DEFAMATION - SLANDER PER SE UNDER FLORIDA LAW AND PUNITIVE DAMAGES

Defamation is generally defined as the unprivileged publication of false statements which naturally and proximately result in injury to another. Wolfson v. Kirk, 273 So. 2d 774 (Fla. 4th DCA 1973). To establish a cause of action for defamation, a plaintiff must show: (1) That the defendant published a false statement about the plaintiff; (2) To a third party; and (3) That the falsity of the statement caused injury to the plaintiff. See Razner v. Wellington Regional Med. Ctr., Inc., 837 So. 2d 437 (Fla. 4th DCA 2002). Only those statements that are false rise to the level of defamation. Id. Also, statements of pure opinion are not actionable. Florida Med. Ctr., Inc. v. New York Post Co., Inc., 568 So. 2d 454 (Fla. 4th DCA 1990).

There are four categories of statements that constitute slander per se:

1. Imputing to another a criminal offense amounting to a felony;
2. Imputing to another a presently existing venereal disease or other loathsome and communicable disease;
3. Imputing to another, the other being a woman, acts of unchastity;
4. Imputing to another conduct, characteristics or a condition incompatible with the proper exercise of his lawful business, trade, profession, or office.

See Wolfson, 273 So. 2d at 777 (internal citations omitted).

In a slander per se action, "punitive damages may be awarded even though the amount of actual damages is neither found nor shown, for in such a case, the requirement of a showing of actual damages as a basis of an award for exemplary damages is satisfied by the presumption of injury which arises from a showing of libel or slander that is actionable per se." Saunders Hardware Five and Ten, Inc. v. Low, 307 So. 2d 893 (Fla. 3d DCA 1974).

The application of the punitive damages rule above was recently made by the Fourth District Court of Appeal in Lawnwood Med. Ctr., Inc. v. Sadow, 43 So. 3d 710 (Fla. 4th DCA 2010), where a surgeon (Dr. Samuel H. Sadow) brought an action against a hospital for breach of contract and slander per se seeking compensatory damages for both claims and punitive damages for the slander per se action. In the trial court proceeding, the jury found the hospital liable on the breach of contract claim and fixed damages at $2,817,000, reduced to $1,517,000. In separate proceedings on the slander per se claim, the jury found Lawnwood liable for the slanders; that Lawnwood specifically intended to harm him by its per se slanderous statements; that, in fact, it had actually injured him by the statements; and that he suffered no compensatory damages from the slanders but that he was entitled to punitive damages of $5,000,000 from the hospital. Id. at 712. The Fourth District Court of Appeal, affirmed the punitive damages award, and set forth the following interesting discussion in its supporting opinion.

> ...[W]hen the claim is defamation per se, liability itself creates a conclusive legal presumption of loss or damage and is alone sufficient for the jury to consider punitive damages. [...] To sum up, Florida's unusually high protection of personal reputation derives from the common consent of humankind and has ancient

roots. It is highly valued by civilized people. Our state constitution and common law powerfully support it. This is a value as old as the Pentateuch and the Book of Exodus, and its command as clear as the Decalogue: "Thou shall not bear false witness against thy neighbor." The personal interest in one's own good name and reputation surpasses economics, business practices or money. It is a fundamental part of personhood, of individual standing and one's sense of worth. In short, the wrongdoing underlying the punitive damages in this case has Florida law's most severe condemnation, its highest blameworthiness, its most deserving culpability. For slander per se, reprehensibility is at its highest.

Lawnwood, 43 So. 3d at 727-29, review denied, 36 So. 3d 84 (Fla. 2010), and cert. denied, 131 S. Ct. 905 (U.S. 2011) (footnotes omitted).