

IN THE COURT OF APPEALS OF IOWA

No. 2-829 / 11-1577
Filed December 12, 2012

SHAEFEN HUYSER,
Plaintiff-Appellee,

vs.

**JOHN D. LYNCH JR. and
MARY LYNCH,**
Defendants-Appellants.

Appeal from the Iowa District Court for Mahaska County, Daniel P. Wilson
(motion to dismiss) and Joel D. Yates (trial), Judges.

Defendants appeal the judgment entered on the jury's award of damages
for slander. **AFFIRMED.**

Chad R. Frese of Kaplan, Frese & Nine, L.L.P., Marshalltown, for
appellants.

Steven Gardner of Deneffe, Gardner & Zingg, P.C., Ottumwa, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

EISENHAUER, C.J.

John Lynch Jr. and his mother, Mary Lynch, appeal a jury award of damages to plaintiff Shaefen Huyser in her civil action for slander. Finding no error, we affirm.

Shaefen and John are the unmarried parents of an eleven-year-old daughter, Z.L. John had regular phone conversations with Z.L., the conversations were tape recorded, and the tapes were played to the jury. Among other things, John told Z.L. Shaefen was sexually abused by her father, Z.L.'s grandfather, when Shaefen was a young girl. John stated Shaefen became pregnant from the incest and had an abortion. When Z.L. told John she didn't think her mother did drugs, John replied Shaefen was legally insane due to her past use of acid. John also stated Shaefen is a drunk who was trying to "hide something" and who doesn't deserve to have kids. Further, John was going to make sure Shaefen lost custody of Z.L. and two other children.

Shaefen is married to Jakab Huyser. In August 2008, defendant Mary Lynch had a conversation with Jakab's mother. At trial, Mary admitted telling Jakab's mother Shaefen "had been sexually abused by her father."

Shaefen sued John and Mary alleging slander per se and child endangerment.¹ Defendants answered and contemporaneously filed a motion to dismiss the child endangerment count. They argued the alleged criminal code violation did not give rise to a civil cause of action. The district court ruled:

¹ During an investigation by the Iowa Department of Human Services, John admitted to daily marijuana use. Z.L.'s hair tested positive for marijuana. Shaefen's petition alleged John's exposure of Z.L. to illegal drug use caused illegal drugs to enter her system and constituted child endangerment.

A final ruling . . . as to whether the criminal statute in question confers or provides for a civil remedy will await further proceedings in this case. The court cannot state as a matter of law that [Shaefen's] Petition could not be granted under any state of facts shown by the pleadings.

Shaefen, individually and as the next friend of Z.L., filed an amended petition and added a count seeking damages from John for an alleged assault of Z.L. No other dispositive pretrial motions were filed by defendants, and trial to a jury commenced in August 2011. After Shaefen presented her evidence, defendants moved for a directed verdict on all counts. The court denied the motion as to the slander and assault counts, ruling:

On [slander] the tape-recordings and the testimony of . . . the mother-in-law, establish the statements that were made. Apparently the defense at this point . . . includes an admission that the statements were made Those statements are slander per se. Slander per se presumes damages. I don't believe that a directed verdict for lack of evidence of damages can be sustained in a case in which the law presumes damages by reason of slander.

With reference to [assault], Mr. Lynch admits the assault. And the issue of damages is for the jury.

After discussing conflicting legal authorities, the court directed a verdict dismissing the child endangerment count and ruled child endangerment is not a valid tort theory and, even assuming arguendo there is a valid tort theory, the element of substantial risk had not been established.

At trial, John and Mary argued the statements were substantially true or were opinions. The jury disagreed and awarded damages for slander per se: \$55,000 compensatory² and \$100,000 punitive damages (John) and \$10,000³

² The jury's special interrogatory answer states: \$10,000 general damages; \$10,000 impairment of reputation; \$5000 personal humiliation; \$5000 past mental anguish and suffering; and \$25,000 future mental anguish and suffering.

compensatory and \$25,000 punitive damages (Mary). The jury returned a verdict for John on the assault claim.

In this appeal, John and Mary, despite the court's dismissal of the child endangerment count after the plaintiff rested her case, first argue the court erred in denying the motion to dismiss the child endangerment count. "We review a district court's ruling on a motion to dismiss for correction of errors at law." *Nixon v. State*, 704 N.W.2d 643, 644 (Iowa 2005). "The court, in ruling on a motion to dismiss, does not conclusively determine the merits of the issues presented in the petition." *City of Ankeny v. Armstrong Co.*, 353 N.W.2d 864, 868 (Iowa Ct. App. 1984).

We find no error in the district court's ruling. The Iowa Supreme Court has recognized civil causes of actions can, in certain circumstances, be based on violations of criminal statutes. See *Heick v. Bacon*, 561 N.W.2d 45, 54 (Iowa 1997) (stating the Iowa Code "allows a cause of action for violation of a criminal statute"); *Seeman v. Liberty Mut. Ins. Co.*, 322 N.W.2d 35, 38 (Iowa 1982) (recognizing violation of a criminal statute can give rise to a civil cause of action); *Hall v. Montgomery Ward & Co.*, 252 N.W.2d 421, 424 (Iowa 1977) (ruling violation of criminal statute (malicious threats) gives rise to a civil cause of action).

Second, John and Mary argue the court erred in entering judgment for damages on the slander count because the "record is absolutely devoid of evidence of loss by [Shaefen] which should have been compensated by the jury."

³ The jury's special interrogatory answer states: \$2000 general damages; \$2000 impairment of reputation; \$2000 personal humiliation; \$2000 past mental anguish and suffering; and \$2000 future mental anguish and suffering.

We review to determine whether the record supports the jury's findings. *Kiesau v. Bantz*, 686 N.W.2d 164, 171 (Iowa 2004).

A tort action for slander is based on the violation of an individual's right to be free from false attacks on their reputation and good name. *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006). Slander "is based on the [oral] transmission of derogatory statements, not any physical or emotional distress to plaintiff which may result." *Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 221 (Iowa 1998). A plaintiff alleging slander must prove *either* the published statement was slanderous per se *or* the publication caused actual harm to the plaintiff's reputation. *Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994) (upholding damages for slander per se for statements implying substance abuse).

Attacks "on the integrity and moral character" of a plaintiff are slanderous per se. *Id.* Slander per se is actionable *without proof of harm to reputation*; however, "damages may not be awarded based solely on the defamatory statements." *Id.* at 786. Recovery is "limited to the natural and probable consequences of the publication" and "may include recovery for emotional distress and resulting bodily harm." *Id.*; *see also Wilson v. IBP, Inc.*, 558 N.W.2d 132, 140 (Iowa 1996) (limiting recovery to "damages which were a natural and probable consequence of the original slander or its repetition or republication").

Shaefen sought damages for slander per se and testified to mental anguish. She also missed work and lost wages when she took Z.L. to a counselor. Shaefen testified the statements affected her relationship with Z.L.:

[I]t's been hard with her. She kind of at this point . . . doesn't trust the decisions I make because of the fact that I allowed my dad to see her, because there's nothing wrong with him But, you know, it's hard for her to understand because of those statements that I'm still a mom who loves her and would protect her and do all that I can, whenever I can

. . . .

It's been a long couple of years. I love my daughter very much, and it hurts me to see her in pain and confused and not knowing who she can trust and who she can't, when I know I'm the person she can, and I can help her.

But I worry all the time that she won't believe me and that when she's older, that I'll not have her in my life because of those things, and . . . I just worry about our relationship now and in the future.

Under this record, Shaefen's testimony sufficiently informed the jury of the consequences of slander per se. We conclude the jury's award of compensatory and punitive damages is "limited to the natural and probable consequences of the publication." See *Wilson*, 558 N.W.2d at 140-48 (upholding \$4000 compensatory damages and \$2 million punitive damages for slander).

AFFIRMED.