

In the
SUPREME COURT OF
THE UNITED STATES

No. 18-2143

Elmore Lansford,
Petitioner

v.

Silvia Courtier,
Respondent

On Petition for Review from the
The Supreme Judicial Court
of State of Tenley

Brief for Respondent

Oral Argument Requested

Team Number 219908
Attorney for Respondent

QUESTIONS PRESENTED

I. CAN AN INDIVIDUAL BE A LIBEL-PROOF PLAINTIFF UNDER DEFAMATION LAW SOLELY ON THE BASIS OF PLEADING GUILTY TO A SINGLE FELONY WITHOUT GAINING ANY NOTORIETY OR PUBLIC ATTENTION RESULTING FROM THE CONVICTION?

II. WHETHER THE CHALLENGED STATEMENTS IN THIS CASE QUALIFY AS UNPROTECTED DEFAMATION OR PROTECTED RHETORICAL HYPERBOLE?

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JURISDICTION STATEMENT

A Formal Statement of Jurisdiction has been omitted in accordance with the Rules of the Washington College of Law’s Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

Silvia Courtier had a difficult upbringing. (J.A. at 5.). Both of her parents were addicted to drugs—her father was killed in prison while serving a fifteen-year sentence for selling drugs and her mother died of a drug overdose when Courtier was only ten years old—Courtier was left to support herself. Id. Courtier turned to drugs and other illegal activities and in her early 20s and ended up serving two years in prison after pleading guilty to a charge for distribution of cocaine. Id. While in prison, Courtier completely rehabilitated herself. Id. She earned her G.E.D. and subsequently enrolled in community college classes where she took every business class available to her and received a business degree. Id. After being released from prison, Courtier opened up a small-clothing business in Silvertown. (J.A. at 7.). She achieved early success and worked to grow a larger business. Id. Raymond Courtier, former mayor of Silvertown, served as Courtier’s primary investor and enabled Courtier to open more exclusive clothing stores. (J.A. at 5, 7, 16.). Courtier and Raymond Courtier eventually got married and Raymond Courtier served as Silvertown mayor for eighteen consecutive years until his death. (J.A. at 2.).

While still maintaining her clothing stores, Courtier gave back to her community through her contributions and dedication to philanthropic and charitable activities. (J.A. at 5.). She also became more politically active, focusing much of her energy on educational equity, restorative justice, and affordable housing. (J.A. at 2.). In the last mayoral election, Courtier became especially involved—Evelyn Bailord and Elmore Lansford ran against each other in a stiff challenge. (J.A. at 3.). Courtier was one of Bailord’s diehard supporters and had a history with the other candidate, Lansford. Id. Lansford was a former city council member who served with Raymond Courtier. Id. Not only that, but as one-time allies, Raymond Courtier aided Lansford in entering the political arena and was one of Lansford’s early supporters. Id. Courtier was

diametrically opposed to Lansford politically, and threw her support behind Bailord, hosting black-tie dinners and writing online commentaries expressing her support for Bailord. Id. These online commentaries also served as a place where Courtier criticized Lansford, calling him a “relic of the past,” “a divisive leader,” and “someone who cares little for social justice issues.” Id.

Courtier’s political ideology clashed with Lansford’s efforts to “clean[] up Cooperwood,” an area of town with high poverty and crime rates known for public housing complexes and lower-rent housing alternatives. (J.A. at 3, 16.). In his campaign, Lansford supported efforts by developers to transform Cooperwood into high-rise developments. (J.A. at 3.). Lansford responded to Courtier’s criticisms calling her “a pimp for the rich,” “a leech on society,” “a whore for the poor,” and “corrupt and a swindler.” (J.A. at 5.). Courtier sued Lansford for defamation of character and false light invasion of privacy arguing that Lansford defamed her with his comments. (J.A. at 4, 5.). Lansford filed a motion to strike and dismiss Courtier’s defamation claim arguing that Courtier has tried to punish or silence him for his freedom of expression. (J.A. at 6.). Lansford reasoned that his statements were true, or at least substantially true, and that they were protected rhetorical hyperbole. Id. Additionally, Lansford contended that because of her past felony, Courtier can be categorized as a libel-proof plaintiff since he argues Courtier has no good reputation to protect. Id.

The Tenley District Court held that Courtier does not fall into the category of libel-proof plaintiffs. (J.A. at 11.). However, the District Court granted Lansford’s special motion to strike and dismiss Courtier’s defamation claim, reasoning that the First Amendment protects Lansford’s harsh response to Courtier just as it protects Courtier’s initial critical political speech. (J.A. at 11–13.). On appeal, the Supreme Judicial Court of State of Tenley affirmed the District

Court's ruling that Courtier is not a libel-proof plaintiff. (J.A. at 19, 22.). However, the Supreme Judicial Court refused to grant Lansford's motion to strike and dismiss the lawsuit, reasoning that there is at least a possibility that calling Courier "corrupt" and a "swindler" is defamatory. Id. For the aforementioned reasons, Respondent respectfully requests this Court to affirm the ruling of the Supreme Judicial Court of State of Tenley and remand for further proceedings consistent with this opinion.

SUMMARY OF THE ARGUMENT

Courtier asks this court, in reviewing the case de novo, to affirm the ruling of the lower courts and find that Courtier has established a prima facie case of defamation and false light invasion of privacy and allow Courtier's claims to proceed. Courtier filed a claim against Lansford for defamation of character and false light invasion of privacy. She contends that Lansford defamed her by calling her "a pimp for the rich," "a leech on society," and a "whore for the poor" and by accusing her of "swindling the poor for her social causes." (J.A. at 5-6.). She additionally contends that Lansford placed her in a false light by claiming she was currently an inveterate criminal because of her difficult past (J.A. at 6.).

Lansford responded by filing a claim under the Tenley Public Participation Act, § 5 – 1 – 701et seq., which allows a party to petition the court to dismiss a legal action that is filed in response to that party's exercise of free speech. Tenley Code Ann. § 5 – 1 – 704(a). Lansford asserted that his speech was protected because his statements were substantially true and were rhetorical hyperbole. He additionally asserts that Courtier's claims must be dismissed because Courtier is a libel-proof plaintiff with no good reputation to protect.

In order to survive dismissal, Courtier must establish a prima facie case of defamation and false light invasion of privacy. The elements for proving a defamation claim are

identification, publication, defamatory meaning, falsity, statements of fact, and damages. There is an additional element of actual malice when a person is a public figure. The elements for false light invasion of privacy are defamatory meaning and actual malice. Thus, the claims can be analyzed together. Courtier has established a prima facie case for each element of defamation and false light invasion of privacy and has rebutted Lansford's assertion that his statements were protected speech. Courtier has met the elements of identification, publication, and defamatory meaning because Lansford's statements identify Courtier, were published on the internet, and contain clearly defamatory words and phrases. Courtier has met the element of falsity because Lansford's statements would cause a reasonable person to think significantly less favorably about Courtier than they would if they knew the truth. Additionally, Lansford's statements are not protected because they are neither true, nor substantially true, and Lansford was aware of their falsity. Courtier has met the element of statements of fact because Lansford's statements are literal assertions of fact that are sufficiently capable of being proved true or false. The statements cannot be classified as rhetorical hyperbole because the language used was not loose, figurative or exaggerated, but rather the statements were accusations of fact capable of a defamatory meaning. Courtier has met the damages element because Courtier is not a libel-proof plaintiff and will be able to collect damages because Courtier's criminal record did not damage her reputation beyond its ability to sustain further harm.

Courtier has additionally met the elements of the false light invasion of privacy claims. This claim shares the defamation element of defamatory meaning and includes the additional element of actual malice. As discussed above, Courtier met the defamatory meaning element because the statements at issue clearly included defamatory phrases. Courtier also met the element of actual malice because Lansford had actual knowledge that the statements he made

were false. Although actual malice is a necessary element for false light invasion of privacy, it is not a necessary element for defamation unless Courtier is considered a public figure. Courtier is not a public figure because she has not reached the level of notoriety of an all-purpose public figure and has not thrust herself to the forefront of the election enough to warrant classification as a limited purpose public figure. Therefore, she is not required to meet the high standard of actual malice for her defamation claim. For the aforementioned reasons, Courtier respectfully asks this court, in reviewing the case de novo, to find that Courtier has established a prima facie case of defamation and false light invasion of privacy and allow Courtier's claims to proceed.

ARGUMENT

I. COURTIER HAS MADE A PRIMA FACIE CASE OF DEFAMATION AND FALSE LIGHT INVASION OF PRIVACY AND IS ENTITLED TO RECOVERY BECAUSE SHE IS NOT A LIBEL PROOF PLAINTIFF AND THE CHALLENGED STATEMENTS ARE NEITHER TRUE, NOR SUBSTANTIALLY TRUE, AND DEMONSTRATE ACTUAL MALICE.

Courtier has met her burden of making a prima facie case of defamation and false light invasion of privacy and Lansford should be held liable because Courtier is not a libel proof plaintiff and the challenged statements are neither true, nor substantially true, and demonstrate actual malice. To survive dismissal, Courtier must establish a prima facie case for each essential element for her defamation and false light invasion of privacy claims. Tenley Code Ann. §5 – 1 – 705(b). Both claims are subject to de novo review. Grey v. St. Martin's Press, Inc., 221 F.3d 243, 250 (1st Cir. 2000); Cockram v. Genesco, Inc., 680 F.3d 1046, 1056 (8th Cir. 2000).

“Although replete with First Amendment implications, a defamation suit fundamentally is a state cause of action.” Marcone v. Penthouse Int'l Magazine for Men, 754 F.2d 1072, 1077 (3d Cir. 1985). Although the state of Tenley does not have an explicit rule for what constitutes libel, the majority of states have these general elements:

- (a) **Identification:** The plaintiff must show that the publication was “of and concerning” himself or herself.
- (b) **Publication:** The plaintiff must show that the defamatory statements were disseminated to a third party.
- (c) **Defamatory meaning:** The plaintiff must establish that the statements in question were defamatory. For example, the language must do more than simply annoy a person or hurt a person's feelings.
- (d) **Falsity:** The statements must be false; truth is a defense to a defamation claim. Generally, the plaintiff bears the burden of proof of establishing falsity.
- (e) **Statements of fact:** The statements in question must be objectively verifiable as false statements of fact. In other words, the statements must be provable as false.
- (f) **Damages:** The false and defamatory statements must cause actual injury or special damages.

§ 5:7. Defamation—Other elements of defamation, Legal Almanac: The First Amendment:

Freedom of Speech § 5:7.

If a person is considered to be a public figure, there is an additional element: actual malice. A public figure may only recover for libel if he proves by clear and convincing evidence “that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” Schiavone Constr. Co. v. Time, Inc., 847 F.2d 1069, 1076 (3d Cir. 1988) (citing N. Y. Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964)).

Courtier must also make a prima facie case for false light invasion of privacy. This claim can be addressed simultaneously with defamation because false light invasion of privacy only includes required elements for defamation. The claim requires that “the false light in which the other was placed would be highly offensive to a reasonable person,” and that “the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other was placed.” Veilleux v. Nat'l Broad. Co., 206 F.3d 92, 134 (1st Cir. 2000). These elements are identical to the defamation elements of defamatory meaning and actual malice.

In assessing Respondent's claims, the enumerated elements of defamation guide the analysis. Courtier has indisputably met the elements of identification, publication, and defamatory meaning. Lansford cannot avoid liability on this defamation claim because his statements are provably false. Further, the statements in question are properly regarded as statements of fact rather than opinions or rhetorical hyperbole. Additionally, Courtier cannot be considered a libel-proof plaintiff, or a public figure, and thus is able to collect damages based solely on the establishment of her prima facie case. However, if this Court is to find that she meets the elements to be considered a public figure, Courtier can still prevail on her claims because Lansford made the statements with actual malice.

- a. Courtier has met the elements of identification, publication and defamatory meaning because Lansford's statements identify Courtier, were published on the internet, and contain clearly defamatory words and phrases.

In this case, Courtier has clearly met the elements of identification and publication because Lansford's statements clearly identify Courtier by name and because Lansford published the statements on the internet. Oja v. U.S. Army Corps of Engineers, 440 F.3d 1122, 1130 (9th Cir. 2006) (holding that Internet-based information is published in the same manner as traditional media).

Courtier has also met the element of defamatory meaning. To be defamatory, a statement must be capable of having a defamatory meaning. A statement qualifies if it is "reasonably susceptible to the defamatory meaning imputed to it." Levin v. McPhee, 119 F.3d 189, 195 (2d Cir. 1997). The phrases "a pimp for the rich," "a leech on society," "a whore for the poor," and "corrupt and a swindler" from Lansford's statements are clearly capable of a defamatory meaning. See, Street v. National Broad., Co., 645 F.2d 1227, 1232 (6th Cir. 1981) (holding that the word "whore" is obviously defamatory); Rosenblatt v. Baer, 383 U.S. 75 (1966) (Harlan, J.,

concurring in part) (holding that “a statement that all members of a school board or a city council are corrupt is sufficiently definite to constitute a defamatory publication of each member thereof.”); Kurmaran v. Brotman, 247 Ill. App. 3d 216, 227 (1993) (holding that “portraying plaintiff as a swindler, the article could be found to prejudice his teaching ability and integrity because it presented him as someone who would not be an acceptable role model for young students.”).

Courtier has clearly met her burden for the first three elements of her defamation claim and one element of her false light invasion of privacy claim because Lansford’s statements identify Courtier, were published on the internet, and contain clearly defamatory words and phrases.

- b. The statements made by Lansford are neither true, nor substantially true, because the substance of the statements would cause a reasonable person to think significantly less favorably about Courtier than they would if they knew the truth.

The success of both a defamation claim and a false light invasion of privacy claim rests upon the published statements being false—truth is an absolute defense to claims of both defamation and false light invasion of privacy. Rinsley v. Brandt, 700 F.2d 1304, 1307 (10th Cir. 1983) (citing Restatement (Second) of Torts § 652E). In assessing the falsity of a statement in the context of a defamation claim, minor inaccuracies are to be overlooked and the focus is placed upon the substantial truth of the statement. Tannerite Sports, LLC v. NBCUniversal Grp., 864 F.3d 236, 242 (1st Cir. 2017). Further, these minor inaccuracies cannot be deemed false statements so long as “the substance, the gist, the sting, of the libelous charge [is] justified.” Masson v. New Yorker Mag., Inc., 501 U.S. 496, 517 (1991) (citations omitted). See Vachet v. Cent. Newspapers, Inc., 816 F.2d 313, 316 (7th Cir. 1987) (“The ‘gist’ or ‘sting’ of the alleged defamation means the heart of the matter in question—the hurtfulness of the utterance.”).

In Tannerite Sports, the Second Circuit held that a statement is substantially true “if the statement would not have a different effect on the mind of the reader from that which the pleaded truth would have produced.” 864 F.3d at 242. See, Bustos v. A & E Television Networks, 646 F.3d 762, 767 (10th Cir. 2011) (holding that referring to someone as a “member” rather than an “affiliate” of a group was a minor inaccuracy and reflected substantial truth); Rinsley, 700 F.2d at 1308 (holding that a publication stating a party had sued when they had only consulted counsel was a minor inaccuracy and therefore substantially true). Further, the effect of the false statement on the mind of the reader must “be likely to cause reasonable people to think ‘significantly less favorably’ about the plaintiff than they would if they knew the truth.” Brokers’ Choice of Am., Inc v. NBC Universal, Inc., 861 F.3d 1081, 1107 (10th Cir. 2017) (citations omitted).

Lansford’s statements, that Courtier is a “whore for the poor,” “pimp for the rich,” “leech on society,” and “corrupt and a swindler,” are neither true, nor substantially true. This case is dissimilar from cases where courts found that the substance, the gist, or the sting of the statements would not have a different effect on the mind of the reader from the pleaded truth. Courtier is not a whore, a pimp, a leech, corrupt, or a swindler, nor is she anything synonymous with these terms. After a difficult upbringing, Courtier rehabilitated herself and became an upstanding member of society who devotes much of her time and resources to educational equity, restorative justice, and affordable housing. While she did spend two years in prison on a drug charge, nothing in her past supports the contention that she is a whore, pimp or a leech. Further, Lansford’s allegations that Courtier is corrupt and a swindler are similarly unfounded and particularly damaging to her reputation in the community as a successful business owner. Thus, the sting of these insults is not justified because they are neither true, nor substantially

true, and would cause reasonable people to think significantly less favorably about Courtier than they would if they knew the truth—that she is a caring, dedicated member of her community.

- c. Lansford’s comments are correctly characterized as statements of fact because they cannot be construed as opinions or rhetorical hyperbole.

Lansford published the defamatory statements about Courtier as assertions of fact, rather than opinions or rhetorical hyperbole. In a defamation claim, the alleged defamatory statements must be statements of fact that are capable of being proved true or false. Milkovich v. Lorain J. Co., 497 U.S. 1, 20–21 (1990). This definition precludes opinion or rhetorical hyperbole from being considered defamatory, and furthermore, actionable. Horsley v. Rivera, 292 F.3d 695, 701 (11th Cir. 2002). Lansford’s statements regarding Courtier are capable of being proven false and the language used is not loose and figurative which is a characteristic of rhetorically hyperbolic language. Id. at 701. Thus, Courtier’s claims meet the statements of fact element to prove a prima facie case of defamation.

1. The statements made by Lansford cannot be considered opinion because they are literal assertions of fact that are sufficiently capable of being proved true or false.

The United States Constitution fully protects statements of opinion, however there is an exception to this broad grant of freedom of expression—these opinions must have no “provably false factual connotation.” Milkovich, 497 U.S. at 20. Thus, opinions are characterized by courts as “statements that cannot reasonably be interpreted as stating actual facts about an individual.” Id. at 2. While there is not a bright line rule to determine whether or not communications are statements of opinion or fact, there is sufficient case precedent to guide the analysis. Id. at 21. The Supreme Court in Milkovich acknowledged that “expressions of ‘opinion’ may often imply an assertion of objective fact.” Id. at 18. In this case, the Plaintiff brought a defamation claim, arguing that statements made about him lying in his testimony, published in the county

newspaper, were defamatory. Id. at 5–6. The relevant statement in dispute was that anyone who heard the testimony in question “knows in [their] heart that [Plaintiff] . . . lied at the hearing.” Id. at 4–5. The Supreme Court of Ohio ruled that the statements were constitutionally protected opinions rather than statements of fact. Id. at 8. On appeal, the Supreme Court of the United States held that a reasonable factfinder could conclude that the statements were not opinion, but rather “sufficiently factual to be susceptible of being proved true or false.” Id. at 20–21. The Court reasoned that there was a core of objective evidence by which a determination of the falsity of the statements could be made, further supporting its finding of fact over opinion. Id.

Similar to Milkovich where a county newspaper employee authored a defamatory article stating that Plaintiff lied in his testimony, Lansford authored an article asserting that Courtier was a corrupt businesswoman with poor morals. In both cases, the defamatory statements in the articles were not opinions, but rather facts. The objective facts Lansford authored can unequivocally be characterized as false statements of fact. These statements, especially the ones deeming Courtier “corrupt and a swindler,” are sufficiently factual to be susceptible of being proved true or false. Courtier contributes heavily to her community both politically and philanthropically. It is undisputed that Courtier had a difficult childhood and young-adulthood. Despite this, she worked hard and started a business from the ground up that became very successful. There is no evidence of wrongdoing in the management or operation of these businesses. Further, there is a complete *lack* of evidence of Courtier being a “whore for the poor,” “pimp for the rich,” or a “leech on society.” Thus, Lansford’s assertions of fact can be proven false by a core of objective evidence, or lack thereof.

2. Lansford’s statements cannot be classified as rhetorical hyperbole because the language used was not loose, figurative or exaggerated, but rather the statements were accusations of fact capable of a defamatory meaning.

This Court should follow the reasoning set forth in the opinion of the Supreme Judicial Court of State of Tenley and fail to dismiss this claim because the language Lansford used in describing Courtier was not protected rhetorical hyperbole, but rather unprotected defamation, and Lansford was intimately aware of its falsity. Rhetorical hyperbole is protected under the First Amendment to the United States Constitution. Horsley, 292 F.3d at 701. Defamatory language is not. Id. Merriam-Webster dictionary defines “rhetorical hyperbole” as: “[an] extravagant exaggeration by which something is *represented* as much greater or less, better or worse, or as involving a greater intensity than in reality, or beyond possibility (e.g., “to dart with the speed of an arrow”); a statement exaggerated fancifully through excitement, or for effect.” *Rhetorical Hyperbole*, Merriam-Webster New International Dictionary (2d. ed. 1961) (emphasis added). Contrastingly, defamatory communication is communication likely to “harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 139 (1951) (citing Restatement (Second) of Torts § 559).

In Horsley, the Eleventh Circuit held that when considering whether language is defamatory or mere rhetorical hyperbole, courts must contemplate “the circumstances in which the statement was expressed” and the “context surrounding the statements.” 292 F.3d at 702. To guide its analysis, the court in Horsley weighed a number of considerations such as 1) whether the language was loose and figurative or a literal assertion, 2) whether the dialogue was taking place on an animated, non-literal plane, and 3) whether a reasonable person would think the statements were expressions of outrage as opposed to accusations of fact. Id.

The statements by Lansford simply do not qualify as rhetorical hyperbole under the definition or under applicable case law. Unlike true statements of rhetorical hyperbole,

Lansford's statements that Courtier was "a pimp for the rich," "a leech on society," "a whore for the poor," and "corrupt and a swindler," were not exaggerated for effect and do convey a defamatory meaning. They would likely deter third persons from associating or dealing with Courtier, especially the terms "corrupt and a swindler." As a businesswoman, these insults are particularly damaging to Courtier's reputation in the community. Considering the factors enumerated in Horsley, the language used by Lansford was not loose and figurative, but rather a literal assertion that was not taking place on a non-literal, animated plane. Further, a reasonable person would likely think these statements were accusations of fact rather than expressions of outrage, especially considering Lansford's personal knowledge of Courtier.

As a one-time political ally of Raymond Courtier, Courtier's late husband, Lansford came from a place of personal knowledge that these statements about Courtier were completely false. (J.A. at 3.). Even with knowledge of the falsity of these statements, Lansford proceeded to defame Courtier simply for voicing her political opinions, not with loose, figurative language, but rather with accusations of fact. As a citizen of Silvertown, and more broadly a citizen of the United States, Courtier has the express right to voice her opinions on political happenings. Her statements fall in line with criticisms that emerge in ordinary political dialogue surrounding an election. The opposite is true of Lansford's retaliatory statements. Thus, these statements are capable of a defamatory meaning and cannot be categorized as protected rhetorical hyperbole. and this Court should not dismiss Courtier's defamation and false light invasion of privacy claims.

d. Courtier is not a libel-proof plaintiff and will be able to collect damages because Courtier's criminal record did not damage her reputation beyond its ability to sustain further harm.

Lansford's claim that Courtier will not be able to collect any damages because of her status as a libel-proof plaintiff is an inaccurate application of the libel-proof plaintiff doctrine. Defamation "allows recovery of purportedly compensatory damages without evidence of actual loss. Under the traditional rules pertaining to actions for libel, the existence of injury is presumed from the fact of publication." Gertz v. Robert Welch, 418 U.S. 323, 349, 94 S. Ct. 2997, 3011 (1974). The libel-proof plaintiff doctrine is a judicially created doctrine which:

recognizes that damage to one's reputation is the core of a defamation action, and essentially holds that when a plaintiff's reputation is so diminished at the time of publication of the allegedly defamatory material that only nominal damages at most could be awarded because the person's reputation was not capable of sustaining further harm, the plaintiff is deemed to be libel-proof as a matter of law and is not permitted to burden a defendant with a trial.

Lamb v. Rizzo, 391 F.3d 1133, 1137 (10th Cir. 2004). The individual's right to the protection of his own good name "reflects no more than our basic concept of the essential dignity and worth of every human being -- a concept at the root of any decent system of ordered liberty." Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring). Therefore, the libel-proof plaintiff doctrine should be applied with caution. Guccione v. Hustler Magazine, Inc., 800 F.2d 298, 303 (2d Cir. 1986). When analyzing if a plaintiff could possibly be libel-proof, a court looks to both the relevant behavior of the plaintiff, as well as the amount of time that has lapsed between the time of the behavior and the defamatory statement. Guccione, 800 F.2d at 304.

In Guccione, a plaintiff was found to have been libel-proof as to adultery because of "the long duration of a widely known adulterous relationship combined with the relatively short period between its end and the article's publication." Guccione, 800 F.2d at 304.. Although the plaintiff claimed that an article was defamatory because his adulterous behavior had stopped, the court found that he did not succeed in restoring his reputation in the four years between the end of his illicit behavior and the statement at issue. Id.

Unlike the plaintiff in Guccione, Courtier's reputation-harming behavior occurred decades ago and Courtier's actions were not widely publicized. (J.A. at 6.). Courtier was able to restore her reputation by earning her G.E.D., attending a community college and running successful clothing stores. (J.A. at 5.). Additionally, Courtier's past clearly did not affect her husband's political career, as he held the office of mayor for eighteen consecutive years until his death. (J.A. at 2.).

Courtier does not reach the status of a libel-proof plaintiff in the eyes of the public because her reputation was not so damaged that it was incapable of sustaining further harm. Lamb, 391 F.3d at 1137. The crimes that Courtier committed in her youth were not widely publicized and did not affect her husband's career as mayor, her ability to run successful businesses, or her participation in political and social causes. (J.A. at 2-3.). Lansford's assertion that Courtier is incapable of recovering for defamation because she is a libel-proof plaintiff is a misapplication of the libel-proof plaintiff doctrine and does not defeat Courtier's claims.

e. Courtier can show that Lansford's defamatory statements were made with actual malice, thus fulfilling her false light invasion of privacy claim and the additional element for defamation for public figures.

Lansford published the defamatory statement about Courtier with actual malice. Actual malice is an essential element to Courtier's false light invasion of privacy claim. Veilleux v. Nat'l Broad. Co., 206 F.3d at 134. Additionally, it is a necessary element for defamation if the plaintiff is considered a public figure. Schiavone Constr. Co. v. Time, Inc., 847 F.2d 1069, 1076 (3d. Cir. 1988). Because actual malice is a high burden, those considered public figures is confined to a limited group of individuals. Gertz, 418 U.S. at 344. Lansford's statements were made with actual malice because he had actual knowledge that the statements were false. This fulfills Courtier's false light invasion of privacy claim. Additionally, Courtier is not a public figure and,

therefore, is not required to meet the standards of actual malice for her defamation claim; however, even if the court chooses to find that Courtier is a public figure for purposes of this litigation, Courtier still meets the threshold for actual malice.

1. Courtier is not a public figure and, therefore, is not required to meet the high standard of actual malice for her defamation claim because she has not reached the level of notoriety of an all-purpose public figure and has not thrust herself to the forefront of the election enough to warrant herself a limited purpose public figure.

Although Lansford's statements were made with actual malice, this is not an essential element for Courtier's defamation claim because Lansford does not qualify as a public figure. A public figure may only recover for libel if he or she proves actual malice. Schiavone, 847 F.2d at 1076 (citing N. Y. Times Co. v. Sullivan, 376 U.S. at 279-80). Public figures are a limited group of individuals who achieve this status "by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention" Gertz, 418 U.S. at 342. Usually, those who are considered public figures "have assumed roles of special prominence in the affairs of society." Id. at 345. There are two types of public figures. Id. There are those who, "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes," and there are limited-purpose public figures who "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." Id. However, a person does not reach the status of a public figure for all purposes because of his or her participation in community and professional affairs. Id. Additionally, a person does not become a limited-purpose public figure "just by becoming involved in or associated with a matter that attracts public attention." Wolston v. Reader's Digest Ass'n, Inc., 443 U.S. 157, 167 (1979). Rather, a person must have "'thrust themselves to the forefront' of the controversies so as to become factors in their ultimate resolution" Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287, 1297 (D.C. Cir. 1980) (citing Gertz, 418 U.S. at 345). When a

person is deemed a limited-purpose public figure, this status is confined to a limited range of issues. Waldbaum, 627 F.2d at 1292.

A plaintiff was not considered a public figure when she was a person of prominence in her community and her husband was a member of an extremely wealthy and well-known family. Time, Inc. v. Firestone, 424 U.S. 448, 454 (1976). In Firestone, the plaintiff was a victim of libel relating to her highly publicized divorce. The Court stated that her wealth, her prominence in her community's society and her relationship to her well-known husband did not make her a public figure. Id. at 454. Additionally, the Court clarified that a person does not become a limited-purpose public figure simply because they are involved in court proceedings. Id. at 456.

Like the plaintiff in Firestone, Courtier is not an all-purpose public figure despite her community involvement. Firestone, 424 U.S. at 454. Although Courtier owns several businesses, is a social advocate, and was married to the former mayor, she has not assumed a role of special prominence in society and does not occupy a position of persuasive power and influence. (J.A. at 2.). Additionally, Courtier has not reached the status of limited-purpose public figure. Like the plaintiff in Firestone, Courtier's involvement in public court proceedings do not make her a limited-purpose public figure for issues relating to her past convictions. Id. Her statements about Lansford also do not elevate her to the status of a limited-purpose public figure. Courtier simply voiced her political opinion on a mayoral candidate. Courtier's involvement in Bailord's campaign similarly did not elevate her status. Courtier was not running for mayor herself, but rather expressing her political voice. She did not thrust herself to the forefront of the election and did not become a factor in the election's resolution. Thus, she does not reach the status of limited-purpose public figure. Further, even if Courtier was a limited-purpose public figure with regard to the political comments she made towards Lansford, this limited-purpose would not

extend to Courtier's personal and professional life, but would be confined to her political views. Waldbaum, 627 F.2d at 1292 (D.C. Cir. 1980).

2. Lansford's defamatory statements about Courtier were made with actual malice because Lansford had actual knowledge that the statements he made were false.

Lansford's defamatory statements about Courtier were made with actual malice.

Although actual malice is not an essential element to Courtier's defamation claim, Courtier still must show that Lansford's statements were made with actual malice to succeed in her false light invasion of privacy claim. A statement is made with actual malice when the it was made "with knowledge that it was false or with reckless disregard of whether it was false or not." Schiavone, 847 F.2d at 1076 (citing N. Y. Times Co. v. Sullivan, 376 U.S. at 279-80). The standard for actual malice is subjective and must be shown by clear and convincing evidence. Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 688 (1989). The evidence must permit the conclusion that the defendant actually had a "high degree of awareness of ... probable falsity." Id. (citing Garrison v. Louisiana, 379 U.S. 64, 74(1964)). A lie which is "knowingly and deliberately published about a public official" is not protected because "the use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected." Garrison, 379 U.S. at 75.

A respondent's actions did not rise to the level of actual malice when he did not have personal knowledge of the petitioner's activities. St. Amant v. Thompson, 390 U.S. 727, 730 (1968). In Thompson, the respondent did not know the petitioner personally, but rather, relied on the false statements of others and failed to verify their accuracy. Id. The court found that because the respondent who made the defamatory statements did not have a high degree of awareness of probable falsity, there was no actual malice. Id. at 730-732.

Lansford has actual knowledge of the falsity of his statements. Unlike the respondent in Thompson, Lansford did not rely on the statements of others for the information contained in his statement, but rather used his own personal knowledge of Courtier. Lansford knew that Courtier was not an inveterate criminal because Lansford and Courtier's late husband, Raymond, were political contemporaries and served on the city council together. (J.A. at 3.). Raymond Courtier was one of Lansford's early supporters. Id. Lansford simply created untrue allegations about Courtier's character and business practices. Lansford had actual knowledge that the statements he made about Courtier were false, and therefore, they were made with actual malice.

Courtier is not a public figure because she has not reached the level of notoriety of an all-purpose public figure and has not thrust herself to the forefront of the election enough to warrant herself a limited purpose public figure. Thus, Courtier does not have to meet the additional element of actual malice in order to succeed on her defamation claim. Even if the court deems Courtier a public figure, however, Courtier has met the additional defamation element of actual malice because Lansford knowingly made false statements which defamed Courtier. Courtier has shown that Lansford's statements were made with actual malice, thus fulfilling an essential element to her false light claim.

CONCLUSION

Courtier's defamation and false light invasion of privacy claims should not be dismissed because Courtier has established a prima facie case for both claims and because Lansford speech was not protected. Courtier has established each element for the two claims and has established that the additional defamation element of actual malice does not apply to Courtier because she does not qualify as a public figure. Further, Courtier has rebutted all of Lansford's assertions. Courtier does not qualify as a libel-proof plaintiff and will be able to recover damages because

Courtier's criminal record did not damage her reputation beyond its ability to sustain further harm. Courtier has additionally shown that Lansford's statements are not protected speech. The statements are not protected because they are neither true, nor substantially true, and Lansford was personally aware of their falsity. Additionally, the statements cannot be classified as rhetorical hyperbole because the language used was not loose, figurative or exaggerated, but rather the statements were accusations of fact capable of a defamatory meaning. For the aforementioned reasons, Courtier respectfully asks this court, in reviewing the case de novo, to find that Courtier has established a prima facie case of defamation and false light invasion of privacy and allow Courtier's claims to proceed.