

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNON HART,
Appellant,

vs.

CHRISTOPHER CAMPBELL; ZENITY
FOUNDATION, INC., A NEVADA
CORPORATION; LAS VEGAS ART
GALLERY, A NEVADA
CORPORATION; AND TAMRA
CAMPBELL A/K/A TAMRA SMILEY,
Respondents.

No. 53866

FILED

APR 19 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court judgment entered in a defamation and fraud action. Eighth Judicial District Court, Clark County; Miriam Shearing, Senior Justice.

In the district court, respondent Christopher Campbell sued appellant Shannon Hart for defamation. Hart subsequently filed counterclaims against Christopher and brought claims against respondents Zenity Foundation, Inc., Las Vegas Art Gallery, and Tamra Campbell for breach of contract, fraud, consumer fraud, intentional infliction of emotional distress, and defamation per se.¹ After a bench trial, the district court ruled against Christopher on his defamation claim and against Hart on each of her claims. Christopher did not appeal the district court's judgment against him. Hart appeals the judgment as to her defamation per se, consumer fraud, and fraud claims.

As an initial matter, when this court granted respondents' counsel permission to withdraw, we cautioned respondents that failure to

¹Zenity Foundation, Las Vegas Art Gallery, and Tamra filed third-party claims against Hart, which were disposed of in Hart's favor on summary judgment. These respondents did not appeal that summary judgment.

retain counsel would result in this appeal moving forward without the participation of Zenity Foundation and Las Vegas Art Gallery. See In re Discipline of Schaefer, 117 Nev. 496, 509, 25 P.3d 191, 200 (2001) (recognizing that legal entities must be represented by counsel in legal proceedings). In a subsequent order, we noted that these corporate respondents had failed to retain counsel, and thus, we stated that the appeal would go forward without their participation. We now construe respondents Zenity Foundation's and Las Vegas Art Gallery's failure to obtain counsel and file an answering brief as a confession of error. NRAP 31(d). As a result, we reverse the portion of the district court's judgment ruling against Hart on her claims against Zenity Foundation and Las Vegas Art Gallery.

As to the remaining respondents, we address, in turn, the district court's ruling on each claim. On appeal, this court will not disturb the district court's factual determinations if they are supported by substantial evidence. See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004).

First, as to defamation per se, substantial evidence supports the district court's conclusion that the Campbells had a good-faith basis for reporting to authorities that Hart had "hacked" into their computer system. Accordingly, these statements were not actionable as defamation. See Pope v. Motel 6, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005) (explaining that a defamation claim requires a plaintiff to demonstrate that the defendant was at least negligent in making the statement at issue).²

²Hart also argues on appeal that Tamra committed defamation per se by reporting to Child Protective Services that Hart was not feeding her child. Hart did not, however, raise this argument in the district court, and

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Second, turning to Hart's consumer fraud claim, the district court correctly concluded that the evidence was insufficient to show that the Campbells were acting as an employment agency. In particular, there was no evidence that they sought out modeling work on appellant's behalf. See NRS 611.020(2)(a)-(b) (including among the definition of an employment agency, a person who furnishes certain information to individuals seeking employment or seeking employees). Moreover, even if their maintenance of Hart's "Agency Agreement" should be considered maintenance of a record of a person seeking employment, there was no evidence that Hart was damaged by the maintenance of the agreement. See NRS 611.020(2)(c) (defining further an employment agency as a person who "[m]aintains a record of persons seeking employment"); cf. Barmettler v. Reno Air, Inc., 114 Nev. 441, 446-47, 956 P.2d 1382, 1386 (1998) (explaining that damage to the plaintiff is an element of fraudulent misrepresentation and that the plaintiff has the burden of proving every element of a fraudulent misrepresentation claim). Thus, the Campbells were entitled to judgment on Hart's consumer fraud claim.

Finally, as to fraud, Hart contends that she would not have posed for photographs taken by Christopher but for the Campbells' representations that the photos would be stored so that artists could purchase them and make paintings of them. Substantial evidence supports the district court's finding that there was no evidence that the Campbells knew or believed the representations to be false when they made them. See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (identifying one of the elements of fraud as the

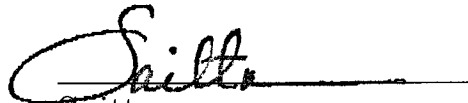
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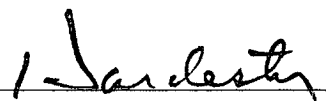
thus, we will not address it on appeal. See Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006).

“[d]efendant’s knowledge or belief that the representation is false”). In particular, Christopher testified that his plan was to photograph models and to commission paintings of some of the photographs. He also testified that paintings had been commissioned from three of the models’ photographs.

As substantial evidence supports the district court’s determinations on the defamation per se, consumer fraud, and fraud claims, we affirm the judgment as to respondents Christopher and Tamra Campbell.

It is so ORDERED.


Saitta, J.


Hardesty, J.


Parraguirre, J.

cc: Chief Judge, Eighth Judicial District Court
Hon. Miriam Shearing, Senior Justice
Ciciliano & Associates, LLC
Rocheleau Law Group, PC
Christopher Campbell
Tamra Campbell a/k/a Tamra Smiley
Las Vegas Art Gallery
Zenity Foundation, Inc.
Eighth District Court Clerk