

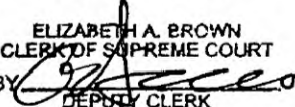
IN THE SUPREME COURT OF THE STATE OF NEVADA

201 NORTH 3RD STREET LV, LLC;
DT3 MANAGER, LLC; DTG LAS
VEGAS, LLC a/k/a DOWNTOWN
GRAND; DTG LAS VEGAS MANAGER,
LLC; and FIFTH STREET GAMING,
LLC,
Appellants,
vs.
HOGS & HEIFERS OF LAS VEGAS,
INC., A NEVADA CORPORATION,
Respondent.

No. 83293

FILED

SEP 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment following a bench trial in a defamation action.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellants DTG Las Vegas, LLC, DT3 Manager, LLC, DTG Las Vegas Manager, LLC, and Fifth Street Gaming, LLC (collectively DTG) own and operate the Downtown Grand Hotel & Casino in downtown Las Vegas. DTG's affiliated entity, appellant 201 North 3rd Street LV, LLC (Landlord) owns 201 North Third Street (the Premises), a commercial property located across the street from the Downtown Grand. Landlord's predecessor began leasing the Premises to respondent Hogs & Heifers of Las Vegas, Inc. (H&H), and Landlord took over as lessor upon acquiring the property in 2007.

¹While other claims were litigated, only appellants' defamation claim is at issue in this appeal.

H&H is a saloon operated by Michelle Dell. H&H's lease permitted the saloon to use a portion of Third Street (the Common Area) for large scale events, subject to certain conditions. The city of Las Vegas permitted the temporary closure of Third Street to accommodate H&H's use of the Common Area for its events. Throughout its lease, H&H hosted various charitable and business events within the Premises and the Common Area, subject to Landlord's consent.

In 2018, DTG informed H&H that it would begin a remodeling and construction project at the corner of Fourth Street and Ogden, which would take approximately 12-18 months to complete. Once construction began in January 2019, H&H began to encounter problems seeking approval for events requiring street closure due to the transfer of hotel valet operations to Third Street. As relevant here, H&H hosted an annual St. Patrick's Day event as well as an annual Patriot's Day event to commemorate the victims of the September 11th terrorist attacks. The parties' inability to agree on a site plan for these events in 2019 led to the litigation at issue on appeal. Specifically, in response to a complaint filed by H&H, DTG filed an answer and counterclaim for business disparagement, which was later substituted for a defamation per se counterclaim. This defamation per se counterclaim largely concerned statements H&H posted on social media during the summer of 2019 discussing DTG's refusal to accommodate the saloon's events.

The district court presided over a bench trial, and thereafter, entered a written order in favor of H&H on DTG's defamation per se counterclaim. DTG now appeals, asserting that the district court's judgment in favor of H&H on the defamation per se claim was not supported by substantial evidence. Specifically, DTG argues that the district court

erred by finding that H&H did not make any false statements about DTG.² We disagree and affirm the district court's finding.

As the district court observed, a classic defamation claim requires proof by a preponderance of the evidence as follows: "(1) a *false* and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002) (alteration in original) (internal quotation marks omitted) (emphasis added). "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." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (emphasis added) (internal quotation marks omitted).

Here, the district court concluded that none of H&H's statements were false, and thus found in favor of H&H on DTG's defamation *per se* counterclaim. The district court reasoned that H&H's statements summarized events and communications between itself and DTG, and were not false, but merely accurately referenced the state of the parties' relationship.

²DTG also argues the district court erred in finding that none of H&H's statements were defamatory, and in requiring DTG to prove special damages. However, in light of our conclusion regarding the statements' falsity, we need not address these arguments. *See Home Warranty Adm'r of Nev., Inc. v. State, Dep't of Bus. & Indus.*, 137 Nev. 43, 45 n.2, 481 P.3d 1242, 1246 n.2 (2021) (observing that this court need not address issues that are not necessary to resolve an appeal).

DTG asserts that the statements H&H made on social media were false. We disagree and conclude that the district court's findings are supported by substantial evidence. *See Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993) (“[T]he truth or falsity of an allegedly defamatory statement is an issue of fact . . .”); *see also Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013) (observing that this court gives deference to a district court's findings of fact, and they will not be set aside on appeal unless clearly erroneous or unsupported by substantial evidence).

In particular, DTG alleged five specific false statements. The first three were made in a single social media post by H&H on June 17, 2019:

[DTG] commandeered the entirety of [the Common Area] for use solely as their own valet.

[DTG] has denied granting [H&H] the use of [the Common Area] for a single street event during the entirety of their 18-24 months long phase of construction.

[DTG] denied granting the Firefighter's 9/11 Memorial Parade the right of way to begin and end on DT3rd Street as it has done for the last 7 years.

At trial, Michelle Dell testified that by the time the post was made, Landlord had already told H&H that Third Street (which included the Common Area) could not be closed and used for any events during the construction because DTG required the space for valet use. Thus, substantial evidence supports the district court's finding that these three statements were not false.

The fourth statement was a July 27, 2019, social media post by H&H: “The DTG has denied [H&H] the use of the [Common Area] for ALL of our annual events and charity events due to the construction they are


doing on the 4th Street side of the property where their Porto Cochere and Valet used to be.”

Again, substantial evidence supports the finding that this statement was not false. Testimony at trial indicated that at the time the post was made, event planners had been informed by city officials that appellants would not approve H&H’s Patriot’s Day event set for September 11, 2019.

The fifth statement is a video interview in which Dell stated that “Managers for the Downtown Grand wouldn’t even allow [the Gold Star Family vehicle] to park [in the Common Area].” At trial, Dell testified that one of the Gold Star families was told by DTG’s security that they could not park on Third Street, again providing substantial evidence that this statement was not false.

Because the district court appropriately found that none of the five statements were false, its decision in favor of H&H on the defamation per se claim was proper.

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 11
Thomas J. Tanksley, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Kaempfer Crowell/Las Vegas
Kaempfer Crowell/Reno
Eighth District Court Clerk