

C O M M U N I C A T I O N S   a n d   M E D I A  
A L E R TMAY  
2012THE NEW JERSEY SUPREME COURT REAFFIRMS  
PRESUMED DAMAGES FOR DEFAMATION, LIMITS  
COMPENSATORY DAMAGES*By Monica C. Platt*

The New Jersey Supreme Court has strictly limited the ability of defamation plaintiffs to recover anything other than nominal damages under the presumed damages doctrine. While the Court reaffirmed that presumed damages still are recoverable in New Jersey, it held that plaintiffs can recover only nominal damages unless they prove they sustained actual damages as a result of the defamatory statements.

In *W.J.A. v. D.A.*, No. A-77-10 (May 16, 2012), David Adams allegedly defamed Wayne Anderson (both fictitious names created by the Court) by publishing statements on a website he created that detailed alleged sex abuse by Anderson. Adams's website also alleged that Anderson perjured himself and intimidated a witness during an earlier civil suit concerning the abuse claims. The site included Anderson's name and address. The only proof of damages Anderson offered involved anguish and emotional injury, which the judge characterized as subjective moral reactions. Finding these allegations insufficient as a matter of law to sustain a defamation claim, the trial court granted summary judgment for Adams even though his statements were defamatory *per se*. The Appellate Division reversed, holding that plaintiffs can recover damages in a defamation action without proving actual harm.

On appeal to the Supreme Court, Adams argued that the doctrine of presumed damages was "an archaic, unsettled presumption over proof in fact" that does not serve the goal of defamation

law — compensating plaintiffs for actual reputational harm. Anderson, on the other hand, argued that he should not be precluded from presenting his case to a jury simply because he lacked concrete proof of injury.

Compensatory, punitive, and nominal damages are available in defamation actions under New Jersey law. Actual damages include economic damages as well as reputational damage and the humiliation, anguish, and suffering flowing from the reputational damage. Presumed damages fall within this category and are simply the damages expected when one's reputation is injured. These damages are difficult to prove, even though they are likely to have occurred, and therefore, are presumed. Under New Jersey law, presumed damages are available in all libel cases. In slander cases, presumed damages are available only for slander *per se* — that is, when the alleged defamatory communication accuses the plaintiff of committing a crime, having a loathsome disease, engaging in business misfeasance, or committing serious sexual misconduct. While the Court, in a footnote, noted that defamatory Internet postings would be libel, it also stated that the distinction here did not make a difference in the outcome, as the allegations could fall into the category of slander *per se* as well.

Addressing the continued viability of presumed damages, the Court noted recent criticisms of the doctrine, pointing out that several jurisdic-

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tions (though not a majority) have done away with it and instead require proof of actual reputational injury. The criticisms the Court highlighted are twofold — modern tort law should not provide a remedy without injury, and there is no uniform method by which a jury can value presumed damages.

The Court brushed off the first criticism, explaining that vindication is an important component of a defamation claim. The Court noted that the presumed damages doctrine is a procedural device relieving a plaintiff of the need to prove damage. This is particularly important where proof of actual loss may be hard to come by — for example when a website's reach creates a very wide potential audience for a defamatory statement.

The Court took more seriously the second criticism — uniformly valuing presumed damages. For this reason, the Court limited the applicability of the presumed damages doctrine such that it only permits a plaintiff to survive summary judgment and to obtain nominal damages at trial. The Court precluded the award of compensatory damages absent proof of some form of actual harm — monetary or otherwise.

Thus, while the doctrine of presumed damages in a defamation case continues to survive in

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New Jersey, a plaintiff's ability to recover under the doctrine has been strictly limited. Without a showing of actual harm, damages will be nominal. However, plaintiffs can still rely on the presumed damages doctrine to defeat a motion for summary judgment and claim nominal damages. ♦

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