No: 18–2143

In the Supreme Court of the United States of America

October Term, 2019

ELMORE LANSFORD,

Petitioner,

v.

SILVIA COURTIER,

Respondent.

Appeal From The Judgment Of The Supreme Judicial Court Of State Of Tenley (No. XSJ – 99219)

Affirming In Part And Reversing In Part The Judgment Of The Tenley District Court (No. CV – 5191).

BRIEF FOR RESPONDENT

September 29, 2019 | Team: 219931 | *Counsel for Respondent*

I. Questions Presented

Issues 1: Will finding an individual who pleaded guilty to a felony that received no public attention decades ago and who is facing allegations of unrelated criminal conduct libel-proof based on that felony when the individual currently enjoys a robust reputation violate defamation law?

Suggested answer: Yes.

Issue 2. Will allowing the challenged statements to pass as rhetorical hyperbole rather than a specific, pointed defamatory attack result in over-extending the ambit of protected First Amendment speech?

Suggested answer: Yes.

Issue 3. Will permitting false allegations that impute criminal conduct, thereby damaging an individual's robust reputation, contravene the long-standing societal interest in preventing and redressing unfounded attacks on reputation?

Suggested answer: Yes

II. Table of Contents

III. Table of Authorities

1. U.S. Supreme Court Cases

2. U.S. Circuit Court Cases

3. U.S. District Court Cases

IV. Statement of Jurisdiction

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.

V. Statement of the Case

Silvia Courtier ("Ms. Courtier") filed a lawsuit against Elmore Lansford ("Mr. Lansford") in the State of Tenley District Court ("District Court") for defamation of character and false light invasion of privacy. Mr. Lansford described her as a "pimp for the rich;" "a leech on society;" "a whore for the Poor;" and "corrupt and a swindler" on his website. In her suit, Ms. Courtier asserted these falsities harm her good name. Mr. Lansford responded with a special motion to dismiss/strike her lawsuit as a strategic lawsuit against public participation ("anti-SLAPP"). He argues his statements are protected rhetorical hyperbole under the First Amendment and that Ms. Courtier is libel-proof.

Statement of Facts:

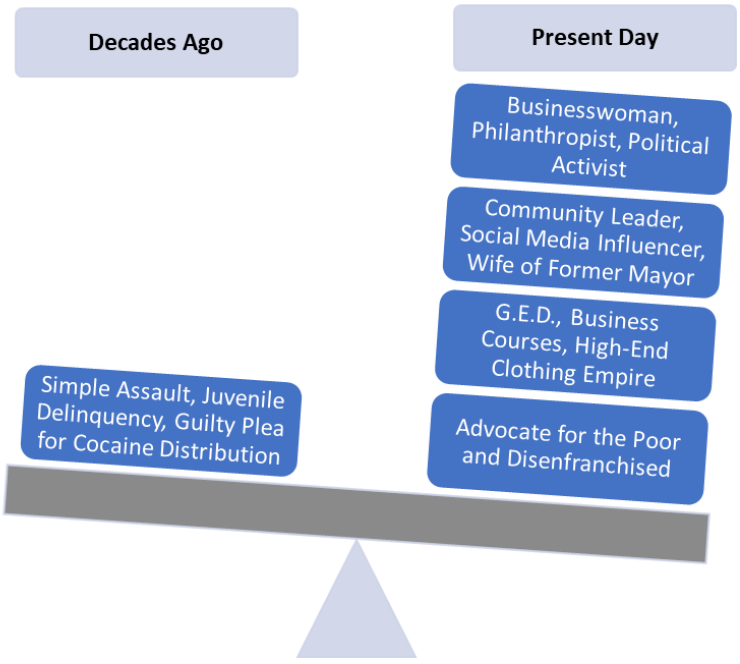
Ms. Courtier is the widow of former Silvertown mayor, Raymond Courtier, and a successful entrepreneur. (J.A. at 2.) She owns a line of high-end clothing stores and fights for marginalized members of her community. (J.A. at 5; 16.) This includes her public advocacy against for-profit prisons and against the elimination of affordable housing. (J.A. at 16.) She uses her large social media presence to influence and further her advocacy, but she maintains separate websites for her business and political causes. (J.A. at 16; 2.)

Ms. Courtier is also a political activist who publicly criticized current Silvertown mayor, Mr. Lansford. (J.A. at 16.) During a recent election, she posted commentaries that noted Mr. Lansford is "someone who cares little for social justice issues." (J.A. at 3; 4.) Mr. Lansford responded with a "fusillade" of insults, labeling Ms. Courtier a "pimp for the rich;" "a leech on society;" "a whore for the Poor;" and "corrupt and a swindler." (J.A. at 4; 18.) Mr. Lansford defends his statements claiming they are protected rhetorical hyperbole and that Ms. Courtier is a libel-proof former felon with no good reputation to protect. Id.

While Ms. Courtier indeed had a troubled past, that was decades ago. (J.A. at 15.) Her youthful transgressions arose from a difficult upbringing by a drug addicted mother and father, who died before she was ten years old. (J.A. at 5.) As a child, Ms. Courtier suffered physical, emotional, and sexual abuse. Id. It was at this time that she turned to illicit substances to cope. Id. Her indiscretions included simple possession of marijuana and pleading guilty to one count of cocaine distribution, for which she served two years in prison. (J.A. at 5; 16.)

While there is no disputing Ms. Courtier committed several offenses as a youth, her transformation into a successful businesswoman, philanthropist, and political activist began during her brief period of incarceration. (J.A. at 5.) In prison, she earned a G.E.D, began community college, and took every business class available. Id. She started the first of her line of high-end clothing stores, and also met her late husband of eighteen years. (J.A. at 5; 15.) Ms. Courtier ultimately established, and now enjoys, a robust reputation in her community. (J.A. at 16.)

Figure 1. Ms. Courtier's Transformation from Prior Conviction to Robust Reputation



Procedural History:

The District Court rejected Mr. Lansford's assertion that Ms. Courtier is libel-proof. (J.A. at 11.) However, it found that his statements were protected rhetorical hyperbole, and granted his special motion to dismiss/strike. (J.A. at 13.) On appeal, the Supreme Judicial Court of State of Tenley ("Judicial Court") adopted the libel-proof doctrine and concluded that Ms. Courtier is not libel-proof. (J.A. at 20; 21.) However, the Judicial Court disagreed that Mr. Lansford's statements were protected speech, noting that calling Ms. Courtier "corrupt" and a "swindler" might be defamatory, and finding he "vociferously" attacked her abilities and integrity as a businessperson. (J.A. at 22.)

This honorable Court granted a petition for writ of certiorari to decide (1) if Ms. Courtier can be held libel proof on the basis of a past criminal conviction that gained no public attention and (2) whether Mr. Lansford's statements qualified as unprotected defamation. (J.A. at 24.)

Standard of Review:

A defamatory statement implicating the First Amendment compels *de novo* review. Rosenbloom v. Metromedia, 403 U.S. 29, 54 (1971). To ensure that First Amendment guarantees remain intact, this Court must make an "independent constitutional judgment on the facts." Id.

Request for Relief:

Ms. Courtier asks this Court to (1) affirm the District Court's holding that she is not a libel-proof plaintiff; (2) affirm the Judicial Court's holding that Mr. Lansford's statements are not protected rhetorical hyperbole; and (3) to therefore deny Mr. Lansford's special motion to dismiss/strike her defamation claim.

VI. Summary of the Argument

The Judicial Court properly affirmed the decision of the District Court finding that Ms. Courtier is not libel-proof. Further, it properly reversed the portion of the District Court's finding that Mr. Lansford's defamatory statements were protected hyperbole. Mr. Lansford appeals the Judicial Court's finding that his statements calling Ms. Courtier a "pimp for the rich;" "whore for the Poor;" "corrupt and a swindler" may not be protected hyperbole, thereby reversing the District Court's decision to grant the motion to dismiss/strike. Upon review of the record and the relevant authorities, Mr. Lansford's argument is without merit.

1. The District Court properly found that Ms. Courtier is not libel proof. Ms. Courtier's guilty plea to distribution of cocaine is not a serious criminal offense. Though she spent two years in prison, her conduct occurred decades ago. Moreover, Ms. Courtier is not a habitual criminal or an individual with a notorious reputation for criminality. Her past conduct is substantially different than that against her. In addition, Mr. Lansford's challenged statements, when read in context, resulted in more harm to Ms. Courtier's reputation than the unchallenged statements in his publication. Importantly, the court found that Ms. Courtier reformed herself, starting during her time in prison, into a successful and respected businesswoman, philanthropist, and political activist. Her past conviction received no public attention or notoriety. Moreover, it does not even concern the present allegations leveled against her.

2. The Judicial Court properly reversed the District Court's grant of Mr. Lansford's motion to dismiss/strike. Mr. Lansford's statements are not rhetorical hyperbole protected under the First Amendment. His comments are *prima facie* defamatory and therefore are not privileged. False defamatory comments about a public figure presented as fact and

published with at least reckless disregard for the truth are not protected by the First Amendment. Not only are Mr. Lansford's published comments verifiable as facts that can be proven true or false, they are in fact substantially false. Further, Mr. Lansford had a high awareness they were probably false and recklessly disregarded this probability. Mr. Lansford's online post is neither vague, rhetorical, nor imaginative. Mr. Lansford makes no indication to the reasonable reader that his statements are opinion. The assertions are specific lies about Ms. Courtier and her abilities and integrity as a businesswoman.

3. This Court's policy-holdings dictate that Mr. Lansford should not be permitted to proceed with his unfounded attacks on Ms. Courtier's reputation. This Court has repeatedly emphasized the importance of preventing and redressing reckless defamatory attacks on reputation. This is especially true when the language is not loose and figurative but instead falsely imputes criminal conduct. Mr. Lansford's comments are indeed reckless and defamatory imputations of criminal conduct and not the type of speech protected by the First Amendment.

The special motion to dismiss/strike must be denied.

VII. Argument

I. MS. COURTIER HAS A ROBUST REPUTATION WORTHY OF PROTECTION AND IS NOT LIBEL-PROOF UNDER TENLEY DEFAMATION LAW.

This Court should affirm (1) the Judicial Court's adoption of the libel-proof plaintiff doctrine and (2) the Judicial and District court findings that Ms. Courter is not a libel-proof plaintiff under Tenley defamation law. Ms. Courtier has not engaged in any criminal conduct for several decades and currently enjoys a robust reputation in her community. (J.A. at 6.) Moreover, Mr. Lansford's defamatory statements resulted in more damage to her reputation than the overall statements read in context. Accordingly, Ms. Courtier is not libel-proof under either (1) the issue-specific libel-proof plaintiff doctrine or (2) the incremental harm doctrine.

a. Ms. Courtier Is Not Libel-Proof Under The Issue-Specific Libel-Proof Plaintiff Doctrine.

Ms. Courtier is not libel-proof under the issue-specific libel-proof plaintiff doctrine. Ms. Courtier is a businesswoman, philanthropist, and political activist who enjoys a robust reputation in the Silvertown community. (J.A. at 2.) Nor has she ever been convicted of a crime. (J.A. at 5.) Decades ago, Ms. Courtier was declared delinquent by a juvenile court for committing minor offenses, including simple assault, and for possession of marijuana, the medicinal and recreational use of which has been legal in Tenley for the past few years. (J.A. at 15.) Though Ms. Courtier pleaded guilty to a single count of cocaine distribution decades ago, her guilty plea received no widespread public attention. (J.A. at 5.) Further, she reformed herself while serving two years in prison for this offense, obtaining her G.E.D., enrolling in business courses, and launching the first of many high-end clothing stores. (J.A. at 16.)

Mr. Lansford's statements that Ms. Courtier is a "pimp," "whore," "corrupt," and a "swindler" pertain to specific subjects that damage her standing in the community. However, Ms. Courtier is not libel-proof under the issue-specific libel-proof plaintiff doctrine because her reputation regarding those subjects was never so badly tarnished that she could not be further injured by his statements. See Stern v. Cosby, 645 F. Supp. 2d 258, 270 (S.D.N.Y. 2009).

Ms. Courtier's guilty plea to distribution of cocaine is not a serious criminal conviction for an act resulting in death or substantial bodily harm. See Ray v. Time, Inc., 452 F. Supp. 618, 622 (W.D. Tenn. 1976) (finding convicted assassin of Dr. Martin Luther King, Jr. libel-proof); Davis v. The Tennessean, 83 S.W.3d 125, 131 (Tenn. Ct. App. 2001) (holding inmate sentenced to 99 years in prison for felony murder libel-proof). Moreover, Ms. Courtier is not a "habitual criminal" because her criminal conduct occurred decades ago, and she has since transformed into a productive member of society. See Cardillo v. Doubleday, Co., 518 F.2d 638, 639 (2d Cir. 1975) (noting inmate "so unlikely by virtue of his life as a habitual criminal to recover anything other than nominal damages" libel-proof).

Importantly, Ms. Courtier's guilty plea received no widespread public attention at the time, and she has never had a notorious reputation for criminality. See Jackson v. Longcope, 476 N.E.2d 617, 621 (1985) (finding convicted felon serving life sentence without possibility of parole and whose crimes were reported in multiple newspaper articles libel-proof). Finally, Ms. Courtier's previous offense is not substantially similar to Mr. Lansford's current allegations against her. See McBride v. New Braunfels Herald-Zeitung, 894 S.W.2d 6 (Tex. App. 1994) (stating that even where a plaintiff's past convictions are well known, a plaintiff whose criminal history is not so extreme that no reasonable person can find further damage to her reputation by a false accusation is not libel-proof).

i. Ms. Courtier's guilty plea for distribution of cocaine is not a serious criminal conviction.

This Court should reject the argument that Ms. Courtier's single guilty plea for distribution of cocaine renders her libel-proof. A guilty plea for distribution of cocaine is not a serious criminal conviction within the meaning of current defamation law. See Ray, 452 F. Supp at 618. The plaintiff in Ray previously pleaded guilty to murdering Martin Luther King, Jr. Id. at 619. He then challenged the defendant publisher's statements regarding his confession as libelous. Id. at 621. However, the court held the plaintiff libel-proof because he was a convicted murderer. Id. at 622.

Nor did Ms. Courtier engage in such serious criminal activity that a court may disregard even a false attribution of different, prior criminal conduct in determining whether she may be held libel-proof. See Davis, 83 S.W.3d at 125. In Davis, the plaintiff and his co-defendant robbed a tavern, resulting in the death of the owner. Id. at 126. The defendant publisher printed a story incorrectly stating that the plaintiff killed the owner when in actuality his co-defendant did so. Id. However, the plaintiff received a 99-year sentence for felony murder. Id. at 131. The court found the plaintiff libel-proof, in spite of the inaccurate newspaper reporting. Id.

Finally, Ms. Courtier has not committed any criminal acts that could be characterized as "utterly" heinous. See Lamb v. Rizzo, 242 F. Supp. 2d 1032 (D. Kan. 2003). The plaintiff in Lamb confessed to committing multiple violent acts, including kidnapping and murder. Id. at 1038. The court held the plaintiff libel-proof, rejecting his argument that he had not committed a new crime in fifteen years. Id. The court noted that his lack of subsequent criminal conduct was due only to his serving three life sentences. Id.

Ms. Courtier is not like the plaintiffs in Ray and Davis because she did not commit a serious criminal act, including murder or felony murder, that resulted in a life sentence. (J.A. at 16.) Ms. Courtier pleaded guilty to a single count for distribution of cocaine, which is not a violent felony. Id. Moreover, she stands to be much more than nominally damaged by Mr. Lansford's false attributions. Her crime was not one for which she may be held libel-proof despite Mr. Lansford's false statements inaccurately asserting that she is "corrupt" and a "swindler." Finally, Ms. Courtier is not like the plaintiff in Lamb because she spent only two years in prison and did not commit any utterly heinous acts, despite having the opportunity to do so over the past several decades.

ii. Ms. Courtier is not a habitual criminal because her single offense occurred decades ago.

Ms. Courtier may not be held libel-proof as a habitual criminal because she committed the only crime to which she has ever pleaded guilty decades ago. The Cardillo case, cited favorably by the District and Judicial courts, is instructive. Cardillo v. Doubleday & Co., 518 F.2d 638 (2d Cir. 1975). The petitioner was convicted of numerous crimes and incarcerated at the time of his suit. Id. at 639–40. The court found him libel-proof based on his reputation for habitual crime. Id. The court noted he was only nominally damaged by the respondent's statements. Id.

Moreover, Ms. Courtier did not generate a "laundry list" of serious crimes for which she may be held libel-proof, regardless of when they occurred. See Dewitt v. Outlet Broad., Inc., C.A. No. NC 98-0196, 1999 R.I. Super. LEXIS 39, *12 (Super. Ct. Dec. 17, 1999). The Dewitt plaintiff was charged with aggravated sexual assault. Id. at *1. The defendants broadcast that he was a "convicted rapist," but asserted that he was libel-proof based on a reputation as a habitual criminal. Id. at *1; *3. The plaintiff responded that he had never been convicted of rape and that his criminal

activity occurred decades prior to defendants' broadcast. Id. at *6. However, the court held him libel-proof, noting his "laundry list" of offenses included robbery, forgery, possession, and first-degree sexual assault. Id. at *12. Importantly, the plaintiff's "reputation [was] . . . sufficiently low" as to enable recovery of only nominal damages." Id.

This Court should give no merit to the argument that Ms. Courtier previously pleaded guilty. Committing a single crime is not similar to engaging in habitual criminal activity. Ms. Courtier is not like the petitioner in Cardillo because she served time in prison decades ago and her reputation was much more than nominally damaged by Mr. Lansford's post. (J.A. at 6.) Moreover, she was not convicted of numerous crimes, but was declared delinquent by a juvenile court. (J.A. at 15.) See Finklea v. Jacksonville Daily Progress, 742 S.W.2d 512 (Tex. App. 1987) (finding plaintiff libel-proof where records indicate long period of arrests and convictions extending over decades, including for possession of narcotics and controlled substances); see also Jackson v. Longcope, 476 N.E.2d 617 (1985) (holding plaintiff with notorious reputation libel-proof).

Though Ms. Courtier is more like Dewitt because her conduct occurred decades ago, she was never convicted of "corruption" and "swindling," contrary to Mr. Lansford's defamatory allegations. (J.A. at 15.) Importantly, unlike Dewitt, whose criminal past was widely reported to the public, Ms. Courtier's reputation for honesty and fair dealing is not "sufficiently low." She is in fact a widely respected figure who actively fights for the rights of the poor and disenfranchised in the Silvertown community. (J.A. at 21.) Finally, unlike Dewitt, Ms. Courtier did not previously serve time for robbery, forgery, or sexual offenses, and is not a "whore for the Poor," "pimp for the rich," or "corrupt" and a "swindler."

iii. Ms. Courtier does not have a notorious reputation for criminality because her conviction received no public attention.

This Court should not consider Ms. Courtier's single guilty plea for distribution of cocaine because her guilty plea was not well-known to the public. Therefore, she is presumed to have a good reputation worthy of protection. See McBride v. New Braunfels Herald-Zeitung, 894 S.W.2d 6 (Tex. App. 1994). The appellant in McBride was convicted of offenses nearly fifteen years prior to publication of an article stating he had been arrested and charged with aggravated robbery. Id. at 7–8. The article included the statement, "[h]e got away with approximately $1,700 in cash and cigarettes." Id. at 9. However, the court noted that because his previous offenses were not widely known, McBride was presumed to have a good reputation with regard to the specific offense reported in the article. Id.

Further, even if Ms. Courtier's conduct was known to individuals within her community, it was not widespread enough to render her libel-proof. See Brooks v. Am. Broad. Cos., 932 F.2d 495 (6th Cir. 1991). In Brooks, a suspected "hitman," alleged that the defendant, a TV personality, broadcast that he was a "pimp," "muscleman," and "street knowledgeable jive turkey." Id. at 496–97. Brooks was previously convicted of multiple crimes, including first-degree larceny. Id. Though some members of the community knew about his criminal past, no "popular nationwide . . . program or publicity" had portrayed him as a "hitman" or a "pimp." Id. at 502.

Ms. Courtier is like Brooks because she was portrayed as a "pimp" and a "whore" on a website accessible nationwide. (J.A. at 8.) Similar to Brooks, who was called defamatory names such as "pimp" and "muscleman," Mr. Lansford imputed conduct to Ms. Courtier in which she did not previously engage and for which she did not have a reputation in her community. In contrast to McBride, who was previously convicted of multiple offenses but still presumed to have a good

reputation where the offenses were not well-known, Ms. Courtier pleaded guilty to a single offense, decades ago, and is presumed to have a good reputation worthy of protection. (J.A. at 15.)

iv. Ms. Courtier's previous offense is not substantially similar to the current allegations against her.

The Court should find that Ms. Courtier is not libel-proof because her previous offense is not substantially similar to the current allegations against her. Mr. Lansford's post contained inaccurate details regarding specific instances of her conduct, including that she is "corrupt" and a "swindler" in her business dealings. (J.A. at 18.) But the argument that she is libel-proof is without merit. See Stern v. Cosby, 645 F. Supp. 2d 258, 271 (S.D.N.Y. 2009). In Stern, the companion of Anna Nicole Smith sued a publisher for falsely stating that he "pimped" Smith out to fifty men per year. Id. at 263. The defendant asserted Stern had failed to prove actual malice. Id. at 264. However, the court concluded that the allegations in the book were "fundamentally different" from those reported in the tabloid media. Id. at 271. The "general thrust" of reports that Stern exploited Smith for money was a situation "different in kind" from allegations that he "pimped" her out. Id. The court found Stern not libel-proof. Id.

Ms. Courtier is similar to Stern because the allegations that she engaged in offenses for which she was declared a juvenile delinquent are different from those that she is a "pimp" and "corrupt." (J.A. at 5.) Her past conduct is "fundamentally different" from the assertions that she is a "leech" and a "whore." Finally, the "general thrust" of the allegations about Ms. Courtier is a situation different in kind from the publicly available information regarding Ms. Courtier's philanthropic and charitable activities. (J.A. at 21.) Moreover, Mr. Lansford's statements that she is "corrupt" and a "swindler" are not related to her guilty plea for distribution of heroin and are

irrelevant to determining whether she is libel-proof. See Logan v. District of Columbia, 447 F. Supp. 1328, 1332 (D.D.C. 1978) (finding plaintiff with prior federal narcotics conviction who was currently serving a prison sentence for federal firearms conviction libel-proof).

Finally, this Court should reject the argument that Ms. Courtier has not adequately reformed herself since the time of her guilty plea. See Zerangue v. TSP Newspapers, Inc., 814 F.2d 1066 (5th Cir. 1987). The court in Zerangue found that the plaintiff had offered sufficient evidence to survive summary judgment because, although he was a law enforcement officer who had been stripped of his office, he had reformed himself within the past six years. Id. at 1074. The evidence of reformation included affidavits that Zerangue had subsequently been seriously considered for Chief of Police. Id. Unlike Zerangue, Ms. Courtier's conduct occurred decades ago, exceeding the six years in that case. (J.A. at 10.) She has more than reformed herself, not only receiving a "promotion," but building a successful line of high-end clothing stores in the city. (J.A. at 16.)

b. Ms. Courtier Is Not Libel-Proof Under The Incremental Harm Libel-Proof Plaintiff Doctrine.

Ms. Courtier is not a libel-proof plaintiff under the incremental harm doctrine. Ms. Courtier was subject to baseless assertions that she is a "pimp," "leech," "whore," and "corrupt." (J.A. at 18.) Though she does not challenge every statement in Mr. Lansford's defamatory post, she does challenge the specific statements that undermine her credibility as a businesswoman and philanthropist within her community. (J.A. at 18.) As a politically active individual, Ms. Courtier is often in the public eye and is subject to tremendous harm from his false allegations. Mr. Lansford's challenged statements, read in context of his complete post, resulted in significant harm to Ms. Courtier's professional reputation in the Silvertown community. Nor are the challenged statements protected by a defense of substantial truth because they are substantially false.

The Court should find that the incremental harm doctrine, which "measures the incremental reputational harm inflicted by the challenged statements beyond the harm imposed by the nonactionable remainder of the publication," is inapplicable to the present case. Masson v. New Yorker Magazine, 501 U.S. 496, 523 (1991). The courts will examine the challenged communication rather than examining a previously damaged reputation. Thomas v. Tel. Pub'g Co., 929 A.2d 991, 1002–03 (2007). If the challenged statement harms a plaintiff's reputation far less than the unchallenged statement in the same article, the plaintiff may be held libel-proof. Id. at 1003. A court may consider only actionable statements, and substantial truth may render a statement nonactionable. Id.

Though Ms. Courtier's conduct does not touch or concern the requirements of the libel-proof plaintiff doctrine, this case presents the Court with an opportunity to clarify differences in state law regarding the types of individuals to whom application of the libel-proof plaintiff doctrine may be appropriate. See, e.g., Buckley v. Littell, 539 F.2d 882, 889 (2d Cir. 1976) (limiting libel-proof doctrine to a "narrow" class of plaintiffs); Marcone v. Penthouse Int'l Magazine, 754 F.2d 1072, 1079 (3d Cir. 1985) (excluding plaintiff from libel-proof plaintiff doctrine because he was not an individual with a "string of items of negative publicity" for past behavior); Zerangue, 814 F.2d at 1066 (applying libel-proof plaintiff doctrine to individuals who have not engaged in measures to improve their past negative reputations).

i. Mr. Lansford's challenged statements caused Ms. Courtier more harm than his unchallenged statements when read in context.

Mr. Lansford's challenged statements resulted in more harm to Ms. Courtier than his unchallenged statements read in context. The statements that she is a "pimp for the rich;" a "whore

for the Poor;" a "leech on society;" and "corrupt and a swindler," when viewed against the entirety of his defamatory post, are more damaging to Ms. Courtier's robust reputation as a businesswoman, philanthropist, and political activist than the unchallenged statements.

To determine whether the incremental harm doctrine applies, the courts will consider the (1) proportion of challenged to unchallenged statements and (2) potential harm from statements not admitted as true. See Thomas, 929 A.2d at 1003. In Thomas, a convicted criminal filed suit against a newspaper for publishing that he was suspected of more than 1,000 burglaries Id. at 319. The plaintiff challenged fifty-eight out of ninety statements in the publication—approximately 66% of the article. Id. at 323. The newspaper asserted that the plaintiff was libel-proof because accurate public reporting of the plaintiff's criminal record would have damaged his reputation far more than the newspaper article. Id. Noting that the incremental harm doctrine focuses on challenged communication, the court found that the article could potentially harm the plaintiff' reputation and that he was not libel-proof under the facts of the case. Id. at 323–24.

Ms. Courtier is like Thomas because she is challenging at least four out of eleven statements in Mr. Lansford's—approximately 36% of the statements in the article. (J.A. at 18.) Although she challenges a smaller percentage of the statements than Thomas, the potential harm from the statements not admitted as true greatly exceeds the harm in that case because Ms. Courtier does not have an extensive criminal history that could be the subject of accurate reporting and because she has not admitted to being involved in any crimes of swindling or corruption. (J.A. at 10.) See Jewell v. NYP Holdings, Inc., 23 F. Supp. 2d 348, 396 (S.D.N.Y. 1998) (finding that defendant newspaper publisher's statements that plaintiff "hero" security guard was likely the Atlanta Olympics bomber, that "we're pretty confident it's him," and that "everybody here should

be glad they finally got this guy" may have caused plaintiff to suffer more than incremental harm regardless of previously published statements that he was the focus of the investigation).

ii. Mr. Lansford's challenged statements are actionable because they are substantially false.

Mr. Lansford's challenged statements are actionable because they are substantially false. In fact, his statements are maliciously false because they did not convey information but rather negatively impacted the post's readers' perception of Ms. Courtier and her robust reputation. C.f. Ferreri v. Plain Dealer Publ. Co., 756 N.E.2d 712 (2001) (finding that statements regarding appellant's involvement in the matter were not defamatory because simply stating appellant was involved is not itself defamatory). In Ferreri, the appellant alleged that an article accusing him of publicly making false statements about judges—thereby violating the Code of Professional Responsibility—and unprofessional conduct in the court was defamatory under the incremental harm doctrine. Id. at 723. The court found that the challenged statement that he was at the center of many disputes could not harm his reputation any more than the truthful statement that he had been recommended for suspension as a judge based on his publicly false statements about other judges. Id. at 643. The appellant was held libel-proof. Id.

Ms. Courtier is not like Ferreri because Mr. Lansford's statements did not convey information that was substantially true. Rather, they contained numerous falsities and "vociferously" attacked her professional integrity and abilities as a businesswoman and philanthropist. (J.A. at 22.) The post did not convey that Ms. Courtier had previously pleaded guilty to one count of distribution of cocaine but rather called her a "pimp," "whore," "corrupt,"

and a "swindler," far exceeding the substantially true statements in Ferreri that the appellant was at the center of many disputes due to his public attacks on judges and other court officials.

Accordingly, as demonstrated above, Ms. Courtier is not libel-proof under either (1) the issue-specific libel-proof plaintiff doctrine or (2) the incremental harm doctrine. Ms. Courtier enjoys a robust reputation worthy of protection. Her guilty plea for distribution of cocaine is not a serious criminal conviction, nor is she a habitual criminal. Her conviction received no public attention, and her past conduct is not substantially similar to the current allegations against her. Further, Mr. Lansford's challenged statements caused Ms. Courtier more harm than his unchallenged statements and are actionable as substantially false.

II. MR. LANSFORD'S STATEMENTS ARE DEFAMATORY AND NOT PRIVILEGED UNDER THE FIRST AMENDMENT AS RHETORICAL HYPERBOLE.

This Court should affirm the Judicial Court's finding that Mr. Lansford's statements are not rhetorical hyperbole. The defamatory remarks Mr. Lansford published about Ms. Courtier are not privileged under the First Amendment. Though Mr. Lansford's statements are expression, they are not the type protected by the First Amendment. Through campaign fundraisers and advocacy, Ms. Courtier has become a public figure. She lays out a *prima facie* case for all essential elements for defamation of a public figure. Read as a whole, Mr. Lansford's statements are not rhetorical hyperbole or imaginative expression. They are provably false facts. The record reflects the substantial falsity of Mr. Lansford's statements and his reckless disregard thereof.

Speech regarding matters of public concern necessarily falls under the First Amendment, as incorporated by the Fourteenth Amendment. New York Times Co. v. Sullivan, 376 U.S. 254,

265–70 (1964) (finding that the United States Supreme Court has jurisdiction over state civil libel claims when there is a First Amendment question). The claim is actionable only if each element is proven *prima facie* and the speech is not the type protected by the First Amendment. Tenley Code Ann. §5–1–701 et. seq. Consequently, this Court must independently assess allegedly defamatory statements in context to determine whether it is privileged speech. Id. at 285. A claimant party must plead clear and convincing particularized facts for each element. Id. at 285–86.

a. Mr. Lanford's Statements Are *Prima Facie* Defamatory.

When defamatory statements are about a public official, the elements for defamation require proof of: 1) a published 2) statement of fact 3) about the claimant 4) that is false, 5) defamatory, and 6) was published with actual malice. Id. at 267; 280. For purposes of defamation, actual malice is either knowledge of falsity or reckless disregard as to falsity. Id. at 280. People who attain the public's attention by achievement or vigorously thrusting themselves into a matter of public concern are considered public figures. Gertz v. Robert Welch, 418 U.S. 323, 342 (1974). Public figures are treated the same as public officials for defamatory analyses. Milkovich v. Lorain Journal Co., 497 U.S. 1, 14–15 (1990). When a claimant proves actual malice, damages may be presumed. Gertz, 418 U.S. at 349 (holding that without knowledge or reckless disregard as to falsity, actual injury must be proven).

The Tenley Citizens' Public Participation Act exists to prevent lawsuits silencing the exercise of First Amendment freedom of speech. (J.A. at 2.) Where a publisher in a defamation case moves to dismiss/strike under anti-SLAPP legislation, the burden is on the publisher to prove the statement is in response to their exercise of free expression. Tenley Code Ann. §5–1–705(a). If a publisher demonstrates this, the burden shifts to the party claiming defamatory libel to prove a

prima facie case for each element of defamation. Tenley Code Ann. §5–1–705(b). At the second step of the anti-SLAPP inquiry, the court need not impose a high bar for the pleader to prevail. Hilton v. Hallmark Cards, 599 F.3d 894, 908; 910 (9th Cir. 2010) (acknowledging federal precedent and the California Supreme Court suggestion that pleadings of "minimal merit" will survive an anti-SLAPP motion to dismiss).

Ms. Courtier has spent many years in the public eye as the wife of a mayor as well as for her philanthropic pursuits. (J.A. at 17.) She has set up a website dedicated to her social activism and seeks the public's attention in her work. (J.A. at 2.) Mr. Lansford published statements about Ms. Courtier defaming her reputation to the entire world on his website. (J.A. at 8.) Her lawsuit is in response to statements Mr. Lansford made while exercising his right to speech. Accordingly, the burden shifts to Ms. Courtier.

i. Mr. Lansford's statements are defamatory *per se*.

There are circumstances in which courts find an accusation of swindling to be an accusation of criminal conduct and therefore defamatory *per se*. In Kumaran v. Brotman, a newspaper published a lengthy article describing Kumaran as "paranoid" and "working a scam". Kumaran v. Brotman, 617 N.E.2d 191, 200 (1993). The article also alleged that Kumaran filed needless lawsuits intending only to settle. Id. at 194. Ultimately, the court found the article to imply Kumaran cheated or swindled people and could be found to impute the commission of a crime. Id. at 199; See also Shelton v. Bauer Publ'g Co., L.P., No. 2:15-cv-09057-CAS(AGRx), 2016 U.S. Dist. LEXIS 52484 (C.D. Cal. Apr. 18, 2016) at *2; 22; 25 (finding an established *prima facie* libel claim with at least "minimal merit" since assertions of "hitting rock bottom" and "drinking vodka before noon" are facts susceptible to being proven false and claims of alcoholism tend to

harm a celebrity's professional reputation). By comparison, statements made by the publisher in Stern v. Crosby, imputing homosexuality, were not defamatory *per se* because being gay is generally no longer criminal or harmful to a person's reputation. Stern, 645 F. Supp. 2d at 273–75.

Mr. Lansford's comments are defamatory *per se* because they falsely impute criminal conduct on the part of Ms. Courtier, therefore damaging her reputation. Unlike the publisher in Stern, Mr. Lansford is not talking about a socially constructed 'bad quality' susceptible to changing opinions like the connotations associated with being gay. Similar to "working a scam", the statements that Ms. Courtier is "corrupt," a "leech," "pimp," "whore," and "swindler" impute socially unacceptable criminal conduct. Just as the publisher in Shelton falsely implied alcoholism, Mr. Lansford implied that Ms. Courtier engages in illicit activities and dishonest acts absent any proof. (J.A. at 18.) Considered in a broad social context, these comments are factual assertions of continuing criminality and are defamatory *per se*.

ii. Mr. Lansford's statements assert facts that can be proven as, and are, substantially false.

Statements with substantially false facts injuring a person's reputation are not protected under the First Amendment. Skakel v. Grace, 5 F. Supp. 3d 199, 208 (D. Conn. 2014). This Court recognizes that "[f]alse statements of fact are particularly valueless" in the "truth-seeking" discourse on which we base our democracy. Hustler Magazine v. Falwell, 485 U.S. 46, 52 (1988). Such statements "cause damage to an individual's reputation that cannot easily be repaired by counter speech". Id. Protecting political discourse, albeit sometimes in bad taste, that brings about the "social changes desired by the people" is fundamental to our nation's Constitutional principles.

New York Times Co., 376 U.S. at 269. Therefore, this Court circumscribes a broad rule, in New York Times Co. v. Sullivan and subsequent cases, to strike this balance. See 376 U.S. 254 (1964).

As a threshold, the law distinguishes between opinion and fact. Milkovich, 497 U.S. at 19. Only defamatory assertions of fact are actionable. Id. Statements are defamatory when, given the context, the meaning is "objectively verifiable" and reasonably easy to ascertain. Levinsky's, Inc. v. Wal-Mart Stores, 127 F.3d 122, 129 (1st Cir. 1997). The defamatory meaning need not match the "literal dictionary definition". Flamm v. Am. Ass'n of Univ. Women, 201 F.3d 144, 152, 153 (2nd Cir. 1975). To survive a motion to dismiss, it is enough for the statement to reasonably imply the defamatory meaning. Id. Opinions, such as rhetorical hyperbole, that do not contain provably false assertions will receive full Constitutional protection. Milkovich, 497 U.S. at 19. On the other hand, a statement presenting or implying the existence of facts verifiable as true or false are actionable even if they are framed as opinions. Id. at 18–19; see Levinsky's, 127 F.3d at 127. "Mere recitation" of "in my opinion" or "I think" will not insulate an otherwise defamatory factual statement. Flamm, 201 F.3d at 152.

As long as the "gist" of the statement is true, slight inaccuracies do not result in liability. Masson, 501 U.S. at 517. Truth and substantial truth are defenses to defamation. A Fisherman's Best v. Rec. Fishing Alliance, 310 F.3d 183, 196 (4th Cir. 2002). A statement containing semi-truths and falsities is ultimately false if it "would have a different effect on the mind of the reader from that which the pleaded truth" would produce. Masson, 501 U.S. at 517. Even if the speaker states the facts upon which an opinion is based, the opinion may still imply incorrect, incomplete, or erroneously assessed factual assertions. Milkovich, 497 U.S. at 19. A claimant will prevail by proving the statements are substantially or literally false assertions of fact that lead reasonable readers to believe the assertions are true. Skakel v. Grace, 5 F. Supp. 3d. 199, 208 (D. Conn. 2014).

The argument that Mr. Lansford's post is purely opinion must fail because it is grounded in statements that can be proven as true or false. The statements accuse Ms. Courtier, a public figure, of being "a leech on society" based merely on youthful indiscretions. (J.A. at 18.) Additionally, the post calls Ms. Courtier "a whore for the Poor", a "pimp for the rich" as well as "corrupt and a swindler" in her capacity as a businesswoman. (J.A. at 18.) The post asserts Ms. Courtier "learned" to whore, pimp, corrupt, and swindle customers and community members as a result of being "on the streets" as a youth. (J.A. at 18.) In the context of (1) the entire post, (2) the social understanding of the words contained in the statement, and (3) the proximity to specific facts, the terms in Mr. Lansford's statement have a clear meaning.

Table 1. Definition[1] and Understanding[2] of Mr. Lansford's Defamatory Statements

Term	Dictionary Definition[1]	Social Understanding[2]
Leech	3: a hanger-on who seeks advantage or gain ex. a celebrity surrounded by leeches who only want his money	Ms. Courtier took advantage of the community without giving anything in return
Pimp	Verb: to make use of, often dishonorably, for one's own gain	Ms. Courtier tricks customers out of their money
Whore	1: a women who engages in sex for money…[a] immoral women	Ms. Courtier engages in her social justice work for money just as a literal whore engages in sex for money
Corrupt	Intransitive Verb: 1a: to become tainted or rotten 1b: to become morally debased	Ms. Courtier takes bribes or favors in exchange for business or political support
Swindler	To obtain money or property by fraud or deceit	Ms. Courtier cheats people out of money and pretends to use the money for activism

Read as a whole, Mr. Lansford's statements lead the reasonable reader to believe that Ms. Courtier is an unreformed "leech" of a drug addict who uses her current business to "whore," "pimp," "corrupt," and "swindle" customers in continuance of her alleged criminal ways. (J.A. at 18.) Mr. Lansford asserts these verifiably provable facts as truths in his published statements. (J.A.

[1] DICTIONARY BY MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary (last visited Sept. 28, 2019).

[2] URBAN DICTIONARY, https://www.urbandictionary.com (last visited Sept. 28, 2019).

at 18.) The statements are substantially false. While Ms. Courtier has a history of youthful delinquency, the substantial truth is that she was born to drug addicted parents, orphaned as a child, and endured sexual assault. (J.A. at 5.) Mr. Lansford leaves out the story of Ms. Courtier's great reformation in prison wherein she obtained a business education and secured funding for her first clothing shop. (J.A. at 16.) The "gist" of the challenged statements results in more "sting" than the pleaded truth. The substantial truth would create a different, likely positive, effect on the mind of the reader than the published statements.

Mr. Lansford accuses Ms. Courtier of not only crimes under the law but crimes against the societal values for which she has long campaigned. There is no language indicating an opinion other than an offhand "I guess". (J.A. at 18.) By stating partially true facts in conjunction with facts that are both literally and substantially false, Mr. Lansford creates the impression that all of the 'facts' are true. Mr. Lansford makes no effort to separate the 'factual assertions' from so-called 'opinion', therein leading the reasonable reader to believe all of the assertions are true facts.

iii. Mr. Lansford published the defamatory statements with at least reckless disregard as to their falsity.

The malice assessment for reckless disregard in defamatory analyses is not what a reasonably prudent person would have investigated or published. St. Amant v. Thompson, 390 U.S. 727, 731 (1968). The commentator must have actually had a "high degree of awareness" as to the "probable" falsity of the statements. Gertz, 418 U.S. at 332. That said, proclaiming good faith without knowledge alone will not shield a publisher. St. Amant, 390 U.S. at 732. Claims of good faith are not persuasive when paired with "fabrications" and "wholly unverified" stories. Id. Further, "allegations…so inherently improbable that only a reckless man" would circulate them

establish reckless disregard. Id. Additionally, recklessness will be found where there are "obvious reasons to doubt the veracity" or "accuracy" of a publisher's report. Id.

Mr. Lansford's statements are so inherently improbable that he must have had a high degree of awareness that he was publishing false assertions of fact. Mr. Lansford intentionally patched the accusations together in a manner that plainly misleads the reader. The juxtaposition of the few true facts with the numerous false 'facts' creates the illusion that all are true and each one is established by the last. He made specific use of criminally associated words like "leech," "pimp," "whore," "corrupt," and "swindler" calculated to go along with only the truthful crime of distribution in Ms. Courtier's young adulthood. These additional assertions are wholly unverified.

Further, there are obvious reasons to doubt that Ms. Courtier swindles or commits any current crimes against customers or abuses the trust of the community for which she advocates. Ms. Courtier spent her youth underprivileged and undereducated. (J.A. at 5; 15–16.) Her time in prison provided the opportunity to learn proper business practices and her stores have flourished in the decades since. (J.A. at 5; 15–16.) She raises significant funds for political candidates through black-tie dinners and has substantially grown her retail empire. (J.A. at 3.) Ms. Courtier obviously has the knowledge, ability, and interest to conduct her business legally and honorably. (J.A. at 3.)

b. Mr. Lansford's Statements Are Not Privileged Under The First Amendment.

The laws of the United States must balance the right of free speech against the right to protect one's reputation. Milkovich, 497 U.S. at 20 (holding statements on matters of public concern without a provably false "connotation will receive full constitutional protection"); New York Times Co., 376 U.S. at 270 (emphasizing the national commitment to "wide open" debate even if it is sometimes "caustic"). Debate on public issues should be "uninhibited" and "robust."

Id. Instances where rhetorical hyperbole includes "caustic" and "unpleasantly sharp attacks on…public officials" are a necessary sacrifice to protect robust debate. Id. To ensure a proper balance, courts must assess both the comments and the entire context to determine if the statements are protected by the First Amendment. Id. at 285.

i. Mr. Lansford's statements are not vague or imaginative but rather specific lies about Ms. Courtier's business practices.

The vaguer a term, or the more meanings it can reasonably convey, the less likely it is to be actionable. Levinsky's, 127 F.3d at 129. Ambiguous statements with multiple rational interpretations will be protected. Masson, 501 U.S. at 508–09. When a statement's tone is "heavily laden with emotional rhetoric", it falls into the category of rhetorical hyperbole. Milkovich, 497 U.S. at 32. The publisher in Milkovich stated that "every man knows in his heart" that Malkovich lied without purporting to have researched what was in the hearts of trial attendees. Id. This Court decided that one cannot actually measure what every man knows in their heart, and so held that the comment was exaggerated and rhetorical. Id. This Court noted there are contextual circumstances in which the word "liar" is used as a defamatory and verifiable fact. Id. at 18–19 (noting that sentences like "Jones is a liar" and "In my opinion Jones is a liar" are not imaginative).

Other courts have also outlined the difference between imaginative language and statements verifiable as fact. In Levinsky's Inc. v. Wal-Mart Stores, a Wal-Mart manager said that a local competitor, Levinsky's, was "trashy" and often left their customers "on hold for 20 minutes". Levinsky's, 127 F.3d at 126. The court decided that "trashy" is not verifiable as fact and therefore imaginative. Id at 131. On the other hand, a statement that Levinsky's phone answering practices result in customers waiting "20 minutes on hold" is verifiable as fact and defamed their

business practices. Id. A listener could reasonably conclude the speaker intended to describe personal knowledge of Levinsky's treatment of callers. Id. at 131.

Another clear example of the distinction between rhetorical hyperbole and defamatory factual assertions is Buckley v. Littell. 539 F.2d at 884. One statement in a book, alleging that Buckley was a "fellow fascist traveler," was found rhetorical because the words had "loose" and "variable" meanings. Id. at 894. The court made particular note of the varied uses of "fascist" in the book, leaving the term open to multiple interpretations. Id. at 890. One of the other statements accused Buckley of lying and libeling others and was held to be definite and provable as false. Id. at 884. The court specifically noted that calling a journalist a libeler is defamatory even if the overall context is otherwise directed at his political views. Id. at 897.

Mr. Lansford's assertions may have an emotional tone, but unlike the facts of Milkovich, none are rhetorical. Mr. Lansford is not nodding to an impossible-to-research exaggeration. He is claiming untrue criminal business practices and socially unacceptable behavior piled on top of true facts. A reasonable reader would interpret Mr. Lansford's statements as being based on personal knowledge because her past guilty plea was not common knowledge. This inference would logically lead the reasonable reader to believe Mr. Lansford has personal knowledge of additional facts regarding Ms. Courtier's supposed illegal business practices. Further, Mr. Lansford leads the reasonable reader to believe her alleged criminal practices are based on her actual criminal past.

The context in which Mr. Lansford leveled these accusations illustrates the specific and provable interpretations of his words. Though there may be scenarios in which leech, pimp, whore, corrupt, and swindle are epithets and could be protected as rhetorical hyperbole, this is not the case at bar. Mr. Lansford grounds each of his false accusations in a true fact: "leech" is grounded in Ms. Courtier's drug addiction; "pimp" in the expensive products Ms. Courtier's sells; "whore" in

Ms. Courtier's extensive community engagement; and "corrupt" and "swindler" in Ms. Courtier's position as a business owner. (J.A. at 18.) These are specific to each accompanying fact and are not political or theoretical. Each defamatory comment is mentioned only once, immediately next to the particularized detail of Ms. Courtier's life. (J.A. at 18.) As in Buckley, Mr. Lansford directs his comments to Ms. Courtier's integrity as a businesswoman and not as a political activist. (J.A. at 18.) These comments are neither rhetorical nor imaginative.

ii. Mr. Lansford does not indicate to the reasonable reader that his statements are opinion.

Speech is protected as rhetorical hyperbole if it cannot be reasonably understood as "describing actual facts" or "actual events in which" the claimant participated. Hustler Magazine, 485 U.S. at 49 (finding a satirical magazine piece was not actionable because no reasonable reader would believe it was true). In Hustler Magazine v. Falwell, a magazine published a full-page parody of a well-known liquor advertisement, warning readers of the "Ad and Personality Parody" in the table of contents. 485 U.S. at 48. Comparably, in Flamm v. Am. Ass'n of Univ. Women, the court explained that publishing a comment calling a lawyer "an ambulance chaser" in a straightforward directory leads the reasonable reader to believe the statement is a true fact. 201 F.3d at 152. The 'fact' asserting unethical solicitation is provable as true or false and harms the lawyer's professional reputation. Id. at 154–55. By contrast, this Court held in Greenbelt Cooperative Pub. Ass'n v. Bresler that citizens calling a local landowner a "blackmailer" was rhetorical hyperbole since it merely referred to a negative opinion about his negotiating position. Greenbelt Cooperative Pub. Ass'n v. Bresler, 398 U.S. 6, 14 (1970).

Unlike the publisher in Hustler, Mr. Lansford presented his entire statement in a uniform manner. The true and false facts are seamlessly woven together. (J.A. at 18.) The reasonable reader has no indication that any one assertion should be understood differently from any other. In Greenbelt, the speakers accused Bresler of blackmail at a public debate where it was known people were speaking their opinions. 398 U.S. at 7. Distinguishably, Mr. Lansford's statements were published by the town mayor on his social media, where forethought and deliberation are expected. (J.A. at 18.) Like the directory in Flamm, Mr. Lansford's web posting is straightforward about his accusations that Ms. Courtier is unethical and clearly intends to harm her professional reputation. This was no heat-of-the-moment epithet during an emotional public debate. The argument that Mr. Lansford's statements are obvious hyperbole must fail.

III. PERMITTING MR. LANSFORD'S STATEMENTS TO PREVAIL WILL VIOLATE THIS COURT'S LONG-STANDING POLICY OF PREVENTING AND REDRESSING UNFOUNDED ATTACKS UPON REPUTATION.

Finally, this Court should affirm its previous holdings regarding the societal interest in "preventing and redressing attacks upon reputation." Milkovich, 497 U.S. at 22. Defamation law "embodies the public policy that individuals should be free to enjoy their reputation unimpaired by false and defamatory attacks." Park v. Hill, 380 F. Supp. 2d 1002, 1015 (N.D. Iowa 2005). The line between "speech unconditionally guaranteed and speech which may legitimately be regulated" has traditionally been drawn by this Court on a case-by-case examination of particular statements. New York Times Co., 376 U.S. at 285. When a statement trespasses over such a line, it cannot be privileged. Id. Where a claimant proves falsity and "the requisite culpability," she may hold a publisher accountable for their valueless and unprotectable speech. Hustler, 485 U.S. at 52.

This Court has determined the contours of the line between defamation and rhetorical hyperbole, repeatedly declining to stretch the protective limits so far as to cover the statements at issue. Doing so now would contravene decades of Constitutional principles. The limits of protected speech cannot encompass Mr. Lansford's comments because they are the type of valueless speech that irreparably harm Ms. Courtier and tarnish the marketplace of ideas. Ms. Courtier has established the statements at issue to be false. Mr. Lansford is culpable for his reckless publication. This is the type of speech legitimately regulated through Tenley state defamation law.

Moreover, this Court has repeatedly held that statements made under the guise of First Amendment protection may not create an impression of criminal liability. In Milkovich v. Lorain Journal Co., a high school wrestling coach sued a newspaper for defamation after it printed an article saying he lied under oath. 497 U.S. at 3. This Court found the statement was not the sort of "loose, figurative, or hyperbolic language" but instead created the impression that the author is seriously accusing Milkovich of criminal perjury. Id. at 21.

The record establishes that Mr. Lansford violated this Court's observations in Milkovich. He failed to use "loose, figurative, or hyperbolic" language. His post contains declaratory statements without a single qualifying word such as "probably" or "apparently" within the context of calling Ms. Courtier a pimp, whore, leech, corrupt, and a swindler. The sole qualifier, the word "guess," does not serve to in any way negate the impression that Ms. Courtier is anything other than a swindling pimp. (J.A. at 18.) Accordingly, the statements serve no purpose other than to create the impression that Ms. Courtier currently engages in criminal conduct. The only relief justified under the present facts and prevailing law is to allow Ms. Courtier the opportunity to defend against this unfounded attack on her reputation.

VIII. Conclusion

For the foregoing reasons, this Court should deny the special motion to dismiss/strike.

Respectfully Submitted,

Team: 219931

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