No. 25-_____

In the
Supreme Court of the United States

ANGELA KAY PLESE,

Petitioner,

v.

RONALD AUSTIN AND LINDA AUSTIN,

Respondents.

On Petition for a Writ of Certiorari to the Tennessee Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First Amendment allows a plaintiff who suffers no reputational harm to recover for defamation.

RELATED PROCEEDINGS

Tennessee Supreme Court: *Austin* v. *Plese*, No. E2024-00586-SC-Rll-CV (Aug. 7, 2025)

Tennessee Court of Appeals: *Austin* v. *Plese*, No. E2024-00586-COA-R3-CV (Mar. 11, 2025)

Tennessee Circuit Court, Knox County, Tennessee: *Austin* v. *Plese*, No. 3-198-20 (Mar. 22, 2024)

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The opinion of the Tennessee Court of Appeals is not published but is available at 2025 WL 763752, and is reprinted at App.1a. The opinion of the Tennessee Circuit Court is not published but is reprinted at App.41a. The order of the Supreme Court of Tennessee denying leave to appeal is reprinted at App.60a.

JURISDICTION

The Tennessee Court of Appeals entered its judgment on March 11, 2025, and the Supreme Court of Tennessee denied leave to appeal on August 7, 2025. On October 23, 2025, Justice Kavanaugh extended the filing deadline for this petition to January 4, 2026. This Court has jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment provides, in relevant part:

> Congress shall make no law … abridging the freedom of speech.

INTRODUCTION

In 2019 and 2020, Petitioner Angela Kay Plese and her neighbors, Respondents Linda and Ronald Austin, got into a protracted dispute. Frustrated by their relationship, and angered by Mr. Austin calling her "white trash," Ms. Plese started looking for dirt online and found it: Ms. Austin had pled guilty in Texas to a charge of deadly conduct. Ms. Plese publicized at a homeowners association meeting and on her Facebook page that Ms. Austin was arrested for deadly conduct with a gun and pled guilty.

Ms. Plese was right about the charge and a plea. But Ms. Plese—a non-lawyer—was wrong about the gun. A Texas lawyer would have informed her that deadly conduct with a gun is a felony. But Ms. Austin pled to a misdemeanor. Her crime was being involved in an accident while driving under the influence.

Upset by Ms. Plese's speech, the Austins sued for defamation, and a Tennessee trial court awarded a six-figure judgment. The Tennessee Court of Appeals upheld most of the award but vacated the portion for reputational damage as "unsupported by evidence." App.39a. In nearly every jurisdiction *except* Tennessee, that would have been the end of the matter, because proof of reputational harm is an indispensable element of a defamation claim. But not here.

This Court should hold that the First Amendment requires proof of reputational harm for a defamation recovery. Such a holding creates First Amendment breathing room and would reduce the frequency of defamation claims filed based on hurt feelings or attempts to censor. It would also resolve substantial lower-court conflicts. Certiorari is warranted.

STATEMENT

I. A conflict among neighbors

Petitioner Angela Kay Plese and Respondents Ronald and Linda Austin were once cul-de-sac neighbors in Lakecove subdivision in Knox County, Tennessee. App.42a, 50a. Ms. Plese and her family have lived in Lakecove since 2008, when they were the only residents. App.50a. The Austins moved into an adjacent house in 2016 and purchased the vacant lot between their home and Ms. Plese's home one year later. App.42a. The Austins have a driveway on both lots exiting into the cul de sac. App.42a.

Initially, the parties had a good relationship. App. 50a. Ms. Plese chatted with Ms. Austin, and when Mr. Austin was out of town, Mses. Plese and Austin visited each other and took kayak trips together. *Ibid.* Ms. Plese was aware that Mrs. Austin struggled with stress and anxiety; at one point, Ms. Plese became so concerned that she contacted a friend to keep an eye on Mrs. Austin in case she was suicidal. App.52a.

The parties' friendship began to sour when the Austins installed a fence on their property; it quickly "became a source of contention between" them. App.42a. On one occasion, Ms. Plese removed survey stakes from the vacant lot. App.49a. But the primary source of tension grew out of the Austins' decision to block part of the cul de sac by placing orange traffic cones in front of the vacant lot's driveway. *Ibid.* This included a dispute where Mr. Austin prevented workmen from parking in the cul de sac "and was cursing the workers." App. 51a.

Things came to a head during "the boat incident." App.51a. Someone was having trouble backing a trailer with a boat on it out of Ms. Plese's driveway. *Ibid.* To assist, Ms. Plese moved the orange traffic cones that Mr. Austin had placed in the cul de sac. *Ibid.* Mr. Austin came out of his house and called Ms. Plese "white trash and cussed at her," though there was no physical assault. App.52a.

Unaware that the subdivision homeowners association had given permission for the fence, Ms. Plese requested a meeting with the association board regarding the fences. App.50a. Before the meeting, Ms. Plese conducted a background check on the Austins. *Ibid.* Through the www.mvlife.com website, she learned that Ms. Austin had a criminal record in Red River County, Texas. *Ibid.* The website reported that the offense was "Deadly Conduct," the offense level was a "misdemeanor," and the disposition was "sentenced." *Ibid.*

The homeowners association conducted a grievance hearing concerning the fence's location in October 2019. App. 42a. At the hearing's conclusion, the association determined that the fence was properly approved and located. *Ibid.* Responding to comments at the hearing, Ms. Plese revealed to association members that Ms. Austin had a criminal record and showed them Ms. Austin's mug shot. *Ibid.* Ms. Austin was very upset and fled the meeting. App.42a–43a.

Later, Ms. Plese looked up Texas's deadly-conduct statute. App.51a. She believed the statute showed that Ms. Austin's offense involved a gun, though she "admitted that she is not a lawyer and did not consult a lawyer for an interpretation of the statute." App.51a. As it turns out, deadly conduct "with a gun" in Texas is a felony. *Ibid.* But Ms. Austin pled guilty to a misdemeanor—based on driving while under the influence and getting in an accident. App.46a, 51a.

The following June, Ms. Plese posted on her personal Facebook page about her frustration over the homeowners association blocking her Memorial Day post on the Neighborhood Facebook page because that post contained the words "God bless America." App.43a. That resulted in numerous comments on Ms. Plese's Facebook page to which she responded—including about her dispute with the Austins. App.43a–44a. Two of Ms. Plese's comments are relevant here:

> [1] I [Angela Plese] finally did a background check hoping I was just overreacting. The criminal check revealed that Linda Austin has a criminal record in Texas. They [Austins] moved to Knoxville from Texas after she was arrested for "Deadly Conduct" with use of gun. I [Angela Plese] realized my instincts were correct and I needed to protect myself from the Austin family.
>
> [2] Linda Austin pleaded guilty to the charges of Deadly Conduct in Texas. This explained my [Angela Plese] experience of being attacked in the cul de sac by the Austin family. [App.44a.]

Ms. Austin learned of Ms. Plese's Facebook comments from her husband, who had received notice from a neighbor. App.46a. Ms. Austin responded poorly. She had experienced a difficult childhood, with an alcoholic father and a strained relationship with her mother. App.45a. In her mid-30s, Ms. Austin was diagnosed with depression, and she has taken medication "for depression and/or anxiety since that time." *Ibid.* Ms. Plese's comments triggered humiliation, isolation, and "memories of the trauma of the DUI arrest." App.46a.

Ms. Austin's psychiatrist's notes show nothing regarding the October 2019 homeowners-association meeting. App.45a–46a. But after the June 2020 Facebook comments, the psychiatrist reported that Ms. Austin was experiencing "real physical fatigue and sleep disruption because of" Ms. Plese's actions. App.47a–48a. His notes in July 2020 indicate that the Austins "were taking legal action" against Ms. Plese. App.48a. This litigation followed.

II. Relevant proceedings below

Following a bench trial in September 2023, App.41a, the trial court entered a six-figure judgment in favor of the Austins on the Austins' claims for defamation and false light, App.54a–55a, 59a. The judgment included reimbursement for Ms. Austin's medical expenses, damages for her loss of reputation, damages for the emotional distress she experienced because of the Facebook comments, punitive damages, and damages for Mr. Austin's loss of consortium. App.58a–59a.

Regarding liability, the court found Ms. Plese's Facebook comment—"The criminal check revealed that Linda Austin has a criminal record in Texas. They moved to Knoxville from Texas after she was arrested for Deadly Conduct with use of a gun"—"to be defamatory and to place Linda Austin in false light." App.55a. As to the statement, "Linda Austin pleaded guilty to the charge of Deadly Conduct in Texas," the trial court found it "was intended to paint the Plaintiff Linda Austin in a false light" because Ms. Plese "knew that Mrs. Austin was upset by the disclosure of her criminal charges to the HOA board." *Ibid.*

The court of appeals mostly affirmed this judgment. App.1a–40a. Crucially, however, the court held that "[t]he record contains *no* evidence of reputational damage incurred by Ms. Austin." App.35a. "[N]one of the evidence goes toward her external standing in the community—her reputation." App.36a. Accordingly, the court of appeals "vacate[d] that portion of the Trial Court's judgment granting Ms. Austin $20,000 in reputational damages as there is simply no evidence in the record to support it." *Ibid.*; accord App.39a.

In so holding, the court of appeals failed to recognize the First Amendment import of awarding damages for defamation and false light in the absence of any evidence of damage to reputation. Ms. Plese raised that issue in an application for permission to appeal to the Tennessee Supreme Court, but that court denied the application. App.60a.

REASONS FOR GRANTING THE WRIT

We live in litigious times, where celebrities, politicians, and next-door neighbors are quick to file suit when they are offended, even when the victim of unkind speech experiences merely faux offense. This reality is especially apparent when a perceived enemy says something critical or unkind. Lawsuits alleging defamation and libel quickly follow.

To protect the right to speak freely, the First Amendment has a role to play in these disputes. While a minority of jurisdictions allows defamation claims to go forward without a showing of damage to reputation, that rule "has been soundly criticized" by courts and scholars alike. *Gobin* v. *Globe Publ'g Co.*, 649 P.2d 1239, 1243 (Kan. 1982) (citation modified). A substantial number of jurisdictions reject that rule and require defamation plaintiffs to prove reputational harm as a prerequisite to recovering for any other injury. *E.g.*, *Schlegel* v. *Ottumwa Courier*, *a Div. of Lee Enters., Inc.*, 585 N.W.2d 217, 223–24 (Iowa 1998) ("we agree with those courts that have continued to impose a reputational harm prerequisite in defamation actions"); *Richie* v. *Paramount Pictures Corp.*, 544 N.W.2d 21, 28 (Minn. 1996) ("[Defendants] … argue that a showing of actual harm to reputation should be required before a defamation action can be sustained. We agree."); *Smith* v. *Durden*, 276 P.3d 943, 949 (N.M. 2012) ("New Mexico is far from alone in requiring reputational injury to be shown as a prerequisite to recovery."); *Joseph* v. *Scranton Times L.P.*, 129 A.3d 404, 430 (Pa. 2015) ("Pennsylvania is not alone in requiring reputational injury as a prerequisite to a defamation plaintiff's recovery of damages for mental and emotional injuries.").

This deep split is not simply a matter of policy but one animated by the same First Amendment principles that undergird this Court's watershed decision in *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974). See *Little Rock Newspapers, Inc.* v. *Dodtrill*, 660 S.W.2d 933, 936–37 (Ark. 1983) ("We can find no greater substantiation after *Gertz* than before that would permit recovery for a defamation action without the element of reputational damage.") As the Arkansas Supreme Court explains it:

> The spirit of the *Gertz* decision on this point is clearly one to protect First Amendment rights from unjustifiable and unsubstantiated intrusions. To allow recovery in a defamation action where the primary element of the cause of action is missing not only sets the law of defamation on end, but also substantially undercuts the impact *Gertz* seeks to effect. The law of defamation has always attempted to balance the tension between the individual's right to protect his reputation and the right of free speech. To totally change the character of defamation to allow recovery where there has been no loss of the former right, would be an unjustified infringement on the First Amendment. [*Id.* at 936–37.]

The decision below exacerbates a substantial split in authority among lower courts on an important and recurring constitutional question: "Whether the First Amendment allows a plaintiff who suffers no reputational harm to recover for defamation." The ruling also implicates a federal-court split over whether reputational harm is a prerequisite to a defamation claim. Certiorari is warranted.

I. State appellate courts are hopelessly divided over whether the First Amendment allows a plaintiff who suffers no reputational harm to recover for defamation.

Some jurisdictions have "permitted the recovery of damages for mental anguish in a 'defamation' action, without a showing of damage to reputation." *Gobin*, 649 P.2d at 1243–44. But the rule applied in those jurisdictions—which the court of appeals applied here—"has been soundly criticized" by courts and scholars alike. *Ibid.* And that rule conflicts with how this Court has understood the tort of defamation: "false statements of fact *harming another's reputation*." *Counterman* v. *Colorado*, 600 U.S. 66, 73 (2023) (emphasis added); see also *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 275 (1971) ("[D]amage to reputation is, of course, the essence of libel.").

The split of authority is substantial—and very lopsided. In Tennessee's camp are Florida, Louisiana, and Maryland. See *Miami Herald Publ'g Co.* v. *Ane*, 458 So. 2d 239, 242 (Fla. 1984) ("Actual damage to reputation is not required under *Gertz*, however, as long as there is evidence of some actual injury, of which injury to reputation is but one example.") (citation omitted); *Freeman* v. *Cooper*, 390 So. 2d 1355, 1360 (La. Ct. App. 1980) ("[M]ental suffering alone, or only injured feelings which must inevitably be inferred from libelous statements, can be made the basis of a damage award."); *Hearst Corp.* v. *Hughes*, 466 A.2d 486, 487–93 (Md. 1983) ("actual impairment of reputation is not required to establish the tort."). That's all.

In the opposite camp are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, and Utah. See *Blevins* v. *W.F. Barnes Corp.*, 768 So. 2d 386, 389 (Ala. Civ. App. 1999) (where reputational harm is not established per se, defamation requires "resulting damage to [a plaintiff's] reputation") (cleaned up); *Burns* v. *Davis*, 993 P.2d 1119, 1129 (Az. Ct. App. 1999) ("If the jury finds that a defamatory statement of objective fact (beyond mere hyperbole) exists, it should then 'consider actual damage to [the plaintiff's] reputation in the real world'"); *Little Rock Newspapers*, 660 S.W.2d at 936–37 ("We can find no greater substantiation after *Gertz* than before that would permit recovery for a defamation action without the element of reputational damage."); *Balla* v. *Hall*, 273 Cal. Rptr. 3d 695, 728 (Cal. Ct. App. 2021) (defamation requires both falsity and injury to reputation); *Bolduc* v. *Bailey*, 586 F. Supp. 896, 900–01 (D. Colo. 1984) ("The gravamen of an action for defamation is the damage to one's reputation in the community[.]" (quoting *Gobin*, 649 P.2d at 1243)); *Cohen* v. *Meyers*, 167 A.3d 1157, 1174 (Conn. Ct. App. 2017) (essential element of defamation is that "the plaintiff's reputation suffered injury as a result of the statement.") (cleaned up); *Gannett Co.* v. *Kanaga*, 750 A.2d 1174, 1184 (Del. 2000) (referencing unchallenged jury instructions that a defamation plaintiff must prove "humiliation and loss of reputation"); *Jews For Jesus, Inc.* v. *Rapp*, 997 So. 2d 1098, 1109

(Fla. 2008) (a defamation plaintiff must prove injury to his or her reputation in the community); *Jenkins* v. *Liberty Newspapers Ltd. P'ship*, 971 P.2d 1089, 1103 (Haw. 1999) (defamation claim fails where a plaintiff fails to prove that he "suffered any actual damage to his reputation."); *Irish* v. *Hall*, 416 P.3d 975, 980 (Idaho 2018) ("the tort of defamation is based on harm to a person's reputation in the community." (citations omitted)), *abrogated on other grounds*, *Siercke* v. *Siercke*, 476 P.3d 376 (Idaho 2020); *Brennan* v. *Kadner*, 814 N.E.2d 951, 956 (Ill. 2004) (defamation "provides redress for false statements of fact that harm reputation."); *Schlegel*, 585 N.W.2d at 223–24 ("[W]e agree with those courts that have continued to impose a reputational harm prerequisite in defamation actions. . . . The presumption limitation in *Gertz* was imposed to prevent the giving of 'gratuitous awards of money damages far in excess of any actual injury[,]'" and "to allow defamation damages without a showing of reputational harm would undercut the Supreme Court's purpose behind the presumption limitation.") (citation omitted); *Gobin*, 649 P.2d at 1243 ("[D]amage to one's reputation is the essence and gravamen of an action for defamation. Unless injury to reputation is shown, plaintiff has not established a valid claim for defamation, by either libel or slander, under our law."); *Toler* v. *Sud-Chemie, Inc.*, 458 S.W.3d 276, 287 (Ky. 2014), as corrected (Apr. 7, 2015) (defame means "'to make a false statement about someone to a third person in such a way as to harm the reputation of the person spoken of.'"); *Barrows* v. *Wareham Fire Dist.*, 976 N.E.2d 830, 836 (Mass. Ct. App. 2012) ("[T]he gravamen of the tort of defamation does not lie in the

nature or degree of the misconduct but in its outcome, i.e., the injury to the reputation of the plaintiff. . . . Defamation is essentially spoken or written words or expressions that injure reputation."); *Am. Transmission, Inc.* v. *Channel 7 of Detroit, Inc.*, 609 N.W.2d 607, 611 (Mich. Ct. App. 2000) ("A defamatory communication is one that tends to harm the reputation of a person so as to lower him in the estimation of the community or deter others from associating or dealing with him."); *Richie*, 544 N.W.2d at 28 (Defendants "argue that a showing of actual harm to reputation should be required before a defamation action can be sustained. We agree."); *Foreman* v. *Miss. Publishers Corp.*, 14 So. 2d 344, 347 (Miss. 1943) (defamation requires "the degrading of reputation" for recovery); *Kenney* v. *Wal-Mart Stores, Inc.*, 100 S.W.3d 809, 813 (Mo. 2003) ("Missouri, as well as several other states—including Arkansas, Kansas, and New York—have adopted rules requiring a plaintiff to prove reputational harm before allowing recovery for other related injuries"); *Durden*, 276 P.3d at 949 ("New Mexico is far from alone in requiring reputational injury to be shown as a prerequisite to recovery." (citing Earl L. Kellett, Annotation, *Proof of Injury to Reputation as Prerequisite to Recovery of Damages in Defamation Action–Post* Gertz *Cases*, 36 A.L.R.4th 807, § 2[b] (1985) (noting that after the issuance of *Firestone* "the various jurisdictions have split into two camps on the question whether injury to reputation must be shown"))); *France* v. *St. Clare's Hosp. & Health Ctr.*, 82 A.D.2d 1, 5–6 (N.Y. 1981) ("[D]amages are recoverable in a defamation action only when concomitant with a loss of reputation."); *Ashcroft* v. *Mt. Sinai Med. Ctr.*, 588 N.E.2d 280, 283

(Ohio Ct. App. 1990) (defamation requires "a false publication causing injury to a person's reputation"); *Zeran* v. *Diamond Broad., Inc.*, 203 F.3d 714, 719 (10th Cir. 2000) ("Plaintiff did not suffer an injury to his reputation, which is the essence of an action for defamation." (citing Oklahoma law)); *Shirley* v. *Freunscht*, 735 P.2d 600, 602 (Or. 1987) ("The gravamen of the tort of defamation is the injury to the plaintiff's reputation."); *Scranton Times*, 129 A.3d at 430 ("Pennsylvania is not alone in requiring reputational injury as a prerequisite to a defamation plaintiff's recovery of damages for mental and emotional injuries."); *Parrish* v. *Allison*, 656 S.E.2d 382, 388 (S.C. Ct. App. 2007) ("tort of defamation allows a plaintiff to recover for injury to his or her reputation"); *Leyendecker & Assocs.* v. *Wechter*, 683 S.W.2d 369, 374 (Tex. 1984) (Where the "evidence does not demonstrate injury to Mrs. Wechter's reputation[,]" "the court of appeals erred in awarding Mrs. Wechter damages for mental anguish."); *Cox* v. *Hatch*, 761 P.2d 556, 561 (Utah 1988) ("The tort of defamation protects only reputation.").

Critically, the difference is not just one of state policy. It is often a differing view of the First Amendment's protection of allegedly defamatory speech. Consider the Arkansas Supreme Court's opinion in *Little Rock Newspapers*. It analyzed *Gertz*—which required proof of some actual injury before an award of damages in a defamation *per se* action—and found its stated purpose to be preventing "the giving of 'gratuitous awards of money damages far in excess of any actual injury.'" *Little Rock Newspapers*, 660 S.W.2d at 936 (quoting *Gertz*, 418 U.S. at 349). The Arkansas Supreme Court concluded that this Court's

point was "clearly one to protect First Amendment rights from unjustifiable and unsubstantiated intrusions." *Ibid.*

Continuing, the court said that "[t]o allow recovery in a defamation action where the primary element of the cause of action [loss of reputation] is missing not only sets the law of defamation on end, but also substantially undercuts the impact *Gertz* seeks to effect." *Ibid.* "[T]o allow recovery when there has been no loss of [reputation] would be an unjustified infringement on the First Amendment." *Ibid.*

In sum, requiring proof of loss of reputation is consistent with "protection of First Amendment principles." *Ibid;* accord, *e.g.*, *Schlegel*, 585 N.W.2d at 223–24 (endorsing *Little Rock*'s First Amendment analysis); *Durden*, 276 P.3d at 945 (same); *Scranton Times*, 129 A.3d at 430 ("permitting the recovery of damages for injuries such as mental anguish without a showing of injury to reputation subverts the intended 'protective influence' of *Gertz's* actual injury stricture") (citation modified); see also *Keisel* v. *Westbrook*, 542 P.3d 536, 556 (Utah Ct. App. 2023) ("A plaintiff may not attempt an end-run around First Amendment strictures protecting speech by instead suing for defamation-type damages under non-reputational tort claims.") (citation omitted).

It is not possible to reconcile these decisions with cases like *Miami Herald*, where the Florida Supreme Court attributed its rule *not* requiring damage to reputation in a defamation action to this Court's decision in *Gertz*. Only this Court can bring national uniformity to this area of the law.

II. Federal courts are split over whether a plaintiff who cannot show reputational harm may maintain a defamation claim.

Relying on the "libel-proof plaintiff doctrine[,]" several federal courts also hold—as a matter of federal constitutional law—that some plaintiffs "have so bad a reputation that they are not entitled to obtain redress for defamatory statements[.]" *Guccione* v. *Hustler Mag., Inc.*, 800 F.2d 298, 303 (2d Cir. 1986) (citing *Cardillo* v. *Doubleday & Co., Inc.*, 518 F.2d 638, 639–40 (2d Cir. 1975)); see also*, e.g., Lavergne* v. *Dateline NBC*, 597 F. App'x 760, 762 (5th Cir. 2015) ("The MJ then recommended that Lavergne's defamation claims under state law be dismissed because they were not actionable as a matter of law under the 'libel-proof plaintiff doctrine.' … The district judge adopted the report and recommendation of the MJ and dismissed Lavergne's claims with prejudice. … [W]e AFFIRM the district court's judgment and adopt its analysis in full.") (citations omitted)); *Ray* v. *Time, Inc.*, 452 F. Supp. 618, 622 (W.D. Tenn. 1976) ("The Court is persuaded, in the light of all the circumstances in this cause and in the public record involved in the other cases mentioned, that plaintiff, James E. Ray, is libel-proof[.]"), *aff'd*, 582 F.2d 1280 (6th Cir. 1978); *Wynberg* v. *Nat'l Enquirer, Inc.*, 564 F. Supp. 924, 927 (C.D. Cal. 1982) ("Wynberg's past conduct and criminal convictions establish a bad reputation which, for purposes of this case, render him 'libel proof' as a matter of law."); *Simmons Ford, Inc.* v. *Consumers Union of U.S., Inc.*, 516 F. Supp. 742, 750–51 (S.D.N.Y. 1981).

There is a longstanding and acknowledged circuit split over whether the libel-proof plaintiff doctrine is a valid federal constitutional requirement, however. See *Brooks* v. *Am. Broad. Cos.*, 932 F.2d 495, 501 (6th Cir. 1991) ("In contrast to the Second Circuit, the District of Columbia Circuit has rejected libel-proof notions: 'Because we think it [libel-proof theory] a fundamentally bad idea, we are not prepared to assume that it is the law of the District of Columbia; nor is it part of federal constitutional law.'" (quoting *Liberty Lobby, Inc.* v. *Anderson*, 746 F.2d 1563, 1569 (D.C. Cir. 1984) (Scalia, J.), *vacated on other grounds*, 477 U.S. 242 (1986))).

The libel-proof plaintiff doctrine inherently recognizes that—whatever other damages a plaintiff may demand or prove—a defamation claim cannot prevail without proof of reputational injury. *E.g., Benanti* v. *Satterfield*, No. E2018-01848-COA-R3-CV, 2020 WL 1491374, at *4 (Tenn. Ct. App. Mar. 27, 2020). "[L]ibel-proof plaintiffs" cannot maintain defamation claims because they "by definition suffer minimal (if any) injury to reputation[.]") *Ibid.* (cleaned up). Thus, if the doctrine—the validity of which federal courts dispute—is correct as a matter of federal constitutional law, then reputational injury must be a prerequisite to lawful defamation liability. Only this Court can resolve the split of federal authority on the matter.

III. The decision below is wrong.

This Court should also review the decision below because it's wrong. Absent reputational harm, the First Amendment prohibits recovery for defamation.

Start with *Gertz*. There, an attorney sued a magazine publisher for libel that an Illinois federal district court found to be libelous *per se*. After a jury awarded the lawyer $50,000, the district court entered judgment for the publisher anyway, believing that such a result was compelled by an extension of the "actual malice" requirement in *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), to any public issue, even if the plaintiff was not a public official or public figure. The Seventh Circuit affirmed in reliance on this Court's intervening decision in *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29 (1971).

This Court reversed. It began with the proposition that the "legitimate state interest" in compensating those harmed by defamation must be balanced against the First Amendment freedoms of speech and press. *Gertz*, 418 U.S. at 339–42. Extending the *New York Times* rule to private persons would abridge the state's legitimate interest. *Id.* at 342–46.

At the same time, the Court held that the First Amendment limited a state's interest in compensating a defamation plaintiff to damages for actual injury. *Id.* at 349–50. The Court did not try to define "actual injury" but left that job to lower courts in the first instance. *Id.* at 350. But it made clear that punitive damages were strictly off limits, since they bear "no necessary relation to the actual harm caused[,]" and they exacerbate the danger of self-censorship. *Ibid.*

Because the *Gertz* jury was allowed to presume damages without proof of injury, the Court reversed and remanded for a new trial. *Id.* at 352.

Shortly thereafter, the Court was asked to apply *Gertz* to a situation like the one presented here—where the plaintiff had no proof of damages to reputation. *Time, Inc.* v. *Firestone*, 424 U.S. 448, 460 (1976). Yet the Court held that the plaintiff was "not prevented from obtaining compensation for such other damages that a defamatory falsehood may have caused her." *Ibid.* For the time being, that left the question to individual states.

Justice Brennan sharply dissented. "[T]o avoid the self-censorship that would necessarily accompany strict or simple fault liability for erroneous statements," he countered, "rules governing liability for injury to reputation *are required* to allow an adequate margin for error protecting some misstatements so that the freedoms of expression have the breathing space that they need to survive." *Id.* at 472 (Brennan, J., dissenting) (cleaned up). "To insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones." *Ibid.* (cleaned up). To allow defamation damages absent proof of reputational harm is "to invite 'gratuitous awards of money damages far in excess of any actual injury' and jury punishment of 'unpopular opinion rather than (compensation to) individuals for injury sustained by the publication of a false act." *Id.* at 475 n.3 (quoting *Gertz*, 418 U.S. at 349).

Time and state-court opinions have vindicated Justice Brennan's dissent. The result in *Firestone* conflicts with the core purposes of the First Amendment and fundamental principles of Article III standing and damages law. State courts have recognized that reality. Accordingly, *Firestone* should be overruled or confined to its facts.

1. At common law and under most modern, state-law decisions, defamation claims are premised on injury to reputation, i.e., harm to the plaintiff's standing in the community. See *Counterman*, 600 U.S. at 73 (describing defamation as an exception to First Amendment restrictions, defined as "false statements of fact harming another's reputation" (citing *Gertz*, 418 U.S. at 340, 342)). When no such harm is proven, liability rests not on reputational damage but on offense, embarrassment, or disagreement with speech. Punishing speech on those bases is inconsistent with the First Amendment.

Outside of *Firestone*, this Court has repeatedly recognized that the Constitution does not allow free-wheeling damage awards without proof of reputational harm. Indeed, in *Gertz*, the Court rejected presumed damages absent actual malice precisely *because* such awards chill speech without serving a legitimate compensatory purpose. *Firestone* undermines that principle by allowing plaintiffs to avoid heightened fault standards even when they cannot demonstrate reputational loss.

2. Allowing defamation recovery without proof of reputational harm also raises serious structural concerns.

First, a plaintiff who cannot show reputational injury lacks the kind of concrete, particularized harm necessary to justify judicial relief. While emotional distress may be compensable in some contexts, it cannot serve as a proxy for reputational damage without collapsing defamation into an all-purpose tort for offensive speech.

Second, damages untethered from actual injury create an unacceptable risk of arbitrary or punitive awards, particularly against media defendants. This danger is magnified where fault standards are relaxed, as *Firestone* permits.

3. As a result, state courts have been critical of the constitutional result in *Firestone*. For instance, in rejecting the *Firestone* majority's logic, the New Mexico Supreme Court echoed Justice Brennan's dissent: "allowing recovery for injuries such as mental anguish before a showing of injury to reputation subverts the intended 'protective influence' of the actual injury stricture." *Durden*, 276 P.3d at 949 (quoting *Firestone*, 424 U.S. at 475 n.3 (Brennan, J., dissenting)). "If the tort of defamation is to retain its identity at all, proof of actual injury to reputation would seem to be a prerequisite to any award of out-of-pocket loss, and it seems more logical to require proof in that order, not in the reverse." *Ibid.* (citation modified). Accord *Schlegel*, 585 N.W.2d at 223 (recognizing *Firestone* but agreeing with *Little Rock*'s reliance on *Gertz* that the "presumption limitation in *Gertz* was imposed to prevent the giving of 'gratuitous awards of money damages far in excess of any actual injury.'" (quoting *Gertz*, 418 U.S. at 349)).

Similarly, in *Scranton Times*, the Pennsylvania Supreme Court followed Justice Brennan's *Firestone* dissent rather than the majority's opinion: "[A]s Justice Brennan articulated in his dissent in *Firestone*, permitting the recovery of damages for injuries such as mental anguish without a showing of injury to reputation subverts the intended 'protective influence' of *Gertz*'s actual injury stricture." 129 A.3d at 430 (quoting *Firestone*, 424 U.S. at 475 n.3 (Brennan, J., dissenting)).

4. This Court should correct *Firestone* and either (a) overturn it, or (b) require defamation plaintiffs who cannot prove reputational harm to satisfy the actual malice standard, even if they are nominally private figures. Either approach would realign defamation doctrine with its constitutional foundations, preserve meaningful protection for speech on matters of public interest, and prevent the imposition of liability where no real-world reputational injury exists.

* * *

Firestone rests on a cramped view of the First Amendment and enables constitutionally suspect defamation claims untethered from reputational harm. In cases where a plaintiff cannot demonstrate actual injury to reputation, the decision allows punishment of protected speech without sufficient justification. For that reason, *Firestone* should be overruled or limited to ensure that defamation law remains a remedy for real reputational injury—not a vehicle for suppressing speech.

It is easy to see how the *Firestone* standard can be abused, and how limiting it could protect free speech. Say a parody news website posted a story—with actual malice—about President Joe Biden:

Assume further that the story is completely false. The parody news website published the piece merely to draw political attention to the President's forgetfulness. If President Biden sued for defamation, the website would be able to defend on the ground that its "news story" was mere parody. But if the President and his legal advisors knew the lawsuit would go nowhere unless he could prove reputational harm, it is less likely he would file it in the first instance.

The same would be true in every case. Celebrities, politicians—and yes, even neighbors—would be less likely to bring defamation actions if there was a proof-of-reputational-harm barrier. That would create substantially more breathing room for free speech.

IV. This case presents an important question and is an ideal vehicle to resolve it.

The underlying dispute here is a disagreement between neighbors. But its constitutional implications are far greater. What's more, this is an ideal vehicle to answer the question presented.

To begin, this appeal is from a final judgment following a bench trial. Ms. Plese accepts the facts the trial court found, and the record is clean.

Second, the issue is cleanly presented. The Tennessee Court of Appeals vacated "that portion of the Trial Court's judgment awarding Ms. Austin $20,000 for reputational damage as it is unsupported by evidence." App.39a. Yet the court of appeals affirmed the trial court's judgment of $75,100 for other types of damages based on defamation.[1] There is nothing in the proceedings below that could provide a barrier to this Court's resolution of the question presented.

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[1] Ms. Austin also brought a false-light claim. But the trial court's judgment only attributed her damages to her defamation claim, App.56a–59a, and did not address what damages (if any) are due to the false-light claim. In addition, Ms. Austin's consortium-based damages award is not allowed under a false-light theory. See, *e.g.*, *West* v. *Media General Convergence, Inc.*, 53 S.W.3d 640, 648 (Tenn. 2001) ("[T]he right to privacy is a personal right" and may not "be asserted by a member of the individual's family[.] . . . Therefore, only those persons who have been placed in a false light may recover for invasion of their privacy."). So if this Court reverses Mrs. Austin's defamation judgment, it will also be necessary—at minimum—to vacate the trial court's entire damages award with instructions to enter a new one. Finally, "false light claims that arise from defamatory speech raise the same First Amendment concerns as are implicated by defamation claims." *SIRQ, Inc.* v. *Layton Cost.*, 379 P.3d 1237, 1246 (Utah 2016).

Finally, the Court should act now because the *Firestone* rule undermines—rather than protects—the First Amendment's core purposes. The central constitutional justification for defamation law is the protection of reputation, not the punishment of speech qua speech. When a plaintiff cannot demonstrate her reputation was actually harmed, the imposition of damages becomes untethered from that legitimate state interest. Allowing recovery without proof of reputational injury transforms defamation from a compensatory tort into a speech-penalizing regime that leads to censorship and chilled speech, as speakers must fear litigation costs and potential liability disconnected from reputational harm. Conditioning recovery on proof of such harm provides a clear, objective limiting principle that protects speech without immunizing falsehoods that genuinely harm reputations.

Firestone also encourages speculative and subjective claims that strain judicial resources and distort jury decision-making. Without a requirement of reputational harm, juries are left to award damages based on emotional reaction or moral disapproval of speech—precisely the dangers the First Amendment is designed to prevent. A proof-of-reputational-harm requirement disciplines both pleadings and proof and serves as a necessary safeguard against viewpoint discrimination and retaliation through litigation.

Finally, limiting *Firestone* on this point would bring doctrinal coherence to modern defamation law. A clear rule requiring proof of reputational injury before damages are awarded better balances the breathing space the First Amendment requires.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2026

APPENDIX

APPENDIX

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APPENDIX A

FILED
3/11/2025
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 15, 2025 Session

RONALD AUSTIN, ET AL. V. ANGELA KAY PLESE

Appeal from the Circuit Court for Knox County
No. 3-198-20 Deborah C. Stevens, Judge

No. E2024-00586-COA-R3-CV

This appeal arises from a lawsuit over defamation and false light invasion of privacy. Ronald Austin and Linda Austin ("Mr." and "Ms. Austin," respectively) ("Plaintiffs," collectively) were neighbors of Angela Kay Plese ("Defendant"). Plaintiffs and Defendant did not get along. At one point, Defendant posted certain statements on Facebook about Ms. Austin, including that Ms. Austin had been convicted in Texas of deadly conduct with a gun. While Ms. Austin had pled guilty many years earlier to a Texas statute called "deadly conduct," this was in the context of her reaching a better deal in a DUI case. Ms. Austin's matter did not involve a gun. Plaintiffs sued Defendant for defama-

tion and false light in the Circuit Court for Knox County ("the Trial Court"). After a trial, the Trial Court found in favor of Plaintiffs, awarding $95,100 in total damages for Ms. Austin's medical expenses, damage to reputation, emotional distress, punitive damages, as well as Mr. Austin's loss of consortium.[1] Defendant appeals. We vacate that portion of the Trial Court's award concerning damage to Ms. Austin's reputation since the record contains no evidence of such damage. Therefore, we modify the judgment to $75,100. Otherwise, we affirm.

Tenn R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed as Modified; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Nathaniel Evans, Knoxville, Tennessee, for the appellant, Angela Kay Plese.

Grant E. Mitchell, Knoxville, Tennessee, for the appellees, Ronald Austin and Linda Austin.

Jonathan Skrmetti, Attorney General and Reporter; J. Matthew Rice, Solicitor General; and Heather C. Ross, Senior Assistant Attorney General, for the appellee, the State of Tennessee.

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[1] The Trial Court appears to have made a mathematical error and stated the total damages as $101,000.

OPINION

Background

Plaintiffs and Defendant were once neighbors in Knox County. Tensions arose between them when Plaintiffs built a fence on their property and put up orange traffic cones in front of their house. Defendant opposed these measures, and bitter exchanges followed. At an October 2019 homeowners' association meeting concerning the fence at issue, Defendant displayed Ms. Austin's mugshot from an old arrest in Texas. Ms. Austin was deeply distressed by this. On June 1, 2020, Defendant posted certain statements about Plaintiffs, and Ms. Austin in particular, on her Facebook page. The relevant statements are as follows:

> When servicemen or guest parked in that area they would often get cussed out by Ron [Austin].
>
> I finally did a background check hoping I was just overreacting. The criminal check revealed that Linda Austin has a criminal record in Texas. [Plaintiffs] moved to Knoxville from Texas after she was arrested for "Deadly Conduct" with use of gun. I realized my instincts were correct and I needed to protect myself from the Austin family.
>
> Linda Austin pleaded guilty to the charges of Deadly Conduct in Texas. This explained my experience of being attacked in the cul de sac by the Austin family.

As Defendant now acknowledges, her statement that Ms. Austin had been arrested for a gun-related

offense was false. In truth, Ms. Austin had been charged with a DUI in Texas some 15 years before. For insurance purposes, Ms. Austin pled guilty to a misdemeanor under a Texas statute called "Deadly Conduct."[2] Although the Texas statute contemplates some offenses in which a firearm is used, Ms. Austin's offense did not involve a firearm. On June 4, 2020, Plaintiffs sent Defendant a cease-and-desist letter through counsel demanding an apology and retraction. Defendant declined to apologize or retract at that time. Defendant would offer to retract only around a year later.

In June 2020, Plaintiffs sued Defendant for defamation and false light invasion of privacy. Plaintiffs also sought punitive damages. In December 2020, Plaintiffs filed an amended complaint, narrowing the statements sued upon. Defendant answered in opposition. Defendant did not request a jury trial, nor did

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[2] The Texas statute, TEX. PENAL CODE § 22.05, provides:

§ 22.05. Deadly Conduct

(a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.
(b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:
(1) one or more individuals; or
(2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.
(c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.
(d) For purposes of this section, "building," "habitation," and "vehicle" have the meanings assigned those terms by Section 30.01.
(e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

she request bifurcation of the proceedings for punitive damages. In September 2023, the Trial Court conducted a bench trial. Plaintiffs and Defendant testified. Ms. Austin's psychiatrist, Dr. Allen Rigell ("Dr. Rigell"), testified also.

Ms. Austin testified first. Ms. Austin had previously sought mental health treatment before the underlying events of this case. According to Ms. Austin, her DUI incident was "the biggest mistake" of her life. Ms. Austin said that her criminal record in Texas was subject to an "order of nondisclosure," and she had not expected to hear about it again. Shortly after Defendant posted her statements on Facebook, Mr. Austin showed Ms. Austin the statements on his phone, where one of the neighbors had forwarded it. Ms. Austin testified to her reaction to the statements:

> Q. And so being portrayed that way and having those statements made that you say are false, how did that impact your family?
> A. It devastated my family. We -- we were humiliated. We were frightened of what -- you know, if someone is thinking that I was arrested with a gun and was attacking one of my neighbors. I knew that people must – might appear to them as somebody to be fearful of.
>
> It was just -- I don't think I have words for it. It was just an unbelievable situation where we were -- just couldn't make sense of it. We could not make sense of it.
>
> ***
>
> Q. You talked earlier about some of the hobbies or organizations you had in the

community. How did this impact your involvement with those?

A. I had become very involved with my women's group Akima, which is a group that does work in the area. Raises money for charities. I immediately felt like I needed to step down so that I would not sully their good name with this horrific, you know, lie going around. I stopped seeing my friends. I stopped keeping -- I stopped doing things I normally did. I didn't go to the food bank anymore. I stopped seeing clients. I couldn't leave the house.

Q. What about your visits to Dr. Rigell and Dr. Brown? How were those impacted by the June 1, 2020, post?

A. After that happened, that was what consumed our discussions. The impact of this person putting this lie out there about me. You know, I couldn't – I couldn't understand why it was happening. I just -- that's the thing that was hardest. It's just why would someone do something like that.

Q. Were there any changes in frequency, medications, anything like that?

A. Yeah. Unfortunately, yeah, I was given quite a few new medications at that time to sleep. Try to bring the anxiety down. To be able to eat, take a shower, get up out of bed. Those things.

Q. I'll --

A. And you asked -- excuse me. You asked about the frequency. And the frequency

> increased from maybe, you know, three times a year with Dr. Rigell to weekly.
>
> Dr. Brown was my psychotherapist that I did talk therapy with, and that increased to two to three times a week.

Dr. Rigell, an outpatient adult psychiatrist who treated Ms. Austin, testified next. Dr. Rigell characterized Ms. Austin's trauma as "severe" in the wake of Defendant's June 2020 Facebook posts. He said that her resulting treatment was "necessary." On cross-examination, Dr. Rigell stated:

> Q. But reliving the old DUI was a trigger, if you will?
>
> A. In this circumstance, the reactivation of the re-traumatization in my estimation was the loss of control. The feeling that power had been taken from her without stimulus. So the event in my mind wasn't necessarily the reminder of the DUI. It was that moment where there was that threat that power and control had been taken away.
>
> Now, what can happen when somebody has experienced a previous trauma is that those same symptoms can, like you said, be re-triggered. And so the symptom that she experienced related to that DUI, I would assume are related to her previous treatment of the trauma versus talking about the DUI itself.

Mr. Austin testified as well. Regarding the effect that Defendant's statements had on his family, Mr. Austin stated:

> Q. Okay. As a result of these things, what happened to your family at that time?

> A. We were devastated. We were back to -- I think, as Dr. Rigell said, back to a traumatic event.
>
> ***
>
> Q. We've talked with Mrs. Austin's psychiatrist this morning and discussed specific conditions. Can you tell me whether these comments had an impact on you personally?
> A. Yes, they did.
> Q. In what way?
> A. I -- I can remember myself, kind of like my wife explained, just not knowing. I mean, feeling that black. And my number-one concern was whether my wife was going to make it through this because it was such a hard experience when she got the DUI fifteen or sixteen years earlier. And I thought -- honestly, because I travel with my business quite often, my big concern was is [sic] that she was going to hurt herself while I was away on a trip.

Asked what harm Defendant's Facebook statements had caused him, Mr. Austin stated: "The harm that I had was my reputation being broadcast that I had attacked the defendant, and the harm of watching my wife suffer."

Last to testify was Defendant. Asked whether she believed that her Facebook post about Ms. Austin was true at the time it was made, Defendant testified:

> Q. So when you – when you made that post, or not – when you put the message on the post about that particular conviction of Mrs. Austin, did you believe that to be true?

A. I did. I had no reason not to believe that it was true.
Q. Did you understand – had you ever heard of this statute before?
A. No, I hadn't. So I didn't know about the statute.
Q. You had said that – you said in that message that it involved a gun.
A. Exactly.
Q. Why did you say that?
A. Well, I went online to -- and I pulled up the statute in Texas and it explained what that particular charge was. And in the description, they said that it always involved a gun. It was a misdemeanor if you didn't discharge the gun, and it was a felony if you discharge the gun. And so that's why I thought a gun was involved in that deadly conduct.
Q. And how long did it take you to realize that the deadly conduct statute might include a vehicle? It was any weapon. It didn't have to be a gun.
A. It was a long time after. It was after my initial attorneys got involved and they were able to get more information.
Q. So when you -- when they had first given you that cease and desist letter, did you still think that you were correct?
A. I did. I hadn't -- you know, I had no reason to believe that I was in error at that point.
Q. Right. Did they tell you specifically how you were wrong?
A. No. No.

On cross-examination, Defendant testified that she did not understand that her Facebook messages would be public. Defendant also testified that she did not know whether Ms. Austin was upset by her actions at the homeowners' association meeting. However, Defendant had testified at her deposition that she was able to observe that Plaintiffs were visibly upset.

At the close of trial, the Trial Court found certain of Defendant's statements tortious. The Trial Court then asked the parties to submit briefs on the recoverability of Mr. Austin's damages and whether a "failure to investigate" holding in *McCluen v. Roane County Times, Inc.*, 936 S.W.2d 936 (Tenn. Ct. App. 1996) impacted the recoverability of punitive damages. Along with their post-trial brief, Plaintiffs submitted a portion of Mr. Austin's deposition in support of an argument for loss of consortium,[3] which they had not pled.

In March 2024, the Trial Court entered its final order. The Trial Court found in Plaintiffs' favor, stating in significant part:

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[3] Mr. Austin testified in his deposition as follows:

> Q. Okay. Back to we originated this discussion talking about your damages, okay, and talking about you said the reputation was number one. You said there was a second one. The suffering, the pain and suffering.
> A. The pain and suffering, yes.
> Q. Discuss that, please.
> A. I had to somehow help my wife through a time that was unimaginable and unbearable. I cried. I didn't know what to do. I wanted to help her and she was devastated. She was in bed. The things that she had been doing in the community and the jobs that she was doing were vaporized.

The tort of defamation includes libel and slander. Slander is the speaking of defamatory words and libel is the publishing of defamatory words. To establish a prima facie case of defamation, a plaintiff must prove that: (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005) (citations omitted). There was no testimony that either Mr. or Mrs. Austin were public figures, therefore this Court finds that this is a claim for defamation to a "private figure" case and did not involve speech of public concern. T.P.I.—Civil 7.02, see comments regarding ordinary, nonprivileged defamation.

In this case, it is acknowledged that the statements at issue were published by Mrs. Plese to her Facebook account. There was undisputed testimony that Mrs. Plese has more than 2000 followers on Facebook. Mrs. Plese was an active participant on Facebook. The Court finds that the statements were published to third parties. *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50-52 (Tenn. Ct. App. 2013).

For a communication to be libelous, it must constitute a serious threat to the plaintiff's reputation. A libel does not occur simply because the subject of a publication finds the publication annoying, offensive or

embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element of disgrace. *Stones River Motors, Inc. v. Mid-South Publ'g Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App 1983) (citations omitted). See also, T.P.I.—Civil 7.01 "Defamation" Defined. (22nd edition, Sept. 2022).

Damages from false and misleading statements cannot be presumed; actual damages must be sustained and proved. *Davis v. Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). The Court must determine whether the record contains any material evidence of impairment of reputation and standing in the community, personal humiliation, or mental anguish and suffering. *Murray v. Lineberry*, 69 S.W.3d 560, 564 (Tenn. Ct. App. 2001).

Truth is a defense to a defamation claim.

The tort of false light was recognized as a separate tort by the Tennessee Supreme Court in the case of *West v. Media General Convergence, Inc.*, 53 S.W.3d 640 (Tenn. 2001). One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability if the false light would be highly offensive to a reasonable person and the actor had knowledge or acted in reckless disregard as to the falsity of the publicized matter. *Id*. at 643-644. See also, *Lee v. Mitchell*, 2023 WL 5286117 (Tenn. Ct. App., Aug. 17, 2023). In a false light claim, the facts may be true, but

the angle from which the facts are presented, or the omission of certain material facts resulting in placing the plaintiff in a false light. Id. at 646. The Court chose not to adopt actual malice as the appropriate standard for false light claims when asserted against a private individual about matters of private concern. In addition, our Supreme Court recognized that the right to privacy is a personal right. As such, it may not be asserted by a member of the individuals family. *Id*. at 648 (citing Section 6521 of the Restatement (Second) of Torts (1977)). Damages for false light must be specifically plead and proven. There must be actual damages, but the plaintiff need not prove special or out-of-pocket damages, as evidence of injury to standing in the community, humiliation, or emotional distress is sufficient. *West*, 53 S.W.3d at 648. Finally, the Court noted that the plaintiff may proceed under the alternative theories of libel or false light, or both although he or she can have but one recovery for a single instance of publicity. *West*, 53 S.W.3d at 647.

As a matter of law, the Court finds that the statement that "when servicemen or guest parked in the cul de sac, they were cussed out by Ron Austin" to not be defamatory and it did not meet the criteria to place the Plaintiff Ron Austin in a fault light. They may have been rude or disagreeable statements, but they did not rise to the level of defamation and did not cause a serious threat to Mr. Austin's reputation.

As to the statement, "Linda Austin pleaded guilty to the charge of Deadly Conduct in Texas. This explained my experience of being attacked in the cul de sac by the Austin family", the Court finds that the first part of the statement is not defamatory because it is true. However, since Mrs. Plese admitted in her deposition that she knew that Mrs. Austin was upset by the disclosure of her criminal charges to the HOA board, her further publication of the statement was intended to paint the Plaintiff Linda Austin in a false light. As to the second part, the Court finds that it is neither defamatory nor place the Plaintiffs in false light because it is admitted that Mr. Austin called Mrs. Plese white trash and cursed at her in the cul de sac which would be a verbal attack. There is no statement that Mrs. Plese states that she was physically attacked by Mr. Austin and the Court declines to read the word physical into the statement based upon the testimony of the parties and the postings in Facebook.

As to the statement that "The criminal check revealed that Linda Austin has a criminal record in Texas. They moved to Knoxville from Texas after she was arrested for Deadly Conduct with use of a gun", the Court finds the statement to be defamatory and to place Linda Austin in false light. The statement was defamatory because it was made with reckless disregard of the truth because Mrs. Plese admitted that she was not a lawyer and not capable of understanding the nuances of a

criminal statute and she made no effort to confirm the truthfulness of her statement. She did however know from her background report that Mrs. Austin pled to a misdemeanor charge and not a felony charge.

The Court does not find the testimony of Mrs. Plese to be credible that she did not understand who could see her posts on Facebook.

The Court does not find the testimony of Mrs. Plese to be credible when she testified that it did not cross her mind that her post might harm someone in the Austin family. This is particularly true in light of the known reaction of Mrs. Austin to the mug shot display by Mrs. Plese at the HOA meeting and then choosing to post to social media alleging a type of conviction without confirming the accuracy of the statement.

Damages

a. Damages for Linda Austin

The Court finds that Mrs. Plese defamed Mrs. Austin based upon the statements that were posted on Facebook. The Court finds that Mrs. Austin proved $5100 in medical expenses.

The Court finds that Ms. Plese's post on Facebook was distributed to all of her "friends" on Facebook and that Mr. Austin testified that based upon his review of her account she had at least 2000 friends who would have had access to the posting.

In addition, the Court finds that Mrs. Austin's testimony about the impact of the defamatory statements to be credible. Her testimony was supported by the testimony of her husband and her treating doctor and photographs that were used to illustrate her life before the posting of statements by Mrs. Plese and her life after the posting. She testified that the actions of Mrs. Plese triggered events from Mrs. Austin's past. She testified that after the posting, she was embarrassed and withdrawn and did not want to participate in daily life. Her husband testified that when he would leave to go out of town for business, he constantly worried that his wife was in such a dark place that she might be tempted to take her own life. For a significant period of time, her doctor testified that she had difficulty managing stress, suffered insomnia, and suffered from moments of despair and hopelessness. Although the Austins are not seeking any economic damage from the sale of their house in Knoxville and their subsequent move to Florida, it was clear that the move was connected to Mrs. Austin's relationship with her neighbor and the impact on Mrs. Austin's well-being. The Court recognizes that Mrs. Austin had preexisting mental health issues requiring therapy visits, the visits increased, and the emotions were more intensified during a period of time after the Facebook posting. Dr. Rigell testified that she was "isolating, experiencing nightmares and dissociative

experiences" based on the trauma caused by her neighbor.

Considering the notes provided by Dr. Rigell, the testimony of Mrs. Austin and in consideration of her pre-existing and continuing mental health issues, the Court finds that the charges for Dr. Brown between June of 2020 and December of 2021 and the treatment charges of Dr. Rigell from June 2020 through February 2020 to be treatment causally related to the actions of Mrs. Plese. Those medical expenses total $5100.00[.]

Based upon an evaluation of the credibility [of] the witnesses presented and the medical records, the Court finds that Mrs. Austin is entitled to damages for injury to her reputation and for emotional distress that were caused by the defamation of the Defendant. The Court awards damages to Mrs. Austin in the amount of $5100.00 in medical expenses, $20,000.00 in damages to her reputation and $25,000.00 for emotional distress for a total compensatory award to Linda Austin in the amount of $51,000.00.

In addition, the Court finds that Mrs. Austin has presented clear and convincing evidence of the malicious and reckless behavior of the Defendant in making the Facebook post. Mrs. Plese was aware of the emotional distress caused by the display of Mrs. Austin's mugshot at the HOA meeting in August of 2019, and without confirming the accuracy of a statement, she chose on June 1, 2020 to post to Facebook that Mrs. Austin had been

convicted of Dangerous Conduct with a gun even though the report she received indicated a conviction of Dangerous Conduct with an unidentified weapon. The Court finds that Mrs. Austin is entitled to an award of punitive damages in the amount of $25,000.00.

b. Damages for Ronald Austin

As previously, indicated the Court does not find that Mr. Austin proved a defamatory statement was made about him.

However, Mr. Austin testified at length about the significant impact of Mrs. Plese's defamatory Facebook post about his wife. Although a claim for consortium was not specifically pled, the Court notes that in discovery and in deposition he testified that an element of his damages was his consortium claim. He also testified at trial about the impact of his wife's depression and anxiety on his life, including his fear of leaving her alone because of her depression.

The Court finds that the pleadings should be amended to conform to the evidence and include Mr. Austin's claim for a loss of consortium. The Court finds that Mr. Austin is entitled to loss of consortium damages in the amount of $20,000.00.

IT IS THEREFORE ORDERED, for all the reasons set forth above, that Ronald and Linda Austin are entitled to an award of Compensatory Damages against the Defendant Angela Kay Plese in the amount of SEVENTY-SIX THOUSAND DOLLARS

> ($76,000.00) and to an award of Punitive Damages in favor of Linda Austin against Angela Plese in the amount of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00); for a total judgment in the amount of ONE HUNDRED ONE THOUSAND DOLLARS ($101,000) plus, statutory post-judgment interest. Costs are taxed to the Defendant for which execution may issue.

Defendant timely appealed to this Court.

Discussion

We restate and consolidate Defendant's issues as follows: 1) whether the Trial Court erred in finding Defendant liable for defamation and false light; 2) whether the Trial Court erred in awarding punitive damages against Defendant, including by failing to hold a separate proceeding pursuant to Tenn. Code Ann. § 29-39-104(a)(2) or clearly setting out sufficient reasoning to support punitive damages pursuant to Tenn. Code Ann. § 29-39-104(a)(4); 3) if Defendant is liable for defamation or false light, whether the Trial Court erred in its award of compensatory damages because Plaintiffs' damages were not caused by Defendant's defamation or false light; and 4) with regard to Mr. Austin, whether the Trial Court erred in awarding damages for loss of consortium, whether Defendant lacked sufficient notice of the claim prior to trial, and whether the Trial Court erred in amending the pleadings.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan*

v. Bogan, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). With respect to credibility determinations, the Tennessee Supreme Court has instructed:

> When it comes to live, in-court witnesses, appellate courts should afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility because trial courts are "uniquely positioned to observe the demeanor and conduct of witnesses." *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000). "[A]ppellate courts will not reevaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." *Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999); *see also Hughes v. Metro. Gov't of Nashville & Davidson Cnty.*, 340 S.W.3d 352, 360 (Tenn. 2011). In order for evidence to be clear and convincing, it must eliminate any "serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 221 (Tenn. 2009)). Whether the evidence is clear and convincing is a question of law that appellate courts review de novo without a presumption of correctness. *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478, 515 (Tenn. 2013), (citing *In re Bernard T.*, 319 S.W.3d

586, 596-97 (Tenn. 2010)), *cert. denied*, --- U.S. ----, 134 S.Ct. 224, 187 L.Ed.2d 167 (2013).

Kelly v. Kelly, 445 S.W.3d 685, 692-93 (Tenn. 2014).

We first address whether the Trial Court erred in finding Defendant liable for defamation and false light. We have articulated what constitutes a *prima facie* claim of defamation in Tennessee as follows:

> The elements of a prima facie case of defamation in Tennessee are: (1) the defendant published a statement with (2) "knowledge that the statement is false and defaming" to the plaintiff, or with "reckless disregard for the truth of the statement," or "negligence in failing to ascertain the truth of the statement." *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999) (citing RESTATEMENT (SECOND) OF TORTS § 580 B (1977), and *Press, Inc. v. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978)). In this context, " '[p]ublication' is a term of art meaning the communication of defamatory matter to a third person." *Quality Auto Parts Co., Inc. v. Bluff City Buick Co., Inc.*, 876 S.W.2d 818, 821 (Tenn. 1994); *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50 (Tenn. Ct. App. 2013). With slander, " 'publication' occurs when the defamatory matter is spoken." *Brown*, 428 S.W.3d at 50.
>
> This court has previously held:
>
> "For a communication to be libelous, it must constitute a serious threat to the plaintiff's reputation. A libel does not occur simply because the subject

> of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element 'of disgrace.' "

McWhorter v. Barre, 132 S.W.3d 354, 364 (Tenn. Ct. App. 2003) (quoting *Stones River Motors, Inc. v. Mid-South Publ'g Co., Inc.*, 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983)). Moreover, the damaging words must be false; "[i]f [the words] are true, or essentially true, they are not actionable, even though the published statement contains other inaccuracies which are not damaging." *Stones River*, 651 S.W.2d at 719; *see also Brown*, 428 S.W.3d at 50. The determination of "[w]hether a communication is capable of conveying a defamatory meaning" presents a question of law and is, thus, reviewed de novo. *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000).

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To make out a claim for defamation, a plaintiff must prove that "the defamation resulted in injury to the person's character and reputation." *Brown*, 428 S.W.3d at 50. In a defamation suit, damages cannot be presumed; rather, a plaintiff must sustain and prove actual damages. *Id.* at 51 (citing *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001)). As to damages, " 'the issue is whether the record contains any material evidence of

> impairment of reputation and standing in the community, personal humiliation, or mental anguish and suffering.' " *Id*. (quoting *Murray v. Lineberry*, 69 S.W.3d 560, 564 (Tenn. Ct. App. 2001)).

McGuffey v. Belmont Weekday Sch., No. M2019-01413-COA-R3-CV, 2020 WL 2754896, at *14, 17 (Tenn. Ct. App. May 27, 2020), *perm. app. denied Sept. 16, 2020*.

With respect to the separate tort of false light invasion of privacy, this Court has discussed as follows:

> Our Supreme Court has adopted the following definition of the tort of false light invasion of privacy:
>
> > "One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if
> >
> > (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
> > (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."
>
> *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 644 (Tenn. 2001) (quoting RESTATEMENT (SECOND) OF TORTS § 652E (1977)). In *West*, the Court "departed from the Restatement by stating that Tennessee does

> not require a plaintiff asserting a false light cause of action to prove actual malice unless the plaintiff is a public official or public figure." *Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at *7 (Tenn. Ct. App. Apr. 20, 2018). A private plaintiff must also show actual malice when asserting a claim concerning "a matter of public concern." *West*, 53 S.W.3d at 647; *Lewis v. News-Channel 5 Network, L.P.*, 238 S.W.3d 270, 303 (Tenn. Ct. App. 2007).
>
> ***
>
> Ms. McGuffey has failed to establish the element of damages necessary for a claim of false light invasion of privacy. For such a claim, she was required to show evidence of "injury to standing in the community, humiliation, or emotional distress." *West*, 53 S.W.3d at 648. In her argument regarding her false light claim, Ms. McGuffey asserts that the statements at issue "would make it difficult for her to secure employment in her field." Although she presented evidence of her earnings after her termination from employment at BWS, she did not substantiate a loss of standing in the community, humiliation, or emotional distress.

McGuffey, 2020 WL 2754896, at *17-18 (footnote omitted).

As to the Trial Court's false light findings, Defendant argues that her statement concerning Ms. Austin's conviction for deadly conduct was true and its implications were true. Defendant contends that

the Trial Court wrongly considered her motivation in publishing the statement in determining whether it cast Ms. Austin in a false light. She argues further that her statement about a gun having been used stemmed from a layperson's misunderstanding of the Texas statute. Defendant asserts that she did not act with reckless disregard as to the falsity of the publicized matter at issue. With respect to defamation, Defendant acknowledges having published a false statement about Ms. Austin but argues that she made a good faith effort to ascertain the truth. Defendant states further that Ms. Austin failed to show any damage to her reputation.

While Ms. Austin pled guilty to deadly conduct in Texas, Defendant's statements on Facebook omitted crucial context about her conviction. Namely, Ms. Austin pled guilty to deadly conduct to obtain a more favorable result for insurance purposes in her DUI case. While a DUI charge is a serious matter, Defendant's statements fundamentally distorted the truth about Ms. Austin's conviction in a manner highly offensive to a reasonable person. The import, or thrust, of Defendant's statements about deadly conduct and use of a gun was that Ms. Austin was violent or aggressive based on her conviction in Texas many years earlier. That is materially different from the truth, which is that Ms. Austin reached a plea deal in a DUI case and no gun was involved at all.

We are unpersuaded by Defendant's contention that she acted in good faith to ascertain the truth about Ms. Austin's conviction. We understand that Defendant is not a lawyer, and that the Texas statute is perhaps unfortunately named. Nevertheless, that Defendant is not a lawyer does not somehow shield

her from a false light claim. Acting on minimal information, Defendant published statements about Ms. Austin that, while true so far as the reference to the deadly conduct statute goes, badly warped the reality of Ms. Austin's Texas arrest. In so doing, Defendant acted with reckless disregard. Insofar as Defendant argues that Ms. Austin failed to allege or prove damages, we note the ample evidence from trial concerning Ms. Austin's medical bills, personal humiliation, and mental anguish and suffering. We conclude that Ms. Austin adequately alleged and proved damages. The evidence does not preponderate against the Trial Court's findings relative to false light.

Regarding defamation, Defendant's false assertion that Ms. Austin's offense involved the use of a gun was defamatory as it held Ms. Austin up to public hatred, contempt, or ridicule. While obviously there is nothing defamatory per se about the use of a gun, "deadly conduct with use of gun" changes the picture completely. That introduces an element of disgrace as there is broad societal hostility to gun crime. Defendant charged ahead and made her false statement about Ms. Austin on a slapdash and flimsy basis. Defendant acted with a reckless disregard for the truth, and Ms. Austin consequently incurred medical bills, personal humiliation, and emotional distress. *See Myers v. Pickering Firm, Inc.*, 959 S.W.2d 152, 164 (Tenn. Ct. App. 1997) ("The issue is whether the record contains any material evidence of impairment of reputation and standing in the community, personal humiliation, or mental anguish and suffering."). The evidence does not preponderate against the Trial Court's factual findings relative to defamation.

Defendant argues overall that finding her conduct tortious would have a chilling effect on speech, and that courts would have to patrol the internet. We disagree. This case involves the application of well-established Tennessee law on defamation and false light. That Defendant's tortious remarks about Ms. Austin were put on the internet as opposed to a bulletin board in a city square, for example, is not a defense. The same elements apply. We affirm the Trial Court in its finding Defendant liable for defamation and false light invasion of privacy.

We next address whether the Trial Court erred in awarding punitive damages against Defendant, including by failing to hold a separate proceeding pursuant to Tenn. Code Ann. § 29-39-104(a)(2)[4] or clearly setting out sufficient reasoning to support punitive damages pursuant to Tenn. Code Ann. § 29-39-104(a)(4).[5] This Court has discussed punitive damages as follows:

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[4] Tenn. Code Ann. § 29-39-104(a)(2) (West eff. July 1, 2013) provides:

> In an action in which the claimant seeks an award of punitive damages, the trier of fact in a bifurcated proceeding shall first determine whether compensatory damages are to be awarded and in what amount and by special verdict whether each defendant's conduct was malicious, intentional, fraudulent or reckless and whether subdivision (a)(7) applies[.]

[5] Tenn. Code Ann. § 29-39-104(a)(4) (West eff. July 1, 2013) provides:

> In all cases involving an award of punitive damages, the trier of fact, in determining the amount of punitive damages, shall consider, to the extent relevant, the

To be entitled to punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant "acted either (1) intentionally, (2) fraudulently, (3) maliciously, or (4) recklessly." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992). To meet the clear and convincing evidence standard, evidence must "leave[ ] 'no serious or substantial doubt about the correctness of the conclusions drawn.' " *Goff v. Elmo Greer & Sons Constr. Co., Inc.*, 297 S.W.3d 175, 187

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following: the defendant's financial condition and net worth; the nature and reprehensibility of the defendant's wrongdoing; the impact of the defendant's conduct on the plaintiff; the relationship of the defendant to the plaintiff; the defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm; the duration of the defendant's misconduct and whether the defendant attempted to conceal such misconduct; the expense plaintiff has borne in attempts to recover the losses; whether the defendant profited from the activity, and if defendant did profit, whether the punitive award should be in excess of the profit in order to deter similar future behavior; whether, and the extent to which, defendant has been subjected to previous punitive damage awards based upon the same wrongful act; whether, once the misconduct became known to defendant, defendant took remedial action or attempted to make amends by offering a prompt and fair settlement for actual harm caused; and any other circumstances shown by the evidence that bear on determining a proper amount of punitive damages. The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole[.]

> (Tenn. 2009) (quoting *Hodges*, 833 S.W.2d at 901 n.3). Punitive damages are intended to punish and deter similar future wrongs and "are available in 'cases involving only the most egregious of wrongs.' " *Sanford v. Waugh & Co., Inc.,* 328 S.W.3d 836, 849 (Tenn. 2010) (quoting *Hodges*, 833 S.W.2d at 901).

McGuffey, 2020 WL 2754896, at *19.

Defendant argues that the punitive damages award must be reversed because the Trial Court failed to bifurcate the proceedings as required by Tennessee law. Notably, Defendant did not request bifurcation in the Trial Court. Even still, we recognize a 2020 opinion by this Court in which we determined that bifurcation in punitive damage proceedings is mandatory pursuant to Tenn. Code Ann. § 29-39-104(a)(2), even in bench trials and whether requested or not. We stated:

> Despite the lack of caselaw addressing the issue, several authors have opined that bifurcation is now mandatory pursuant to the statute. *See, e.g.*, Gary A. Cooper, *Tennessee Handbook Series, Tennessee Forms for Trial Practice – Damages* § 2:1 (2019) ("The *Hodges* decision provided that if a defendant moved for bifurcation, trial involving a claim for punitive damages would be bifurcated. The Tennessee Civil Justice Act of 2011 requires bifurcation of compensatory and punitive damages, without mention of any requirement that a defendant must move for such bifurcation."); *Id*. at § 2:2 ("Effective October 1, 2011, a motion for bifurcation of trial involving a

claim for punitive damages is no longer required. The Act provides for bifurcation, without mention of the necessity of a motion."); Robert E. Burch, *Tennessee Handbook Series, Trial Handbook for Tennessee Lawyers* § 33:7 (2019) ("A trial in which punitive damages are sought shall be a bifurcated proceeding. . . ."); 8 *Tennessee Practice Series Pattern Jury Instructions Civil* 14.55A (2019 ed.) ("The statute requires bifurcation in Tenn. Code Ann. § 29-39-104(a)(2).").

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Returning to the language of the statute, it unequivocally states, "In an action in which the claimant seeks an award of punitive damages, *the trier of fact* in a bifurcated proceeding *shall* first determine whether compensatory damages are to be awarded and in what amount and by special verdict whether each defendant's conduct was malicious, intentional, fraudulent or reckless. . . ." Tenn. Code Ann. § 29-39-104(a)(2) (emphasis added). We conclude that this language is mandatory and that it applies to both jury trials and bench trials. Courts "presume that the General Assembly used every word deliberately and that each word has a specific meaning and purpose." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010). Based on the plain language of the statute, we decline the invitation to read the statute as mandating bifurcation only in a jury trial and not in a bench trial.

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> Because of the host of problems with the procedure employed and the lack of necessary findings, we deem it appropriate to vacate the award of punitive damages entirely. On remand, the proceedings should be conducted in two phases. First, the trial court should enter a revised order regarding its initial decision to *impose* punitive damages based on the evidence already presented at trial, clarifying whether it finds *by clear and convincing evidence* that Defendant acted intentionally, fraudulently, maliciously, or recklessly. If it does, the court must hold an additional hearing regarding the *amount* of punitive damages to be awarded, if any. Any additional order awarding punitive damages must address the statutory factors listed in Tennessee Code Annotated section 29-39-104.

Hudson, Holeyfield & Banks, G.P. v. MNR Hospitality, LLC, No. W2019-00123-COA-R3-CV, 2020 WL 4577483, at *10-11 (Tenn. Ct. App. Aug. 7, 2020), *no appl. perm. appeal filed* (emphases in original); *see also Hogue v. P&C Invs., Inc.*, No. M2021-01335-COAR3-CV, 2022 WL 17175608 , at *13 (Tenn. Ct. App. Nov. 23, 2022), *no appl. perm. appeal filed* ("In trials where punitive damages are sought, the proceedings must be bifurcated.").

For their part, Plaintiffs acknowledge the caselaw but argue that interpreting Tenn. Code Ann. § 29-39-104(a)(2) to require bifurcation even when no one requests it violates the separation of powers doctrine in that it unduly interferes with the judiciary's control of its own procedure. The State, in turn, filed a brief defending the constitutionality of Tenn. Code Ann.

§ 29-39-104(a)(2). However, we need not reach the constitutional question. Not all errors by trial courts rise to the level of reversible error. Rule 36 of the Tennessee Rules of Appellate Procedure provides that a final judgment "shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process." Tenn. R. App. P. 36(b). Even granting that Defendant is correct and the Trial Court erred in failing to bifurcate, Defendant does not articulate how she was prejudiced. It is wholly unclear how the result of this bench trial would have been more favorable to Defendant had the Trial Court conducted a separate hearing for punitive damages. That being so, any error by the Trial Court in failing to bifurcate proceedings for punitive damages was harmless in that it did not more probably than not affect the judgment or result in prejudice to the judicial process.

Next on this issue, Defendant argues that the Trial Court failed to sufficiently review the factors for an award of punitive damages under Tenn. Code Ann. § 29-39-104(a)(4). The Trial Court did not explicitly set out and discuss each factor. However, the statute provides for consideration of the listed factors "to the extent relevant." Tenn. Code Ann. § 29-39-104(a)(4) (West eff. July 1, 2013). Not every factor will prove relevant to every case. It is clear from the Trial Court's order what it found relevant based on the evidence, and that related to the evidence showing the maliciousness of Defendant's act. The Trial Court found that "Mrs. Austin has presented clear and convincing evidence of the malicious and reckless behavior of the Defendant in making the Facebook post."

The Trial Court found further that "Mrs. Plese was aware of the emotional distress caused by the display of Mrs. Austin's mugshot at the HOA meeting in August of 2019," and that "without confirming the accuracy of a statement, she chose on June 1, 2020 to post to Facebook that Mrs. Austin had been convicted of Dangerous Conduct with a gun even though the report she received indicated a conviction of Dangerous Conduct with an unidentified weapon." These findings, which the evidence does not preponderate against, fit with certain of the statute's factors, such as "the nature and reprehensibility of the defendant's wrongdoing; the impact of the defendant's conduct on the plaintiff; the relationship of the defendant to the plaintiff; the defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm[.]" Tenn. Code Ann. § 29-39-104(a)(4) (West eff. July 1, 2013). We find that the Trial Court adequately considered the factors for an award of punitive damages under Tenn. Code Ann. § 29-39-104(a)(4).

Lastly, Defendant argues that her conduct "did not rise to the level of reckless conduct as is required under the statute to permit the trial court to award punitive damages." The Trial Court found clear and convincing evidence "of the malicious and reckless behavior of the Defendant in making the Facebook post." The Trial Court found further that Defendant was aware of how upset Ms. Austin was at having her mugshot shown at the homeowner's association meeting. Defendant's actions toward Ms. Austin, her erstwhile neighbor, showed maliciousness. In addition, Defendant declined to timely retract her statements, only offering to do so a year later. Like the Trial

Court, we find that Defendant's conduct was sufficiently egregious to support an award of punitive damages by the standard of clear and convincing evidence. We affirm the Trial Court's award to Ms. Austin of punitive damages.

We next address whether the Trial Court erred in its award of compensatory damages because Plaintiffs' damages were not caused by Defendant's defamation or false light. On this issue, Defendant argues that there was no causal connection between the harm Ms. Austin suffered and the defamatory statements. As relevant to this issue, the Trial Court found:

> [T]he Court finds that Mrs. Austin's testimony about the impact of the defamatory statements to be credible. Her testimony was supported by the testimony of her husband and her treating doctor and photographs that were used to illustrate her life before the posting of statements by Mrs. Plese and her life after the posting. She testified that the actions of Mrs. Plese triggered events from Mrs. Austin's past. She testified that after the posting, she was embarrassed and withdrawn and did not want to participate in daily life. Her husband testified that when he would leave to go out of town for business, he constantly worried that his wife was in such a dark place that she might be tempted to take her own life. For a significant period of time, her doctor testified that she had difficulty managing stress, suffered insomnia, and suffered from moments of despair and hopelessness. Although the Austins are not seeking any

> economic damage from the sale of their house in Knoxville and their subsequent move to Florida, it was clear that the move was connected to Mrs. Austin's relationship with her neighbor and the impact on Mrs. Austin's well-being. The Court recognizes that Mrs. Austin had preexisting mental health issues requiring therapy visits, the visits increased, and the emotions were more intensified during a period of time after the Facebook posting. Dr. Rigell testified that she was "isolating, experiencing nightmares and dissociative experiences" based on the trauma caused by her neighbor.

There is no clear and convincing evidence that would serve to overturn the Trial Court's favorable assessment of Ms. Austin's credibility and her explanation of how Defendant's statements impacted her. Dr. Rigell's testimony further supports this causal connection. In short, Ms. Austin suffered personal humiliation, emotional distress, and incurred medical bills as a direct result of Defendant's tortious statements on Facebook. Defendant's attempt to argue that the actual cause was something other than the June 2020 Facebook posts is unavailing.

While there is evidentiary support for the Trial Court's findings with respect to medical bills, personal humiliation, and emotional distress, the same cannot be said for the Trial Court's $20,000 award to Ms. Austin for reputational damage. The record contains no evidence of reputational damage incurred by Ms. Austin. Plaintiffs argue that the evidence is circumstantial in nature. We disagree. The evidence shows that Ms. Austin suffered mentally and

emotionally, became withdrawn, and required additional medical treatment, but none of the evidence goes toward her external standing in the community—her reputation. We therefore vacate that portion of the Trial Court's judgment granting Ms. Austin $20,000 in reputational damage as there is simply no evidence in the record to support it. We affirm the remainder of the compensatory damages.

The final issue we address is whether, regarding Mr. Austin, the Trial Court erred in awarding damages for loss of consortium, whether Defendant lacked sufficient notice of the claim prior to trial, and whether the Trial Court erred in amending the pleadings. Plaintiffs did not assert loss of consortium in their complaint, but the Trial Court found that the pleadings should be amended to conform to the evidence and include a loss of consortium claim. Defendant states that she lacked sufficient notice of the claim. In response, Plaintiffs say that the claim was tried by implied consent. With respect to implied consent, this Court has stated:

> Tennessee Rule of Civil Procedure 15.02 creates an exception to the general rule that "[j]udgments awarded beyond the scope of the pleadings are void." *See Randolph v. Meduri*, 416 S.W.3d 378, 384 (Tenn. Ct. App. 2011) (footnote omitted). Rule 15.02 provides in pertinent part:
>
> > Amendments to Conform to the Evidence.—When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if

> they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

"Generally speaking, trial by implied consent will be found where the party opposed to the amendment knew or should reasonably have known of the evidence relating to the new issue, did not object to this evidence, and was not prejudiced thereby." *Hiller v. Hailey*, 915 S.W.2d 800, 804 (Tenn. Ct. App. 1995) (quoting *Zack Cheek Builders, Inc. v. McLeod*, 597 S.W.2d 888, 890 (Tenn. 1980)). As this Court has explained, "[t]rial by implied consent is not shown by the presentation of evidence that is relevant to an unestablished issue when that evidence is also relevant to the established issue." *Christmas Lumber Co. v. Valiga*, 99 S.W.3d 585, 593 (Tenn. Ct. App. 2002) (quoting *McLemore v. Powell*, 968 S.W.2d 799, 803 (Tenn. Ct. App. 1997)). "The determination of whether there was implied consent rests in the discretion of the trial judge, whose determination can be reversed only upon a finding of abuse." *Zack Cheek Builders, Inc. v. McLeod*, 597 S.W.2d 888, 891 (Tenn. 1980).

Jones v. Unrefined Oil Co., Inc., No. E2023-00272-COA-R3-CV, 2024 WL 2797073, at *8 (Tenn. Ct. App.

May 31, 2024), *no appl. perm. appeal filed*. Concerning the deferential abuse of discretion standard, our Supreme Court has stated that "[a]n abuse of discretion occurs when the trial court causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice." *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011). Our Supreme Court has explained that "the basis for recovery of loss of consortium is an 'interference with the continuance of a healthy and happy marital life and injury to the conjugal relation[.]'" *Yebuah v. Ctr. for Urological Treatment, PLC*, 624 S.W.3d 481, 489 (Tenn. 2021) (quoting *Tuggle v. Allright Parking Sys., Inc.*, 922 S.W.2d 105, 109 (Tenn. 1996)).

As relevant to this issue, the Trial Court found that "Mr. Austin testified at length about the significant impact of Mrs. Plese's defamatory Facebook post about his wife," and that "in discovery and in deposition he testified that an element of his damages was his consortium claim. He also testified at trial about the impact of his wife's depression and anxiety on his life, including his fear of leaving her alone because of her depression." Defendant argues on appeal that "a stressful, even painful, experience in a marriage is not sufficient to prove a loss of consortium claim," and further that "[Mr. Austin] did not testify or prove their communication, cooperation, or quality time suffered as a result of these events." We disagree with Defendant. Mr. Austin's testimony about the impact of Defendant's statements on his family life went squarely to the health and happiness of his marriage. It is evident from Mr. Austin's testimony that his marital life

suffered as a result of Defendant's defamatory statements, including to the point where he feared Ms. Austin might engage in self-harm. Mr. Austin's testimony about the impact of Defendant's statements on his married life did not relate to the other established claims at trial, yet there was no objection. We conclude that Defendant was put on sufficient notice of Mr. Austin's loss of consortium claim. Further, the evidence does not preponderate against the Trial Court's findings regarding damages for Mr. Austin's loss of consortium. We find no abuse of discretion in the Trial Court's determination that Mr. Austin's loss of consortium claim was tried by implied consent and that the pleadings should be amended to conform to the evidence.

As a final point on damages, the parties agree that the Trial Court made a mathematical error in its order. The Trial Court awarded Ms. Austin $20,000 for reputation damage, $25,000 for emotional distress, and $5,100 for medical expenses; punitive damages totaling $25,000; and $20,000 for Mr. Austin's loss of consortium claim. The Trial Court stated total damages as $101,000. However, the damages instead add up to $95,100. Because we vacate the Trial Court's award of $20,000 to Ms. Austin for reputation damage, this leaves a total of $75,100. We therefore modify the judgment to $75,100.

In sum, we vacate that portion of the Trial Court's judgment awarding Ms. Austin $20,000 for reputational damage as it is unsupported by evidence. We modify the Trial Court's judgment to $75,100. Otherwise, we affirm.

Conclusion

The judgment of the Trial Court is affirmed as modified, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed equally against the Appellant, Angela Kay Plese, and her surety, if any, and the Appellees, Ronald Austin and Linda Austin.

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D. MICHAEL SWINEY, CHIEF JUDGE

APPENDIX B

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

FILED
CHARLES D. SUSANO III
CLERK
2024MAR22 AM11:44

KNOX COUNTY CIRCUIT,
CIVIL SESSIONS
AND JUVENILLE COURTS

RONALD AUSTIN and LINDA AUSTIN,	)	
Plaintiffs	)	
v.	)	**No. 3-198-20**
ANGELA KAY PLESE	)	
Defendant	)	

FINAL ORDER

This matter was heard as a non-jury trial on September 21, 2023. After hearing the testimony of witnesses, the documentary and video evidence admitted at trial, the written stipulation of the parties and the agreement of the parties at the beginning of trial as to the statements at issue and after receiving supplemental briefs to address questions from the Court, the Court makes the following findings based on the evidence presented at trial.

Findings of Fact

The Plaintiffs and the Defendant were next door neighbors in the Lakecove subdivision in Knox County, Tennessee. The Defendant moved into her home in 2008. Plaintiffs moved into their home in 2016. A year later, the Plaintiffs purchased the vacant lot between them with an agreement that a house would not be built on the vacant lot.

Both parties have a driveway exiting into a cul de sac, as defined by the Merriam Webster Dictionary as "a street or passage closed at one end." In this case the end of the street is shaped like a "T". Plaintiffs have one driveway on Lot 10 of the subdivision, where their residence is located, and a second driveway on Lot 11, the vacant lot.

Plaintiffs installed a fence on their property that became a source of contention between Plaintiffs and Defendant.

At some point, the Plaintiffs also placed orange traffic cones that sat in the street in front of the Plaintiffs' driveway on the vacant lot. The cones became a source of contention between the parties.

In October of 2019, the HOA conducted a grievance hearing, challenging the location of the Plaintiffs' fence. At the conclusion of the hearing, the HOA determined that the fence was properly located and as approved by the HOA.

In response to things said at the hearing, Defendant showed members of the HOA information about a criminal conviction against Linda Austin. When Linda Austin saw her mug shot being shown to members of the HOA board, she was flooded with emotions and had to run out of the meeting. She testified that

the stress of the mugshot was so significant that she had no recollection of anything else other than fleeing the meeting to their car.

Mr. Austin testified and confirmed that his wife ran out of the meeting. He found her standing near their truck and she was wailing in a manner that he has never seen in their entire marriage.

On June 1, 2020, the Defendant placed a post on her Facebook page. The post contained a reference to the fact that she was a member of the Lakecove Subdivision and that she had attempted to make a post on their Neighborhood Facebook page for Memorial Day. The post had a picture of the American Flag, with an eagle and a link to Celine Dion singing God Bless America. The words "God Bless America" are in large text in the middle of the page. Her personal post states that the HOA blocked her post because of the HOA rule against religious posts.

Plaintiffs testified that the Defendant has more than 2000 Facebook Friends. Ron Austin testified that by his review, the Plaintiff posts 30-40 times a day. Defendant could not state how many Facebook Friends she has.[1]

After Defendant's post about her attempt to post a Memorial Day tribute, there were numerous comments, including comments from Defendant Angela

[1] The Court is aware that there is a technical difference between a post and the comments made to a post. However, for purposes of simplicity in this Order, the Court will use the term "post" to refer to statements made by Ms. Plese on Facebook whether generated as an original post or as a comment to a post.

Stroud Plese and comments on her comments. (See Trial Exhibit 13)

At the beginning of the trial the parties agreed that they were alleging the following statements found in the comments of Angela Plese's Facebook post, and stipulated to have been made by Angela Plese, (Trial Exhibit 13) were at issue:

1. When servicemen or guest parked in that area [the cul de sac where Ron Austin placed orange cones] they would often get cussed out by Ron [Austin].

2. I [Angela Plese] finally did a background check hoping I was just overreacting. The criminal check revealed that Linda Austin has a criminal record in Texas. They [Austins] moved to Knoxville from Texas after she was arrested for "Deadly Conduct" with use of gun. I [Angela Plese] realized my instincts were correct and I needed to protect myself from the Austin family.

3. Linda Austin pleaded guilty to the charges of Deadly Conduct in Texas. This explained my [Angela Plese] experience of being attacked in the cul de sac by the Austin family.

Ms. Plese alleges truth as a defense to statements 1 and 3. Ms. Plese acknowledges that the "use of gun" portion of the statement 2 was not true but that she has an explanation for her statement.

Mrs. Austin's family had lived in Knoxville but then moved to Texas and she and her family lived in Texas for 15 years. They moved from Texas to Ohio where they lived for two years. Mrs. Austin's sister

lived in Knoxville and was dying. Mr. Austin could work remotely so they decided to move back to Knoxville. They lived in Knoxville from 2016 to 2021. They currently reside in Florida.

Mrs. Austin enjoyed her life in Knoxville. She became active in the community including her work with Akima, a non-profit group. Photographic evidence was provided of her active involvement with her friends in Akima and her participation in fundraising events for charities. She also obtained her insurance license to work in Medicare insurance.

Mrs. Austin had a difficult childhood. Her father was an alcoholic and she had a strained relationship with her mother. She started counseling in her early 20s. When life got difficult, she would seek help. She was diagnosed with depression in her mid-30s and had been taking some form of medication for depression and/or anxiety since that time.

When she initially moved back to Knoxville, she saw psychiatrist, Dr. Jobson for her medication management. Shortly thereafter, Dr. Jobson retired, and her care was transferred to Dr. Rigell, a board-certified psychiatrist. She first saw Dr. Rigell in February of 2019. At that time, she was doing fairly well but had stress issues related to her sister's death and as a result of her husband's pulmonary embolism. She testified that she saw Dr. Rigell approximately 3 times per year and that she also saw Dr. Brown, a clinical psychologist on a regular basis. Dr. Rigell's notes state that prior to June 1, 2020, Ms. Austin was making progress and facing stress without much issue. There are no notes regarding the October 2019

HOA meeting, or any stress noted as a result of the mug shot display to the HOA board members.

Ms. Austin testified that she was arrested and charged with DUI after an accident in Texas. No one was injured in the accident. She testified that it was recommended that she enter a plea to a "deadly conduct" charge to avoid having the DUI charge impact her insurance. She testified that she was represented by an attorney, and he explained the deadly conduct charge to her. She testified that she was humiliated by the DUI arrest and that it was particularly disturbing to her considering her family's history with alcohol. She took her punishment and sought additional mental health treatment.

Ms. Austin testified that she learned of the June 1, 2020 post made by Ms. Plese from her husband who had received a screenshot of the post from a neighbor. She said that she and her family were devastated by the posts. She was humiliated. She thought people would be fearful of her. She was flooded with memories of the trauma of the DUI arrest. She began to isolate and stay in the house and did not go to any events with Akima because of the fear that people would think she had engaged in violence with a gun and did not want the attack on her reputation to impact the reputation of Akima.

She immediately contacted Dr. Rigell about the incident and the shame and stress she felt regarding the disclosure of her history by her neighbor. Instead of the normal three times a year visit with Dr. Rigell, she had two telephone visits in June of 2020 and then monthly visits from July to December of 2020. (Most of the early visits were telephone visits due to

COVID.) She also increased her visits with Dr. Brown. She said that things began to normalize for her by December of 2020, although she still had some anxiety and fears regarding her neighbor.

Ms. Austin stated that the posts made by Ms. Plese were humiliating because of what people would think of someone charged with a crime involving a gun.

Ms. Austin stated that they did not move from Texas to Knoxville. She stated that she was not arrested for deadly conduct with use of a gun. She admits she was arrested for a DUI in Texas and that she entered a plea to misdemeanor deadly conduct.

Dr. Rigell testified live at trial and confirmed his notes, diagnosis, and treatment of Ms. Austin. On June 4, 2020, Dr. Rigell notes that "Linda was blindsided by a neighbor. She is struggling with the impact of her neighbor's choice to post on Facebook about a DUI she had 16 years ago. It is impacting her self-worth and has been a horrible reminder of a difficult chapter. Sleep is stable". He recommended a follow-up with him in one week. On June 12, he reports that her sleep is stabilizing, and her mood is improving. He notes that she states that her neighbor's actions have impacted her standing at work. He also notes that she is concerned that this might impact her relationship with her insurance companies and impact credentialing at the end of the month. On June 18, she reports to Dr. Rigell that she is not doing as well as she thought. She reports that the actions of her neighbor have caused her to relive previous traumas and that she is having nightmares. On July 8, Dr. Rigell notes that she is making slow progress and is battling

real physical fatigue and sleep disruption because of the neighbor's actions. Mrs. Austin advised Dr. Rigell that they were taking legal action against Ms. Austin and that responding to legal events takes her back to the underlying event and notes she is worried about her safety. His December notes indicate that she was doing much better, and that Ms. Austin was excited about her future and moving forward. In February his notes reflect that she was returning to a every three months schedule of visits. By September she notes that they had sold their house and that they are generally doing okay with the transition. Their house in Lakecove sold in two weeks. In November of 2021, Dr. Rigell reports that she is doing much better. Sleep, mood, and outlook have all improved. (Notes of Dr. Rigell, Trial Exhibit 3). Dr. Rigell testified that the incident involving the posts by Ms. Austin was the cause of the increased frequency of visits with Dr. Rigell. He also testified that the medical bills of both Dr. Rigell and Dr. Brown were reasonable and necessary and were causally related to the actions of Ms. Plese in making the posts in June of 2020. Dr. Rigell also admitted that it is likely Mrs. Austin would have continued to be his patient, treated for depression and anxiety, without the June 2020 Facebook posting incident.

Dr. Rigell's initial notes indicate that Ms. Austin was seeing Dr. Brown every other week. Mrs. Austin testified, prior to any incident with Mrs. Plese, she was seeing Dr. Brown 2-3 times per month. No notes or records for the visits with Dr. Brown were introduced.

Medical bills were provided for the period of June 2020 through October of 2021 for Dr. Brown and June

2020 through August of 2022 for Dr. Rigell. (Trial Exhibit 5).

The written stipulation entered by the parties, entered as Trial Exhibit 8, indicate that no claim is being made for any economic damages from their move from Knoxville to Florida.

Mr. Austin confirmed that there had been animosity between his family and the neighbor, Ms. Plese for some time. He stated that the problems began when Ms. Plese removed survey stakes from his property. There were additional issues in August of 2019 involving parking in the cul de sac and cones that Mr. Austin placed in the cul de sac. He admits that he called Mrs. Plese white trash and cussed at her on one occasion.

Mr. Austin was present at the October 2019 HOA board meeting where Mrs. Plese disclosed the picture of Mrs. Austin's mug shot from her arrest in Texas. He said that his wife ran from the meeting, and he found her standing beside his truck. He stated that he never before had seen his wife crying so hard.

After the June 1, 2020 Facebook incident, Mr. Austin reviewed Mrs. Plese's Facebook posting and, by his count, she posted 30 or more posts per day. He also testified that her Facebook page indicated that Mrs. Plese had more than 2000 Facebook friends.

Mr. Austin testified that after the June 1, 2020 post, his family was devastated. His wife was back to facing a prior traumatic event. He testified that when he travelled for business that he was worried about leaving his wife alone because he was concerned that she would hurt herself. He testified that they left

Knoxville because of the damage the Defendant's behavior was causing to his family.

Neither Mrs. Austin nor Mr. Austin provided any testimony as to any specific economic loss, other than the evidence of the medical expenses placed in the record. No other witnesses testified as to any damage to reputation of Mr. Austin or Mrs. Austin.

Mrs. Plese is a cul de sac neighbor of the Austins. She and her family have resided in Lakecove subdivision since 2008 when there were no other neighbors. The Austins moved to Lakecove in 2016 and initially they had a good relationship. She would talk with Linda Austin and when Ms. Austin's husband was out of town for work, they visited each other's homes and went on kayak trips together. She agrees that the relationship between the two families has significantly deteriorated, and she eventually requested a meeting with the HOA board regarding the fence that the Austins built. She was unaware that Mr. Austin had received HOA permission for the fence as she had never been notified of the request.

A few days prior to the HOA meeting, Mrs. Plese visited a website that she identified as www.mylife.com. She paid a fee for a background check on the Austins. The website provided information that Linda Austin had a criminal record in Red River County, Texas. The date of the offense was listed as 08-05-2006 and the offense is listed as Deadly Conduct. The level is identified as "misdemeanor" and the disposition is identified as "sentenced".

Ms. Plese admits that she took information of the arrest to the October board meeting and showed the information to the HOA board. While at trial, Mrs.

Plese denied any knowledge that her conduct upset Mrs. Austin. In her deposition, she testified that she was aware the Austins were unhappy. She further testified that she could tell they were not happy right after Mrs. Plese tried to discuss the results of the background check report. (Exhibit 7, Plese Deposition designation, page 121).

At some point, Mrs. Plese took it upon herself to look up the statute in Texas for deadly conduct. She testified that she thought the statute indicated that the offense involved the use of a gun based on her review of the statute but admitted that she is not a lawyer and did not consult a lawyer for an interpretation of the statute. The Court takes judicial notice of the Texas statute at issue. Deadly conduct with a gun is a felony. Deadly conduct with an instrumentality, in Mrs. Austin's case, a vehicle, can be a misdemeanor offense. The "mylife" search by Mrs. Plese indicated that Ms. Austin plead guilty to a misdemeanor charge of deadly conduct.

Mrs. Plese admits that she made the June 1, 2020 posts on Facebook regarding the Austins.

Mrs. Plese testified that on several occasions before the June 1, 2020, the police were called. At one point, after she had called the police, she testified that Mr. Austin had prevented workman from parking in the cul de sac and was cursing the workers. Mrs. Austin affirmed a video of what has been designated by the parties as the boat incident. Someone was backing a trailer with a boat out of her driveway and was not doing so very successfully. Mrs. Plese moved some of the cones that had been placed in the cul de sac by Mr. Austin. She states that she was verbally attacked by

Ron Austin who called her white trash and cussed at her. There was no physical assault by Mr. Austin.

Mrs. Plese also acknowledges that she was aware of the issues Mrs. Austin had with anxiety and stress and even indicated that at some point she was concerned enough about Mrs. Austin that she contacted a friend to keep an eye on her because she was concerned Mrs. Austin might be suicidal.

Legal Analysis and Conclusions

The tort of defamation includes libel and slander. Slander is the speaking of defamatory words and libel is the publishing of defamatory words. To establish a prima facie case of defamation, a plaintiff must prove that: (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005) (citations omitted). There was no testimony that either Mr. or Mrs. Austin were public figures, therefore this Court finds that this is a claim for defamation to a "private figure" case and did not involve speech of public concern. T.P.I.—Civil 7.02, see comments regarding ordinary, non-privileged defamation.

In this case, it is acknowledged that the statements at issue were published by Mrs. Plese to her Facebook account. There was undisputed testimony that Mrs. Plese has more than 2000 followers on Facebook. Mrs. Plese was an active participant on Facebook. The Court finds that the statements were published to third parties. *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50-52 (Tenn. Ct. App. 2013).

For a communication to be libelous, it must constitute a serious threat to the plaintiff's reputation. A libel does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element of disgrace. *Stones River Motors, Inc. v. Mid-South Publ'g Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App 1983) (citations omitted). See also, T.P.I.--Civil 7.01 "Defamation" Defined. (22nd edition, Sept. 2022).

Damages from false and misleading statements cannot be presumed; actual damages must be sustained and proved. *Davis v. Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). The Court must determine whether the record contains any material evidence of impairment of reputation and standing in the community, personal humiliation, or mental anguish and suffering. *Murray v. Lineberry*, 69 S.W.3d 560, 564 (Tenn. Ct. App. 2001).

Truth is a defense to a defamation claim.

The tort of false light was recognized as a separate tort by the Tennessee Supreme Court in the case of *West. v. Media General Convergence, Inc.*, 53 S.W.3d 640 (Tenn. 2001). One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability if the false light would be highly offensive to a reasonable person and the actor had knowledge or acted in reckless disregard as to the falsity of the publicized matter. *Id.* at 643-644. See also, *Lee v. Mitchell*, 2023 WL 5286117 (Tenn. Ct. App., Aug. 17, 2023). In a false light claim, the facts may be true, but the angle from

which the facts are presented, or the omission of certain material facts resulting in placing the plaintiff in a false light. Id. at 646. The Court chose not to adopt actual malice as the appropriate standard for false light claims when asserted against a private individual about matters of private concern. In addition, our Supreme Court recognized that the right to privacy is a personal right. As such, it may not be asserted by a member of the individuals family. *Id.* at 648 (citing Section 6521 of the Restatement (Second) of Torts (1977)). Damages for false light must be specifically plead and proven. There must be actual damages, but the plaintiff need not prove special or out-of-pocket damages, as evidence of injury to standing in the community, humiliation, or emotional distress is sufficient. *West*, 53 S.W.3d at 648. Finally, the Court noted that the plaintiff may proceed under the alternative theories of libel or false light, or both although he or she can have but one recovery for a single instance of publicity. *West*, 53 S.W.3d at 647.

As a matter of law, the Court finds that the statement that "when servicemen or guest parked in the cul de sac, they were cussed out by Ron Austin" to not be defamatory and it did not meet the criteria to place the Plaintiff Ron Austin in a fault light. They may have been rude or disagreeable statements, but they did not rise to the level of defamation and did not cause a serious threat to Mr. Austin's reputation.

As to the statement, "Linda Austin pleaded guilty to the charge of Deadly Conduct in Texas. This explained my experience of being attacked in the cul de sac by the Austin family", the Court finds that the first part of the statement is not defamatory because it is true. However, since Mrs. Plese admitted in her

deposition that she knew that Mrs. Austin was upset by the disclosure of her criminal charges to the HOA board, her further publication of the statement was intended to paint the Plaintiff Linda Austin in a false light. As to the second part, the Court finds that it is neither defamatory nor place the Plaintiffs in false light because it is admitted that Mr. Austin called Mrs. Plese white trash and cursed at her in the cul de sac which would be a verbal attack. There is no statement that Mrs. Plese states that she was physically attacked by Mr. Austin and the Court declines to read the word physical into the statement based upon the testimony of the parties and the postings in Facebook.

As to the statement that "The criminal check revealed that Linda Austin has a criminal record in Texas. They moved to Knoxville from Texas after she was arrested for Deadly Conduct with use of a gun", the Court finds the statement to be defamatory and to place Linda Austin in false light. The statement was defamatory because it was made with reckless disregard of the truth because Mrs. Plese admitted that she was not a lawyer and not capable of understanding the nuances of a criminal statute and she made no effort to confirm the truthfulness of her statement. She did however know from her background report that Mrs. Austin pled to a misdemeanor charge and not a felony charge.

The Court does not find the testimony of Mrs. Plese to be credible that she did not understand who could see her posts on Facebook.

The Court does not find the testimony of Mrs. Plese to be credible when she testified that it did not cross her mind that her post might harm someone in

the Austin family. This is particularly true in light of the known reaction of Mrs. Austin to the mug shot display by Mrs. Plese at the HOA meeting and then choosing to post to social media alleging a type of conviction without confirming the accuracy of the statement.

Damages

a. Damages for Linda Austin

The Court finds that Mrs. Plese defamed Mrs. Austin based upon the statements that were posted on Facebook. The Court finds that Mrs. Austin proved $5100 in medical expenses.

The Court finds that Ms. Plese's post on Facebook was distributed to all of her "friends" on Facebook and that Mr. Austin testified that based upon his review of her account she had at least 2000 friends who would have had access to the posting.

In addition, the Court finds that Mrs. Austin's testimony about the impact of the defamatory statements to be credible. Her testimony was supported by the testimony of her husband and her treating doctor and photographs that were used to illustrate her life before the posting of statements by Mrs. Plese and her life after the posting. She testified that the actions of Mrs. Plese triggered events from Mrs. Austin's past. She testified that after the posting, she was embarrassed and withdrawn and did not want to participate in daily life. Her husband testified that when he would leave to go out of town for business, he constantly worried that his wife was in such a dark

place that she might be tempted to take her own life. For a significant period of time, her doctor testified that she had difficulty managing stress, suffered insomnia, and suffered from moments of despair and hopelessness. Although the Austins are not seeking any economic damage from the sale of their house in Knoxville and their subsequent move to Florida, it was clear that the move was connected to Mrs. Austin's relationship with her neighbor and the impact on Mrs. Austin's well-being. The Court recognizes that Mrs. Austin had preexisting mental health issues requiring therapy visits, the visits increased, and the emotions were more intensified during a period of time after the Facebook posting. Dr. Rigell testified that she was "isolating, experiencing nightmares and dissociative experiences" based on the trauma caused by her neighbor.

Considering the notes provided by Dr. Rigell, the testimony of Mrs. Austin and in consideration of her pre-existing and continuing mental health issues, the Court finds that the charges for Dr. Brown between June of 2020 and December of 2021 and the treatment charges of Dr. Rigell from June 2020 through February 2020 to be treatment causally related to the actions of Mrs. Plese. Those medical expenses total $5100.00

Based upon an evaluation of the credibility or the witnesses presented and the medical records, the Court finds that Mrs. Austin is entitled to damages for injury to her reputation and for emotional distress that were caused by the defamation of the Defendant. The Court awards damages to Mrs. Austin in the amount of $5100.00 in

medical expenses, $20,000.00 in damages to her reputation and $25,000.00 for emotional distress for a total compensatory award to Linda Austin in the amount of $51,000.00.

In addition, the Court finds that Mrs. Austin has presented clear and convincing evidence of the malicious and reckless behavior of the Defendant in making the Facebook post. Mrs. Plese was aware of the emotional distress caused by the display of Mrs. Austin's mugshot at the HOA meeting in August of 2019, and without confirming the accuracy of a statement, she chose on June 1, 2020 to post to Facebook that Mrs. Austin had been convicted of Dangerous Conduct with a gun even though the report she received indicated a conviction of Dangerous Conduct with an unidentified weapon. The Court finds that Mrs. Austin is entitled to an award of punitive damages in the amount of $25,000.00.

b. Damages for Ronald Austin

As previously, indicated the Court does not find that Mr. Austin proved a defamatory statement was made about him.

However, Mr. Austin testified at length about the significant impact of Mrs. Plese's defamatory Facebook post about his wife. Although a claim for consortium was not specifically pled, the Court notes that in discovery and in deposition he testified that an element of his damages was his consortium claim. He also testified at trial about the impact of his wife's depression and anxiety on his life, including his fear of leaving her alone because of her depression.

The Court finds that the pleadings should be amended to conform to the evidence and include Mr. Austin's claim for a loss of consortium. The Court finds that Mr. Austin is entitled to loss of consortium damages in the amount of $20,000.00.

IT IS THEREFORE ORDERED, for all the reasons set forth above, that Ronald and Linda Austin are entitled to an award of Compensatory Damages against the Defendant Angela Kay Plese in the amount of SEVENTY-SIX THOUSAND DOLLARS ($76,000.00) and to an award of Punitive Damages in favor of Linda Austin against Angela Plese in the amount of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00); for a total judgment in the amount of ONE HUNDRED ONE THOUSAND DOLLARS ($101,000) plus, statutory post-judgment interest. Costs are taxed to the Defendant for which execution may issue.

Enter this 22 day of March, 2024

APPENDIX C

FILED
08/07/2025
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

RONALD AUSTIN ET AL. V. ANGELA KAY PLESE

Circuit Court for Knox County
No. 3-198-20

No. E2024-00586-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Angela Kay Plese and the record before us, the application is denied.

PER CURIAM