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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ISHMAEL TEMPLE, Plaintiff and Respondent, v. ODELL BECKHAM, JR., et al., Defendants and Appellants.	B292583 (Los Angeles County Super. Ct. No. BC699092)

APPEAL from an order of the Superior Court of Los Angeles County. Mitchell L. Beckloff, Judge. Reversed.

Resch Polster & Berger, Andrew V. Jablon and Stacey N. Knox for Defendants and Appellants.

Nsahlai Law Firm and Emmanuel Nsahlai for Plaintiff and Respondent.

Odell Beckham, Jr., (Beckham) and Daniel E. Davillier (Davillier) (collectively Beckham Defendants) appeal the order denying their special motion to strike pursuant to Code of Civil Procedure section 425.16[1] with respect to the defamation and false light causes of action asserted by Ishmael Temple (Temple). We reverse because Temple failed to establish a probability of prevailing on his claims.

FACTS

It is undisputed that Beckham is a famous professional football player who is employed in the National Football League. Temple sued Beckham based on two allegations: First, persons in Beckham's employ assaulted Temple while at a party at Beckham's home. Second, Beckham interfered with Temple's business relationships with other celebrities by telling them not to hire Temple. Against Beckham, Temple alleged causes of action for negligence, intentional and negligent infliction of emotional distress, negligent hiring/supervision, intentional interference with prospective economic advantage, and premises liability. As alleged, Temple incurred over $18,000 in medical bills. He sought, inter alia, $5 million in damages related to premises liability and $1 million related to the business tort.

On March 23, 2018, members of the national media contacted Davillier and asked for a statement regarding Temple's lawsuit against Beckham. Sports Illustrated released an article online noting that, per a report from TMZ, Beckham was being sued "by a man who claims he was assaulted [by Beckham's

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[1] Section 425.16 is known at the anti-SLAPP statute. (*Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177, 1180.) "SLAPP is an acronym for strategic lawsuit against public participation." (*Id.* at p. 1180, fn. 1.)

security team.]" The article represented that Davillier issued the following statement:

"This is getting old. The filing is full of falsehoods and misinformation, and Mr. Beckham's legal team is fully prepared to vigorously defend against these outlandish and unsubstantiated claims. Mr. Beckham denies any business or other relationship with plaintiff, and further denies any wrongdoing whatsoever.

"[Temple] has expressly acknowledged in his own lawsuit that [Beckham] never once touched him; and yet, [Beckham] is being sued for an alleged altercation that definitively did not involve him at all. In January, 2018, [Temple] arrived drunk and belligerent at a third-party private residence at which [Beckham] was also present, among others. [Temple] made threatening remarks to several attendees, at which point he was repeatedly asked to leave. When he refused, and aggressively threatened yet another attendee, he was involved in a fight with that person. The situation was diffused, and [Temple] was escorted off the premises.

"Even though [Temple] agrees that [Beckham] was in no way involved in the physical altercation, . . . he nevertheless demanded money from [Beckham], and has now filed a meritless lawsuit against him. Veteran attorney [Davillier] . . . said that they are confident that [Beckham] has no legal liability to [Temple], and they have no intention of giving in to what amounts to a shakedown attempt. 'This guy claims somebody assaulted him to near death, but there's no police report, no hospital record, no evidence of an actual injury, and he asserts that [Beckham] is responsible. This is clearly a frivolous lawsuit. We'll see him in court.'"

Temple amended his complaint to allege causes of action for defamation and false light against Beckham and Davillier based on Davillier's statement to the media. Per the allegations in both causes of action, the statements conveyed that Temple "is a liar, an extortionist, a fraudster, [a] drunk, [an] attacker," that he was demanding money from Beckham, and that Temple "is someone who should not be trusted, and that his claims" are a shakedown attempt.

The Beckham Defendants filed a special motion to strike pursuant to Code of Civil Procedure section 425.16. They argued that Davillier's statements fell within the true report privilege in Civil Code section 47, subdivision (d), and they did not have defamatory meaning. Also, they argued that Temple is a limited purpose public figure, that he had to show actual malice, and he could not establish that element. Finally, they argued that Temple did not establish harm for purposes of the false light cause of action. In his opposition, Temple argued that the special motion to strike was frivolous and he should be awarded his attorney fees.

The trial court denied the motion. It concluded that Temple established a probability of showing that he was defamed by Davillier's statements concerning the nonexistence of hospital records, actual injury to Temple, his state of being drunk and belligerent, and his threats to party attendees. The trial court did not award attorney fees.

This appeal followed.

DISCUSSION

The denial of an anti-SLAPP motion is de novo. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.)

There is a two-prong analysis when a trial court rules on a special motion. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) First, the moving party must make an initial showing that the anti-SLAPP statute applies to the claims that are the subject of the motion. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 819.) If the moving party does so, the motion will be granted unless the court determines that the plaintiff has established a probability of prevailing on the claim. (*DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 567–568.) Our Supreme Court has described the second prong as a summary-judgment-like procedure. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 385.)

We turn to the issues below.

I. Prong One Analysis.

Temple contends that Davillier's statements do not constitute protected activity because either the Beckham Defendants conceded that they were illegal, or illegality was conclusively established by the evidence. (*Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1366, 1367 [illegal activity is not protected under the anti-SLAPP statute]; *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320 [activity is not protected under the anti-SLAPP statute if the defendant concedes it is illegal or illegality is conclusively established by the evidence].) In support, Temple claims that he was assaulted and battered by Beckham (as well as Beckham's chef and bodyguard), and that Davillier's statements either aided and abetted these crimes or

they made him an accessory-after-the-fact. These arguments are patently frivolous.

To establish these assertions, Temple had to prove through evidence or admissions that Beckham and/or others committed assault and battery (Pen. Code, §§ 240, 242), and that Davillier either (1) aided their commission, or (though not present) advised and encouraged their commission (Pen. Code, § 31), or (2) after the crimes were committed, he harbored, concealed or aided the principals with the intent that they "may avoid or escape from arrest, trial, conviction or punishment" (Pen. Code, § 32).

Notably, the allegations in Temple's complaint and amended complaint, and the statements by Temple in his police report, aver that third parties assaulted and battered him. Also, in a letter from Temple's counsel to Beckham's counsel prior to Davillier being added as a defendant, Temple's counsel stated: "We do agree that [Beckham] did not commit the assault or battery (and the draft [c]omplaint does not allege that against him), but we do find him legally responsible[.]" Temple points to no admissions that Beckham or others committed a crime by attacking Temple, or that Davillier either aided and abetted the crime or was an accessory after the fact. Nor does Temple point to conclusive evidence that Davillier was an aider and abettor or an accessary after the fact. Temple's briefing on this point is incomprehensible.

At one point in his appellate brief, Temple notes that a person who knowingly gives a criminal a false alibi is an accessory after the fact. (*People v. Partee* (2018) 21 Cal.App.5th 630, 639 [a false alibi made with the requisite knowledge and intent will support an accessory conviction].) An alibi indicates that a person was somewhere else when an alleged crime took

place. In his statement, Davillier did not provide Beckham or anyone else with an alibi.

Beyond the foregoing, we are not aware of any case law establishing that an attorney's statement to the media can constitute a violation of Penal Code section 32. Rather, case law focuses on false statements to authorities made with the requisite knowledge and intent. (*People v. Plengsangtip* (2007) 148 Cal.App.4th 825, 835.) Davillier released a statement to the media. He did not make a statement to the police regarding the alleged assault and battery. In fact, there is no evidence that a police investigation was pending at the time. Temple filed a police report on March 27, 2018, which was four days after the Sports Illustrated online article.

Because Temple's arguments are not sufficiently developed to be cognizable, we consider them no further. (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.)

II. Prong Two Analysis.

The Beckham Defendants argue that Davillier's statements were nonactionable opinion, or that Temple failed to establish a probability of demonstrating that Davillier acted with the requisite malice. We agree.

A. Most Statements not Defamatory.

To establish defamation, appellant must show a publication that was false, defamatory, and unprivileged, and which has a natural tendency to injure or cause special damages. (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1259.) A defamation claim must be based on a verifiable statement of fact, not mere opinion. (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1052.) "To ascertain whether the statements in question are provably false factual assertions, courts consider the totality

of the circumstances. [Citation.]" (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 156 (*GetFugu*).) Rather than analyzing a publication from the perspective of someone trained in the law, courts examine the natural and probable effect upon the mind of the average reader. (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401 (*Ferlauto*).)

"Part of the totality of the circumstances used in evaluating the language in question is whether the statements were made by participants in an adversarial setting. '[W]here potentially defamatory statements are published in a . . . setting in which the audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may well assume the character of statements of opinion.' [Citation.]" (*Ferlauto*, *supra*, 74 Cal.App.4th at pp. 1401–1402.)

In *GetFugu*, various plaintiffs filed a Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. § 1961) action against GetFugu individually and on behalf of its shareholders. After the RICO case was dismissed, the RICO plaintiffs' attorney issued a Tweet stating: "GetFugu runs an organization for the benefit of its officers and directors, not shareholders and employees. The RICO suit was not frivolous. . . ." (*GetFugu*, *supra*, 220 Cal.App.4th at p. 146.) They were sued for defamation based in part on the Tweet. They filed a successful anti-SLAPP motion, which triggered an appeal. The reviewing court affirmed after concluding that the Tweet was nonactionable opinion. The court cited *Ferlauto* and stated, "Deprecatory statements regarding the merits of litigation are 'nothing more than "the predictable opinion" of one side to the lawsuit' and

cannot be the basis for a defamation claim. [Citation.]" (*GetFugu*, *supra*, at p. 156.)

Here, Davillier stated that the complaint was full of falsehoods and misinformation, he called the lawsuit meritless and frivolous, and he characterized the claims as outlandish and unsubstantiated. He said that Beckham denied any wrongdoing. Davillier expressed confidence that Beckham was not subject to any liability. This was nothing other than the predictable opinion of Beckham's attorney.

In the context of Davillier's broad opinions about the merit of the lawsuit, his representations about the absence of hospital records and injuries assumed the character of statements of opinion. A reasonable mind would expect an attorney engaged in hyperbolic denials of claims to express his or her opinion about the strength of the opponent's case by downplaying and disputing any adverse evidence.

With respect to the statement about the absence of a relationship between Beckham and Temple, we conclude that it is not defamatory on its face because it does not have any tendency to injure in the absence of explanatory matter. (Civ. Code, § 45a.) Simply put, nothing in that statement suggests that Temple is a liar, an extortionist, or any other type of villainous person. If it is defamatory, it is only through innuendo and inducement. "'[I]nducement' and 'innuendo' are terms of art: '[Where] the language is ambiguous and an explanation is necessary to establish the defamatory meaning, the pleader must do two things: (1) Allege his interpretation of the defamatory meaning of the language (the "innuendo," . . .); (2) support that interpretation by alleging *facts* showing that the readers or hearers to whom it was published would understand it in that

defamatory sense (the "inducement").' [Citation.]" (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 387.) Nonetheless, the complaint merely alleged that people who read Davillier's statement reasonably understood that he meant to convey that Temple is a liar, etc. He did not allege inducement and innuendo. That was insufficient. Consequently, that statement was not actionable.

The only statements that had a natural tendency to injure Temple sufficient to support a defamation claim were Davillier's comments about Temple being drunk and belligerent and threatening party attendees. But the point is moot because Temple did not establish malice.

B. No Evidence of Malice.

"When the plaintiff is a public figure, he or she may not recover defamation damages merely by showing the defamatory statement was false. Instead, the plaintiff must also show the speaker made the objectionable statement with malice." (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 114.) "Actual malice 'requires a showing that the allegedly false statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." [Citation.] The reckless disregard standard requires a "high degree of awareness of . . . probable falsity. . . ." [Citation.]' [Citation.] 'The question is not "'whether a reasonably prudent [person] would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.'"

[Citation.]' [Citation.]" (*Burrill v. Nair* (2013) 217 Cal.App.4th 357, 389.)

There are two types of public figures. "'The first is the "all purpose" public figure who has "achieve[d] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." The second category is that of the "limited purpose" or "vortex" public figure, an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues."'" (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 247.)

"[A limited] 'public figure' plaintiff must have undertaken some *voluntary* act through which he seeks to influence the resolution of the public issues involved. . . . [¶] . . . [W]hen called upon to make a determination of public figure status, courts should look for evidence of affirmative actions by which purported 'public figures' have thrust themselves into the forefront of particular public controversies. . . . [S]uch a determination is often a close question which can only be resolved by considering the totality of the circumstances which comprise each individual controversy." (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 254–255, fn. omitted.) "It is not necessary to show that a plaintiff actually achieves prominence in the public debate," only that the plaintiff sought to place himself or herself "'into the public eye.'" (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845–846.) "[D]efamation decisions finding the complainants to be vortex public figures have typically involved persons who claimed they were defamed for private conduct *after* they injected themselves into matters of general

public discussions or controversy." (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 25–26.)

Temple's multi-million-dollar lawsuit against Beckham attracted the attention of the news media. Moreover, as the Beckham Defendants point out, this case involves a public controversy "'because of the public interest or debate regarding the size of litigation claims and jury awards . . . .'" (*Lee v. Calhoun* (10th Cir. 1991) 948 F.2d 1162, 1165), and because of the public debates over athletes and celebrities behaving badly and/or being involved in or around violence. Further, by suing a high-profile public figure like Beckham for millions of dollars due to his allegedly bad/negligent behavior, Temple sought to place himself in the public eye. We conclude he is a limited public figure as to the issues related to this case.

To establish malice, Temple relies on his contentions that he was defamed and that Davillier's statements were criminal. But there was no criminal conduct by Davillier. Also, even if the statements were defamatory, there is no evidence that Davillier made the statements with knowledge they were false or with reckless disregard as to falsity.

III. False Light.

"'False light is a species of invasion of privacy, based on publicity that places a plaintiff before the public in a false light that would be highly offensive to a reasonable person, and where the defendant knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.' [Citation.] . . . "'A 'false light' cause of action is in substance equivalent to a libel claim, and should meet the same requirements of the libel claim, including proof of malice [where malice is required for the libel claim].'" [Citations.]

Indeed, '[w]hen a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action.' [Citation.]" (*Jackson v. Mayweather, supra,* 10 Cal.App.5th at p. 1264.)

The false light claim must fail for the same reason as the defamation claim.[2]

DISPOSITION

The order denying the Beckham Defendants' anti-SLAPP motion is reversed. The Beckham Defendants shall recover their costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ

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[2] All other issues are moot. Temple's requests for attorney fees and sanctions are denied.