IN THE COURT OF APPEALS
STATE OF GEORGIA

WILLIAM JOSEPH HANIG and COAKLEY HANIG,	:	
Appellants,	:	
v.	:	COA No. A24A1551
CHRISTINA LOFT,	:	
Appellee.	:	

REPLY BRIEF

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Reply Brief

Re: The Statement of the Case and the Facts

Loft misunderstands the issues on appeal regarding her claims that the email and the Facebook post constituted defamation per se. She complains that the "recitation of facts, taken from the Trial Court's Order Denying Appellants' Motion for Summary Judgement, predates the trial and does not account for the testimony presented" and that "[c]itations to pretrial factual representations in the appellate record are not citations equivalent to evidence." (Brief of Appellee, pg. 2). Yet, Loft admitted in her Response to the Motion to Set Aside the Judgment, "There are no facts in dispute." (RII-V2-180). Moreover, in her entire Brief of Appellee, she has not identified any dispute regarding the material facts. The enumerated errors arose directly from Loft's claims and pleadings, which included the full, verbatim text of the email (RII-V2-28-29) and Facebook post (RII-V2-14) and the investigation reports of the Houston County Sheriff's Office (RII-V2-30-37) and from the verdict (RII-V2-148-150) and final judgment (RII-V2-151-4).

Even worse, Loft completely misquotes, at considerable length, the subject email. On pages 5 to 6 of her Brief of Appellee, she falsely asserts that the following statements appear in the subject email:

- "I am writing to inform you about a disturbing incident involving Maj. Loft. She took possession of a cat that belongs to my family and has refused to

return it despite repeated requests. This act, in my view, demonstrates a severe lapse in judgment and integrity."

- "Maj. Loft's actions have caused significant distress to my family. The cat was a beloved pet, and her refusal to return it, even after knowing its importance to us, raises serious ethical concerns."
- "Such behavior is unbecoming an officer of her rank. It not only reflects poorly on her personal ethics but also raises questions about her professional conduct and suitability for her position."
- "Her actions could potentially undermine the trust and cohesion within the unit. Officers are expected to uphold the highest standards of conduct, and her failure to do so could have broader implications for morale and discipline."
- "I urge the command to take this matter seriously and to consider the implications of having an officer who demonstrates such poor judgment and lack of respect for peers and their property."

(Brief of Appellee, pgs. 5 to 6). Each of those statements is absent from the subject email. *See* (RII-V2-28-29). For that reason, the Hanigs are filing a Motion to Strike those statements from the Brief of Appellee.

Furthermore, Loft's defamation claim regarding the email would still have no support even if the email contained those statements.

> The requirement that, to be actionable, a statement of opinion must imply an assertion of objective facts about the plaintiff unquestionably excludes from defamation liability not only statements of rhetorical hyperbole but also statements clearly recognizable as pure opinion because their factual premises are revealed…. If an opinion is based upon facts already disclosed in the communication, the expression of the opinion implies nothing other than the speaker's subjective interpretation of the facts.

Lucas v. Cranshaw, 289 Ga. App. 510, 514 (2008) (quoting Jaillett v. Ga. Television Co., 238 Ga. App. 885, 890 (1999)) (ellipsis in original).

> The expression of opinion on matters with respect to which reasonable men might entertain differing opinions is not libelous. An assertion that cannot be proved false cannot be held libelous. A writer cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

Webster v. Wilkins, 217 Ga. App. 194, 195-6 (1995) (quoting Kendrick v. Jaeger, 210 Ga. App. 376, 377-8 (1993)). Because Lt. Col. Hanig (ret.) disclosed the factual basis for his opinion of Maj. Loft, the expression of his opinion did not imply any false assertion of fact.

Re: Preservation of Enumerated Errors

Concerning enumerated errors 1 through 3, the lack of subject matter jurisdiction is an error so fundamental that it may be preserved at any time for appellate review. "Whenever it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." O.C.G.A. § 9-11-12(h)(3). "A judgment void because of lack of jurisdiction of the … subject matter may be attacked at any time." O.C.G.A. § 9-11-60(f). "The judgment of a court having no jurisdiction of … the subject matter … is a mere nullity and may be so held in any court when it becomes material to the interests of the parties to consider it." O.C.G.A. § 9-12-16.

> Waiver or consent of the parties cannot confer on a court jurisdiction of a subject matter wherein it has none at law. When a court has before it a matter where it has no jurisdiction of the subject matter, no legal judgment can be rendered except one of dismissal; and when … [the Georgia Supreme Court] discovers from the record on appeal that a judgment has been rendered by a court having no jurisdiction of the subject matter, it will of its own motion reverse the judgment.

Gray v. Gray, 229 Ga. 460, 461 (1972). "When a court has no jurisdiction of a subject-matter, the whole proceeding is coram non judice and void." Deans v. Deans, 164 Ga. 162, 164 (1927) (citing Gray v. McNeal, 12 Ga. 424 (1853)).

Also, enumerated errors 1 through 3 are nonamendable defects appearing on the face of the record and pleadings.

As for enumerated errors 4 and 5, Loft mischaracterizes the arguments raised by the Hanigs. *Compare* (Brief of Appellants, pgs. 3 to 4) *with* (Brief of Appellee, pg. 8). She incorrectly asserts that the Hanigs "contend that the verdict form must be wrong because the [] email and the [] Facebook post cannot constitute defamation per se." (Brief of Appellee, pg. 8). The trial court committed the same fallacy as Loft when it failed to set aside the final judgment. *See* (RII-V2-211) (stating that it "deems it inappropriate to address any issue as to the form of the jury's verdict").

Enumerated errors 4 and 5 have nothing to do with the form of the verdict. Enumerated errors 4 and 5 concern issues of substance, not form. The jury found no special damages. *See* (RII-V2-148-50). The presence of either special damage or defamation per se is an essential element of defamation. Neff v. McGee, 346 Ga. App. 522, 525 n.3 (2018) (quoting Smith v. DiFrancesco, 341 Ga. App. 786, 787-88 (2017)) In the present appeal, Loft has implicitly conceded the absence of special damages. *See* (Brief of Appellee, pgs. 6 to 7) (conceding the absence of defamation per quod from the record).

Because the absence of defamation per se was a nonamendable defect appearing on the face of the trial court record and Loft's own pleadings, the issues were properly raised and preserved by the Hanigs' motion to set aside the final judgment. *See* O.C.G.A. § 9-11-60(d)(3).

Re: Enumerated error 4

While Loft vaguely denies that the issue regarding enumerated error 4 concerns the "application of law to undisputed facts," *see* (Brief of Appellee, pg. 29), she has admitted previously *in judicio* that no facts were in dispute, (RII-V2-180), and more importantly, she fails now to identify any dispute regarding the material facts. *See* (Brief of Appellee, pgs. 29 to 31). Loft misidentifies findings related to the purely legal issues of subject matter jurisdiction as factual findings concerning the issue of defamation per se. *See* (Brief of Appellee, pg. 30). Neither the underlying facts nor the contents of the email are in dispute. The issue of whether the email constituted defamation per se is purely a question of law.

Loft argues, without explanation, that the "repeated questioning of [her] judgment and decision-making skills could be seen as assertions of fact" and that "[s]tatements which imply factual assertions, particularly questioning someone's professional competence, are not protected as pure opinions." (Brief of Appellee, pgs. 30-31).

Loft fails to identify any implied factual assertions, *see* (Brief of Appellee, pgs. 29-31), and the factual basis for Lt. Col. Hanig (ret.)'s opinion, as stated in the email, was express, not implied, *see* (RII-V2-28-29).

Re: Enumerated error 5

As for enumerated error 5, again, the material facts are undisputed. Loft's own admissions *in judicio*, appearing in her Brief of Appellee, do not contradict, but rather, support the facts stated in the Hanigs' Facebook post. *Compare* (Brief of Appellee, pgs. 2 to 4) *with* (R2-V2-14). "Truth is a complete defense to alleged libel or slander." Cottrell v. Smith, 299 Ga. 517, 523 (2016) (citing O.C.G.A. § 51-5-6).

Loft fails to apply the proper, legal standard for defamation per se. *See* (Brief of Appellee, pg. 33). "In regard to imputing a crime, [t]o constitute [defamation] per se, … the words at issue must charge the commission of a specific crime punishable by law. Where the plain import of the words spoken [or written] impute no criminal offense, they cannot have their meaning enlarged by innuendo." Cottrell, 299 Ga. at 524 (quoting Dagel v. Lemcke, 245 Ga. App. 234, 244 (2000)). Neither "suggesting serious wrongdoing on [Loft's] part," (Brief of Appellee, pg. 33), nor "le[ad]ing readers to believe that [Loft] was involved in criminal activity," (Brief of Appellee, pg. 33), meets the standard for defamation per se, as the words in the Facebook post do not charge the commission of a specific crime and the plain import of the words do not impute a criminal offense. *See* (R2-V2-14).

CERTIFICATION OF WORD COUNT

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted, this 22nd day of July, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served opposing counsel, Rebecca C. Moody, MOODY & ASSOCIATES LAW OFFICE, LLC, P.O. Box 422, 905 Jernigan Street, Perry, GA 31069, with a true and correct copy of the foregoing Reply Brief by placing the copy in the United States Mail, properly addressed and with sufficient postage, this 22nd day of July, 2024.

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