

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

SABRINA PRITCHETT-EVANS and KIMBERLY HARRIS  
Plaintiffs,

CASE NO.: 23-0169- CZ

v.

DIVISION: Judge Curtis Bell

REPUBLICAN PARTY OF KALAMAZOO COUNTY, STATE OF MICHIGAN (KGOP),  
KALAMAZOO GRAND OLD PARTY EXECUTIVE COMMITTEE (KGOPEC),  
And (AKA) KALAMAZOO COUNTY REPUBLICAN COMMITTEE (KGOPEC),  
And KELLY SACKETT  
Defendants.

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION AAND AMENDED BRIEF  
FOR SUMMARY DISPOSITION**

Plaintiffs represented by Attorney James A. Thomas, replies to Defendants' Amended Motion for Summary Disposition and Brief in Support as follows:

Defendants filed an Amended Motion for Summary Disposition and Brief in Support to Plaintiff's Amended Complaint, specifically Count IV defamation. Plaintiff submits this Response to the Defendants' Amended Motion for Summary Disposition.

**FACTS AND ARGUMENT**

A. Plaintiff relies on the facts in their sworn Amended Verified Complaint, exhibits, and affidavits filed by Plaintiffs in response to Defendant's original Summary Disposition motion to which the facts have not changed in this subsequent amended brief and motion. Defendants have

asserted in this subsequent summary disposition motion that the surviving libel, slander, defamation claim does not state a cause of action, to which Plaintiffs' disagree and that there are no material facts in dispute, to which Plaintiffs' disagree. For purposes of the arguments regarding the KGOPEC and the factual disputes, an affidavit by both Plaintiffs disputing the facts in opposition to Defendants Motion for Summary Disposition was attached as **Exhibit 8** in that original response and is incorporated herein to dispute the same facts that the Defendants are arguing as a successive motion that has already been ruled upon (res judicata).

B. Defendants allude to the Court's order from August 10, 2023 in paragraph 2 under Facts that they are facing three specific allegations that were exhibits D and E in the original amended complaint and number 3 under libel or slander claim was a statement made by their attorney Matthew DePerno. DePerno is a member of the KGOPEC which is an entity that is a defendant in this case and DePerno as a delegate of the KGOPEC, DePerno is also a defendant of this case along with all of the other members in the KGOPEC. The Plaintiffs advised this court that he will have a conflict during trial being that DePerno's actions as a member of the KGOPEC are both relevant and admissible.

C. The Court was clear in its order that there were enough specific facts to overcome the original Motion for Summary Disposition as to the Libel claims made in the amended verified complaint. The Court stated that further discovery would have to be finished to analyze whether the allegations can be proven. As of the date of that order, Plaintiffs' allege that no further discovery was taken by either party in this lawsuit. The Plaintiffs conducted interrogatories, production and admissions. Defendants allege that almost no discovery was taken which is not true. Taking discovery depositions is a matter of strategy and at this time the only person named is Kelly Sackett, the former KGOPEC chair who distributed the falsehoods and who signed the propaganda. The Plaintiffs'

believe that the evidence of the text messages and the public censures sent by Kelly Sackett calling the Plaintiffs' members of a "coup de etat" rose to the level of a criminal conspiracy allegation and defamation per se and this litigation ensued.

D. There is no dispute that Kelly Sackett and the KGOPEC with malice sent the text messages and the censures to label the Plaintiffs as part of a conspiracy via a coup de etat to set aside Rule 9 when it took a super majority of the delegates to accomplish that feat out of approximately 194 or so voters. Over 2/3 of those voters or around 164 people set aside Rule 9 and the Plaintiffs were only two votes of the many.

E. Dictionary.com defines coup de etat as a *noun, plural coups d' tat* [koo dey-tahz; French koo dey-tA].

1. a sudden and decisive action in politics, especially one resulting in a change of government illegally or by force.

The Defendants alleged that the Plaintiffs illegally conspired to set aside Rule 9 to make the KGOPEC have less representation at the state level which under state law if this were true would be a criminal offense.

#### **750.157a Conspiracy to commit offense or legal act in illegal manner; penalty.**

##### **Sec. 157a.**

Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein:

(a) Except as provided in paragraphs (b), (c) and (d) if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of \$10,000.00 may be imposed.

(b) Any person convicted of conspiring to violate any provision of this act relative to illegal gambling or wagering or any other acts or ordinances relative to illegal gambling or wagering shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$10,000.00, or both such fine and imprisonment.

(c) If commission of the offense prohibited by law is punishable by imprisonment for less than 1 year, except as provided in paragraph (b), the person convicted under this section shall be imprisoned for not more than 1 year nor fined more than \$1,000.00, or both such fine and imprisonment.

(d) Any person convicted of conspiring to commit a legal act in an illegal manner shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$10,000.00, or both such fine and imprisonment in the discretion of the court.

In this situation, the Defendants allege that the legal act of voting on a Rule change was conspired with other delegates to conduct a coup de etat. There is no other explanation the Defendants can argue that triggered their disdain and malice intentions toward the Plaintiffs in this case. As a result, the Plaintiffs were characterized, censured and removed from their positions in the KGOPEC.

F. On Page 86 line 21 of Plaintiff Sabrina Pritchett-Evans deposition in regard to Count IV, Defense counsel asked "How have you been monetarily damaged?" The Plaintiff answered the question line 22a-25 and Page 87 line 1 "It reduced in standing in the community. Therefore, that right there is a violation and a defamation of character by what was posted by the KGOPEC." Defense counsel follows up on Page 87 starting at line 2-5 "So I've looked through the discovery you produced and I didn't see any discovery that indicated any evidence of damage within the community. Can you explain then how you've been damaged within the community?" Page 87 line 6 by Plaintiff "That will be decided in court." Page 87 line 7 defense counsel "So you don't have any evidence of your damages?" 87 line 8 by Plaintiff "That will be decided in court." Defense counsel lacked asking the right questions in regard to count 4 and Plaintiffs will rely on defamation per se. The elements that must be established to sustain a defamation claim are (1) a false and defamatory statement regarding the plaintiff, (2) a communication or unprivileged communication to a third party that is not privileged, (3) fault on the part of the publisher that amounts to at least negligence, and (4) either actionability of the statement irrespective of special harm (defamation per se) caused by the publication or actionability of the statement regardless of special harm, otherwise known as **defamation per se**. Words imputing a

lack of chastity or the commission of a **crime** constitute **defamation per se** and are actionable even in the absence of an ability to prove actual or special **damages**. Mich. Comp. Laws Ann. § 600.2911(1).

Where **defamation per se** has occurred, the person defamed is entitled to recover general **damages** in at least a nominal amount. A civil action for defamation can proceed despite the lack of any proof of actual or special **damages**. With respect to **defamation per se**, there is a presumption of general **damages**. Where a plaintiff brings an action under defamation statute alleging use of words imputing lack of chastity or commission of a **crime** under statute codifying the common-law principal that such words constitute **defamation per se**, the inability to prove **damages** is not fatal to claim. Mich. Comp. Laws Ann. § 600.2911(1).

In Burden v Elias Brothers Big Boy Restaurants, 240 Mich.App 723 (2000), transit police officers brought a slander action against the restaurant and its manager alleging that the restaurant employees had falsely accused them in front of customers of failing to pay for their meals. The case was originally granted a summary disposition in favor of the restaurant on the basis that plaintiffs failed to make a showing of economic damages or actual malice required under defamation. The Court reversed the lower court's dismissal to the Defendants because actual damages need not be proven. Even if Defendants believe there are no actual damages, and have argued this in the pending motion, it is not fatal to the Plaintiffs notwithstanding the fact that Defense counsel contributed only a few lines of questioning as to damages in a discovery deposition that came to 13 total lines incorporating the answer from Plaintiff Pritchett-Evans. The *Burden* Court reversed the ruling of the trial court by holding that actual damages do not need to be proven or malice. See Plaintiffs' Exhibit A Case Law Burden v Big Boy Restaurants

G. Defense Counsel presented Exhibit 1 in this Amended brief that sets the tone for this

lawsuit. The language of Exhibit 1 and the Defense's own admission that this Exhibit was in fact sent to many third party Republicans in Kalamazoo states the following on Page 2 of that exhibit.

"The proposed rule change was to allow the entire District (5 other Counties) to vote on Kalamazoo County's allotted three (3) District Executive Committee and two (2) State Committee seats. In effect, all 174 delegates would vote on those seats, rather than Kalamazoo's 39 delegates being the sole voters of their seats, while all other counties would break out into caucuses as prescribed by rule 9 and vote on their seats. Five counties would vote only on their county seats, and they would all vote on Kalamazoo's seats, two votes. Kalamazoo only had one vote, and was not allowed to vote on any other counties seats.

It became very clear that the small group of delegates from Kalamazoo County who were running for **District Executive Committee and State Committee seats had likely orchestrated this apparent "coup d'etat" with the help of factions** within other counties. This move seemed expressly for the purpose of getting elected at any cost, and in this case it was likely the sovereignty of their neighbors and fellow member delegates from Kalamazoo.

**The small group of delegates likely knew they did not have the majority support within the Kalamazoo County caucus and would not have been elected.** So essentially, **they decided to disregard their fellow delegates rights,** which consequently resulted in their own personal benefit.

The delegates of **Kalamazoo County had their votes "diluted" through this parliamentary move, resulting in a potential equal protection violation** . And in the end the rule change was passed, over the objections of those opposing it in Kalamazoo

County, but **the District went ahead and over-whelming voted to trample on the rights of Kalamazoo County delegates.**” Summarized in the next paragraph below, the former KGOPEC chair used her power to punish with words, the two Plaintiffs in this case specifically to do what was intended and that was to shatter their reputation, character and loyalty to the party by using specific language that gave the appearance that a criminal act had occurred via a conspiracy to orchestrate a coup de etat. A group of people who have a right to vote however they chose, were labeled by the Defendants in this case as an orchestrated coup de etat conspiracy, allegedly violating the rights of the Kalamazoo Caucus, which if true would be a felony in this state.

The Defendants allegation that Plaintiffs “**orchestrated**” a “**coup de etat**” disregarding their fellow delegates rights **resulting in a potential equal protection violation** and over-whelmingly **trampled on the rights** of Kalamazoo delegates rises to the level of defamation per se under the statute. The Defendants have taken the Plaintiffs absolute right to legally vote how they chose and criminalize it by alleging that a conspiracy was orchestrated. This is defamation per se.

H. Defendants make the same arguments in their original Motion for Summary Disposition as to the elements of the statute for libel and slander. The Court has already ruled upon the elements of the statute with what was pled in the Amended Verified Complaint. Being the Defendants did not do any further discovery since that decision, there is nothing different from the Court’s original ruling and res judicata should be applied to this successive motion that brings nothing new to the table.

I. The Plaintiffs in this case are the only two people who need to testify as to the facts of this case. The Defendants seem to believe that the Plaintiffs are in need of further witnesses. The Court will apply the law as to the facts and evidence that is presented.

### **ARGUMENT AS TO MCR 2.116(C)(8) AND (C)(10)**

The Court should deny Defendants MSD as to the argument of MCR 2.116(C)(8) and (10). There are overwhelming material facts in dispute as to the defamation issues and are one of the main reasons why the District 4 caucus voted to set aside Rule 9.

#### **Count IV Violations of MCL 600.2911**

The Defendants assert that no cause of action has been pled and have failed to state claims upon which the Court can grant relief. MCR 2.116(C)(8). The Defendants would rely on the surviving Count IV that was pled in the Amended Verified Complaint and reiterate that the Defendants own materials and exhibits attached to their SDM prove that there was defamation per se and there are material facts in dispute as to the characterization of an orchestrated coup de etat..

Plaintiffs allege that the KGOP EC vicariously through their chairperson Defendant Sackett defamed them with false propaganda via a mass text message and also in a press release published February 21, 2023 and republished the same on their website, naming them individually as members of the KGOPEC and not private citizens on March 1, 2023. They were then publicly censured and labeled as giving false statements (lying) marring their character and reputations not only as members of the Republican GOP but as to members of the committee KGOPEC, Kalamazoo County Community and business relationships. As elected members of their respective positions in the EC and District 4, their reputations have been tarnished bringing unwanted fame for their lawful actions at the Michigan State Republican Convention. If the Defendants believed that there was an orchestrated coup de etat, a police report should have been filed alleging those facts, however, the Defendants did not file a report, and instead they threw accusations at the members for casting lawful votes. The Defendants published this material knowing it was false and with reckless disregard as to its veracity. The documents were



published on KGOP letterhead signifying that they were coming from the authority of the Defendant former chairperson, Kelly Sackett.

Doing a simple Google search of the Plaintiffs' names pulls these negative and false accusations to light and it is foreseeable that any future endeavors to run for elected office within the Republican Party or current and future business activities will bring light to the tainted reputation that the KGOPEC and Defendant Sackett intentionally meant to do. The Defense alleges that there was no specifics of libel and slander in the verified complaint: However, there are many instances: On Sunday, February 19, 2023, at 4:02 PM a text was sent by KGOP on behalf of Kalamazoo County Republican Party to all Kalamazoo County Republican Precinct Delegates stating the following false statements:

- 1 - A hostile faction Kalamazoo County delegates aligned with Ottawa County delegates to disenfranchise the Kalamazoo Republican party
- 2 - A hostile faction Kalamazoo County delegates aligned with Ottawa County delegates to steal the sovereignty of Kalamazoo Republican Party
- 3 - A hostile faction of Kalamazoo County delegates aligned with Ottawa County delegates to violate the equal protection rights of Kalamazoo County delegates.
- 4 - A hostile faction of Kalamazoo County delegates committed a coup d'état

Hostile Definition: 1. Adverse. 2. Showing ill will or desire to harm. 3. Antagonistic; unfriendly  
Blacks Law Dictionary 11th Edition

On February 21, 2023, Kelly Sackett emailed a press release to the Kalamazoo County Republican Party's entire email list and posted the press release on the KGOP website:

On March 1, 2023 Kelly Sackett held a Special Meeting. At the special meeting Sabrina Pritchett-Evans and Kimberly Harris were censured. The following false statements were made maligning Sabrina Pritchett-Evans and Kimberly Harris and posted to the KGOP Website and a link on the KGOP website:

Falsely stated on February 17, 2023 that KGOP Executive Committee took an illegal vote on February 13, 2023. Ms. Pritchett-Evans never made this statement on February 17, 2023 before the MIGOP convention. Ms. Harris never made this statement on February 17, 2023 at MIGOP convention.

In the Censure notice released to the public Ms. Sackett stated on behalf of the Kalamazoo County Republican Party that Sabrina Pritchett-Evans put forth a hostile amendment for a hostile motion to set aside rule 9. Ms. Pritchett-Evans did not put forth an amendment at the MIGOP convention.

Statement in Censure: "Whereas, we believe Sabrina Pritchett-Evan's false statement, hostile amendment, and vote are a betrayal of her fellow delegates and the core values of the KGOP. We believe her false statement and vote were against the interest of voters in Kalamazoo County."

On March 1, 2023, KGOP Chair, Kelly Sackett, issued a press release by posting on the public KGOP website after the Special meeting called due to events that took place at the district caucus in Lansing on February 17th, 2023 that involved precinct delegates from Kalamazoo County. Statement from Chair, Kelly Sackett:

"We need to ensure all delegates have a voice and they deserve to be heard and that the credibility of the KGOP has been diminished and discredited, we won't let this disenfranchisement of our delegates go unanswered, even if the MIGOP Chair does nothing."

"We are done playing games with delegates who think winning a seat by disenfranchising our voters is the end game."

In this Press Release Sabrina Pritchett-Evans and Kim Harris were named.

Sabrina Pritchett-Evans and Kimberly Harris were falsely accused of disenfranchising voters.

This information was publicly published on March 1, 2023, and a link to February 21, 2023, press release was embedded in the March 1, 2023, press release.

Sabrina Pritchett-Evans and Kimberly Harris are falsely accused of being anarchist-minded delegates with a focus on burning down the party.

Falsely accused of having a Christian Cult mentality.

In the response Attorney Matt DePerno Falsely states that Sabrina Pritchett-Evans and Kim Harris formulated a coup d'état

"Therefore, Plaintiffs Pritchett-Evans and Harris, along with Veronica Pero and William Bennett formulated a coup d'état in conjunction with other like-minded delegates from other counties.."

Stated that Pritchett-Evans and Harris violated U.S. Constitution and Michigan Constitution's basis principle of "one person, one vote" and equal protection.

Plaintiff Pritchett-Evans is a Democrat and a disruptor.

The press releases were written to finger the Plaintiffs as the whistleblowers who voted

for a Rule 9 amendment during the state convention and were the basis of the Defendant's multiple false allegations. The Defendants acted negligently, willfully and deliberately with malice to tarnish their character and reputations within the Republican Party. A demand letter was sent to the KGOPEC addressed to Kelly Sackett to retract the false accusations. No one responded even though Ms. Sackett has sworn in an affidavit that Mr. DePerno has been the attorney for KGOPEC since December of 2022.

Plaintiffs assert that the Defendants violated the statute by printing falsehoods. The Defendants were given an opportunity to correct the effort by certified mail demanding a retraction of the press releases and other false propaganda and to publish a new press release with a correction of the facts. No reply was ever made, and this lawsuit ensued. Plaintiffs assert that the Defendants MSD and amended brief as to Count IV should be denied. The allegations have been pled specifically with documents, times and dates with detail. Plaintiffs would rely and incorporate by reference all previous Exhibits, documents, emails and texts previously filed with their Amended Verified Complaint and other motions in support of this response.

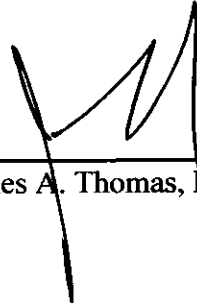
#### **DEMAND FOR SANCTIONS RESPONSE**

The Defendants request for Sanctions is disingenuous and duplicative. The Court had already ruled on the record that the lawsuit was not frivolous and Count IV survived the first MSD. Nothing has changed. During the course of this litigation, the Defendants have filed motions, filed to take depositions including subpoenas for at least 9 non-party alleged witnesses, filed for discovery and have spent an incredible amount of time not only preparing the first MSD but requesting excessive pages because of the complex legal issues involved in this case, yet writes that "the complaint does not contain a single viable cause of action against the defendants." ... "It is vexatious and frivolous." If any of those words were true at the time, no lawyer would have gone through the vast lengths and

money spent that defense counsel has taken to bring this complaint to finality. Taking a five-hour deposition of the Plaintiff and ordering a transcript on an alleged frivolous case does not sound reasonable or honest. The Plaintiffs filed this lawsuit because the KGOPEC and their leader refused to reply to the original demand letter to attempt to resolve the issues. In the Defendants minds, it appears that they expected the Plaintiffs to tuck their tails and walk away. This lawsuit was filed in good faith, based on facts and the law that are relevant and necessary for this Court to decide. The Amended Verified complaint was filed under oath and as a testament that the Plaintiffs want to right a wrong. Plaintiffs reject the Defendants contention that anything in Count IV is false, frivolous, misleading or made for the purpose of embarrassment, if anything, the Defendants are the ones posting much of the paperwork and discovery responses to social media in an attempt to continue the embarrassment and defamation of the Plaintiffs. It is apparent that the Plaintiffs use of words and accusations of asserting claims of coup de etat and orchestrating a vote to have their own representatives rises to the level of voter fraud, a felony in this state. A conspiracy to commit a coup de etat is alleged by the Defendants in this cause and the Plaintiffs seek damages for those allegations. Plaintiffs respectfully request this Court reject the Defendants' demand for sanctions.

WHEREFORE, Plaintiff requests that this honorable Court deny the Defendants' Motion for Summary Disposition as to Count IV under MCR 2.116 in its entirety and to Dismiss their demand for sanctions for the reasons set forth herein.

Dated January 15, 2024




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James A. Thomas, Esq. P80931

**PLAINTIFFS'**  
**EXHIBIT A**

**For Plaintiffs' Response to Defendants' Motion for Summary Disposition and Amended  
Brief, Case Law Burden v. Elias Brothers Big Boy Restaurants 240 Mich.App 723 (2000)  
613 N.W.2d 378**

 KeyCite Yellow Flag - Negative Treatment  
Declined to Extend by Cetera v. Mileto, Mich.App., July 28, 2022  
240 Mich.App. 723  
Court of Appeals of Michigan.

Jacqueline Kay BURDEN, and Adrienne Denise  
Roby, Plaintiffs–Appellants,  
v.  
ELIAS BROTHERS BIG BOY RESTAURANTS,  
Defendant–Appellee,  
and  
Darryll Smith, Defendant.

Docket No. 204788  
|  
Submitted Oct. 6, 1999, at Detroit.  
|  
Decided May 5, 2000, at 9:00 a.m.  
|  
Released for Publication July 11, 2000.

#### Synopsis

Transit police officers brought slander action against restaurant and its manager, alleging that restaurant employees had falsely accused them, in front of other customers, of having failed to pay for their meals before leaving during visit to restaurant on previous day. The Wayne Circuit Court, Pamela R. Harwood, J., granted **summary disposition** to restaurant, on basis that plaintiffs had failed to make showing of economic **damages** or actual malice required under **defamation** statute. Plaintiffs appealed. The Court of Appeals held that: (1) under **defamation** statute, inability to prove **damages** is not fatal to action alleging use of words imputing lack of chastity or commission of a crime, which constitute **defamation** per se, and (2) plaintiffs' allegations stated claim for **defamation** per se, **damages** for which are presumed.

Reversed and remanded.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment.

West Headnotes (19)

[1] **Appeal and Error**—De novo review

Appellate court reviews a trial court's decision regarding a motion for **summary disposition** de novo. MCR 2.116.

2 Cases that cite this headnote

[2] **Summary Judgment**—Genuine Issue or Dispute as to Material Fact

Motion for **summary disposition** on basis that there is no genuine issue of material fact tests the factual support for a claim. MCR 2.116(C)(10).

4 Cases that cite this headnote

[3] **Appeal and Error**—Summary Judgment

In reviewing trial court's decision on motion for **summary disposition** which is based on absence of any genuine issue of material fact, appellate court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, and, giving the benefit of the doubt to the nonmoving party, must determine whether a genuine issue of material fact exists to warrant a trial. MCR 2.116(C)(1).

2 Cases that cite this headnote

[4] **Libel and Slander**—Nature and elements of **defamation** in general

Elements of a cause of action for **defamation** are (1) a false and **defamatory** statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either "**defamation** per se," which is actionability of the statement

irrespective of special harm, or the existence of special harm caused by the publication, which is "defamation per quod."

46 Cases that cite this headnote

[5] **Appeal and Error**—Statutory or legislative law

Statutory interpretation is a question of law that is considered de novo on appeal.

[6] **Statutes**—Intent

Primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the legislature.

[7] **Statutes**—Language and intent, will, purpose, or policy

First step in determination of legislative intent underlying statute is to review the specific language of the statute.

[8] **Statutes**—Plain language: plain, ordinary, common, or literal meaning  
**Statutes**—Clarity and ambiguity: multiple meanings

If a statute is unambiguous on its face, legislature is presumed to have intended the meaning it plainly expressed, and judicial interpretation is neither required nor permissible.

[9] **Statutes**—Common or Civil Law

Language of a statute should be read in light of previously established rules of the common law.

[10] **Statutes**—Statutory Alteration or Abrogation of Common Law  
**Statutes**—Plain, literal, or clear meaning of statute: ambiguity

Well-settled common law principles are not to be abolished by implication, and when an ambiguous statute contravenes common law, it must be interpreted so that it makes the least change in the common law.

2 Cases that cite this headnote

[11] **Libel and Slanders**—Executive officers and employees

Allegations by uniformed transit police officers that restaurant employees had falsely accused them, in front of other customers, of leaving restaurant without paying for their meals on the previous day, involved the imputation of a criminal offense, and thus stated claim for **defamation per se, damages** for which are presumed regardless of any showing of economic **damages** or actual malice. M.C.L.A. § 600.2911(1), (2)(a), (7).

3 Cases that cite this headnote

[12] **Libel and Slander**—Presumption as to **damage**: special **damages**

At common law, words charging the commission of a crime are **defamatory per se**

and hence, injury to the reputation of the person **defamed** is presumed to the extent that the failure to prove **damages** is not a ground for dismissal.

29 Cases that cite this headnote

[13] **Libel and Slander**—Nominal or substantial **damages**

At common law, where **defamation** per se has occurred, the person **defamed** is entitled to recover general **damages** in at least a nominal amount.

12 Cases that cite this headnote

[14] **Libel and Slander**—Nominal or substantial **damages**

At common law, where the **defamatory** publication was maliciously published, the person **defamed** could recover substantial **damages**, even if no special **damages** could be shown

1 Case that cites this headnote

[15] **Libel and Slander**—Nominal or substantial **damages**

At common law, **defamation** per se gives rise to presumption of general **damages**, whether nominal or substantial.

4 Cases that cite this headnote

[16] **Libel and Slander**—Presumption as to **damage**; special **damages**

Where a plaintiff brings an action under **defamation** statute alleging use of words imputing lack of chastity or commission of a crime, inability to prove **damages** is not fatal to claim, as statute codifies common law principle that such words constitute **defamation** per se and are actionable even in the absence of an ability to prove actual or special **damages**. M.C.L.A. § 600.2911(1).

34 Cases that cite this headnote

[17] **Libel and Slander**—Actionable Words in General  
**Libel and Slander**—Nominal or substantial **damages**

Word “actionable,” when used at common law in conjunction with a claim of **defamation** per se, means that the person **defamed** may bring a civil action, and receive at least nominal **damages** in the absence of any proof of actual or special **damages**.

8 Cases that cite this headnote

[18] **Statutes**—Superfluosity

Interpretation which renders a portion of statute nugatory is contrary to the principles of statutory construction.

[19] **Libel and Slander**—Words Imputing Crime and Immorality  
**Libel and Slander**—Want of chastity or sexual crimes in general

Specific reference to per se **defamation** action for words imputing a lack of chastity, or the commission of a crime, in **damages** provision of **defamation** statute is meant to distinguish these actions from other slander actions, and to except them from the **damages** restriction



applicable to other slander actions. M.C.L.A. § 600.2911(1), (2)(a), (7).

13 Cases that cite this headnote

### Attorneys and Law Firms

**\*\*380 \*724** William L. Glenn, Detroit, for the plaintiffs.

DeWitt, Balke & Vincent, P.L.C. (by William B. Balke and Cathleen C. Jansen), Detroit, for Elias Brothers Big Boy Restaurants.

Before: NEFF, P.J., and MURPHY and J.B. SULLIVAN, JJ.

### Opinion

PER CURIAM.

Plaintiffs' appeal as of right from the summary dismissal of their slander action pursuant to MCR 2.116(C)(10). We reverse and remand.

The following facts are not in dispute. Plaintiffs, uniformed People Mover Transit police officers, entered Elias Brothers Big Boy Restaurants' (hereafter defendant) restaurant intending to dine. While being escorted to their table, defendant Darryll Smith, **\*725** an assistant manager of the restaurant, pointed at plaintiffs and stated that they had been in the restaurant on the previous day. When plaintiffs acknowledged that they had been in the restaurant on the previous day, Smith repeatedly and loudly accused them of leaving the restaurant that day without paying for their meals. At the time, there were other patrons in the restaurant whose attention was drawn to plaintiffs. Plaintiff Adrienne Roby informed Smith that he was mistaken and that they had paid their bill. A manager was summoned and made an unsuccessful attempt to get Smith to apologize to plaintiffs. Smith refused, continuing to accuse plaintiffs of leaving the restaurant without paying for their meals. Plaintiffs left the restaurant without dining.

Relying on *Glazer v. Lankin*, 201 Mich.App. 432, 506 N.W.2d 570 (1993), defendant moved for **summary disposition** arguing that M.C.L. § 600.2911; MSA 27A.2911, as amended by 1988 PA 396, § 1 (which, in

pertinent part, added subsection 7), required either a showing of economic **damages** pursuant to subsection 7 or a showing of actual malice pursuant to subsection 2(a). Plaintiffs argued that subsection 7 did not repeal subsection 1 or override prior case law permitting an action for slander per se wherein **damages** are presumed. The trial court agreed with defendant and found that plaintiffs "presented no evidence which would raise a question of fact as to either the existence of economic **damages** or the actual malice required to collect non-economic **damages**."

<sup>111</sup> <sup>121</sup> <sup>131</sup> <sup>141</sup> We review a trial court's decision regarding a motion for **summary disposition** de novo. *Power Press Sales Co. v. MSI Battle Creek Stamping*, 238 Mich.App. 173, 177, 604 N.W.2d 772 (1999). A **\*\*381** motion **\*726** under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The motion may be granted when, except with regard to the amount of **damages**, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Ireland v. Edwards*, 230 Mich.App. 607, 613, 584 N.W.2d 632 (1998). In reviewing the trial court's decision, we must consider the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, and, giving the benefit of the doubt to the nonmoving party, we must determine whether a genuine issue of material fact exists to warrant a trial. *Power Press, supra; Ireland, supra.* The elements of a cause of action for **defamation** are (1) a false and **defamatory** statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (**defamation** per se) or the existence of special harm caused by the publication (**defamation** per quod). *Ireland, supra* at 614, 584 N.W.2d 632.

<sup>151</sup> <sup>161</sup> <sup>171</sup> <sup>181</sup> <sup>191</sup> <sup>1101</sup> Statutory interpretation is a question of law that is considered de novo on appeal. *Oakland Co. Bd. of Co. Rd. Comm'rs v. Michigan Property & Casualty Guaranty Ass'n*, 456 Mich. 590, 610, 575 N.W.2d 751 (1998). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut. Ins. Co. v. Marlette Homes, Inc.*, 456 Mich. 511, 515, 573 N.W.2d 611 (1998). The first step in that determination is to review the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich. 396, 411, 596 N.W.2d 164 (1999). If the statute is unambiguous on its face, the **\*727** Legislature is presumed to have intended the meaning it plainly expressed, and judicial

interpretation is neither required nor permissible. *Id.* However, the language of a statute should be read in light of previously established rules of the common law. *B & B Investment Group v. Gitler*, 229 Mich.App. 1, 7, 581 N.W.2d 17 (1998). Well-settled common-law principles are not to be abolished by implication, and when an ambiguous statute contravenes common law, it must be interpreted so that it makes the least change in the common law. *Marquis v. Hartford Accident & Indemnity (After Remand)*, 444 Mich. 638, 652-653, 513 N.W.2d 799 (1994).

<sup>[11]</sup> Michigan's **defamation** statute provides in pertinent part:

(1) Words imputing a lack of chastity to any female or male are actionable in themselves and subject the person who uttered or published them to a civil action for the slander in the same manner as the uttering or publishing of words imputing the commission of a criminal offense.

(2) (a) Except as provided in subdivision (b), in actions based on libel or slander the plaintiff is entitled to recover only for the actual **damages** which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.

\* \* \*

(7) An action for libel or slander shall not be brought based upon a communication involving a private individual unless the **defamatory** falsehood concerns the private individual and was published negligently. Recovery under this provision shall be limited to economic **damages** including attorney fees. [MCL. 600.2911; MSA 27A.2911.]

<sup>[12]</sup> <sup>[13]</sup> <sup>[14]</sup> <sup>[15]</sup> At common law, words charging the commission of a crime are **defamatory** per se, and hence, injury to \*728 the reputation of the person **defamed** is presumed to the extent that the failure to prove **damages** is not a ground for dismissal. *Sias v. General Motors Corp.*, 372 Mich. 542, 551, 127 N.W.2d 357 (1964); *Peoples v. Detroit Post & Tribune Co.*, 54 Mich. 457, 20 N.W. 528 (1884); *Wilkerson v. Carlo*, 101 Mich.App. 629, 632, 300 N.W.2d 658 (1980). Where **defamation** per se has \*\*382 occurred, the person **defamed** is entitled to recover general **damages** in at least a nominal amount. *Slater v. Walter*, 148 Mich. 650, 652-653, 112 N.W. 682 (1907); *Scougale v. Sweet*, 124 Mich. 311, 323, 325, 82 N.W. 1061 (1900); *Sias, supra* at 551-552, 127

N.W.2d 357. Where the **defamatory** publication is "maliciously published," the person **defamed** may recover "substantial **damages**" even where no special **damages** could be shown. *Whittemore v. Weiss*, 33 Mich. 348, 353 (1876). Whether nominal or substantial, where there is **defamation** per se, the presumption of general **damages** is well settled. *McCormick v. Hawkins*, 169 Mich. 641, 650, 135 N.W. 1066 (1912); *Clair v. Battle Creek Journal Co.*, 168 Mich. 467, 473-474, 134 N.W. 443 (1912); *Simons v. Burnham*, 102 Mich. 189, 204, 60 N.W. 476 (1894); *In re Thompson*, 162 B.R. 748, 772 (E.D.Mich., 1993).

<sup>[16]</sup> <sup>[17]</sup> MCL 600.2911(1); MSA 27A.2911(1) is the codification of the common-law principle that words imputing a lack of chastity or the commission of a crime constitute **defamation** per se and are actionable even in the absence of an ability to prove actual or special **damages**, as evidenced by the statute's indication that such words are "actionable in themselves...." The word "actionable," when used at common law in conjunction with a claim of **defamation** per se, means that the person **defamed** may bring a civil action and receive at least nominal **damages** in the absence of \*729 any proof of actual or special **damages**. See, e.g., *Sias, supra* at 551-552, 127 N.W.2d 357; *Peoples, supra*; *Wilkerson, supra* at 632, 300 N.W.2d 658. This meaning ascribed to the word "actionable" by the common law with regard to **defamation** per se must also be ascribed to the word "actionable" that is found in subsection 1. *Pulver v. Dundee Cement Co.*, 445 Mich. 68, 75-76, 515 N.W.2d 728 (1994). Accordingly, where a plaintiff brings an action alleging words imputing lack of chastity or commission of a crime under M.C.L. § 600.2911(1); MSA 27A.2911(1), the inability to prove **damages** is not fatal to the claim.

<sup>[18]</sup> <sup>[19]</sup> Defendant argues that subsections 2(a) and 7 modify the common law as codified in subsection 1 to the extent that the two **defamation** actions specifically enumerated in subsection 1 are not actionable in the absence of a showing of either economic **damages** pursuant to subsection 7 or the actual malice required for noneconomic **damages** to reputation or feelings pursuant to subsection 2(a). However, such a construction renders subsection 1 nugatory, contrary to the principles of statutory construction. *Altman v. Meridian Twp.*, 439 Mich. 623, 635, 487 N.W.2d 155 (1992). If the Legislature intended the two specifically enumerated actions for slander per se set forth in subsection 1 to be governed by the **damages** restrictions of subsections 2(a) and 7, then the Legislature would have made no specific reference to those actions in M.C.L. § 600.2911; MSA

27A.2911. It follows that the specific reference to these two per se actions in the statute is meant to distinguish these actions from other slander actions and to except them from the **damage** restrictions applicable to other slander actions in subsections 2(a) and 7. ¶ *Bradley v. Saranac Community Schools Bd. of Ed.*, 455 Mich. 285, 298, 565 N.W.2d 650 (1997).

\*730 Our review of *Glazer, supra*, does not dictate a different result. The issue there was whether the Legislature, in amending the statute by 1988 PA 396, § 1, intended that subsection 2(a) apply only to actions for libel or slander involving *public* plaintiffs; this Court found that it did not. ¶ *Glazer, supra* at 435–436. 506 N.W.2d 570. The bankruptcy court stated in *Thompson, supra*, that the *Glazer* Court “purported to reconcile [subsections 2(a) and 7] by interpreting subsection (7) as precluding private plaintiffs from recovering for ‘injuries to feelings’ absent a showing of actual malice.” *Thompson, supra* at 773. The *Glazer* Court, however, ultimately found that the record “contain[ed] no admissible documentary evidence setting forth specific \*\*383 facts showing a genuine issue of material fact that

[the] defendant accused [the] *plaintiffs* [as opposed to another]” of the allegations in the complaint. ¶ *Glazer, supra* at 439. 506 N.W.2d 570 (emphasis in the original). Arguably, the statutory interpretation therein is dictum. See *Thompson, supra* at 773. In any event, we have determined that the two actions for **defamation** per se as set forth in subsection 1 are, unlike other **defamation** actions, not subject to the **damages** restrictions of subsections 2(a) and 7.

In this case, plaintiffs alleged **defamation** per se, the **damages** for which are presumed, and the trial court erred in granting **summary disposition** to defendant with regard to the issue of **damages**.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

#### All Citations

240 Mich.App. 723, 613 N.W.2d 378

#### Footnotes

Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

<sup>1</sup> Plaintiff Jacqueline K. Burden died before her deposition could be taken and her estate has not been substituted as a party to this action.

<sup>2</sup> The trial court also denied plaintiffs’ motion to enter a default judgment with regard to defendant Darry Smith and dismissed the claim against him with prejudice. That dismissal is not appealed.