

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 98-1543

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DANIEL JANUSZ,

PLAINTIFF-APPELLANT,

V.

**BRYAN J. OLEN AND SCHOOL DISTRICT OF
CUDAHY SCHOOL BOARD,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
JACQUELINE D. SCHELLINGER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Daniel Janusz appeals from an order granting summary judgment to Bryan J. Olen and the School District of Cudahy School Board, dismissing Janusz's complaint alleging slander. Janusz claims the trial court erred in granting the motion because this case constituted slander per se.

Because Janusz admitted that the slander did not damage his reputation “at the present time,” the trial court’s decision granting summary judgment was correct, albeit for the wrong reasons. Accordingly, we affirm.

BACKGROUND

¶2 Janusz filed this action alleging slander after he discovered that Olen, a member of the Cudahy School Board, made the following statement during a school board meeting on January 22, 1996: “Dan Janusz, the son of former board member Marion Janusz, worked for the district in maintenance, but he was such a bad worker that we had to fire him.”

¶3 Janusz is a 1991 graduate of Cudahy High School. When he was a freshman there, he worked part-time for the Cudahy School District in the maintenance department as a custodial assistant. In 1993, Janusz left his employment with the school district of his own accord to look for a different job. In 1994, he began working with Midwest Express Airlines as a part-time customer service representative. He also enrolled as a full-time student at Cardinal Stritch College to pursue a degree in elementary/middle school education.

¶4 After learning that Olen made the statement, Janusz’s mother, Marion, requested that Olen retract the statement. He refused. Janusz filed the instant lawsuit. Discovery, including Janusz’s deposition, was conducted. During his deposition, Janusz was asked: “Since January 1996, do you believe that as a result of what Mr. Olen was alleged to have said, your reputation has actually been injured?” Janusz responded: “At the present time, no.”

¶5 Olen and the school board filed a motion for summary judgment. The trial court granted the motion, ruling that the “statement at issue in this case is

not sufficiently disparaging such that it is peculiarly harmful to one engaged in the teaching profession, absent proof of special damages.” Because Janusz failed to demonstrate that he had suffered any special damages, the trial court dismissed the complaint. Janusz now appeals.

ANALYSIS

¶6 This appeal arises from the grant of summary judgment. The standards for reviewing such a case are well known and will not be repeated here. *See Larson v. Kleist Builders, Ltd.*, 203 Wis. 2d 341, 345, 553 N.W.2d 281 (Ct. App. 1996). Our review is *de novo*. *See id.*

¶7 Janusz’s claim is that his case falls into the “slander per se” category, so it does not matter that he did not prove any special damages.

Slander, originally, was not actionable without proof of actual damage of a pecuniary nature, called special damages, but by the nineteenth century it was established that some kinds of slander were actionable without proof of damages which would be presumed from the character of the defamatory language. Such slander was thus actionable *per se* and consisted of an imputation of certain crimes or of a loathsome disease, or affecting the plaintiff in his business, trade, profession, or office, and of unchastity to a woman.

Martin v. Outboard Marine Corp., 15 Wis. 2d 452, 459, 113 N.W.2d 135 (1962) (citation omitted). “All other slander ... no matter how obvious or apparent, [is] not actionable without alleging and proving special damages.” *Id.*

¶8 We need not reach the issue of special damages, however, because Janusz conceded that the statement has not affected his reputation “at the present time.” A publication is libelous or slanderous if it “tends so to harm the reputation of another so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Voit v. Madison*

Newspapers, Inc., 116 Wis. 2d 217, 222, 341 N.W.2d 693 (1984) (citation and emphasis omitted).

¶9 The elements necessary to prove a slander claim are: (1) a false statement was made; (2) the statement was communicated by speech to a third person; (3) the communication was unprivileged and tended to harm one's reputation or lower him in the community. *See* WIS JI—CIVIL 2500. Janusz has conceded that the third element of a slander claim has not yet occurred. He admitted that Olen's statement had not affected his reputation at the time of the deposition. Accordingly, his claim fails, regardless of whether the statement constituted slander per se.¹

¶10 Janusz focuses his argument on challenging the trial court's reasoning that the statement did not affect his profession because it was not "disparaging enough." He contends that a jury should decide this question. He suggests that the status of Olen as an elected school board member draws more attention to the statement. He argues that the fact that he wants to be a teacher in the Cudahy School District makes Olen's statement more harmful than otherwise. He claims that Olen should not be allowed to make a false statement without repercussions. Although we can sympathize with Janusz's position, his admission that his reputation had not been injured means that he has no claim.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ The motion seeking costs on the basis that this appeal is frivolous is denied.

