[Cite as *Al-Aroud v. McCoy*, 2021-Ohio-3832.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LASHANDA AL-AROUD, ET AL.,	JUDGES:
Plaintiffs-Appellees	Hon. William B. Hoffman, P.J. Hon. John W. Wise, J. Hon. Earle E. Wise, Jr., J.
-vs-	
	Case No. 2021 CA 00003
ARLENE MCCOY	
Defendant-Appellant	O P I N I O N

CHARACTER OF PROCEEDINGS:	Appeal from the Alliance Municipal Court, Case No. 2019 CVE 1138
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	October 25, 2021

APPEARANCES:

For Plaintiffs-Appellees	For Defendant-Appellant
JULIE JAKMIDES MACK Jakmides Law Offices, LTD 325 East Main Street Alliance, Ohio 44601	ADAM V. BUENTE The Law Office of Adam V. Buente, LLC 841 Boardman-Poland Road Suite #307 Boardman, Ohio 44512

Hoffman, P.J.

{¶1} Defendant-appellant Arlena McCoy appeals the December 10, 2020 Judgment Entry entered by the Alliance Municipal Court, which found in favor of plaintiffs-appellees LaShanda Al-Around and Theresa Al-Around ("Appellees," collectively; "LaShanda" and "Theresa," individually) on their defamation and intentional infliction of emotional distress claims, and awarded Appellees compensatory and punitive damages as well as attorney fees, following a bench trial.

STATEMENT OF THE CASE AND FACTS

{¶2} On October 11, 2019, Appellees filed a complaint in the Alliance Municipal Court, naming Appellant as defendant. Therein, Appellees asserted causes of action for civil conspiracy, defamation per se, and intentional infliction of emotional distress. Appellees filed the complaint following actions taken by Crandall Medical Center ("CMC"), Appellees' employer, after Appellant messaged her friend, who was also an employee of CMC, implicating Appellees in the theft on narcotics.

{¶3} The matter proceeded to bench trial on March 3, 2020. Appellant appeared pro se.

{¶4} Appellant, who was called as if on cross-examination, stated she contacted a friend, who was an employee of CMC, after she overheard a conversation outside of a Dollar General in Sebring, Ohio. While looking at clothing on a rack on the sidewalk outside of the store, Appellant claimed she heard three people discussing "a Black girl named LaShanda" who was stealing narcotics and giving them to her mother. March 3, 2020 Trial Transcript at 11-12. Appellant detailed the conversation she overheard, noting the three individuals stated "LaShanda" and her mother were replacing the narcotics with

a drug called "Lisinopril."[1] Appellant explained she did not go to the police at the time because she "was going through my brother dying from cancer." Tr. at 12. Appellant also acknowledged she did not contact the administration at CMC, but contacted a family friend who works for CMC. Appellant adamantly denied "meddling," adding she is a mandatory reporter.

{¶5} When asked if she followed proper procedure for mandatory reporting by sending a message to a friend via Facebook, Appellant stated, at the time, she had read about a drug bust and was not sure if the incident occurred at her friend's workplace and was merely inquiring if it had. Appellant's friend confirmed a drug bust had occurred at CMC. Appellant informed her friend, "she isn't the only one involved…you have a nurse and her mother working there? * * * well I heard they was stealing pain meds and replacing them with other meds that look like the pain meds." Plaintiff's Exhibit 1 A-C.

{¶6} Theresa testified she has worked as an STNA, CDP at CMC for 18 years[2]. Theresa noted, in the course of her 18 years of employment at CMC, she had never been suspended from work or placed on any kind of leave. However, in late July or early August, 2019, she was placed on leave as a result of an allegation her daughter was stealing drugs and giving them to her and she (Theresa) was using them. Theresa indicated she learned about the allegation when she and LaShanda were pulled off the floor and taken to the administrator's office. The administrator explained someone outside of CMC had contacted the facility and made the allegation. The administrator asked Theresa and LaShanda to empty their pockets. Theresa and LaShanda were required to immediately submit to drug screens. Another employee supervised while

[1] Lisinopril is used to treat high blood pressure.
[2] An STNA is a state tested nursing assistant. A CDP is a certified dementia practitioner.

Theresa and LaShanda provided their urine samples. Theresa described feeling "very uncomfortable." Theresa and LaShanda were advised they could not return to work until CMC received the results of the urine screens and were escorted out of the facility.

{¶7} Theresa recalled she was off work for nine days. She added the time she was off work "wasn't pleasant." Tr. at 21. "Because I wasn't supposed to talk about what had happened at work, and everybody wonderin', 'What you doing home?' . . . 'Why aren't you working?' 'What's going on?'." *Id*. Theresa was reinstated as soon as CMC received the result of her drug screen, which was negative. When she returned to work, Theresa felt uncomfortable as her co-workers would approach her and ask, "What happened? I heard you got fired?" *Id*. Theresa added the questions were prevalent for a while. She felt her reputation at work has been impacted. Theresa explained, "some of my coworkers – we used to pray together. We – you know, they would say, 'Pray for me about this.' They don't come up to me and ask me those things anymore. * * * I just know it's not as – like it used to be." *Id*. at 22.

{¶8} Randi Roose, the administrator at CMC, testified, in the summer of 2019, her work clerk told her (Roose) she had received a Facebook message from someone she has known her entire life, claiming LaShanda was stealing pain pills, replacing them with cholesterol medication, and giving Theresa the pain pills. Roose sent a Facebook message to Appellant, inquiring about what she had specifically heard. Roose turned over the messages between herself and Appellant to the Sebring Police Department. As per CMC procedure, once the allegation was made, Roose immediately removed Appellees from the floor.

{¶9} Roose and a nursing supervisor explained the allegations to Appellees. Appellees, without hesitation, complied with Roose's request they empty their pockets. Roose then asked Appellees to go to the health clinic at the facility and submit urine samples for drug testing. Roose informed Appellees they would be removed from the schedule until the results of the drug tests were received and the investigation completed. Roose described Appellees as "very open. . .willing to do anything that I asked them to do. * * * they were humiliated. * * * they continued to apologized. . . you could just tell, by their mannerisms that they were embarrassed." *Id*. at 35. After concluding the investigation, Roose found nothing to establish the allegation was "in any way factual." *Id*. Roose noted Appellees received partial wages while they were on leave.

{¶10} On re-direct examination, Roose stated she found the method by which the allegation was presented odd. Roose continued, "I don't typically have community people reporting to other staff members. Whenever there's been a big issue that someone's heard about in the community, it's come directly to myself or to my director of nursing * * * I think that that's the appropriate channel. You go to the top when you have an accusation as such. . . misappropriation of narcotics is a big deal." *Id*. at 39.

{¶11} LaShanda testified she has worked at CMC as a licensed practical nurse for nine years. During July or August, 2019, she became involved in a custody dispute with her ex-boyfriend. Around the same time, the allegation was made against her and her mother. LaShanda stated she learned of the allegation after being pulled off the floor and taken to the administrator's office. LaShanda was instructed to empty her pockets. Thereafter, she was taken to the health clinic to submit to a drug test. LaShanda described the experience as "the most humiliating, embarrassing moment of my life * * *

It made me feel belittled." *Id*. at 43. The result of the LaShanda's drug test was negative for any narcotics. Following the clean drug screen, LaShanda was reinstated.

{¶12} LaShanda believed the incident negatively impacted her reputation, both professionally and personally. She also believed the incident impacted the way she does her job. She stated she is constantly looking over her shoulder and feels like she is being watched.

{¶13} Appellees went to the Sebring Police Department after they learned of the allegation against them. LaShanda explained she and her mother wanted the police to know they were not doing anything wrong and were following every protocol. Neither LaShanda nor Theresa were ever criminally charged. CMC did not press any charges against Appellees. LaShanda learned Appellant was the individual who made the allegation after she received a copy of the police report from Officer Redfern of the Sebring Police Department. LaShanda expressed her belief Appellant and Annette Jermolenko, her daughter's paternal grandmother, were trying to get her in trouble in order for Tim, Annette's son, to get custody of LaShanda's daughter. LaShanda and Tim attended court seminars on July 24, 2019, the day on which Appellant first made the allegation.

{¶14} LaShanda testified she lost wages and missed overtime opportunities while she was suspended from her position at CMC. LaShanda verified the wages and overtime she lost as well as the attorney fees she and Theresa incurred as a result of Appellant's allegation.

{¶15} Appellant did not testify on her own behalf. The trial court inquired of Appellant as to her obligations as a mandatory reporter. Appellant responded, "My

understandings [sic] as a mandatory reporter is if I hear something or if I see something that has happened, I am – I am to report that." Tr. at 80. The inquiry proceeded as follows:

> THE COURT: * * * Moving onto the second question then. You've repor [trial court stopped mid-word] – repeatedly stated that you did not take any ownership of the statements, that you indicated, "I merely reported what I heard." And you pointed to some language in here. . . . Could I direct your attention to Exhibit C, please. . . . The first full lines that are attributed to you in that exhibit. "I wasn't sure it was true 'til I seen that happened." You're going beyond reporting what you simply heard. You're then ascribing truth to it, veracity to it. Is that not correct?
>
> [APPELLANT]: No, Your Honor. It was just the way I worded it.
>
> THE COURT: Alright.
>
> [APPELLANT]: I – I did – I don't know if they had involvement in it or not.
>
> THE COURT: Let me go down a little further, ask the same question. If we go down to the third communication from you, it reads, "And I do believe they're replacing the pain meds with cholesterol meds.
>
> [APPELLANT]: That is what I hear, Your Honor.
>
> THE COURT: You ascribed the words, "I do believe."
>
> [APPELLANT]: It was, again, just the way I worded it, Your Honor
>
> THE COURT: Okay.

[APPELLANT]: I mean all of it, if you look, it said, "I heard," you know, and, "I believe." It wasn't something that I myself believed that they were doing it. I mean, even when I wrote to [CMC], I – I told her, I did not know them. You know, --

THE COURT: [Appellant], do you understand the significance of the words used? You just told me it wasn't as if you yourself believed and the actual language typed reads, "I do believe". * * *

Tr. at 81-82

{¶16} The trial court took the matter under advisement. Via Judgment Entry filed December 10, 2020, the trial court found in favor of Appellees on their defamation and intentional infliction of emotional distress claims, but in favor of Appellant on Appellees' claim of civil conspiracy. The trial court awarded compensatory and punitive damages to Appellees in the amount of $11,431.52. The trial court ordered Appellant to pay attorney fees in the amount of $3,547.00, plus court costs and interest.

{¶17} It is from this judgment Appellant appeals, raising the following assignments of error:

I. THE TRIAL COURT FAILED TO APPLY THE CONDITIONALLY PRIVILEGED COMMUNICATION DOCTRINE TO APPELLANT'S REPORT.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW BECAUSE THE APPELLEES FAILED TO MEET THEIR BURDEN OF PROOF

REGARDING THEIR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIMS.

III. THE TRIAL COURT ERRED IN AWARDING PUNITIVE DAMAGES BECAUSE PLAINTIFF FAILED TO SHOW ACTUAL MALICE.

IV. THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES.

I

{¶18} In her first assignment of error, Appellant contends this Court should reverse the trial court's ruling in favor of Appellees on their defamation claim as the trial court "failed to consider [her] status as a mandatory reporter of elder abuse under Ohio law." Brief of Appellant at 12. We disagree.

{¶19} The elements of a defamation claim are: "(1) that a false statement of fact was made; (2) that the statement was defamatory; (3) that the statement was published; (4) that the plaintiff suffered injury as a proximate result of the publication; and (5) that the defendant acted with the requisite degree of fault in publishing the statement." *Pollock v. Rashid*, 117 Ohio App.3d 361, 368, 690 N.E.2d 903 (996).

Defamation per se occurs when material is defamatory on its face; defamation per quod occurs when material is defamatory through interpretation or innuendo. Written matter is [defamatory] per se if, on its face, it reflects upon a person's character in a manner that will cause him to be ridiculed, hated, or held in contempt; or in a manner that will injure him in his trade or profession. When a writing is not ambiguous, the question of

> whether it is [defamatory] per se is for the court. A writing that accuses a person of committing a crime is [defamatory] per se.
>
> *Gosden v. Louis,* 116 Ohio App.3d 195, 206-207, 687 N.E.2d 481 (1996). (Emphasis and citations omitted).

{¶20} "If a claimant establishes a prima facie case of defamation, a defendant may then invoke a conditional or qualified privilege." *Jackson v. Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, 883 N.E.2d 1060, ¶ 9, citing *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Const. Trades Council*, 73 Ohio St.3d 1, 7, 651 N.E.2d 1283 (1995).

{¶21} Appellant does not challenge the trial court's finding her statement constitutes defamation per se. Rather, Appellant asserts she was a mandatory reporter throughout her career as an STNA; therefore, "the public has an interest in [her] statements being protected under the conditional use privilege. Brief of Appellant at 14.

{¶22} R.C. 5101.63 provides, in pertinent part:

> (A)(1) Any individual listed in division (A)(2) of this section having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the county department of job and family services.
>
> (2) All of the following are subject to division (A)(1) of this section:
>
> * * *

(n) An employee of a nursing home or residential care facility, as defined in section 3721.01 of the Revised Code;

{¶23} In its December 10, 2020 Judgment Entry, the trial court found:

[Appellant's] claim of being under a mandatory duty to report this allegation lacks credibility. She asserts she confirmed her allegations as a result of reading an unrelated report in a local newspaper of an unrelated drug theft. However, as a "mandatory reporter" she did not report this matter to the police who were investigating the existing drug theft case, and she did not report the matter to CMC Administrators responsible for supervising these matters. Finally, she did not make any report to any state licensing board. Rather, she reported it to an acquaintance who worked at CMC.

Id. at 3.

{¶24} We agree with the trial court and find Appellant was not a mandatory reporter under the plain language of R.C. 5101.63. At the time, Appellant was retired; therefore, not "[a]n employee of a nursing home or residential care facility." Furthermore, because the trial court did not find Appellant to be credible regarding the conversation she claimed to have heard at the Dollar General store, we do not find the trial court violated the spirit of the statute.

{¶25} Appellant's first assignment of error is overruled.

II

{¶26} In her second assignment of error, Appellant asserts the trial court erred in granting judgment in favor of Appellees on their claim for intentional infliction of emotional distress. Specifically, Appellant argues Appellees "failed to demonstrate by a preponderance of the evidence that [Appellant's] conduct in reporting the suspected abuse was 'extreme and outrageous' and resulted in 'severe and debilitating' emotional injury." Brief of Appellant at 18.

{¶27} To establish a claim for intentional infliction of emotional distress, a plaintiff must show (1) that the actor either intended to cause emotional distress or knew or should have known that the actions taken would result in serious emotional distress to the plaintiff, (2) that the actor's conduct was so extreme and outrageous as to go "beyond all possible bounds of decency" and was such that it could be considered as "utterly intolerable in a civilized community," (3) that the actor's actions were the proximate cause of plaintiff's psychological injury, and (4) that the mental anguish suffered by the plaintiff was serious and of such a nature that "no reasonable man could be expected to endure it." *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 374-375, 453 N.E.2d 666 (1983), *abrogated on other grounds*, 113 Ohio St.3d 464, 2007-Ohio-2451, 866 N.E.2d 1051.

{¶28} The trial court concluded Appellees met their burden of proof as to their claim of intentional infliction of emotion distress. The trial court found:

> Through her actions of making, publishing and continuing to publish allegations that she knew or should have known were baseless, [Appellant] caused [Appellees] to suffer emotional distress. Because of her own

involvement in the health care field, [Appellant] knew these types of allegations were certain to immediately result in employee misconduct investigations with immediate negative consequences to [Appellees]. * * * [Appellant's] repeated written allegations, without any basis of support, involve civil liability implications on the part of [Appellees], but also felony criminal liability. [Appellant] made, then repeated false and unfounded claims that two health care professionals were involved with theft from their employer, drug abuse, trafficking in drugs by giving stolen pain medication to another, improper administration of another drug to patients and without prescribed medication from patients. When contacted by Administrator Roose, [Appellant] was actually given an opportunity to end her involvement in this matter. However, she again repeated the allegations.

The impact of this incident upon [Appellees] was clearly identified by Roose. * * * Roose noted that [Appellees] were clearly humiliated and embarrassed to have to be subjected to ensuing investigation resulting from the false allegations. The Court had the opportunity to evaluate the demeanor of the witnesses upon the stand and can conclude that [Appellees] showed appropriate responses during testimony, including bewilderment and shock at how this could have happened to them, embarrassment, frustration, anger, and some degree of fear/concern for future conduct. Perhaps most direct, LaShanda testified that this event was "the most humiliating and embarrassing moment of her life." LaShanda further testified that she now feels like she is being constantly scrutinized at

her own employment, after nine years of maintaining a good work record. Despite having the clear support of her employer (as demonstrated in Court by Roose), it is LaShanda who must bear the constant stress and pressure of feeling as if always being under scrutiny. The Court finds this harm, caused by [Appellant], to be particularly unwarranted in light of LaShanda's past positive work record.

This Court finds the conduct of [Appellant] goes well beyond mere indignities, petty aggressions or insult.

* * *

This Court finds [Appellant's] actions were intentional, malicious, willful and made with reckless disregard for [Appellees'] rights.

{¶29} December 10, 2020 Judgment Entry at 4-5.

{¶30} As the trier of fact, the trial court was free to accept or reject any or all of the testimony of the witnesses. The trial court obviously chose to believe Appellees in this instance. We find there was sufficient evidence to support the trial court's conclusion Appellant's conduct rose to the level of "extreme and outrageous" and resulted in "severe and debilitating" emotional injury to Appellees.

{¶31} Appellant's second assignment of error is overruled.

III

{¶32} In her third assignment of error, Appellant submits the trial court erred in awarding punitive damages as Appellees failed to demonstrate actual malice.

Specifically, Appellant maintains Appellees failed to prove she "actually knew the allegations were false." Brief of Appellant at 23.

{¶33} The purpose of punitive damages is not to compensate the plaintiff, but to punish and deter the defendant's conduct. *Dick v. Tab Tool & Die Co., Inc.*, 5th Dist. No. 2008-CA-0013, 2008-Ohio-5145, ¶ 33 citing *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121. Under Ohio law, an award of punitive damages is available only upon a finding of actual malice. *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 316, 736 N.E.2d 517.

{¶34} The "actual malice" necessary for purposes of an award of punitive damages has been defined as (1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. *Navistar, Inc. v. Dutchmaid Logistics, Inc.*, 5th Dist. Licking No. 2020 CA 00003, 2021-Ohio-1425, ¶ 64, citing *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 316, 736 N.E.2d 517, quoting *Preston v. Murty* (1987), 32 Ohio St.3d 334, 512 N.E.2d 1174, syllabus; *Kemp v. Kemp*, 5th Dist., 161 Ohio App.3d 671, 2005-Ohio-3120, 831 N.E.2d 1038, ¶ 73.

{¶35} Whether actual malice exists is a question for the trier of fact. *Spires v. Oxford Mining Co., LLC,* 7th Dist., 2018-Ohio-2769, 116 N.E.3d 717, ¶ 32, citing *Buckeye Union Ins. Co. v. New England Ins. Co.* (1999), 87 Ohio St.3d 280, 720 N.E.2d 495; R.C. 2315.21(C)(1). "The same standard of review is employed to assess the weight of evidence whether the finding is for compensatory damages or the elements necessary to justify an award of punitive damages." *Id.*, citing *Bosak v. Kalmer*, 7th Dist. Mahoning

App. No. 01 CA 18, 2002-Ohio-3463, 2002 WL 1483884, ¶ 36. Factual determinations will not be overturned as long as they are supported by some competent, credible evidence going to all the essential elements of the case. *Id.*, citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.

{¶36} In awarding punitive damages to Appellees, the trial court concluded Appellant's actions were intentional, malicious, willful and made with reckless disregard for [Appellees'] rights. December 10, 2020 Judgment Entry at 5. The trial court found Appellant's conduct went "well beyond mere indignities, petty aggressions or insult." *Id*. The trial court noted Appellant failed to take reasonable steps and failed to make "reasonable efforts to verify the veracity of the statements she made before repeating them to [CMC]." *Id*. at 4. The trial court continued Appellant, "[b]eing involved in the health care field herself, . . . certainly was aware of the effect these allegations would have on [Appellees'] employer, and consequently, upon [Appellees] themselves," adding Appellant's "repeated written allegations, without any basis of support, involved civil liability implications on the part of [Appellees], but also felony criminal liability." *Id*.

{¶37} Upon our review of the entire record, we find there is sufficient evidence of actual malice to support the trial court's award of punitive damages. Appellant claimed to have overheard a conversation between unidentified individuals in the parking lot of a Dollar General store. Appellant proceeded to contact a friend at CMC via Facebook and assert unverified allegations against a nurse named "LaShanda" and her mother. Appellant repeated the unverified allegations to Randi Roose, the administrator at CMC. Appellant, as a former healthcare provider, was well aware of the consequences such allegations could potentially have on an individual's career. Yet, Appellant acted with "a

conscious disregard for the rights of" Appellees which had "a great probability of causing substantial harm," and which did, in fact, cause them substantial harm. Accordingly, we find the trial court did not err in awarding punitive damages.

{¶38} As stated, supra, Appellant specifically argues Appellees failed to demonstrate actual malice because they did not prove she knew the allegations were false. The "actual malice" necessary for an award of punitive damages does not require "knowledge of falsity" as Appellant contends. See, *Navistar*, supra. Actual malice as required to establish defamation "means that a statement was made with knowledge of falsity or a reckless indifference to its truth." *Lansky v. Brownlee*, 8th Dist. No. 105408, 2018-Ohio-3952, ¶ 23. Because this assignment of error challenges the trial court's award of punitive damages, we find it unnecessary to determine whether Appellees proved Appellant made the statement "with knowledge of falsity or a reckless indifference to its truth."

{¶39} Appellant's third assignment of error is overruled.

IV

{¶40} In her final assignment of error, Appellant challenges the trial court's award of attorney fees.

{¶41} A trial court may award attorney fees to a plaintiff who prevails on a claim for punitive damages. See *Galmish v. Cicchini* (2000), 90 Ohio St.3d 22, 35, 734 N.E.2d 782, 795; *Columbus Finance, Inc. v. Howard* (1975), 42 Ohio St.2d 178, 183, 327 N.E.2d 654, 658. "In other words, " '[a]ttorney fees may be awarded as an element of compensatory damages where the jury finds that punitive damages are warranted.' "

Galmish, supra at 795, quoting *Zoppo v. Homestead Ins. Co.* (1994), 71 Ohio St.3d 552, 558, 644 N.E.2d 397, 402.

{¶42} The appropriate amount of attorney fees to award in a given case rests in the sound discretion of the trial court. See *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 146, 569 N.E.2d 464, 467. Thus, a reviewing court should not reverse a trial court's determination as to the amount of attorney fees absent an abuse of that discretion. *Id.* at 146, 569 N.E.2d 464.

{¶43} Having found no error in the trial court's award of punitive damages, we, likewise, find the trial court did not abuse its discretion in awarding attorney fees.

{¶44} Appellant's fourth assignment of error is overruled.

{¶45} The judgment of the Alliance Municipal Court is affirmed.

By: Hoffman, P.J.
Wise, John, J. and
Wise, Earle, J. concur