Hennelly*, 370 F. Supp. 3d 603, 618 (D.S.C. 2019), a court was asked to determine if statements on Facebook that a person was a "crony capitalist," a "crook," and a "crooked owner" were actionable. The court determined these were all rhetorical hyperbole and not capable of being proven false or even properly defined. In addition, the general tenor of the statements in the context of a Facebook post and a long, emotive comment on a newspaper article negated any impression that the speaker is asserting actual facts. The court concluded that these rhetorical statements in the Facebook Post warranted First Amendment protection and that the plaintiff could not base his defamation claims on these statements. *McGlothlin v. Hennelly*, 370 F. Supp. 3d 603, 618–19 (D.S.C. 2019).

Courts throughout the country, in regards to internet posts, have found no defamation. The Northern District for the United States District of Ohio found that statements on an internet message board where a publicly traded company was accused of accounting fraud, readers were warned to "get ready for" an "FBI and SEC probe", and readers were advised to sell the stock did not constitute

actionable defamation. The court found that they were privileged opinions fraught with figurative language and hyperbole and the statements were unverifiable to any reader just like in this case. *See, SPX Corp. v. Doe,* 253 F.Supp.2d 974, 978 (N.D. Ohio 2003).

In *Global Telemedia Int'l v. Doe 1,* 132 F.Supp.2d 1261 (C.D. Cal. 2001), the United States District Court for the Central District of California, the plaintiff sued 35 anonymous internet message posters for libel and interference with contractual relationships when posts were made that were not flattering of plaintiff or its management practices. The court struck the claims because of the general tenor, and because the setting and the format of the posts strongly suggested the postings were opinion. The court looked at the context and stated, "[i]mportantly, the postings are full of hyperbole, invective, short-hand phrases and language not generally found in fact-based documents . . . " finding the court to hold that a reasonable reader of the postings would not expect that the defendant was airing anything other than his personal views. *Global* at 1267-1268. This description could describe the Facebook posts in this case.

In the context of the Facebook post in this case, the reference to "slumlord" could not be interpreted as a defamatory statement of fact by a reasonable reader. There is no Iowa case directly on point with regard to the word "slumlord".

However, there are persuasive decisions from other state courts that determined calling a landlord a "slumlord" is not libelous. In *Rasky v. Columbia Broad. Sys., Inc.*, 103 Ill. App. 3d 577, 582, 431 N.E.2d 1055, 1058 (1981), the Illinois court determined slumlord was not actionable because it was capable of innocent construction and innocent construction is presumed. A New York court agreed and also found it not actionable. *See*, *Wahrendorf v. City of Oswego*, 72 A.D.3d 1604, 1605, 899 N.Y.S.2d 502, 503 (2010) (calling defendant a slumlord on website not actionable defamation).

The court needs to keep in mind the statements which Bauer complains about were included in a Facebook post. This is not a forum where a reasonable reader would perceive what was being stated as a statement of fact. The Supreme Court, Monroe County, New York in *Kindred v. Colby*, 54 Misc. 3d 1205(A), 50 N.Y.S.3d 26 (N.Y. Sup. Ct. 2015), *aff'd,* 145 A.D.3d 1586, 42 N.Y.S.3d 906 (N.Y. App. Div. 2016) had this to say about a Facebook post:

> Internet forums are venues where citizens may participate and be heard in free debate involving civic concerns. It may be said that such forums are the newest form of the town meeting. We recognize that, although they are engaging in debate, persons posting to these sites assume aliases that conceal their identities or "blog profiles." Nonetheless, falsity remains a necessary element in a defamation claim and, accordingly, "only statements alleging facts can properly be the subject of a defamation action". Within this ambit, the Supreme Court correctly determined that the accusation on the newspaper site that the plaintiff was a "terrorist" was not actionable. Such a statement was likely to be perceived as "rhetorical hyperbole, a vigorous epithet" This conclusion is especially apt in the digital age, where it has been commented that readers give less credence to allegedly defamatory Internet

communications than they would to statements made in other milieus. Accordingly, we conclude that this statement constituted an expression of opinion, and, as such, is nonactionable.

> "Loose, figurative or hyperbolic statements, even if deprecating the plaintiff, are not actionable" Statements that amount to "no more than name-calling or ... general insults" are not actionable. Where "the tone of the statements at issue 'is ironic, sarcastic and caustic; 'it is evident that the [statements were] intended to be invective expressed in the form of heavy-handed and nonsensical humor'' (*citations omitted*)" and are not actionable. Expressions of opinion are "deemed privileged and, no matter how offensive, cannot be the subject of an action for defamation" (internal citations omitted).

Kindred v. Colby, 54 Misc. 3d 1205(A), 50 N.Y.S.3d 26 (N.Y. Sup. Ct. 2015), *aff'd,* 145 A.D.3d 1586, 42 N.Y.S.3d 906 (N.Y. App. Div. 2016).

Other New York decisions contain additional guidance for dealing within online posts and keeping the context in mind. Those courts have said that "sifting through a communication for the purpose of isolating and identifying assertions of fact" is not "the central inquiry" and the courts "should look to the over-all context in which the assertions were made and determine on that basis whether the reasonable reader would have believed that the challenged statements were conveying facts about the libel plaintiff." (*Guerrero v. Carva,* 10 A.D.3d 105, 112, 779 N.Y.S.2d 12 [1st Dept.2004]). The "*dispositive inquiry* ... is whether a reasonable [reader] could have concluded that [the articles were] conveying facts about the plaintiff' (*Gross v. New York Times Co., supra* at 152, 603 N.Y.S.2d 813, 623 N.E.2d 1163[emphasis supplied])." *Finkel v. Dauber*, 29 Misc. 3d 325, 329, 906 N.Y.S.2d 697, 702 (Sup. Ct. 2010).

The District Court in this case found, just like the Illinois and New York Courts cited above, that, in addition to the definition of "slumlord" being unverifiable as to whether or not an individual is one,

> It is also important to note that Brinkman's statement was contained within a Facebook comment. Although Facebook is regularly used to share reputable journalism and factual information, it is also commonly used to share personal opinions and comments on public and private life. Brinkman made the allegedly offending comment in response to a discussion concerning the conflict between Bauer and the Co-Defendants affiliated with the Pet Perfect LLC legal action(s). Brinkman, apparently angry with Bauer's actions regarding that dispute, first insulted Bauer by using the phrase "piece of shit" and in a subsequent sentence then accused Bauer of being a "slumlord." Given that Facebook is regularly used as a forum for sharing opinions and the fact that Brinkman was attempting to insult Bauer in the same message, it is apparent that this specific use of the word "slumlord" was not a statement of act, but rather that of an opinion.
>
> Hypothetically, "slumlord" could be used as a statement of fact; for instance, if a hypothetical tortfeasor was attempting to discourage prospective tenants by calling a property owner a "slumlord" and commenting on how a property's accommodations are poor. However, in the context used in this case, Brinkman was not attempting to comment on the quality of the Bauer Apartments, but rather Brinkman was attempting to insult Bauer. The sole fact that Bauer might find the word "slumlord" insulting does not make the statement actionable defamation.

(App. at 4-5.)

The statements made by Brinkman are constitutionally protected speech, opinion or rhetorical hyperbole—none of which is actionable as defamation. It was name-calling in a heated Facebook post about Bauer objecting to and trying to

impede the business of Kathy Lynch in Sloan. The District Court was correct in noting it was a heated Facebook thread not related to Bauer's apartments, but rather about Bauer's contesting and creating legal problems for Pet Perfect, LLC and Kathy Lynch. The terms "piece of shit" and "slumlord" were name-calling and hyperbole, not actionable defamation.

3. Libel Per Se vs. Libel Per Quod

Bauer argued to the District Court, and now to this Court, that the words used by Brinkman are libel *per se*. Just as the District Court agreed, Brinkman also wholeheartedly disputes that the words he used meet the legal definition of libel *per se*. The District Court, however, never analyzed whether the words from Brinkman were libel *per se* because it found that they aren't even libel.

Nevertheless, if this Court finds that Brinkman's Facebook post could be considered libel, it does not constitute libel *per se.* The District Court makes the initial determination of whether or not the statements constitute libel *per se* as a matter of law. Libel *per se* is available only when a private figure plaintiff sues a non-media defendant for certain kinds of defamatory statements that do not concern a matter of public importance. *Bierman v. Weier*, 826 N.W.2d 436, 448 (Iowa 2013). Certain statements were held to be libelous *per se*, which meant they were "actionable in and of themselves without proof of malice, falsity or damage." This was "based on the very nature of the language used." Libel *per se* statements

have "'a natural tendency to provoke the plaintiff to wrath or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse.'" For example, "[i]t is libel *per se* to make published statements accusing a person of being a liar, a cheater, or thief." "To accuse a person of an indictable crime is defamation *per se*." *Bierman v. Weier*, 826 N.W.2d 436, 444 (Iowa 2013)(internal citations omitted.) A statement is not defamatory *per se* "if it is susceptible to two reasonable constructions or meanings, one not defamatory." *Craig v. City of Cedar Rapids*, 2012 WL 6193862, 11 (Iowa App. 2012)(Table Decision.)

The dispute that involved Bauer and Kathy Lynch became a matter of public interest to the community. Sloan is a small town and the startup of a new business is big news. Bauer elevated the dispute to a matter of public importance when he sued the City of Sloan and its City Council Members in August 2016.[2] As a matter of public importance, Brinkman was entitled to offer his opinion on the matter. A qualified immunity should attach to Brinkman's statements because they were made in the context of a public Facebook debate about a matter that had become of public interest, all created by Bauer himself who had elevated the matter by suing the City of Sloan and its council members.

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[2] *See, Bauer v. City of Sloan et.al.* CVCV171636 filed in the Iowa District Court in and for Woodbury County on August 20, 2016.

In libel *per qu*od cases, by contrast, a party must ordinarily prove six elements, including "some sort of cognizable injury, such as injury to reputation." *Johnson v. Nickerson*, 542 N.W.2d 506, 513 (Iowa 1996); see also *Suntken v. Den Ouden*, 548 N.W.2d 164, 167 (Iowa App. 1996). Further, "[h]urt feelings alone cannot serve as the basis of a defamation action." *Nickerson*, 542 N.W.2d at 513. A statement was considered libelous *per quod* at common law if it was "necessary to refer to facts or circumstances beyond the words actually used to establish the defamation." *Id*. at 510. Thus, a statement would be deemed libel *per quod* where the words in themselves were not considered sufficiently harmful to the plaintiff without further context. *See*, e.g., *Ragland v. Household Fin. Corp*., 254 Iowa 976, 982–83, 119 N.W.2d 788, 792 (Iowa 1963) (holding a statement that the plaintiff had not paid a debt was not libelous per se). *Bierman v. Weier*, 826 N.W.2d 436, 444 (Iowa, 2013).

The six elements that Bauer must prove in order to establish libel *per quod* are: 1) The defendant made written or printed (oral) statement(s) concerning the plaintiff; 2) The statement(s) [was] [were] false; 3) The defendant made the statement(s) with malice; 4) The defendant communicated the statement(s) to someone other than the plaintiff; 5) The statement(s) tended to [injure the reputation of the plaintiff] [expose the plaintiff to public hatred, contempt or ridicule] [injure the plaintiff in the performance of [his] [her] business or

occupation]; 6) The statement(s) caused damage to the plaintiff and 7) The amount of damage. *Delaney v. International Union UAW Local No. 94 of John Deere Mfg. Co.,* 675 N.W.2d 832, 839 (Iowa 2004) (defining defamation).

With respect to falsity, "statements regarding matters of public concern that are not sufficiently factual to be capable of being proven true or false and statements that cannot reasonably be interpreted as stating actual facts are absolutely protected under the Constitution." *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 771 (Iowa 2006). Although there is no strict dichotomy between "opinion" and "fact," [the court] must consider "whether the alleged defamatory statement can reasonably be interpreted as stating actual facts and whether those facts are capable of being proven true or false." *Id.* Under this framework, "statements of opinion can be actionable if they imply a provable false fact, or rely upon stated facts that are provably false." *Id.* (quoting *Moldea v. N.Y. Times Co.*, 22 F.3d 310, 313 (D.C. Cir. 1994)). Importantly, "[t]he statement that the plaintiff must prove false is not the literal wording of the statement but what a reasonable reader or listener would have understood the author to have said." *Id.* citing *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 47 (Iowa 2018).

Brinkman's statements are not capable of being analyzed based upon "falsity" because they were matters of opinion and not fact. The statements constituted rhetorical hyperbole or "name calling", which is not a matter of fact. A

reader of the post, in the context in which it was made on Facebook, would readily see that this was name calling. It cannot be argued by Bauer that someone might think he was an actual piece of feces when he was called a “piece of shit”. The same is true with the use of the term “slumlord”. Nobody could reasonably believe that Sloan, Iowa had a slum in it or that Bauer was overseeing a slum. This does not constitute a false and defamatory statement as a matter of law given the context of the post. A reasonable reader could not construe the post as a statement of fact. A reasonable person would not file suit over such a post and continue with appeals upon losing at summary judgment.

Iowa uses a four-part test to determine whether a statement is factual or a protected opinion. The first factor is “whether the alleged defamatory statement ‘has a precise core of meaning for which a consensus of understanding exists or, conversely, whether the statement is indefinite and ambiguous.’ ”. The second factor is “the degree to which the [alleged defamatory] statements are ... objectively capable of proof or disproof[.]” The third factor is “the context in which the alleged defamatory statement occurs.” The final factor is “the broader social context into which [the alleged defamatory] statement fits.”(internal citations omitted). *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 47 (Iowa 2018).

Bauer has failed to produce evidence that the comment posted by Brinkman was made with malice. The comment contained Brinkman's opinions regarding Bauer's dispute with Kathy Lynch and her business. Nothing more, nothing less.

Bauer has also failed to establish that the statements made by Brinkman have injured his reputation or caused him any damage. In fact, Bauer testified at his deposition that he could not think of any damage to his reputation that had taken place. (App. at 30-31.) He had no economic loss to the apartments he managed and he had 100% occupancy. (App. at 31-32.) It is not enough for him to claim he has suffered hurt feelings or emotional distress. The Iowa Supreme Court's decisions in *Schlegel v. Ottumwa Courier, a Div. of Lee Enterprises, Inc.*, 585 N.W.2d 217 (Iowa 1998) and *Bierman v. Weier*, 826 N.W.2d 436, 443–67 (Iowa 2013) are on point.

In *Schlegel*, a newspaper incorrectly reported that a lawyer had declared bankruptcy. The record contained evidence of hurt feelings and depression, but did not demonstrate that anyone thought less of the attorney. *Id.* at 225. The Schlegels presented a number of witnesses, most of whom were friends, who saw the false report. None testified that the lawyer had any particular reputation before the false report or that they thought ill of him because of it." *Id.* The Iowa Supreme Court held the defendants should have been granted judgment n.o.v. *Id.* at 226.

In *Bierman,* the court found the plaintiffs case suffered from the same gap in proof as *Schlegel* and granted summary judgment. The record in *Bierman* contained evidence of the good reputations of the plaintiffs, but was devoid of evidence that anyone changed his or her opinion of the plaintiffs after reading the book at issue. Affidavits of friends revealed either that they had not read the book, or that if they had read portions of it, they did not accept the allegations it contained about plaintiffs. A work supervisor's averment that one of the plaintiffs had suffered mental anguish and was less outgoing at work than before the book was published, but that nobody thought less of her was noted to be the same kind of proof found insufficient in *Schlegel.* The court refused to infer reputational damage and noted to do so would turn libel per quod into "libel per se lite". *Bierman v. Weier*, 826 N.W.2d 436, 443–67 (Iowa 2013).

It should be noted that Bauer has filed a separate action against others claiming his reputation had already been damaged by Facebook comments made by people other than Brad Brinkman. These other Facebook posts, which Bauer claims damaged his reputation, included posts made in November 2016, April 2017 and June 5, 2017. (*See,* Combined Ruling entered on February 26, 2019 in EQCV177792 and App. at 302-307.) Bauer also filed many affidavits in this case proclaiming his reputation is good in the community, which leads to the question of where are the damages? (App. at 227, 229, 231-232, 234, 236, 238, 240, 242,

244, 246, 248, 251, 253, 255, 257, 259, 262, 264, 266, 268-269, 271.) Bauer has failed to demonstrate that he has suffered any damage to his reputation or any economic loss as a result of the comment by Brad Brinkman. As noted above, Bauer's hurt feelings are insufficient to satisfy requirement that he prove damages caused by the statements made by Brinkman.

CONCLUSION

Defendant/Appellee Brinkman respectfully requests this Court to uphold the District Court Ruling.

ORAL ARGUMENT

Brinkman does not believe this matter warrants oral argument.

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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies this Final Brief was filed with the Iowa Supreme Court via EDMS, pursuant to the Court Order and a copy of this proof brief was served on the 15th day of June 2020, upon all parties to the appeal via EDMS:

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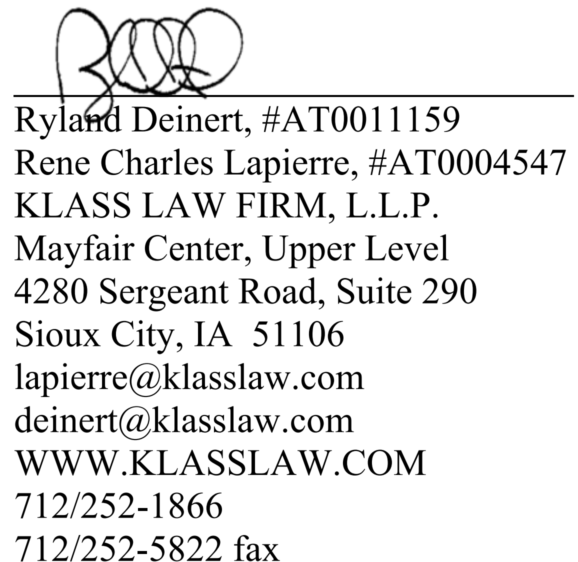

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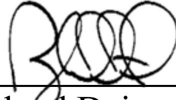

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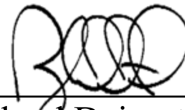

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