

IN THE SUPREME COURT OF IOWA

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NO. 18-1170  
GRUNDY CO. CASE NO. CVCV059487

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SCOTT COOPER  
Plaintiff-Appellant,

vs.

CITY OF REINBECK, REINBECK  
TELECOMMUNICATIONS UTILITY, and TIM JOHNSON,  
MAYOR OF THE CITY OF REINBECK  
Defendant-Appellee.

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APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR GRUNDY COUNTY  
HONORABLE BRADLEY J. HARRIS, JUDGE

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APPELLANT'S BRIEF

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DAVID L. BROWN  
TYLER R. SMITH  
Hansen, McClintock & Riley  
Fifth Floor – U.S. Bank Building  
520 Walnut Street  
Des Moines, Iowa 50309  
Phone: (515) 244-2141

ATTORNEYS FOR PETITIONER-APPELLANT,  
SCOTT COOPER

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**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**I. DID THE DISTRICT COURT ERR IN DISMISSING SCOTT'S CLAIM OF DEFAMATION?**

*Barreca v. Nickolas*, 683 N.W.2d 111, 116 (Iowa 2004)

## **ROUTING STATEMENT**

The case should be transferred to the Court of Appeals of Iowa as the issues presented can be summarily disposed of by application of existing legal principles. Iowa R. App. P. 6.1101(3).

## STATEMENT OF THE CASE

This case involves a claim for defamation and defamation *per se*. Scott Cooper filed his claim in the District Court for Grundy County on March 30, 2017. (Amended App. p. 4). The claim for defamation involved, *inter alia*, statements made by Tim Johnson the mayor of Reinbeck, Iowa, insinuating Mr. Cooper had engaged in unlawful conduct while working for Reinbeck Telecommunications Utility (“RTU”). Mr. Johnson, RTU, and the City of Reinbeck were all named as Defendants in this case.

The Defendants filed a motion for summary judgment on April 13, 2018. (Amended App. p. 22). Mr. Cooper resisted. (Amended App. p. 66). Hearing on the motion was held before Judge Bradley Harris on May 21, 2018, in Grundy County. The district court granted the motion for summary judgment and dismissed the claim on June 8, 2018. (Amended App. p. 88). Mr. Cooper timely files this appeal. (Amended App. p. 93).

## STATEMENT OF THE FACTS

Scott Cooper was hired by the Reinbeck Telecommunications Utility Board on October 3, 2002. Tim Johnson has served as Mayor for the City of Reinbeck since 2014.

Tim Johnson submitted an affidavit in an unemployment claim that falsely accused Scott Cooper of unlawful conduct and severe misconduct while working at RTU before members of the RTU board and the Reinbeck City Council.

On or around the May 15, 2015, Reinbeck City Council meeting, the RTU Board was removed in its entirety and replaced with new members. Tim Johnson, as Mayor of the City of Reinbeck, convened a meeting of the RTU Board on or around May 18, 2015. Scott Cooper's employment was placed on the agenda for the meeting. Mr. Cooper was not informed either verbally or in writing of the meeting.

Scott Cooper was terminated from his position with RTU on May 18, 2015. The minutes of the June 1, 2015, RTU meeting was published in the June, 12, 2015, edition of the Reinbeck Courier. The minutes stated, "Scott Cooper's compensation was discussed. [Chairman Dan] Smoldt, seconded by [board member Nick] Suender, moved to pay Cooper 3 weeks' pay at \$23.20 per hour, as long as there is no unlawful activity found in the audit, pending

city council approval. 4 ayes. Motion carried”.

Reinbeck City Council also had a meeting on or around June 1, 2015. At this meeting, Kristen Schiller of the RTU Board brought forth the proposal for Scott Cooper’s compensation of three weeks’ pay at \$23.20 per hour. A motion was made to deny the proposal. The proposal was denied by the City Council.

Scott Cooper maintains that he did not engage in any unlawful conduct or activity that could be construed as misconduct during his employment. Upon reading the minutes of the RTU Board meeting, Scott Cooper discovered false accusations of unlawful conduct and while working at RTU were levied against him by a person attending the meeting.

Tim Johnson was the only person who attended the May 15, 2015 meeting where the RTU Board was removed and replaced in its entirety, the May 18, 2015 RTU Board meeting electing to terminate Scott Cooper, and the May 18, 2015, City Council meeting affirming the RTU Board’s decision. Tim Johnson’s initial unsuccessful attempt to terminate Scott. Cooper before the May 15, 2015 RTU Board, subsequent removal of the RTU Board, termination of Mr. Cooper before the May 18, 2015, RTU Board and City Council, indicates that Tim Johnson had made the false accusation that Mr. Cooper had engaged in unlawful conduct.



Scott Cooper filed an unemployment claim with Iowa Workforce Development on or around May 26, 2015, concerning his termination from RTU. The Unemployment Insurance Appeals Bureau found in favor of Mr. Cooper finding that he was discharged despite no qualifying reason.

Evidence submitted in conjunction with the unemployment claim confirmed that Tim Johnson falsely accused Scott Cooper of unlawful conduct and severe misconduct while working at RTU before members of the RTU board and the Reinbeck City Council.

Tim Johnson made the following false accusations concerning Scott Cooper's conduct:

- The false accusation that Scott Cooper locked out all other employee at RTU from access to customer files and access to credit card payments.
- The false accusation that Scott Cooper forged the former RTU Board Chair, Tom Bickett's signature on a revenue bond document for \$155,000.
- The false accusation that Scott Cooper intentionally caused or prolonged a city-wide telephone service outage in Reinbeck.

Tim Johnson had previously communicated at least some of the statements to members of the RTU Board and members of the Reinbeck City Council. Defendant Tim Johnson made the false accusations while serving as Mayor of the City of Reinbeck.

## APPELLANT'S ARGUMENTS

### I. THE DISTRICT COURT ERRED IN DISMISSING SCOTT COOPER'S CLAIM FOR DEFAMATION.

#### SCOPE & STANDARD OF REVIEW/PRESERVATION OF ERROR

“Summary judgment is proper only if the record made shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. If the conflict in the record concerns only the legal consequences flowing from undisputed facts, entry of summary judgment is proper[.] Review, therefore, is for the correction of errors at law.” *Barreca v. Nickolas*, 683 N.W.2d 111, 116 (Iowa 2004). Error is preserved in the record before the district court.

#### ARGUMENT

Scott Cooper established a *prima facie* case for defamation *per se* before the district court in his resistance to the Defendants' motion for summary judgment. A genuine dispute of fact existed with regards to the defenses proffered by the Defendants – specifically the qualified and absolute privilege defenses. Given the genuine dispute of material fact, summary judgment is not appropriate. The district court erred in granting the motion

and dismissing Mr. Coopers claim. The matter should be reversed and remanded for a trial on the merits of the case.

**A. Summary Judgment Standard**

Summary judgment is appropriate when there is no genuine issue of material fact. Iowa R. Civ. P. 1.981; *see Goodpaster v. Schwan's Home Serv., Inc.*, 849 N.W.2d 1, 6 (Iowa 2014). A question of fact exists "if reasonable minds can differ on how the issue should be resolved." *Cemen Tech., Inc. v. Three D Indus., L.L.C.*, 753 N.W.2d 1, 5 (Iowa 2008) (quoting *Walker v. Gribble*, 689 N.W.2d 104, 108 (Iowa 2004)). When determining whether summary judgment is appropriate the court will "view the record in the light most favorable to the nonmoving party". *Goodpaster*, 849 N.W.2d at 6.

**B. The Defendant's defamatory statements are defamatory *per se*.**

Statements made by Tim Johnson constitute libel and slander *per se*. Specifically, Tim Johnson published statements on multiple occasions that Scott Cooper engaged in criminal conduct or conduct related to incompetence in his profession. Under Iowa law, these statements are slander *per se*.

Defamation law is comprised of both libel and slander, written and spoken defamation. Ordinarily, a Plaintiff will be required to establish damages as part of the *prima facie* case for defamation. However, certain

defamatory statements are considered defamatory *per se* and damages are presumed.

Statements that are defamatory *per se* in Iowa have been grouped into four distinct categories. Those categories include, “imputation of (1) certain indictable crimes, (2) loathsome disease, (3) incompetence in occupation, and (4) unchastity”. *Barreca v. Nickolas*, 683 N.W.2d 111, 116 (Iowa 2004). The statements published by Tim Johnson against Scott Cooper fall squarely within the categories of defamation *per se*.

Tim Johnson signed an affidavit which was submitted to Iowa Workforce Development concerning Scott Cooper’s unemployment hearing. In the affidavit, Tim Johnson alleged the following:

Scott locked out all other [city of Reinbeck] employees from access to customer files [and] locked out all employees from accessing credit card payments.

In September 2013, a RTU Bond in the amount of \$155,000 was issued. . . . The signature was done by Scott via either a stamp or cutting and pasting a signature from a previous document. The RTU Board did not issue any warnings nor did they take any action on this illegal transaction.

On May 12, 2015 at around 2:40 a.m. all telephone service with RTU went down. . . . Scott knew the outage could happen because RTU was operating on a debunk system for over a year and had no backup or emergency plan; Scott did not communicate with the city on updates or progress

of the outage and showed poor customer service, even laughing at the situation at a public meeting, showed no sense of urgency; negligently handled the system.

(Amended App. p. 62).

These statements were communicated not only in the affidavit, but also to city council and RTU Board members at their respective meetings. (Amended App. p. 126, 128). The above statements are false while assuredly falling within the aforementioned categories of defamation *per se*. (Amended App. pp. 117-119).

The statements are aimed directly at Scott Cooper's competence in his position with the RTU Board. Further, Tim Johnson states that Scott Cooper engages in an "illegal transaction" by forging a signature "via either a stamp or cutting and pasting a signature from a previous document."<sup>1</sup> The affidavit accordingly invokes the doctrine of defamation *per se*. See *Nickolas*, 683 N.W.2d at 116; Patrick J. McNully, *The Law of Defamation: A Primer for the Iowa Practitioner*, 44 Drake L. Rev. 639, 650 (1996).

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<sup>1</sup> See Iowa Code § 715A.2. "A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person . . . Alters a writing of another without the other's permission [or] Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

**C. The defamatory statements are not entitled to a qualified privilege.**

The Defendants are not entitled to qualified privilege as his statements were made with actual malice. Ordinarily, Tim Johnson would be entitled to qualified privilege as mayor of the City of Reinbeck for duties that are pertinent and relevant to his duties as mayor. *Nickolas*, 683 N.W.2d at 118. However, statements made with actual malice are not privileged. “Actual malice occurs when a statement is made with knowledge that it is false or with reckless disregard for its truth or falsity.” *Taggart v. Drake Univ.*, 549 N.W.2d 796, 804 (Iowa 1996).

As noted, the allegations against Scott Cooper were very serious allegations – the kind that constitute defamation *per se*. Mayor Johnson admitted in his deposition that he did not conduct any investigation into whether or not his allegations were true. *See Nickolas*, 683 N.W.2d at 123.

Mayor Johnson admitted in his deposition testimony that he did not make any inquiry into his allegation that Scott had stamped or cut Tom Bickett’s signature onto the document. Rather, Mayor Johnson simply presumed Scott had done so without any other facts supporting his theory. (Amended App. p. 125). Mayor Johnson completely disregarded whether the

statements were true or false. Accordingly, he is not entitled to qualified privilege.

**D. The Defendants are not entitled to absolute privilege.**

The defamatory statements made by Tim Johnson are not absolutely privileged. As noted, Scott Cooper has demonstrated that the statements made by Tim Johnson are false. It follows that ‘truth’ is not an applicable defense for this matter.

Additionally, absolute privilege for defamatory comments made in judicial proceeding does not apply in this matter. “A statement is privileged if made by one who has an interest in the subject matter to one who also has an interest in it or stands in such a relation that it is proper or reasonable for the writer to give the information.” *Spencer v. Spencer*, 479 N.W.2d 293, 295 (Iowa 1991).

The affidavit submitted by Tim Johnson in the unemployment proceeding is not privileged. First, the unemployment matter involved the employer Reinbeck Telecommunications Utility and Scott Cooper. The City of Reinbeck and Tim Johnson were not party to the proceedings and had no interest in the subject matter. (Exhibit 2). Finally, the absolute privilege does

not apply as the allegations in the affidavit were communicated to city council and RTU Board members outside of the judicial proceeding.

### **CONCLUSION**

The evidence before the district court established a genuine dispute as to material fact as to whether the statements made against Scott Cooper constituted defamation or defamation *per se*. The district court erred in granting the Defendants motion for summary judgment and the matter should be reversed and remanded for a trial on the merits.

### **APPELLANT'S REQUEST FOR ORAL ARGUMENT**

Petitioner-Appellants hereby request to be heard in oral argument. Iowa Rule of Appellate Procedure 6.908.



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