

No. 24-5917

IN THE SUPREME COURT OF THE UNITED STATES

MYRNA DE JESUS,

Petitioner,

v.

DIGNITY HEALTH CORPORATION,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

PETITION FOR REHEARING



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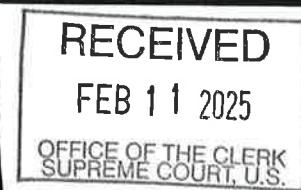


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PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner Myrna De Jesus respectfully requests rehearing and reconsideration of the Court's January 13, 2025 order denying the Petition for a Writ of Certiorari with no stated specific grounds. Ms. De Jesus moves this Court to grant this petition for rehearing and consider her case with merits briefing. This petition for rehearing is filed within 25 days after this Court's denial of this case.

REASONS FOR GRANTING THE PETITION

Petitioner's filing will demonstrate an exceptional nationwide importance of the question presented here. The Ninth Circuit's *concurring* opinion that was not for publication offended the basic principles of due process that prejudicially omitted and misstated material facts of the issue concerning defamation slander per se. This Court has expressed its clear holdings and rulings concerning private individuals on actual malice and excessive publication in slander per defamatio and libel without a doubt. The ruling of this Court was meant to protect all individuals based on First Amendment, not only public figures, but also for private individuals without prejudice.

The Ninth Circuit concurring and not for publication opinion on slander per se defamation will only change the current rulings and holdings of this Court, the common laws, and state laws in Arizona about excessive publication and actual malice. The Ninth Circuit's judicial analysis about Dignity Health's defamatory statements was based on libel and not for slander per se.

Dignity Health cannot present any provable facts and evidence that its slanderous utterance did not prejudice Ms. De Jesus of her profession. Dignity Health stated several falsehoods such as “she has gray hair, unprofessional, refused to wear mask, mean to the patients, extremely aggressive, screamed profanities inside the hospital in the presence of patients, hospital personnel, and visitors” were all falsehood. Dignity Health’s spoken falsehood was spread and learned by her co-workers, prospective employers, school alma mater, and friends (*Yetman v. English*, 168 Ariz. 71, 811 P.2d 323 (Ariz. 1991)). Due to Dignity Health’s slanderous statements, Ms. De Jesus was terminated from her employment immediately. She suffered complete economic losses and her professional career was undermined forever. (*Modla v. Parker*, 17 Ariz. App. 54, 495 P.2d 494 (Ariz. Ct. App. 1972)

This petition shows just how the Ninth Circuit’s misleading opinions were, which it relied its decision and analysis based on libel citing the case of *Green Acres Trust v. London* case (*Green Acres Trust v. London*, 141 Ariz. 609, 688 P.2d 617 (Ariz. 1984)) and not for slander per se. Petitioner also has discovered new evidence, provable facts, and applicable laws that were not available at the time of discovery in the District Court which significantly impacts the factual findings of the case. Also, this case is now in the media as it was published all over the internet and this case will serve as an exceptional precedent.

There is no other common law rule that prevails in Arizona about slander per se. No other State court ruling and decrees has eradicated, disturbed, and

superseded the holdings of Arizona court that it expressed about slander per se. In the case of *Modla v. Parker*, the AZ court clearly held: "slander *per se* is actionable without a need to plead or prove special damages if the utterance falls within one or more specified categories, damages in such case being assumed." (*Modla*, 17 Ariz. App. 54, 495 P.2d 494 (Ariz. Ct. App. 1972)). This holding aligns with another AZ courts' holdings. First, it stated "The common law of defamation recognized no distinction between statements of fact on the one hand and opinion or hyperbole on the other." (*Yetman v. English*, 168 Ariz. 71, 811 P.2d 323 (Ariz. 1991)). Second, it stated, "when a plaintiff is a private figure and the speech is of private concern, the states are free to retain common law principles" *Rogers v. Mroz*, 502 P.3d 986, 63 Arizona Cases Digest 4 (Ariz. 2022). The Ninth Circuit court, without regard, failed to acknowledge Arizona's state common law.

Moreover, the Ninth Circuit invalidated and discarded Arizona State law after holding that De Jesus cannot prove actual malice. Arizona's common law did not require private individuals to prove actual malice. The AZ supreme court clearly held, "In an ordinary defamation action between private individuals, a speaker may be liable for damages if a falsehood is published that injures the plaintiff's reputation..." (*Ibid*) and that "The First Amendment left undisturbed the common law of defamation and subsequent state modifications so far as they govern actions between private figures on matters of private concern" (*Ibid*). This Court held, "The First Amendment does not require a separate "opinion" privilege limiting the application of state defamation laws" (*Milkovich v. Lorain Journal*, 497 U.S. 1,

110 S. Ct. 2695 (1990)). However, the Ninth Circuit court ditched its own definition of actual malice as “knowledge of the falsity of the statement or a reckless disregard for the truth” (*Jesinger v. Nevada Federal Credit Union*, 24 F.3d 1127 (9th Cir. 1994)).

Dignity Health admitted that all its statements were defamatory and falsehood but claimed that it has qualified privilege. The Ninth Circuit holdings fundamentally altered the Arizona State’s holdings after upholding Dignity Health’s qualified privilege. In the case of *Chamberlain v. Mathis*, the court held “The entire common law of defamation attests to the importance we attach to an individual’s right to seek compensation for damage to his reputation... where “qualified immunity... is a personal liability for acts within the employee's discretion ‘done in good faith’ without wanton disregard of his statutory duties” (*Chamberlain v. Mathis*, 151 Ariz. 551, 729 P.2d 905 (Ariz. 1986)). The Ninth Circuit departed from its own holding based on its theory of supervisory liability. Although it was the employed nurses who did the tortious actions, Dignity Health is responsible for all their slanderous statements that were falsehood statements that injured and impeached De Jesus character (*Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012)). The Ninth Circuit court bulldozed its own holdings that Dignity Health is liable for its nurses’ tortious actions under its theory of supervisory liability that violated De Jesus constitutional rights (*Ibid*).

Here, the Ninth Circuit court made a stark departure from the AZ Supreme Court’s holding in *Chamberlain v. Mathis* provided. The AZ court provided a clear

scope of qualified privilege that “Qualified immunity protects only acts that are reasonably within the employee's discretionary authority [emphasis added]” (*Chamberlain*, 729 P.2d 905 (Ariz. 1986)). First, Dignity Health's nurse yelled, accused, and denigrated Ms. De Jesus in public (at the hospital's hallway) while she was on break; eating her snacks. Second, Dignity Health's nurses' actions of interrupting and haranguing her while performing her work in good faith was not within the nurses. Not one patient ever complained against Ms. De Jesus while she was rendering services with them. All Dignity Health's tortious acts were done outside its discretionary authority. As such, Dignity Health only abused its qualified privilege. Dignity Health admitted its slanderous statements and tortious conduct. Yet, the Ninth Circuit's grossly contradicted its own viewpoints regarding qualified immunity in support of Dignity Health (*Ibid*). The Ninth Circuit departed from this Court's holding after stating that De Jesus cannot prove actual malice. “actual malice” — that is, with knowledge that it was false or with reckless disregard of whether it was false or not” (*New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964)).

Moreover, the Ninth Circuit court grossly ignored that Dignity Health's admission of all its falsehood statements but raised qualified privilege defense to shield itself from liability. This Court held, “Permitting recovery of presumed and punitive damages in defamation cases absent a showing of “actual malice” does not violate the First Amendment when the defamatory statements do not involve matters of public concern,” (*Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472

U.S. 749, 105 S. Ct. 2939 (1985)). Additionally, “the privilege was defeasible on a showing that the comment was motivated by some purpose inconsistent with the social policy supporting the privilege of fair comment, or was motivated solely by malice, in the common law sense of ill will or spite.” (*Yetman*, 168 Ariz. 71, 811 P.2d 323 (Ariz. 1991)) ARS § 12-653.01, in part, stated that actual malice is “...that state of mind arising from personal spite, hatred, or ill will toward the [plaintiff]...”

Further, the Ninth Circuit court gave a blind eye to Arizona’s common law in terms of excessive publication for slander per se actions. “To establish defamation under Arizona common law, “a publication must be false and must bring the defamed person into disrepute, contempt, or ridicule, or must impeach plaintiff’s honesty, integrity, virtue, or reputation” (*Rogers*, 502 P.3d 986, 63 Arizona Cases Digest 4 (Ariz. 2022)). Ms. De Jesus did not file a complaint for libel but is seeking redress for Dignity Health’s slander per se tortious actions. In this regard, the Ninth Circuit grossly ignored Ms. De Jesus cause of action of slander per se. In Arizona, the elements of a defamation claim are:

- (1) false statement concerning the plaintiff;
- (2) the statement was defamatory;
- (3) the statement was published to a third party;

the requisite fault on the part of the [defendant]; and the [plaintiff] was damaged as a result of the statement. (*Morris v. Warner*, 160 Ariz. 55, 770 P.2d 359 (Ariz. Ct. App. 1989)).

Consistent with this view, the Ninth Circuit court restricted the Arizona defamation law or any AZ court holdings. Arizona law considers Dignity Health, as a tortfeasor, that publicized the defamatory falsehood statements and met the Arizona defamation law requirements. Arizona courts follow the Restatement guidance in the absence of any other case or statutory authority on point (*Cunningham v. Goettl Air Conditioning, Inc.*, 194 Ariz. 236, 980 P.2d 489 (Ariz. 1999)).

CONCLUSIONS WITH PRAYERS FOR RELIEF

Under Rule 44.2, a petition for rehearing should present intervening circumstances or controlling effect or to other substantial grounds not previously presented.

Petitioner has described the Ninth Circuit's shady and grave abuse of discretion in rendering its judicial analysis. It is hardly to dispute that the Ninth Circuit made a stark departure from this Court's definition of actual malice and excessive publication for slander per se and the common laws of Arizona.

Petitioner is entitled to all types of remuneration for the damages that she endured. This Court held that the state interest in compensating private individuals for injury to their reputation adequately supports awards of presumed and punitive damages -- even absent a showing of "actual malice" (*Dun Bradstreet*, 472 U.S. 749, 105 S.Ct. 2939, 86 L.Ed.2d 593 (1985)).

Finally, this Court expressly stated:

"Because private individuals characteristically have less effective opportunities for rebuttal than do public officials and public figures, they are more vulnerable to injury from defamation. Because they have not voluntarily exposed themselves to increased

risk of injury from defamatory falsehoods, they are also more deserving of recovery." (*Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1972)

Petitioner respectfully prays that this Honorable Court grant a rehearing of the judgment rendered in this cause and, upon such rehearing, vacate the prior judgment and render a decision consistent with the arguments herein

Respectfully submitted,



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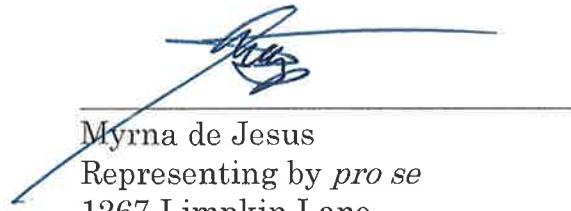
This 4th day of February 2025

CERTIFICATION

I, Myrna de Jesus, the petitioner in this case, hereby certify that this petition for rehearing is done in good faith and not filed for the purpose of delay. This petition is based on specific and substantial grounds that warrant reconsideration by the Court. I further certify that all statements of fact contained in this petition are true to the best of my knowledge and belief.

This 4th day of February 2025.

Respectfully submitted,



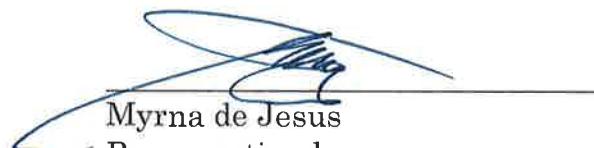
Myrna de Jesus
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1267 Limpkin Lane
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CERTIFICATE OF SERVICE

I, Myrna de Jesus, do hereby certify that I have this day mailed by U.S. mail a true and correct copy of the above foregoing Notice of Service to the Defendant Dignity Health's attorney Lindsay J. Fiore GREENBERG TRAURIG, LLP 2375 EAST CAMELBACK RD; SUITE 800; PHOENIX, ARIZONA 85016

This 4th day of February 2025.

Respectfully submitted,



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