

MEMORANDUM DECISION

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APPELLANT *PRO SE*

Sherrie Mitchell
Morgantown, Indiana

IN THE COURT OF APPEALS OF INDIANA

Sherrie Mitchell,
Appellant-Defendant,

v.

Christine Buccos,
Appellee-Plaintiff

December 6, 2023

Court of Appeals Case No.
23A-SC-1089

Appeal from the Brown Circuit
Court

The Honorable Frank Nardi,
Magistrate

Trial Court Cause No.
07C01-2102-SC-000008

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

- [1] Sherrie Mitchell appeals pro se following the trial court's judgment in favor of Christine Buccos. Mitchell raises four issues for our review, which we

consolidate and restate as whether the trial court clearly erred when it entered judgment in favor of Buccos. We affirm.

Facts and Procedural History

- [2] In 2015, Mitchell moved into a house near property owned by Shady Oaks Lake, LLC (“Shady Oaks”) in Brown County, Indiana. Buccos inherited Shady Oaks from her father, and she began running the business after he died. On one portion of Shady Oaks’s property, the company operated a mobile home park and rented lots to mobile home owners. On a second portion of the property, Shady Oaks operated a logging business. Buccos’s son also lived in a house on Shady Oaks’ property. Buccos regularly paid Shady Oaks’s property taxes, and she never received a notice from any governmental entity alleging she was delinquent in making such payments.
- [3] On October 1, 2019, Mitchell filed a zoning complaint against Buccos alleging the zoning designation for Shady Oaks’s property did not allow for operation of a logging business. The Brown County Plan Commission investigated the complaint and found it to be true. Buccos then petitioned the Plan Commission for a special exemption to allow Shady Oaks to continue operating the logging business, and the Plan Commission granted the special exemption approximately two years later.¹

¹ The exact date the Plan Commission granted the special exemption is not in the record.

[4] On February 7, 2021, the Brown County Democrat, a newspaper based in Nashville, Indiana, posted an article to the newspaper's Facebook page with the headline: "Middle school reorganization plan proposed to save money[.]" (Ex. Vol. I at 4.) Christina Buccos commented on the article:

Omg you all wonder why people don't move to Brown County everything is always negative. I know since I pay taxes in Marion County we are not the highest in taxes. I have internet my [sic] not be the fastest but I have it.

(*Id.* at 5.)

[5] Mitchell replied to Buccos's comment by saying:

Christina Buccos you are wrong. Try reading the newspaper.

Christina Buccos not to mention, you are not even paying your fair share of property taxes. You haven't paid property taxes on that log cabin and all those trailers with year long residents in them. Of course you love it here, everyone else is paying your property taxes because the government offices around here are protecting you from any accountability. It's disgusting.

(*Id.* at 7.) Buccos responded to Mitchell's reply:

False accusations again I pay every bit of my taxes and then some and by the way this is about Brown County Schools not my personal things.

(*Id.*) Mitchell then posted:

Christina Buccos you do not. It's too bad I can't post pictures here. We could take a look at your property card right now. Here is the list of the laws you break in this county and get away with.

1. You are operating an industrial park inside of a residential district. Illegal. What is being done about it? Nothing.
2. You have 2 of your kids living in houses/trailers on your property that you pay no taxes on. Illegal.
3. You have way more than 13 acres of commercial property that do [sic] you do not pay commercial taxes on. Illegal.
4. Frost law violations. Loaded log trucks driving on this 16 ft. wide road during January 16th to April 15th. Illegal. How are you weighing these trucks?

All of this is happening and no one in government is doing a thing to stop it.

If my claims are false, sue me. I would love to prove you wrong again.

(*Id.* at 8.) Residents of the mobile home park and some of Buccos's former classmates contacted Buccos after viewing Mitchell's posts and asked her if she was paying her taxes. Mitchell's statements caused Buccos to feel "[v]ery embarrassed." (Tr. Vol. II at 24.)

[6] On February 9, 2021, Buccos filed a notice of claim and summons. Following extensive motion practice by the parties, the small claims court held a bench

trial on February 2, 2023. At trial, Buccos submitted statements from the Brown County Treasurer's Office that reflected Shady Oaks's property tax payments were current as of February 2021. On March 2, 2023, the trial court issued an order entering judgment in favor of Buccos for \$500 plus costs. In the order, the trial court found:

15. The defendant's statements can be broken down into two separate categories. Some of the defendant's statements are criticisms of local government based upon her belief that government officials were not assessing plaintiff's real estate taxes correctly and upon her belief that government was allowing the plaintiff to operate a business in violation of the Brown County zoning ordinance. These statements in essence, express defendant's opinion that plaintiff was not assessed her fair share of taxes and that in this regard, local government was not acting appropriately. While these statements were directed at the plaintiff, they are not defamatory insofar as they do not accuse the plaintiff of doing anything other than possibly being the beneficiary of government action or inaction.

16. The other category of statements made by the defendant do accuse the plaintiff of violating the law and of misconduct in plaintiff's trade, profession, or occupation. The defendant accused the plaintiff of "Illegal" acts in several different areas and specifically accused the plaintiff of not paying her taxes. These allegations are separate and distinct from defendant's statements that plaintiff wasn't assessed her fair share of taxes and specifically accuse the plaintiff of not paying the taxes that she was assessed. . . . The defendant also stated that plaintiff did not pay taxes on the trailers located on her property, although the evidence shows that the plaintiff did not own the trailers because they were *owned by the tenants renting* her property and would therefore owe no taxes on those trailers. The defendant stated that the plaintiff was illegally not paying taxes on all of her

commercial property, while the evidence shows that plaintiff paid what she was assessed. These statements of the defendant that the plaintiff was not paying her taxes . . . were defamatory per se and were false. The evidence clearly shows that the defendant published the statements and that they were viewed by other individuals.

* * * * *

19. The Court finds that the plaintiff has proven that the defendant acted with malice when she made the defamatory statements. . . . The defendant did not just allege that plaintiff's property was improperly assessed, she accused the plaintiff of breaking the law by not paying taxes . . . and implied that plaintiff had hidden property from the taxing authority. The defendant did not present any evidence that the plaintiff hid improvements on her property from the government officials who determine tax assessments or that government officials were misled by the plaintiff in determining the amount of taxes due from the plaintiff. The evidence does not support the conclusion that plaintiff hid property from the taxing authority. but [sic] does show that she paid the taxes that were due and owing. The defendant did present evidence that plaintiff's property was recently re-assessed and modifications were made to the assessed values regarding her property, however there was no evidence to indicate that the prior assessments were improper or that the plaintiff owed delinquent taxes.

20. The plaintiff did not prove any special damages as the result of defendant's statements, however she did present evidence that some of the individuals who rent camping spaces from her questioned whether she was actually paying her taxes based upon defendant's statements and whether their rentals were in jeopardy. The evidence tends to show that plaintiff suffered embarrassment and humiliation based upon defendant's

statements. As noted already, damages are presumed when statements are defamatory per se.

(App. Vol. II at 12-14) (emphasis in original). On March 28, 2023, Mitchell filed a “Motion to Reconsider (Correct Error).” (*Id.* at 15.) The trial court denied Mitchell’s motion on April 18, 2023.

Discussion and Decision

- [7] Initially, we note Buccos did not file an appellee’s brief. “When an appellee fails to file a brief, we may reverse the trial court’s decision if the appellant demonstrates a prima facie case of reversible error. Prima facie means at first sight, on first appearance, or on the face of it.” *Bergman v. Zempel*, 807 N.E.2d 146, 149 (Ind. Ct. App. 2004) (internal citation and quotation marks omitted).
- [8] Moreover, Mitchell proceeds on appeal pro se. We hold pro se litigants to the same standard as trained attorneys and afford them no inherent leniency because of their self-represented status. *Zavodinik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). “We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.” *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016) (internal quotation marks omitted), *reh’g denied, trans. denied*. In addition, “pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh’g denied*.

[9] We will not reverse a small claims court’s judgment unless it is clearly erroneous. *Spainhower v. Smart & Kessler, LLC*, 176 N.E.3d 258, 264 (Ind. Ct. App. 2021), *reh’g denied, trans. denied*. Thus, a party appealing from a negative small claims court judgment “must establish that the evidence is without conflict and, as a whole, unmistakably and unerringly points to a conclusion contrary to the trial court’s judgment.” *Id.* This standard of review “is particularly deferential in order to preserve the speedy and informal process for small claims.” *Heartland Crossing Found. Inc. v. Dotlich*, 976 N.E.2d 760, 762 (Ind. Ct. App. 2012). “The small claims court is the sole judge of the evidence and the credibility of witnesses, and on appeal we neither reweigh the evidence nor assess the credibility of the witnesses.” *Id.* While Indiana Trial Rule 52(A), which governs the effect of findings of fact entered by the trial court, does not apply in small claims proceedings, a small claims court’s findings, while not binding, are nevertheless helpful to this court in reviewing the judgment. *Kalwitz v. Kalwitz*, 934 N.E.2d 741, 748 (Ind. Ct. App. 2010). However, we review the court’s conclusions of law de novo. *Herren v. Dishman*, 1 N.E.3d 697, 702 (Ind. Ct. App. 2013).

[10] “Although free speech is vigorously protected, a statement will not be afforded constitutional protection if it is defamatory.” *In re Ind. Newspapers, Inc.*, 963 N.E.2d 534, 549 (Ind. Ct. App. 2012). “A defamatory communication is one that tends to harm a person’s reputation by lowering the person in the community’s estimation or deterring third persons from dealing or associating with the person.” *Baker v. Tremco, Inc.*, 917 N.E.2d 650, 657 (Ind. 2009). A

plaintiff must prove four elements to succeed on a defamation claim: “(1) communication with defamatory imputation; (2) malice; (3) publication; and (4) damages.” *Bd. of Trs. of Purdue Univ. v. Eisenstein*, 87 N.E.3d 481, 499 (Ind. Ct. App. 2017), *trans. denied*. “Any statement actionable for defamation must not only be defamatory in nature, but false.” *Trail v. Boys & Girls Clubs of N.W. Ind.*, 845 N.E.2d 130, 136 (Ind. 2006). “Actual malice, as an element of the tort of defamation, exists when the defendant publishes a defamatory statement with knowledge that it was false or with reckless disregard of whether it was false or not.” *McCullough v. Noblesville Schs.*, 63 N.E.3d 334, 348 (Ind. Ct. App. 2016) (internal quotation marks omitted), *trans. denied*. “Damages are presumed even without proof of actual harm to the plaintiff’s reputation if the communication is defamatory per se.” *Lovings v. Thomas*, 805 N.E.2d 442, 447 (Ind. Ct. App. 2004). “A communication is defamatory per se if it imputes: (1) criminal conduct; (2) a loathsome disease; (3) misconduct in a person’s trade, profession, office, or occupation; or (4) sexual misconduct.” *Kelley v. Tanoos*, 865 N.E.2d 593, 596 (Ind. 2007).

[11] Here, Mitchell accused Buccos of not paying her “fair share of property taxes.” (Ex. Vol. I at 5.) Mitchell specifically accused Buccos of not paying property taxes on the house where her son lived and on the trailers in the mobile home park. However, Buccos had paid all the property taxes Shady Oaks owed, including the taxes associated with her son’s house and the lots Shady Oaks rented to the mobile home park tenants. The tenants were responsible for paying the taxes associated with their mobile homes. When Buccos replied to

Mitchell's comment by saying she paid all the taxes she owed, Mitchell responded: "Christina Buccos you do not." (*Id.* at 8.) Mitchell also referenced looking at Buccos's "property card," (*id.*), which implied that she had viewed Buccos's property tax records. However, Mitchell's statements were not true because Buccos was current on her taxes and her tax records did not reflect any delinquency.

[12] Residents of Brown County viewed Mitchell's false Facebook posts and asked Buccos about them, causing Buccos embarrassment. Mitchell asserts she was merely criticizing the Brown County government in her posts and "[i]t was the Court and the plaintiff that made Mitchell's statements defamatory and false by creating innuendos." (Appellant's Br. at 18.) However, Mitchell specifically directed her posts to Buccos and the plain, ordinary meaning of Mitchell's posts indicated she was accusing Buccos of not paying her property taxes. Thus, we hold the trial court did not clearly err when it ruled in favor of Buccos. *See, e.g., Glasscock v. Corliss*, 823 N.E.2d 748, 754 (Ind. Ct. App. 2005) (holding statement by executive falsely accusing former employee of theft constituted defamation *per se*), *reh'g denied, trans. denied*.

Conclusion

[13] Mitchell wrote public social media posts falsely accusing Buccos of not paying her property taxes, and therefore, the trial court did not clearly err when it entered judgment in favor of Buccos on Buccos's defamation claim. We affirm the trial court.

[14] **Affirmed.**

Bailey, J., and Felix, J., concur.