Aase v. Hamilton

Court of Appeals of Minnesota

November 23, 2020, Filed

A20-0239

Reporter
2020 Minn. App. Unpub. LEXIS 873 *; 2020 WL 6846370

Katie Aase, Respondent, vs. Megan Hamilton, Appellant.

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Prior History: **[*1]** Hennepin County District Court File No. 27-CV-19-13123.

Aase v. Hamilton, 2020 Minn. Dist. LEXIS 33 (Jan. 31, 2020)

Disposition: Affirmed in part, reversed in part, and remanded.

Case Summary

Overview
HOLDINGS: [1]-There was sufficient evidence to create a genuine issue of material fact regarding whether plaintiff transferred ownership of her cat to the defendant via an oral contract because it was undisputed that plaintiff expressed an inability to care for her cat's medical needs on her own and reached out to defendant for help. It is also undisputed that defendant expended time and significant funds caring for the cat.

Outcome
Judgment affirmed in part, reversed in part, and case remanded.

Counsel: For Respondent: Katherine S. Barrett Wiik, Brian J. Linnerooth, Best & Flanagan LLP, Minneapolis, Minnesota.

for Appellant: Marshall H. Tanick, Teresa J. Ayling, Meyer Njus Tanick, PA, Minneapolis, Minnesota.

Judges: Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

Opinion by: LARKIN

Opinion

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's grant of summary judgment for respondent on respondent's claim seeking possession of a cat and on appellant's counterclaims for defamation. We affirm in part, reverse in part, and remand.

FACTS

This case arises from a dispute regarding ownership of a cat named Oliver. The undisputed facts of record are as follows.

In August 2018, respondent Katie Aase paid for and adopted two cats, Oliver and Belle, from Fur-Ever Home Rescue (Fur-Ever), a nonprofit run by Tania Richter. The cats were a bonded pair of littermates. After the adoption, Oliver became ill, and Aase brought him to VCA Cedar Animal Hospital in November 2018. The veterinarian determined that Oliver might have diabetes.

Aase did not know how to care for a diabetic **[*2]** cat and did not know if she would have enough money to give Oliver the treatment he needed. She contacted Richter for help and asked if Fur-Ever would take Oliver back and continue the level of inpatient care that he needed. She expressed fear that if Fur-Ever did not take him back, he would deteriorate to the point that euthanasia would be the most humane option.

Richter referred Aase to appellant Megan Hamilton. Hamilton is the founder of Basil's Cradle, a sanctuary for special-needs cats. She is associated with Main Street Veterinary Service, a clinic owned by Dr. Ronald Gaskin. Hamilton had fostered Fur-Ever's diabetic cats in the past.

On November 17, 2018, Hamilton met with Aase at VCA Cedar Animal Hospital and took possession of Oliver. Approximately ten days later, Hamilton brought Oliver in for a checkup with Dr. Gaskin. Hamilton texted Aase, "[D]r. Gaskin needs to get permission from you to have me as the agent so how soon could he call you to get that?" Aase gave her permission and paid the resulting veterinary bill.

Over the next four months, Oliver remained in Hamilton's care. Aase and Hamilton communicated by text regarding Oliver. The initial communications primarily regarded **[*3]** Oliver's condition. Aase also expressed her desire to visit the cat. Later communications addressed whether and when Hamilton intended to return Oliver to Aase. In one text, Aase asked, "The goal is still for [Oliver] to come home with Belle and I, yes?" Hamilton responded, "Yes it is."

On January 29, 2019, the parties had a contentious phone conversation.[1] Aase accused Hamilton of putting off her efforts to see Oliver for two months. Aase asked Hamilton, "[Y]our intention is still to give me my cat back, correct?" Hamilton responded, "Yes! I'm giving you your cat back!" Hamilton made additional statements implying that she would return the cat to Aase.

However, the following exchange regarding Aase's attempts to visit Oliver suggests that Aase had agreed to "surrender" the cat to Hamilton:

> AASE: You told me long notice doesn't work, now you tell me short notice doesn't work, I just, I . . . I'm also upset and anxious, so . . . that's . . .
> HAMILTON: Well there's no reason for you to be! Because guess what, he hasn't had insulin for two days.

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[1] The record includes transcriptions of two phone calls between the parties, one on January 29, 2019, and one on March 27, 2019.

AASE: Well that's wonderful, I'm really glad to hear that. But I did also give verbal permission or like . . . verbally surrender him, so I know I **[*4]** don't have a lot of ground to stand on here.

The conflict came to a head in March 2019. Aase texted Hamilton: "I think we need to consider a deadline for when [Oliver] should come home, even if he's not in remission and I can continue his care here." Aase delivered a letter to Hamilton's home asserting her ownership rights and threatening legal action. Hamilton called Aase and refused to return the cat. The following exchange occurred:

HAMILTON: I don't know why you think you own Oliver. You don't. It was very clear, and I spoke to you at length before you and I even met, that in order for me to help you that he would have to be surrendered to my rescue. That was the plan and that is what happened.
AASE: With the intent of him coming home to his sister.
HAMILTON: Well, what I told you[. . .]
AASE: I had surrendered him formally . . .
HAMILTON: What I told you . . . was IF I could get him into remission I would consider letting you have him back if you were capable, but the fact of the matter is #1 you surrendered him to me and you did it in front of witnesses, and you also . . .
AASE: Mmm huh[.]

HAMILTON: . . . reiterated on the phone in a conversation we had in January that you had surrendered **[*5]** him to me. When you surrender him, you surrender all rights to ownership and then what happens next is up to me.
. . . .
AASE: So and all your uh statements that you intended to return my cat to me were false[?]
HAMILTON: I said IF he went into remission that I would consider it. I told you from the get go that there were no guarantees of anything. . . .
. . . .
AASE: Yes. [Y]ep, that was my . . . that's, that is what happened. Um, but again, that being said, there was always the understanding that hopefully he would go into remission but that he would come home.
HAMILTON: No . . .
. . . .
HAMILTON: [E]verything was predicated on him going into remission. I was clear about that.

Aase contacted the police and reported that Hamilton had stolen her cat. She also posted a statement online regarding her experience with Hamilton and Main Street Veterinary Service. And, she filed a conciliation-court claim seeking the return of Oliver. The conciliation court granted judgment in favor of Aase and ordered Hamilton to return the cat to Aase.

Hamilton removed the case to district court and raised defamation counterclaims. She claimed that Aase had "surrendered" Oliver to her and that Aase had posted defamatory **[*6]** statements on social media and Yelp such as Hamilton has "stolen my cat," Hamilton "cannot be trusted," and Hamilton "does not at all conduct herself in a professional manner." Aase admitted that she posted the statements, but she asserted affirmative defenses to the defamation counterclaims.

Aase moved for summary judgment. She argued that Hamilton provided insufficient evidence to raise a genuine issue of material fact regarding Oliver's ownership. She asserted that Hamilton's defamation claims failed because the statements were true, nonactionable opinions, and also privileged. Hamilton argued that a genuine issue of material fact remained regarding whether Aase surrendered ownership of Oliver to Hamilton. She submitted her affidavit stating that she had told Aase that Aase had to surrender

Oliver in order for Hamilton to care for the cat and that she "explained to [Aase] very clearly that surrendering Oliver meant relinquishing her ownership."

The district court granted summary judgment for Aase on all claims, and Hamilton returned Oliver to Aase. This appeal followed.

DECISION

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, **[*7]** and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). There is no genuine issue of material fact when "the nonmoving party presents evidence . . . which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Conversely, summary judgment is inappropriate when reasonable people can draw different conclusions from the evidence presented. *Id.* at 69.

We review a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). In doing so, we "view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.* We need not adopt the district court's reasoning and "may affirm a grant of summary judgment if it can be sustained on any grounds." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

I.

We begin our review with the district court's grant of summary judgment on Aase's claim against Hamilton. In Minnesota, companion pets like Oliver are deemed personal **[*8]** property. *See Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). Aase contends that she did not relinquish ownership of Oliver to Hamilton. Aase argues that the parties agreed that Hamilton would have temporary custody of Oliver for the purpose of attending to his medical needs. Hamilton counters that Aase agreed to "surrender" ownership of Oliver to Hamilton and that Oliver's return to Aase was solely within Hamilton's discretion. Hamilton asserts that the district court erred by granting summary judgment because a genuine issue of material fact exists regarding who owns Oliver.

The parties did not memorialize their agreement regarding Oliver's placement in Hamilton's care. Thus, the parties address the dispute regarding Oliver's ownership in the context of oral-contract formation. Formation of a contract requires: an offer that is communicated to the offeree, acceptance of the offer by the offeree, and consideration. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). The parties must assent to the terms of the contract. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). "Mutual assent entails a meeting of the minds concerning a contract's essential elements." *Id.* (quotation omitted). Minnesota courts apply an objective standard of contract formation. *Riley Bros. Constr., Inc. v. Shuck*, 704 N.W.2d 197, 202 (Minn. App. 2005) ("Minnesota follows the objective theory **[*9]** of contract formation, under which the parties' outward manifestations are determinative, rather than either party's subjective intent."). "Both the existence and terms of an oral contract are issues of fact, generally to be decided by the fact-finder." *Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309, 315 (Minn. App. 2011), *review denied* (Minn. Mar. 29, 2011).

Viewed in a light most favorable to Hamilton, there is sufficient evidence to create a genuine issue of material fact regarding whether Aase transferred ownership of Oliver to Hamilton via an oral contract. *See id.* It is undisputed that Aase expressed an inability to care for Oliver's medical needs on her own, attempted to return the cat to Fur-Ever, and reached out to Hamilton for help. It is also undisputed that Hamilton expended time and significant funds caring for the cat. Hamilton's affidavit opposing summary judgment states that she explained to Aase that she would take Oliver only if Aase surrendered her ownership rights. And Aase made statements during a phone call indicating that she had formally surrendered Oliver to Hamilton. On this record, a reasonable person could conclude that Aase transferred ownership of Oliver to Hamilton, for the purpose of obtaining necessary medical care that **[*10]** Aase could not provide.

Aase argues that no rational trier of fact could find for Hamilton. She asserts that Oliver's "microchip registration" is under her name, her adoption agreement restricted a transfer of ownership without Fur-Ever's approval, and she did not complete a "surrender form," which is "standard in the animal rescue community." Although such arguments may be relevant to the issue of ownership, they are not dispositive. Aase fails to offer any legal authority or persuasive argument foreclosing the possibility of a transfer of ownership from Aase to Hamilton under the circumstances Hamilton has described. Aase points to Hamilton's statement that she would give Oliver back to Aase and Hamilton's request that Aase list her as an "agent" to facilitate a veterinary visit. While this evidence is persuasive, it is not, as Aase suggests, conclusive. Reasonable jurors could reach different conclusions regarding whether Aase transferred ownership of Oliver to Hamilton.

Summary judgment is a "blunt instrument," and "should be employed only where it is perfectly clear that no issue of fact is involved." *Donnay v. Boulware*, 275 Minn. 37, 144 N.W.2d 711, 716 (Minn. 1966). A court is not allowed to weigh the evidence or assess credibility when determining **[*11]** whether summary judgment is appropriate. *See* *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007) ("Weighing the evidence and assessing credibility on summary judgment is error."). Given the record before us, we fail to see how the dispute regarding ownership of Oliver can be resolved without assessing the relative credibility of the parties' positions. When we view the evidence in the light most favorable to Hamilton, as we are required to do, there is sufficient evidence to create a genuine issue of material fact regarding whether Aase surrendered her ownership rights to Hamilton via an oral contract. We therefore reverse the grant of summary judgment on Aase's claim against Hamilton.

II.

We now turn to the district court's grant of summary judgment on Hamilton's defamation claims. "Under the common law, a plaintiff pursuing a defamation claim must prove that the defendant made: (a) a false and defamatory statement about the plaintiff; (b) in an unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019) (quotation omitted). "The question of whether a statement's language reasonably conveys a defamatory meaning is one of law." *McKee v. Laurion*, 825 N.W.2d 725, 731 (Minn. 2013). The truth or falseness of a statement is a fact question. *Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 889 (Minn. 1986) **[*12]** ("[T]he truth or falsity of a statement is inherently within the province of the jury.").

If the defamatory statement constitutes a false accusation that the plaintiff committed a crime, or a false statement about the plaintiff's business, trade, or professional conduct, it is defamation per se, and general damages are presumed. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). "Courts allow presumed damages because statements that are defamatory per se are virtually

certain to cause serious injury to reputation, and . . . this kind of injury is extremely difficult to prove." *Maethner*, 929 N.W.2d at 875 (quotation omitted).

Hamilton asserts that Aase's statement that Hamilton stole her cat ascribes criminality and is defamation per se. Aase counters that the statement is sufficiently true and therefore cannot provide grounds for a defamation claim. Truth is a complete defense to defamation. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980).

We have decided that there is a genuine issue of material fact regarding whether Aase transferred ownership of Oliver to Hamilton. Thus, there is a genuine issue of material fact regarding the truth or falsity of Aase's statement that Hamilton stole her cat. Summary judgment is therefore not appropriate on Hamilton's defamation claim based on the stolen-cat statement.

We **[*13]** next consider Aase's statement that Hamilton cannot be trusted. "[S]tatements charging another with . . . dishonesty are defamatory regardless of the terms in which they are couched." *Church of Scientology of Minn. v. Minn. State Med. Ass'n Found.*, 264 N.W.2d 152, 156 (Minn. 1978). Aase contends that the statement is protected opinion.

"The First Amendment protects opinion from defamation liability." *Larson v. Gannett Co.*, 940 N.W.2d 120, 147 (Minn. 2020). In determining whether a statement is one of fact or opinion, courts consider: "(1) a statement's precision and specificity; (2) a statement's verifiability; (3) the social and literary context in which the statement was made; and (4) a statement's public context." *Fine v. Bernstein*, 726 N.W.2d 137, 144 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007). If a statement expresses "a subjective view, an interpretation, a theory, conjecture, or surmise . . . , the statement is not actionable." *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 308 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Mar. 19, 2002). If, in context, an audience would understand that an "[e]xpression[] of opinion, rhetoric, [or] figurative language" was "not a representation of fact," it is not actionable. *Fine*, 726 N.W.2d at 144 (quotation omitted). Likewise, statements that reflect "mere vituperation and abuse" or "rhetorical hyperbole" are not actionable because they show no real intent to defame and are understood by listeners not to be defamatory. *McKee*, 825 N.W.2d at 733 **[*14]** (quotations omitted).

A statement may be actionable if it implies the existence of facts that can be proven true or false. *Schlieman*, 637 N.W.2d at 308. Defamation by implication occurs when a defendant "juxtaposes a series of facts to imply a defamatory connection between them." *Metge v. Cent. Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 498 (Minn. App. 2002). Aase's statement that Hamilton cannot be trusted implies that Hamilton is dishonest because she stole Aase's cat, which is a verifiable fact. Given the context in which the statement was made, Aase's statement that Hamilton cannot be trusted implies the existence of a verifiable fact and is therefore not a protected opinion.

We next consider Aase's statement that Hamilton "does not at all conduct herself in a professional manner." That statement is a subjective viewpoint rooted in Aase's interpretation of professional conduct. Likewise, Aase's statement, "[D]o not let [Dr. Gaskin] refer you to [Hamilton]" is a subjective viewpoint regarding how others should respond to a potential referral. Both statements are protected opinions.

Lastly, we consider Aase's statement, "If you have a cat in [Hamilton's] care right now, try getting it back immediately." Again, this is a protected opinion because it is a subjective recommendation and makes **[*15]** no specific or verifiable allegations. Hamilton argues that the statement implies that she stole the cat. Unlike Aase's statement that Hamilton cannot be trusted, in this instance, the connection to the stolen-cat statement is too attenuated.

Aase asserts that her statements were privileged. There are two types of privileges that defend against a defamation claim: (1) absolute privilege and (2) qualified privilege. *Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014). The privileges exist because "statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory." *Id.* (quotation omitted). Aase relies on qualified privilege, which protects against liability "only if the defamatory statements are publicized in good faith and without malice." *Id.* (quotation omitted). "Malice under the common law means that the defendant made the statement from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff." *Maethner*, 929 N.W.2d at 873 (quotation omitted).

Aase asserted the defense of qualified privilege in district court, but it was not necessary for the district court to address it given its summary-judgment ruling. Although we may affirm a grant of summary **[*16]** judgment "if it can be sustained on any grounds," *Doe 76C*, 817 N.W.2d at 163, we generally address only those issues that were presented to and considered by the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Moreover, Aase acknowledges that there "does not appear to be any binding precedent from the state of Minnesota" regarding whether qualified privilege protects statements made in online reviews. Given the lack of clear precedent regarding whether qualified privilege protects the online statements at issue here, the possibility of overcoming that defense at the summary-judgment stage if there is a genuine issue of material fact regarding malice, and our decision to reverse the grant of summary judgment regarding two of Aase's allegedly defamatory statements, we do not decide the qualified-privilege issue for the first time in this appeal.

In conclusion, we reverse and remand for further proceedings on Aase's claim against Hamilton and Hamilton's defamation claims that are based on Aase's statements that Hamilton stole the cat and cannot be trusted. We affirm the grant of summary judgment on the remaining defamation claims.

Affirmed in part, reversed in part, and remanded.

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