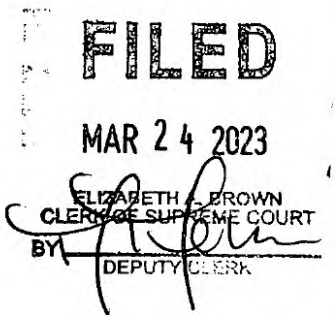
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN DOE, AN INDIVIDUAL,
Appellant,
vs.
THE ROMAN CATHOLIC BISHOP OF LAS VEGAS AND HIS SUCCESSORS, A CORPORATION SOLE, A NEVADA DOMESTIC NON-PROFIT CORPORATION SOLE,
Respondent.

No. 84346-COA



ORDER OF AFFIRMANCE

John Doe appeals from a district court final judgment in a tort action. Eighth Judicial District Court, Clark County; James M. Bixler, Senior Judge; Monica Trujillo, Judge.[1]

Doe was an at-will volunteer for the St. Joseph, Husband of Mary Roman Catholic Church (SJHOM), a church under the direction of respondent The Roman Catholic Bishop of Las Vegas and His Successors, (hereinafter referred to as the Diocese).[2] As a volunteer, Doe acted as a lector and provided guidance counseling to the SJHOM youth ministries, which consisted of middle school and high school-aged children and teenagers.

In November 2017, Doe volunteered at the SJHOM youth group's Homeless & Hunger Retreat. During the retreat, Doe directed a minor and the minor's friends toward the lunch line. As the minor and his

[1]Doe appeals from a final judgment ordered by Senior Judge James M. Bixler, and the issues on appeal originate from an order granting summary judgment entered by Judge Monica Trujillo.

[2]We do not recount the facts except as necessary to our disposition.

friends walked past Doe, the children began rough-housing. Doe crouched down and spread his arms, but it is unclear whether Doe did so to engage in the rough-housing or to stop the children's conduct. In doing so, Doe made unwanted physical contact with the minor. At the conclusion of the retreat, the minor reported the incident to one of the Diocese's staff members, indicating that Doe had inappropriately touched him in the genital area. The Diocese staff member and the minor filed incident reports with the Diocese.

After receiving the incident reports, the Diocese initiated an investigation into the allegations against Doe. At the outset, the Diocese sent Doe a suspension letter to inform him that he was suspended from providing volunteer services for the Diocese. While the investigation was pending, Doe contacted Diocesan representatives on several occasions to express his frustrations with the investigation.[3] In December 2017, the Diocese sent Doe a termination letter wherein it elected to terminate Doe as a volunteer as the result of its investigation of the underlying allegations and Doe's conduct during the investigation. In the termination letter, the Diocese indicated that the investigation of the complaint, which included

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[3]In one instance, Doe sent Father Marc Howes a letter criticizing the Diocese by stating "Given the laziness, lack of procedures & proper investigation of this entire matter along with the other past disasters of this [D]iocese leads me to have zero trust in the leadership and staff of our [D]iocese offices." In a separate instance, when Steve Meriwether, a Diocesan representative investigating the allegations, called Doe, Doe attempted to record the telephone conversation without Mr. Meriwether's consent. On another occasion, Doe arrived at the Diocesan office without an appointment and asked to speak with Mr. Meriwether. Finally, Doe approached Tiffany Madsen, an employee of the Diocese, at a Catholic charities luncheon and told her that she was "being a coward by not standing up and doing the right thing."

review of a surveillance video of the incident, as well as communications with Doe and other Diocesan employees, supported its decision. Accordingly, Doe's at-will volunteer status with the Diocese was terminated.

In April 2018, Doe filed a complaint against the Diocese in the Eighth Judicial District Court. Doe alleged six causes of action: (1) defamation, (2) defamation per se, (3) false light, (4) intentional infliction of emotional distress, (5) negligent infliction of emotional distress, and (6) punitive damages.[4]

During discovery, Doe provided deposition testimony and made several concessions. Of note, Doe conceded that he made physical contact with the minor, acknowledged that it was possible that he may have touched the minor's groin area, and agreed that it was never appropriate for a volunteer to touch a child in this manner. Doe also conceded that it was appropriate for the Diocese to investigate the allegations. Furthermore, Doe testified that the only written statements he believed were defamatory were certain statements contained in the suspension and termination letters he received. As to the suspension letter, Doe admitted that there was nothing written in the suspension letter that constituted a false statement. Additionally, Doe agreed he did not know with whom or even if the Diocese representatives shared the letters.

Doe also testified in his deposition that during a conversation he had with Anna Millage, an assistant to the Deacon for the Diocese, Millage volunteered information that she received from her son regarding

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[4]We note that Doe's complaint did not allege a separate cause of action for negligence, and only alleged a claim for negligent infliction of emotional distress.

Doe's innocence. However, Doe did not elaborate on the communications made to Millage's son, and no further details about such communications are in the record. Tiffany Madsen, an employee of the Diocese, testified that she spoke with Frank Kocka, an attorney and "core team member" for the Diocese, because Doe had asked her to give Kocka his telephone number. Madsen testified that she informed Kocka that Doe wanted to speak with him because he needed a friend but did not provide further details. Finally, Father Mark Howes with the Diocese testified that he had discussed Doe's case with his mother, but he did not elaborate on the statements discussed.

In February 2021, the Diocese moved for summary judgment on all of Doe's causes of action and sought dismissal of Doe's complaint in its entirety. After holding a hearing, the district court granted the Diocese's motion for summary judgment. In its findings of fact, conclusions of law and order, the district court found that none of the statements made in the suspension and termination letters were false, and that the Diocese did not share the letters with anyone outside of the Diocese. The district court further found that Doe failed to provide any evidence demonstrating that Millage, Madsen, and Father Howes made any false statements concerning Doe. Additionally, the district court found that Doe failed to present any evidence of publication of a false statement to any third parties. Thus, the district court found that the Diocese was entitled to judgment as a matter of law as to Doe's claims for defamation, defamation per se, and false light. As to Doe's claim for intentional infliction of emotional distress, the district court found that Doe failed to present evidence that the Diocese engaged in any extreme or outrageous conduct. Finally, the district court found that Doe failed to establish the elements of negligence to support a claim for emotional distress damages. Accordingly, the district court granted the

Diocese's motion for summary judgment as to Doe's complaint in its entirety. This appeal followed.

On appeal, Doe argues that the district court erred in granting summary judgment on his claims for defamation and defamation per se, false light, intentional infliction of emotional distress, and negligent infliction of emotional distress because genuine disputes of material fact remain. Specifically, Doe argues that (1) the suspension letter, termination letter, and the communications to Millage's son, Kocka, and Father Howes' mother contained false and defamatory statements that supported his claims for defamation and defamation per se; (2) the communications to Millage's son, Kocka, and Father Howes' mother demonstrate that the Diocese placed him in a false light; (3) he suffered severe emotional distress as a result of the Diocese's intentional infliction of emotional distress; and (4) he suffered severe emotional distress as a result of the Diocese's negligent infliction of emotional distress. Conversely, the Diocese disagrees with each of Doe's arguments on appeal. We agree with the Diocese.

Standard of review

We review the district court's decision to grant summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment requires this court to view all evidence in a light most favorable to the nonmoving party. *Id.* Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to summary judgment as a matter of law. *Id.* "However, the nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322 (1993). "The nonmoving party's documentation must be admissible

evidence, and he or she is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *Id.* (internal quotation marks and citation omitted). A defendant is entitled to summary judgment "[w]here an essential element of [the plaintiff's] claim for relief is absent." *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1988).

The district court did not err in granting summary judgment as to Doe's claims for defamation and defamation per se

On appeal, Doe argues that the district court erred in granting summary judgment as to his claims for defamation and defamation per se because the underlying allegations infer that he is a sexual deviant. Doe points to the suspension and termination letters, and deposition testimony regarding statements made to Millage's son, Kocka, and Father Howes' mother, to support that the Diocese is liable for defamation and defamation per se. The Diocese argues that summary judgment was appropriate because Doe failed to show evidence that the Diocese published a false or defamatory statement to a third party. We agree with the Diocese.

In Nevada, "[a]n action for defamation requires the plaintiff to prove four elements: (1) a false and defamatory statement . . . ; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence; and (4) actual or presumed damages." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (internal quotation marks omitted). "However, if the defamatory communication imputes a person's lack of fitness for trade, business, or profession, or tends to injure the plaintiff in his or her business, it is deemed defamation per se and damages are presumed." *Id.* (internal quotation marks omitted).

Whether a statement is susceptible to a defamation claim is a matter of law for the court to decide. *Branda v. Sanford*, 97 Nev. 643, 646,

637 P.2d 1223, 1225 (1981). "However, where a statement is susceptible of different constructions, one of which is defamatory, resolution of the ambiguity is a question of fact for the jury." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425-26 (2001) (internal quotation marks omitted). Generally, "only assertions of fact, not opinion, can be defamatory." *Wynn v. Smith*, 117 Nev. 6, 17, 16 P.3d 424, 431 (2001).

"A defamatory statement is actionable only if it has been published." *M & R Inv. Co., Inc. v. Mandarino*, 103 Nev. 711, 715, 748 P.2d 488, 491 (1987). Publication is the communication of a defamatory statement to a third party. *Id.* "Publication is generally proven by direct evidence of the communication to a third person" through "testimony of a third person that he heard the defamatory statement." *Id.* However, publication may also be proven by circumstantial evidence, which is that the "defamatory statement was comprehensible to and uttered in the presence and hearing of a third person." *Id.*

In this case, Doe has failed to demonstrate that the suspension and termination letters at issue were defamatory or published to a third person. During his deposition, Doe conceded that there were no false or defamatory statements contained in the suspension letter. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002) (noting that a statement is not defamatory "if it is absolutely true, or substantially true"). Although Doe contends that there were defamatory statements contained in his termination letter, the record supports that such statements were not defamatory because they were true or substantially true. *See id.* Even assuming that such statements contained in the suspension and termination letters were false or defamatory, Doe conceded during his deposition testimony that he did not have any evidence that the

letters were published to a third person. Accordingly, the district court did not err in granting summary judgment on Doe's claims for defamation and defamation per se as to the suspension and termination letters because Doe did not demonstrate a false or defamatory statement was published to a third person. *See M & R Inv. Co., Inc.*, 103 Nev. at 715, 748 P.2d at 491 (noting that "[a] defamatory statement is actionable only if it has been published").

As to Doe's claims that communications to Millage's son, Kocka, or Father Howes' mother demonstrate that the Diocese published defamatory statements to a third party, the record does not support the conclusion that any statements were false or defamatory. While deposition testimony cited by Doe in support of his argument may demonstrate that the Diocese made communications with alleged third parties, Doe failed to demonstrate that any such communications contained false or defamatory statements.[5] *See Pegasus*, 118 Nev. at 714, 57 P.3d at 87. Thus, the district court did not err in granting summary judgment on Doe's claims for defamation as to these communications.[6]

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[5]Although Doe proposes hypothetical false or defamatory statements that the Diocese could have made to these third parties, these hypotheticals were not sufficient to survive summary judgment. *See Sprague*, 109 Nev. at 250, 849 P.2d at 322 ("The nonmoving party's documentation must be admissible evidence, and he or she is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." (internal quotations omitted)).

[6]We are not persuaded by Doe's contention that the allegations give rise to defamation per se because Doe failed to demonstrate a false or defamatory statement. *See Pegasus*, 118 Nev. at 714, 57 P.3d at 87. Considering the disposition of Doe's defamation and defamation per se claims, we need not address Doe's alternative argument that the district court erred in finding that the statements made were protected by the

The district court did not err in granting summary judgment as to Doe's claim for false light

Nevada recognizes false light as a valid and separate cause of action. *Franchise Tax Bd. of Cal. v. Hyatt*, 133 Nev. 826, 846, 407 P.3d 717, 735 (2017), *rev'd on other grounds*, ___ U.S. ___,139 S. Ct. 1485 (2019) ("[W]e, like the majority of courts, conclude that a false light cause of action is necessary to fully protect privacy interests, and we now officially recognize false light invasion of privacy as a valid cause of action . . . ."); *see also Abrams v. Sanson*, 136 Nev. 83, 92 n.5, 458 P.3d 1062, 1070 n.5 (2020) ("In light of the United States Supreme Court's reversal in *Franchise Tax Bd. of. Cal. v. Hyatt*, ___ U.S. ___, 139 S. Ct. 1485 (2019), we reassert our recognition of the cause of action for false light invasion of privacy as set forth in the Restatement."). In Nevada, an action for false light arises when:

> [o]ne who gives publicity to a matter concerning another that places the other before the public in a false light . . . if
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> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
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> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Franchise Tax Bd., 133 Nev. at 844-45, 407 P.3d at 735 (quoting Restatement (Second) Torts § 652E). False light also *requires* an implicit *false* statement of objective fact. *Flowers v. Carville*, 310 F.3d 1118, 1132

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intracorporate communications privilege or the common interest privilege. *See Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case at bar).

(9th Cir. 2002) (emphasis added); *see also* Restatement (Second) Torts § 652E (1977), cmt. a ("It is essential to the rule stated in this Section that the matter published concerning the plaintiff is not true.").

Here, Doe argues that the district court erred in granting summary judgment as to his claim for false light because communications to Millage's son, Kocka, and Father Howes' mother, demonstrate that he was placed in a false light.[7] However, Doe's claim lacks merit because he fails to demonstrate that any of the communications made on behalf of the Diocese were false.[8] *See Abrams*, 136 Nev. at 92, 458 P.3d at 1070 ("Abrams did not show minimal merit supporting her claim for false light invasion of privacy because she failed to show that she was placed in a false light that was highly offensive or that Sanson's statements were made with knowledge or disregard to their falsity."). Accordingly, as Doe failed to demonstrate that any statements allegedly made were false and therefore placed him in a false light, the district court did not err in granting summary judgment as to this claim.

The district court did not err in granting summary judgment as to Doe's claim for intentional infliction of emotional distress

To establish a cause of action for intentional infliction of emotional distress, the plaintiff must show: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing

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[7]We note that Doe did not argue that the suspension or termination letters placed him in a false light.

[8]We are not persuaded by Doe's contention that a claim for false light does not require a false statement because the legal authority he cites to support his argument, *Flowers v. Carville*, 310 F.3d 1118 (9th Cir. 2002), expressly concluded that false light requires "an implicit false statement of objective fact."

emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and (3) actual or proximate causation." *Olivero v. Lowe*, 116 Nev. 395, 398-99, 995 P.2d 1023, 1025-26 (2000) (quoting *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981)). Extreme and outrageous conduct "is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal quotation marks omitted).

In this case, Doe argues that the district court erred in granting summary judgment as to his claim for intentional infliction of emotional distress. Doe, however, failed to allege how the Diocese, or any member of the Diocese, engaged in extreme and outrageous conduct. Accordingly, summary judgment was appropriate as to Doe's claim for intentional infliction of emotional distress. *See Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (affirming summary judgment and stating that extreme and outrageous conduct is a necessary element of an intentional infliction of emotional distress claim).

The district court did not err in granting summary judgment as to Doe's claim for negligent infliction of emotional distress

Nevada recognizes that a direct victim of a negligent act may "be able to assert a negligence claim that includes emotional distress as part of the damage suffered." *Shoen v. Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995).[9] Thus, this court recognizes that "the negligent infliction

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[9]Nevada recognizes a separate claim for negligent infliction of emotional distress under limited circumstances, but such circumstances are not present here. *See Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 482, 851 P.2d 459, 462 (1993). Therefore, even though Doe pleaded a separate claim for negligent infliction of emotional distress, it would not constitute a stand-

of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff." *Id.* To establish a cause of action for negligence, the plaintiff must show duty, breach, causation, and damages. *Turner v. Mandalay Sports Entm't, LLC*, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008).

Doe argues that the district court erred in granting summary judgment as to his claim for negligent infliction of emotional distress because evidence supports that he suffered emotional distress because of the Diocese's negligent acts. Because Doe's claim for negligent infliction of emotional distress is not a separate claim, but a claim for damages that may be recovered for negligence, Doe was required to bring a negligence claim and establish the elements of the claim. *See Shoen*, 111 Nev. at 748, 896 P.2d at 477 (holding that negligent infliction of emotional distress "can be an element of the damages sustained by the negligent acts committed directly against the victim-plaintiff"). However, Doe not only failed to plead a separate claim of negligence against the Diocese, he also failed to establish the elements of a negligence cause of action.[10] *See Turner*, 124 Nev. at 217, 180 P.3d at 1175. Thus, we necessarily affirm the grant of summary judgment on the claim for negligent infliction of emotional distress.[11]

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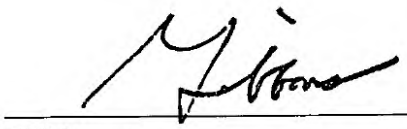
alone claim, but only permit the recovery of emotional distress damages in connection with his negligence claim. *See Shoen*, 111 Nev. at 735, 896 P.2d at 477.

[10]We also note that Doe conceded that the Diocese's decision to investigate the incident was proper and that the type of contact he may have made with the minor was inappropriate.

[11]We also note that Doe's separate claim for punitive damages necessarily fails. *Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 313,

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[12]



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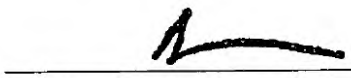
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. James M. Bixler, Senior Judge
Hon. Monica Trujillo, District Judge
Lansford W. Levitt, Settlement Judge
Canon Law Services, LLC
Greenberg Traurig, LLP/Las Vegas
Judith L. Simon-Kohl
Eighth District Court Clerk

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468 P.3d 862, 881 (2020) (holding that "punitive damages is a remedy, not a cause of action").

[12]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.