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Court of Appeals APPEALS

Division II DIVISION II

State of Washington WASHINGTON

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Larry Seaquist & Carla Seaquist, Appellants

v.

Michelle Caldier, Respondent

BRIEF OF RESPONDENT

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I. INTRODUCTION

Elected officials are “men of fortitude, able to thrive in a hardy climate.” *New York Times Co. v. Sullivan*.¹ Courts do not easily permit such officials to pursue libel claims.

A man in his seventies took pictures of a woman in her thirties without her knowledge or consent. When confronted, he admitted taking the pictures. When Ms. Caldier shared this incident on Facebook someone commented that Mr. Seaquist’s actions were “creepy.” Mr. Seaquist’s motives may have been innocent. He had every right to take her picture. But the Seaquists cannot make a prima facie defamation claim because the gist of Ms. Caldier’s statements were true – Mr. Seaquist took a picture of her without her knowledge or consent. The “sting” of her statements about Mr. Seaquist regarding the incident made him look “creepy.” Ms. Caldier’s campaign seized on those events, and that theme, using caricatured photographs of Mr. Seaquist taking pictures. The First Amendment protects this speech.

The Seaquists claim Ms. Caldier’s Facebook post about the incident is a “lie” because only a small portion of her is visible and that it was not while she was “getting in” her car. But when Ms. Caldier wrote about the incident on Facebook she did not know what he photographed, when he took the photographs, or how many he took.

¹ *New York Times Co. v. Sullivan*, 376 U.S. 254, 273, 84 S. Ct. 710, 722, 11 L. Ed. 2d 686 (1964).

The other publications the Seaquists complain about are true, or not provably false. There is no evidence of malice regarding any publication. Further, while the implication claims survived summary judgment, the Seaquists waived those claims. Their opening brief attempts to resurrect those claims by arguing that Ms. Caldier’s statements, taken together, create a “false impression.” But a “false impression” theory is no different than an implication claim.

The Seaquists may complain about Ms. Caldier’s statements and advertising. But under well-established precedent the forum is the court of public opinion – not the Superior Court. The trial court’s orders should be affirmed.

II. COUNTER STATEMENT OF THE CASE

A. FACTS

Mr. Seaquist was the incumbent for election to the Washington House of Representatives 26th Legislative District.² Michelle Caldier defeated him in the November 2014 election.³

1. Several incidents caused Ms. Caldier concern.

Although Ms. Caldier was raised in Kitsap County⁴ she moved back to the district prior to the campaign.⁵ Because Ms. Caldier previously lived outside the district, her residency was an issue.⁶ The campaign became

² CP 3, 5.

³ CP 152.

⁴ CP 77.

⁵ CP 301.

⁶ CP 107, 301, 774-775.

tense.⁷ After the campaign began, Ms. Caldier experienced three unusual events. First, in early 2014, a neighbor told Ms. Caldier that someone had tampered with her mail, leaving some of it on the ground outside her mailbox.⁸ Second, in June or July 2014, someone approached her house, got out of his car, and took photographs. When confronted, this person claimed to be an appraiser looking for comparable houses.⁹ Finally, shortly thereafter, Ms. Caldier's sister, also her campaign manager, informed her that a similar incident occurred at her house, i.e., someone had taken photos of her house.¹⁰

These incidents concerned Ms. Caldier.¹¹ When she was a child, her stepfather physically and sexually abused her, including taking photographs of a sexual nature.¹² Later in life she had to obtain a restraining order against an ex-boyfriend who stalked and harassed her.¹³

2. Mr. Seaquist took photographs of Ms. Caldier in her car, prompting Ms. Caldier to file a police report.

The candidates participated in interviews at the *Kitsap Sun* in Bremerton on August 29, 2014.¹⁴ Both parked on the same street.¹⁵ After the interviews, Ms. Caldier noticed Mr. Seaquist taking photographs after she got in her car.¹⁶ She immediately confronted him. He laughed and admitted to taking the photo.¹⁷

⁷ CP 78.

⁸ Id.

⁹ CP 78, 300-301.

¹⁰ CP 78.

¹¹ CP 78.

¹² CP 77.

¹³ CP 77.

¹⁴ CP 7-8 78.

¹⁵ CP 7-8, 78

¹⁶ CP 6-7, 78.

¹⁷ CP 78.

Ms. Caldier posted a comment to Facebook, recounting the incident and stating, “I felt like I was being stalked.”¹⁸ A commenter called it “creepy.”¹⁹ Ms. Caldier found some comments objectionable, and so she removed the post.²⁰

Soon after the incident, Ms. Caldier learned from Marlyn Jensen (Mr. Seaquist’s 2008 opponent) that she felt Mr. Seaquist had threatened her in 2009.²¹ During that incident, as reported by the *Port Orchard Independent*, Mr. Seaquist allegedly was upset that Ms. Jensen, then acting as a lobbyist, had left symbolic bags of rocks and dirt on his desk.²² Mr. Seaquist reportedly became agitated, yelling and shaking his fists at Ms. Jensen, who said she feared for her safety.²³

Ms. Jensen’s experience heightened Ms. Caldier’s concern. On September 5, 2014, she filed a police report about the photographs.²⁴ She also mentioned the other incidents to the police, although she did not tell the police that Mr. Seaquist was responsible for them.²⁵ She does not recall telling the police officer that Mr. Seaquist had taken photographs of her more than one time, even though the report includes such a statement.²⁶ The officer informed Ms. Caldier that Mr. Seaquist had not committed a crime, but also advised her that a continuing pattern would be harassment.²⁷ Ms. Caldier asked the officer not to contact Mr. Seaquist.²⁸

¹⁸ CP 7, 78.

¹⁹ CP 194-197.

²⁰ CP 78.

²¹ CP 78-79; 102-103.

²² CP 102-103.

²³ CP 102-103.

²⁴ CP 78-79, 83-85.

²⁵ CP 83-85.

²⁶ CP 79.

²⁷ CP 79.

²⁸ CP 79.

The police report was reported in a Bremerton Sun blog on September 12, 2014.²⁹

3. Campaign advertisements for Ms. Caldier discuss the incident.

On October 8, 2014, Ms. Caldier's campaign posted an advertisement to YouTube.³⁰ The video lists reasons to vote for Ms. Caldier, ending in the last six seconds with a statement that "Seaquist was caught secretly photographing Michelle, invading her privacy," and citing the September 5, 2014 police report.³¹ The video also includes an image of Mr. Seaquist holding a camera.³²

On October 10, 2014, Ms. Caldier participated in an interview on KIRO Radio.³³ Ms. Caldier and another female candidate were asked why they supported the Republican Party, given that the party allegedly has a war on women.³⁴ Ms. Caldier responded that she felt supported by the Republican Party³⁵ and that she has been "harassed and had people take pictures of me; had my opponent take pictures of me" and that "the Democrats have more of a war on women than the Republicans."³⁶

The Seaquists also complain about a mailer and the website LarrySeaquistFacts.com.³⁷ They both contain the image of Mr. Seaquist holding a camera.³⁸ The mailer also includes an image of a hand holding a

²⁹ CP 105-115.

³⁰ CP 77; 951 (Exhibits to Caldier Decl.)

³¹ Id.

³² Id.

³³ CP 79; 951 (Exhibit B to Caldier Decl); 92.

³⁴ Id at Ex. B at 2:13; CP 121-124.

³⁵ Id.

³⁶ Id. CP 12.

³⁷ CP 12-16, 93-94, 124-129.

³⁸ Id.

camera taking a photograph of Ms. Caldier in her car.³⁹ Both refer to Mr. Seaquist taking photographs of Ms. Caldier, and “Seaquist campaign people” taking photos of her home, and Ms. Caldier’s police report.⁴⁰ Both contain Ms. Caldier’s expression of her subjective feelings that “friendly campaigning had turned into what felt like stalking and harassment” and that Mr. Seaquist “should be ashamed.”⁴¹ She asks whether the opposing “team” has “resort[ed] to dirty tactics,” answering “IT APPEARS SO.”⁴²

B. PROCEDURE

The trial court initially dismissed the Seaquists’ Amended Complaint pursuant to RCW 4.24.525.⁴³ After the dismissal was vacated⁴⁴ under *Davis v. Cox*,⁴⁵ Ms. Caldier moved for summary judgment.⁴⁶ The court granted the motion, in part.⁴⁷ The court did not dismiss the Seaquists’ claims arising from two publications – finding those publication were possibly actionable under a theory of defamation by implication.⁴⁸

Explaining its order, the trial court concluded that the Seaquists’ claims for defamation by implication would not be dismissed because for

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ CP 312-348

⁴⁴ CP 387.

⁴⁵ 183 Wn.2d 269, 351 P.3d 862 (2015).

⁴⁶ CP 419-444.

⁴⁷ CP 841-843. Plaintiffs complain that the Court “struck” certain statements, inferring that they were stricken from evidence. (*See* BA 2, 27). The trial court did not such thing. It ruled that certain statements were not actionable, not that they were inadmissible. CP 846.

⁴⁸ CP 873.

these claims “each statement was true, but the juxtaposition of the true statements in the context in which they were presented, clearly implies facts that are not true.”⁴⁹ Finding a substantial ground for difference of opinion whether Washington recognizes a claim for defamation by implication the trial court certified the case for appeal under RAP 2.3(b).⁵⁰

Both parties sought discretionary review. In their answer to Ms. Calder’s Motion for Discretionary Review, the Seaquists’ unambiguously denied they were bringing claims for defamation by implication. As noted by this Court:

[The Seaquists] state, “Plaintiff’s case does not rely on defamation by implication as a cause of action,” and “[w]e note initially, that plaintiff has not relied on a unique, stand-alone theory of law called defamation by implication....The Seaquists state further, “[t]he word “implication” is not to be found in either the amended complaint...nor the Seaquists’ 61 page response to the summary judgment. The better analysis in resolution of this case is the analysis of false opinion....” The Seaquists continue, “[t]he entire line of cases addressing defamation by implication relies on the juxtaposition of true, but perhaps incomplete, statements of fact to create a false impression. The present case is far more direct, and relies on less subtlety.” The Seaquists’ position is that this matter does not involve whether true statements are actionable, rather it involves whether Calder made “stated defamatory opinions and based her opinions on *false facts*.”⁵¹

⁴⁹ Id.

⁵⁰ CP 822.

⁵¹ CP 847-859; See also CP 892-912.

Because the Seaquists “renounced” any defamation by implication claims, this Court concluded review of the issue would not “materially advance the ultimate termination of the litigation.”⁵²

Because the remaining claims were for defamation by implication, and the Seaquists had waived those claims, Ms. Caldier moved for entry of judgment dismissing the action.⁵³ The Seaquists agreed, asserting that they brought no claim by defamation by implication. Instead they limit their claims to assert that Ms. Caldier is liable for “false opinion” based on false or omitted facts.⁵⁴

C. ARGUMENT

A. STANDARD OF REVIEW

Appellants correctly state review is *de novo*.⁵⁵ This Court should affirm “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁵⁶ A court must dismiss a lawsuit when a defendant demonstrates that the plaintiffs cannot establish a critical element of their claim.⁵⁷

A party moving for summary judgment can meet its burden by pointing out that the nonmoving party lacks sufficient evidence to support

⁵² CP 855.

⁵³ CP 861-864

⁵⁴ CP 918.

⁵⁵ BA 26.

⁵⁶ CR 56(c).

⁵⁷ *In re Estate of Hansen*, 81 Wn. App. 270, 285, 914 P.2d 127 (1996).

its case.⁵⁸ The moving party must identify portions of the record, with the affidavits which demonstrate the absence of a genuine issue of material fact.⁵⁹

“In the First Amendment area, summary procedures are...essential.”⁶⁰

The function of the trial court in ruling on a defense motion for summary judgment in a defamation action is to determine if the plaintiff's proffered evidence is of a sufficient quantum to establish a prima facie case with convincing clarity. Unless the plaintiff has done so, the motion must be granted.⁶¹

The Seaquists cannot prove the statements are false and fail to put forward any evidence of malice. “Serious problems regarding the exercise of free speech and free press guaranteed by the First Amendment are raised if unwarranted lawsuits can proceed to trial. The chilling effect of the pendency of such litigation can itself be sufficient to curtail the exercise of these freedoms.”⁶²

⁵⁸ *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986)).

⁵⁹ *White v. Kent Medical Center, Inc.*, 61 Wn. App. 163, 170, 810 P.2d 4, 9 (1991) (citing *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2553; *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989)).

⁶⁰ *Mark v. Seattle Times*, 96 Wn. 2d 473, 484, 635 P.2d 1081, 1087 (1981).

⁶¹ *Id* at 486 citing *Chase v. Daily Record, Inc.*, 83 Wn.2d 37, 515 P.2d 154 (1973); *Exner v. American Medical Ass'n*, 12 Wn. App. 215, 224, 529 P.2d 863, 75 A.L.R.3d 603 (1974).

⁶² *Id* at 484-85 citing *Tait v. KING Broadcasting Co.*, 1 Wn. App. 250, 255, 460 P.2d 307 (1969).

B. THE SEAQUISTS CANNOT MEET THEIR BURDEN TO PROVE DEFAMATION FOR STATEMENTS MADE DURING A POLITICAL CAMPAIGN.

To prove defamation a plaintiff must show: (1) a false and defamatory communication; (2) lack of privilege; (3) fault; and (4) damages.⁶³ On summary judgment a plaintiff must establish a prima facie case on all four elements.⁶⁴ While damages is a fact question, the defamation itself is a matter of law for the court.⁶⁵

A defamation claim must be based on a provably false statement.⁶⁶ “A statement meets this test to the extent it falsely expresses or implies provable facts, regardless of whether the statement is, in form, a statement of fact or a statement of opinion.”⁶⁷ A statement that does not express or imply provable facts but communicates only ideas or opinions does not meet this test.⁶⁸ “[T]here is no such thing as a false idea.”⁶⁹ The burden to

⁶³ 16A Wash. Prac., Tort Law and Practice § 20:4 (3d ed.) and cases cited therein; *Davis v. Fred's Appliance, Inc.*, 171 Wn. App. 348, 367, 287 P.3d 51, 61 (2012).

⁶⁴ *LaMon v. Butler*, 112 Wn.2d 193, 197, 770 P.2d 1027, 1029 (1989).

⁶⁵ 16A Wash. Prac., Tort Law and Practice § 20:4 (3d ed.) and cases cited therein.

⁶⁶ *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 590, 943 P.2d 350, 357 (1997).

⁶⁷ *Id* citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-21, 110 S. Ct. 2695, 2706, 111 L. Ed. 2d 1 (1990); *Dunlap v. Wayne*, 105 Wn. 2d 529, 538-539, 716 P.2d 842, 848 (1986); *Hoppe v. Hearst Corp.*, 53 Wn.App. 668, 671, 770 P.2d 203 (1989); *Benjamin v. Cowles Publishing Co.*, 37 Wn. App. 916, 922, 684 P.2d 739 (1984); Restatement (Second) of Torts § 566 at 170.

⁶⁸ *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 590-91, 943 P.2d 350, 357 (1997).

⁶⁹ *Id* quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), 418 U.S. at 339, 94 S.Ct. at 3006-07; and citing *Benjamin*, 37 Wn. App. at 921, 684 P.2d 739; and *Milkovich*, 497 U.S. at 18, 110 S.Ct. at 2705-06; *Vern Sims Ford, Inc.*, 42 Wn. App. at 683, 713 P.2d 736.

prove falsity rests with the party claiming defamation.”⁷⁰

Not every misstatement of fact is defamatory. The substance of the statement must make substantial danger to reputation apparent.⁷¹ “A publication that is merely unflattering, annoying, irking, or embarrassing, or that hurts the plaintiff’s feelings, without more, is not actionable.”⁷² “The defamatory character of the language must be apparent from the words themselves.”⁷³

Washington law does not require the “literal truth of every claimed defamatory statement.”⁷⁴ A statement need only be “substantially true or [] the gist of the story, the portion that carries the ‘sting’, [must be] true.”⁷⁵ And “[w]here a report contains a mixture of true and false statements, a false statement (or statements) affects the ‘sting’ of a report only when ‘significantly greater opprobrium’ results from the report containing the falsehood than would result from the report without the falsehood.”⁷⁶

Opinions are not defamatory. “A threshold requirement of defamation is that the alleged defamatory statement be a statement of fact and not just opinion.”⁷⁷ An expression of opinion based on disclosed or

⁷⁰ *Id.*

⁷¹ 16A Wash. Prac., Tort Law and Practice § 20:4 (3d ed.) and cases cited therein.

⁷² *Id.*

⁷³ *Yeakey v. Hearst Commc'ns, Inc.*, 156 Wn. App. 787, 792, 234 P.3d 332, 335 (2010).

⁷⁴ *Mark v. Seattle Times*, 96 Wn.2d 473, 494, 635 P.2d 1081, 1092 (1981).

⁷⁵ *Id.*

⁷⁶ *Mohr v. Grant*, 153 Wn. 2d 812, 826, 108 P.3d 768, 775 (2005) quoting *Herron v. KING Broad. Co.*, 112 Wn. 2d 762, 770, 776 P.2d 98, 102 (1989), holding modified by *Richmond v. Thompson*, 130 Wn.2d 368, 922 P.2d 1343 (1996), 112 Wn.2d at 769, 776 P.2d 98 (quoting *Mark*, 96 Wn.2d at 496, 635 P.2d 1081).

⁷⁷ *Davis v. Fred's Appliance, Inc.*, 171 Wash. App. 348, 365, 287 P.3d 51, 60 (2012)

assumed non defamatory facts is not itself sufficient for an action of defamation, “no matter how unjustified and unreasonable the opinion may be or how derogatory it is.”⁷⁸ “But an expression of opinion that is not based on disclosed or assumed facts and therefor implies that there are undisclosed facts on which the opinion is based is treated differently.”⁷⁹ The reason for this is because “[w]hen an audience knows the facts underlying an opinion and can judge the truthfulness of the allegedly defamatory statement themselves, the basis for liability is undercut.”⁸⁰ Whether a statement is an opinion presents a question of law.⁸¹

“[T]he First Amendment ‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.’”⁸²

“Statements “in the midst of a heated political debate,” where an audience would expect “fiery rhetoric or hyperbole” that it would meet “with an appropriate amount of skepticism” and “with the expectation that they are, in all probability, going to hear opinion” and a “reluctance to conclude ... that the statements made are to be heard as objective fact.”⁸³

Here, the statement was made in a political campaign and was true – Mr. Seaquist took pictures of Ms. Caldier in her car. Ms. Caldier’s opinion about how that made her feel is impossible to disprove.

⁷⁸ Restatement 566 cmt. C.

⁷⁹ Id.

⁸⁰ *Duc Tan v. Le*, 177 Wn 2d 649, 664, 300 P.2d 356 (2013)

⁸¹ *Rodriguez v. Panayiotou*, 314 F.3d 979, 985-86 (9th Cir. 2002)

⁸² *Rickert v. State, Pub. Disclosure Comm'n*, 161 Wash. 2d 843, 848, 168 P.3d 826, 828 (2007).

⁸³ *Melius v. Glacken*, 943 N.Y.S.2d 134 (App. Div. 2012) (statements by one mayoral candidate calling another mayoral candidate an “extortionist” seeking “to extort money” was protected opinion). See also *Dunlap v. Wayne*, 105 Wn.2d 529, 538-539, 716 P.2d 842, 848 (1986).

C. MS. CALDIER IS NOT LIABLE FOR OPINIONS BASED ON TRUTHFUL ASSUMPTIONS.

While the Seaquists are correct that an opinion that implies false facts can be defamatory, there is no such liability here because Ms. Caldier's statements were true. In *Duc Tan v. Le*⁸⁴ defamation was found not because the defendant believed the plaintiff was a communist spy who could not be trusted. Instead, the defendant was liable because the facts relied on to support his opinion were false. Here each factual statement made by Ms. Caldier to support her stated opinions were true – the “gist”, was true or the statement was not provably false: 1) Mr. Seaquist took a photograph; 2) Ms. Caldier was in the photograph; 3) Mr. Seaquist had no permission⁸⁵; 3) Ms. Caldier had no knowledge photographs were being taken; 4) photographs of her home were taken under suspicious circumstances; 4) her mail was tampered with; and 5) she made a police report.

She disclosed those facts as the basis for her feelings. Because someone “feels like” they were being stalked does not imply that they *were* stalked. It implies the opposite – that they were not technically stalked, but they felt like they were.

⁸⁴ 177 Wn.2d 649, 300 P.3d 356 (2013).

⁸⁵ Mr. Seaquist did not need permission to take the photograph. But the statement that he lacked permission is true.

D. THE SEAQUISTS' ATTEMPTS TO CIRCUMVENT MS. CALDIER'S FIRST AMENDMENT RIGHTS ARE UNCONVINCING – HER STATEMENTS WERE NOT OF THE NATURE TO STRIP THEM OF PROTECTION.

While the Seaquists' primer on the law of defamation is generally correct, they fail to correctly apply the law to the facts regarding a public figure. Plaintiffs' own argument dooms their claims:

An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case.⁸⁶

Arguing the First Amendment does not protect Ms. Caldier's political speech, the Seaquists cite several cases where First Amendment protection do not apply. These cases involve cross burning,⁸⁷ and "fighting words"⁸⁸—not political speech. Ms. Caldier's statements may have not been in the best taste, but it "is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions..."⁸⁹ Bad taste is no rationale to limit free speech.

⁸⁶ BA 40 quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 344 (1974).

⁸⁷ BA 30, citing *Virginia v. Black*, 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003)

⁸⁸ Id citing *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 (1942)

⁸⁹ *Bridges v. State of Cal.*, 314 U.S. 252, 270, 62 S. Ct. 190, 197, 86 L. Ed. 192 (1941).

E. NO EVIDENCE OF MALICE EXISTS AND THE SEAQUISTS CANNOT RELY ON CIRCUMSTANTIAL EVIDENCE TO MEET THEIR BURDEN.

Whether evidence supports a finding of actual malice is a question of law.⁹⁰ The Seaquists must show that Ms. Caldier did in fact entertain serious doubts as to the truth of her statements.⁹¹ The standard is subjective:

The standard for finding actual malice is subjective and focuses on the declarant's belief in or attitude toward the truth of the statement at issue.

To prove actual malice a party must establish that the speaker knew the statement was false, or acted with a high degree of awareness of its probable falsity, or in fact entertained serious doubts as to the statement's truth.⁹²

The Seaquists provided no direct evidence that Ms. Caldier questioned the publications. The only application of the legal standard for malice to the facts in the Seaquists' materials can be found at CP 53 where they argue that statements questioning Mr. Seaquist's integrity shows malice. But the statement they complain about is garden variety politics. Ms. Caldier said Mr. Seaquist should be ashamed, and that you would expect more integrity from him. These are opinions. The Seaquists correctly cite the standard for malice in their brief, but fail point to any evidence of malice – except to claim that because the statements themselves “are not known to be true” that they must be malicious.⁹³ The Seaquists

⁹⁰ See *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 510-11 (1984). See also *Camer v. Seattle Post-Intelligencer*, 45 Wn. App. 29, 36, 723 P.2d 1195 (1986).

⁹¹ *Moe v. Wise*, 97 Wn. App. 950, 965, 989 P.2d 1148, 1158 (1999).

⁹² *Id.*

⁹³ BA 42.

appear to claim that based on the circumstances, she must have known the statements were false.

But “circumstantial evidence of a possible malicious motive is a far cry from proving with clear and convincing evidence that [the defendant] knew [her] statement was false or was reckless in regard to its truth or falsity.”⁹⁴

Ms. Caldier made statements she believed were true, given Ms. Caldier’s history of abuse, and the incidents leading to the August 29, 2014 incident. No evidence exists that Ms. Caldier knew her statements were false or recklessly disregarded whether they were false.

“The standard of actual malice is a daunting one,”⁹⁵ and is necessary to guarantee the “national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open[.]” *New York Times Co. v. Sullivan*.⁹⁶

Kauzlarich v. Yarbrough discusses how allegations of falsity, by themselves, cannot support a malice finding on summary judgment. “Unsupported allegations of malice, where a plaintiff alleges mere falsity and possible corrupt motives, and no other bad faith activity on the part of the defendant, would make determination of the existence of a qualified privilege by the court of little or no importance and force every defamation case to trial.”⁹⁷

Because the Seaquists presented no evidence to permit the conclusion that Ms. Caldier “did in fact [entertain] serious doubts” about

⁹⁴ *Kauzlarich v. Yarbrough*, 105 Wn. App. 632, 647, 20 P.3d 946, 953 (2001).

⁹⁵ *McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1308 (D.C. Cir. 1996).

⁹⁶ 376 U.S. 254, 270, (1964).

⁹⁷ *Kauzlarich*, 105 Wn. App. 632, 647.

the truth of her statements⁹⁸ the trial court order dismissing all the Seaquists claims should be affirmed.

F. THE 'LIES' CLAIMED BY THE SEAQUISTS ARE NOT DEFAMATORY.

The Seaquists assert that every untruth or false statement is actionable. They claim that five "lies" should be evaluated by a jury. But not every misstatement of fact is defamatory. And in political debate the bar to make a claim is higher. Each claimed defamatory statement must also be made with malice. There is no evidence of malice regarding the "lies."

1. The Facebook post of September 2, 2014 is not a "lie" and not actionable.

The Seaquists complain that the Facebook post was defamatory because Ms. Caldier was not "getting in" her car when the photographs were taken; she is hardly, if at all, recognizable in the photographs; and she has no right to privacy on the street. But Mr. Seaquist admitted to taking her picture and her subjective feelings about the incident are opinion.

Ms. Caldier wrote:

I came out of a candidate interview and saw Rep. Larry Seaquist, my opponent, taking pictures of me as I got into my car. Wow....I felt like I was being stalked!⁹⁹

⁹⁸ *Herron v. Tribune Publ'g Co.*, 112 Wn.2d 762.

⁹⁹ CP 7.

The Seaquists complain the post contains two “false statements.”¹⁰⁰ Neither statement is false. First, they complain that it is false that “that Seaquist took pictures of her.”¹⁰¹ But, when confronted, Mr. Seaquist admitted to taking a photograph of Ms. Caldier in her car. (“Larry Seaquist said he had [taken a photo]”).¹⁰² And the Seaquists concede that part of Ms. Caldier’s face is in the photograph. (Ms. Caldier “cannot be seen in the photographs, *except* that part of a face with sunglasses can be seen in the vehicle’s center rear view mirror”).¹⁰³ The statement that Mr. Seaquist took a picture of her is true.

Second, they complain it is false that the photographs were taken “while she was getting into her car,”¹⁰⁴ because she was sitting in the car when the photographs were taken. It is undisputed that she had just gotten into her car. What difference does it make if she was sitting in her car, getting into her car, or getting out of her car, on the negative connotation of the statement? Would the statement be less “damaging” to Mr. Seaquist had she accurately stated the sequence of events?

I came out of a candidate interview and saw Rep. Larry Seaquist, my opponent, taking pictures of me as *sat in* my car. Wow....I felt like I was being stalked!

Both the gist and sting of the post are true. A statement need only be “substantially true or [] the gist of the story, the portion that carries the

¹⁰⁰ BA 35.

¹⁰¹ Id. (Emphasis in original).

¹⁰² CP 6.

¹⁰³ Id. (Emphasis Added).

¹⁰⁴ BA 35. (Emphasis in original).

‘sting’, [must be] true.” And “[w]here a report contains a mixture of true and false statements, a false statement (or statements) affects the ‘sting’ of a report only when ‘significantly greater opprobrium’ results from the report containing the falsehood than would result from the report without the falsehood.”¹⁰⁵

What constitutes the “gist” or “sting” of a statement is a question for the court.¹⁰⁶ In *U.S. Mission Corp. v. Kiro TV, Inc.*,¹⁰⁷ the court found that even though a television report that a charity “recruited” and sent “beevies” of felons to neighborhoods to solicit donations was not entirely true, the gist of the story was true. The statement did not alter the sting of the report regarding the charity’s practice of requiring all of its residents, including those with convictions, from engaging in door-to-door solicitation.¹⁰⁸

Mr. Seaquist’s subjective intention was to photograph Ms. Caldier’s car, in this context it is irrelevant. Imagine instead of taking a picture, he had fired a gun *at the car*. If Ms. Caldier complained that he had fired *at her*, no fault would be attributed to Ms. Caldier for mistaking the target of his intentions. The same is true here. Mr. Seaquist admitted to her he had taken a photograph.¹⁰⁹ Its object is irrelevant.

¹⁰⁵ *Mark*, 96 Wn.2d 473, 494, 635 P.2d 1081, 1092. See also *Herron v. KING Broad. Co.*, 112 Wn.2d 762, 769, 776 P.2d 98, 102 (1989), holding modified by *Richmond v. Thompson*, 130 Wn.2d 368, 922 P.2d 1343 (1996).

¹⁰⁶ *U.S. Mission Corp. v. Kiro TV, Inc.*, 172 Wn. App 767, 292 P.3d 137 (2013).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 781.

¹⁰⁹ CP 78.

Further, when Ms. Caldier wrote the post she did not know how many pictures were taken, when they were taken, or what was in them. All she knew was that Mr. Seaquist took pictures of her and admitted it when confronted. The gist of this statement is true.

Even if Ms. Caldier made a factual error, in this context, her speech is protected. Mr. Seaquist's forum for his grievance is the court of public opinion. "In a political campaign, a candidate's factual blunder is unlikely to escape the notice of, and correction by, the erring candidate's political opponent."¹¹⁰ "The preferred First Amendment remedy of 'more speech, not enforced silence,' thus has special force."¹¹¹ The best remedy for false or unpleasant speech is more speech, not less speech.¹¹²

Sullivan v. New York Times explains that factual errors are expected and protected in the public discourse. An "erroneous statement is inevitable in free debate, and it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need to survive.'"¹¹³

¹¹⁰ *Brown v. Hartlage*, 456 U.S. 45, 61, 102 S. Ct. 1523, 1533, 71 L. Ed. 2d 732 (1982).

¹¹¹ *State ex rel. Pub. Disclosure Comm'n v. 119 Vote No! Comm.*, 135 Wn.2d 618, 627, 957 P.2d 691, 696 (1998).

¹¹² *Rickert v. State, Pub. Disclosure Comm'n*, 161 Wn.2d 843, 855-56, 168 P.3d 826, 832 (2007) citing *Brown v. Hartlage*, 456 U.S. 45, 61, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982) (quoting *Whitney v. California*, 274 U.S. 357, 377, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring) emphasis added).

¹¹³ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271, 84 S. Ct. 710, 721, 11 L. Ed. 2d 686 (1964).

Even if, as Mr. Seaquist asserts, this does not somehow constitute taking a photo of Ms. Caldier, Washington does not require the “literal truth of every claimed defamatory statement.”¹¹⁴

Ms. Caldier’s statement she felt like she was being stalked expresses her subjective feeling that cannot be proven false. If she was stating a fact she would have said that “Larry Seaquist is stalking me.” She did not. Instead she expresses how Mr. Seaquist’s actions made her feel.

The Seaquists incorrectly conclude that “[b]y summary judgment standards, all that need be shown is that reasonable minds might differ on whether this is a photo of Michelle Caldier getting into her car.” First, no reasonable mind could reach a different conclusion, because Mr. Seaquist admits taking pictures of her immediately after she got in her car. The Seaquists in making this statement fail to address the caselaw cited above regarding the court’s duty to determine if a statement is capable of a defamatory meaning. Even if the statement is false, falsely accusing someone of taking a picture, in or out of a car, is not defamatory.

But even if the statement was defamatory – the Seaquists fail to address malice *at all*. The statement was close to the truth. There can be no reckless disregard. There is no evidence that Ms. Caldier “entertained serious doubts about the veracity of her statements.”¹¹⁵

¹¹⁴ *Mark v. Seattle Times*, 96 Wash. 2d 473, 494, 635 P.2d 1081, 1092 (1981).

¹¹⁵ *Moe v. Wise*, 97 Wn. App. 950, 965, 989 P.2d 1148, 1158 (1999).

Because accusing someone, even falsely, of taking a photograph, is not imputation of a crime or communicable disease, this statement is not defamatory *per se*. Because the Seaquists do not allege or show any special damages this claim fails as a matter of law.

2. The YouTube Video is not provably false or malicious.

The Seaquists claim this broadcast is defamatory because it contains the “lie” that Mr. Seaquist took Ms. Caldier’s picture, contains an “offending image” of Mr. Seaquist, references a police report, and characterizes Mr. Seaquist’s picture taking as secret, and an invasion of privacy. This claim fails because the statements are not provably false, and the Seaquists have not produced evidence of malice.

First, they claim it repeats the “lie” that Mr. Seaquist photographed Ms. Caldier. As discussed above, the Amended Complaint admits he took a picture that contained a portion of Ms. Caldier.¹¹⁶

Second, they complain about the photoshopped images of Mr. Seaquist.¹¹⁷ But the First Amendment extends to comical or satirical exaggerations.¹¹⁸ The altered photographs of Mr. Seaquist are protected. The creator of the images, Ms. Caldier’s consultant, Chuck Adams, wanted “to have fun” with the political advertisements. He saw it as parody, or satire.¹¹⁹ The photograph was caricature.

¹¹⁶ CP 6.

¹¹⁷ BA 38.

¹¹⁸ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, 108 S. Ct. 876, 882, 99 L. Ed. 2d 41 (1988)

¹¹⁹ CP 532-533.

“The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or *politically embarrassing events—an exploitation often calculated to injure the feelings of the subject of the portrayal.*”¹²⁰ In *Hustler Magazine, Inc. v. Falwell*¹²¹ the United States Supreme Court adopts the Webster’s definition of caricature as “the deliberately distorted picturing or imitating of a person, literary style, etc. by exaggerating features or mannerisms for `satirical effect.”¹²²

While there is no Washington case discussing how Photoshopped photographs can be defamatory, the Second Circuit has ruled that hyperbolic speech is protected if there is not reckless disregard of its falsity.¹²³ In *Reuland* the defendant used hyperbole to illustrate the high murder rate in Brooklyn. It did not deal with photographs. But it analyzed the issue under *Hustler v. Falwell*. the *Reuland* court found that just because a “statement [is] not literally true does not automatically deprive it of First Amendment protection, so long as not made with knowledge or reckless disregard of its falsity.”¹²⁴ In *Reuland* the Court found that because the statement was hyperbole, the public would know it is hyperbole – just as the Court in *Hustler*.

¹²⁰ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, 108 S. Ct. 876, 882, 99 L. Ed. 2d 41 (1988) (Emphasis added).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Reuland v. Hynes*, 460 F.3d 409 (C.A.2 N.Y., 2006).

¹²⁴ *Reuland*, 460 F3d at 414 (citing *Hustler*, 485 U.S. at 56-57).

Even though *Reuland* is not binding precedent, it is helpful. Here, the campaign mailer photographs would not have reasonably “been perceived as an assertion of fact.”¹²⁵ This is because a reasonable person would know that someone with Ms. Caldier’s campaign was not taking photographs of Mr. Seaquist, while Mr. Seaquist took pictures of Ms. Caldier, in a park. The public would know that the photographs are recreations. The public who received such campaign mailers in the mail would also know that political campaign advertisements are hyperbolic and biased.

A Seaquist campaign ad is illustrative.¹²⁶ A woman meant to be Ms. Caldier (but not her) is standing in front of a chalkboard with “I will not tell a lie” written repeatedly. The woman holding her right hand up (as if swearing an oath) with her left hand behind her with fingers crossed – indicating she is a liar. The public knows that the woman in the photograph is not Ms. Caldier – just as the public knows the Photoshopped images of Mr. Seaquist are a “deliberately distorted picture[] or imitat[ation] of a person [with] exaggerated features or mannerisms for satirical effect.”¹²⁷ Finding Ms. Caldier liable for caricatured images would open up a Pandora’s box – as any ad like Mr. Seaquist’s would also invite litigation.

¹²⁵ *Id.*

¹²⁶ CP 772.

¹²⁷ *Hustler* at 881.

Third, the Seaquists complain that the reference to the police report will create the implication there was a police criminal investigation into Mr. Seaquist's conduct.

But the statement referencing the police report is true. The written statement at the bottom of the screen reads "SOURCE: POLICE REPORT FILED, SEPTEMBER 5, 2014." A police report was filed. The trial court originally found that because Ms. Caldier did not clarify the nature of the police report, that including this statement, juxtaposed with the other statements, could create a claim for defamation by implication.¹²⁸

But even if a claim by implication could be made, the Seaquists have unequivocally waived any claim to defamation by implication stating that their claims rest on false facts and false opinion.¹²⁹

Finally, the Seaquists claim that the statement "Seaquist was caught secretly photographing Michelle, invading her privacy" is a "false opinion" because there is no right or expectation of privacy in a public place.¹³⁰ But this statement is not provably false or defamatory. Mr. Seaquist admitted he took a photograph of the defendant in her car. He did not do so with her knowledge or consent. The statement it was secret is true. Ms. Caldier did not know he was doing it. The statement about "privacy" was an opinion despite the Seaquists' tortured argument to the contrary.

¹²⁸ CP 873.

¹²⁹ CP 878-890, 916-920,

¹³⁰ CP 916-920, 928-934.

Plaintiffs' primer on the law of privacy is irrelevant. Ms. Caldier's statement were her opinion on how Mr. Seaquist's actions made her feel – not statements of fact on the state of the law.¹³¹

So, while the Seaquists' are correct that privacy is dwindling in our surveillance society, that does not mean that Ms. Caldier's subjective feelings about her privacy being invaded are provably false. The law does not tell someone how they can feel.

There is no proof of malice because the Seaquists have no facts to prove “knowledge of falsity” or “reckless disregard as to the truth or falsity” of the statement. The statements themselves were true or a matter of opinion. (Or substantially true – the gist or sting is true).

Because the statement was not provably false and there is no evidence showing malice, and no evidence of special damages, this publication is not actionable.

3. The statements during a radio interview were not defamatory.

During her interview on the radio Ms. Caldier was asked why she supported the Republican Party, given that the party allegedly has a war on women. Ms. Caldier responded that she felt supported by the Republican Party and that she has been “harassed and had people take pictures of me; had my opponent take pictures of me” and that “the Democrats have more of a war on women than the Republicans.”

¹³¹ Note that when a Court gives its interpretation of the law it is called an “opinion.” Legal analysis is not fact. It is interpretation.

The Seaquists complain that “...Caldier went on the radio and stated she was harassed and her opponent had actually taken pictures of her (not of her car).”¹³²

The statements are not provably false, because the Mr. Seaquist took Ms. Caldier’s picture. That Ms. Caldier verbalized that she felt harassed is her expression of her subjective feelings. Further, she did not state who harassed her. As a matter of law this is insufficient. See *Sims v. Kiro, Inc.*¹³³ (“[I]f it can be said as a matter of law that the plaintiff has failed to submit convincingly clear proof of his identity as a target of an allegedly libelous statement, the trial court must dismiss the action when a motion for summary judgment is brought on that basis by the defendant.”).¹³⁴

There is no malice, because there is no evidence to prove knowledge of falsity, or reckless disregard on the truth or falsity of the statement. Again, for this to be malicious it had to be patently untrue. Here, even if incorrect, the gist was correct. The statement was in response to the radio broadcaster asking her how she felt as a woman running for an elected office position in the Republican Party. Ms. Caldier’s response stated that since her Democratic opponent had taken photographs of her, she then felt in her experience that the “Democrats probably have more of a war on women...” That statement is not provably false.

¹³² BA 41.

¹³³ *Sims v. Kiro, Inc.*, 20 Wn. App. 229, 580 P.2d 642 (1978)

¹³⁴ *Id.*

4. The campaign mailer and website were not defamatory.

The mailer and website had hyperbolized versions of what occurred on August 29, 2014 – Mr. Seaquist taking a picture, and a photograph illustrating someone aiming their camera into what looks like Ms. Caldier’s car from the passenger side. Neither actually depicts the events.

The Seaquists first complain about the question “Why was Larry Seaquist taking pictures of Michelle Caldier?” But this question is based on an actual event that the Seaquist’s Amended Complaint admits to – that he took pictures of Ms. Caldier. While the answer to the above question may be innocent, Ms. Caldier can ask the question.

Courts have repeatedly found that raising questions does not imply wrongdoing. For example, in *Chapin v. Knight-Ridder*,¹³⁵ the Fourth Circuit held that an investigative report on a charity program was not defamatory because “inquiry itself, however embarrassing or unpleasant to its subject, is not an accusation.”¹³⁶ The *Chapin* court explained there must be an assertion of a “false fact” – that “the language used cannot be tortured to ‘make that certain which is in fact uncertain.’”¹³⁷ See also *Partington v. Bugliosi*¹³⁸ (No claim where book questioned attorney’s trial tactics) and *Phantom Touring, Inc., v. Affiliated Publ’ns*,¹³⁹ (no claim where the authors readers were implicitly invited to draw their own conclusions).

¹³⁵ 993 F.2d 1087, 1094 (4th Cir. 1993).

¹³⁶ *Id.*

¹³⁷ *Id.* Internal citations omitted.

¹³⁸ 56 F.3d 1147, 1157 (9th Cir. 1995)

¹³⁹ 953 F.2d 724, 731 (1st Cir. 1992).

The Seaquists next complain about the statement “Why were Seaquist campaign people taking pictures at Caldier Home?” Again, this question is not actionable. It is either opinion (based on facts – a witness observed someone taking pictures of Ms. Caldier’s home under suspicious circumstances when Ms. Caldier’s residency was questioned),¹⁴⁰ or not provably false, as stated above. The statement “Seaquist campaign people” does not mean campaign staff employed by Mr. Seaquist. The statement is so broad it can mean supporters of the Seaquist campaign in the community. The statement does not accuse Mr. Seaquist of directing, controlling or ratifying behavior of “campaign people.”

Mr. Seaquist has not put forth any admissible evidence it did not happen. Mr. Seaquist’s hearsay statements regarding his campaign supporters’ promises they followed his dictates is not evidence. And we know Seaquist supporters *were* driving by the home looking at it – “at the risk of the fate of Larry Seaquist.”¹⁴¹

Ms. Caldier’s statement was based on experiences she had with her opponent and others focusing on her residency. The issue was a matter of public concern as it dealt with the campaign. Even if this rhetorical question can be said to be a “factual blunder,” Washington Courts recognize clumsy, careless and “erroneous statement[s] [are] inevitable in free debate.”¹⁴² A

¹⁴⁰ CP 300-301.

¹⁴¹ CP 773-781.

¹⁴² *Rickert*, 161 Wn.2d at 855-56; *Rickert*, 129 Wn.App. at 460 (quoting *New York Times Co.*, 376 U.S. at 271-72).

Court should not regulate speech during political campaigns on matters of public concern. In *Rickert v. State, Pub. Disclosure Comm'n*¹⁴³ the court struck down restrictions on campaign speech because such a “paternalistic” approach is “generally suspect.”¹⁴⁴

Third, the Seaquists’ claim that Ms. Caldier’s statements about her mail being tampered with is defamatory. But the statement does not attribute the mailbox tampering to Mr. Seaquist, or his campaign. It recites the concerning events that led Ms. Caldier to file the police report.

Ms. Caldier never stated that Mr. Seaquist or his campaign staff tampered with her mailbox. She said that “[i]t started with *unwelcome strangers* taking pictures of her home. Then the mailbox *was tampered* with leading to the likelihood of trespassing - a Federal offense.”¹⁴⁵ Ms. Caldier did not identify the perpetrators as Mr. Seaquist or his staff. She called them “strangers.”

But even a statement about his campaign staff is not a statement about Mr. Seaquist. Mr. Seaquist cannot allege a claim based on these statements. A defamation plaintiff must show that he was the target of the statement. See *Sims v. Kiro, Inc.*¹⁴⁶

The Seaquists claim proof of malice because Ms. Caldier “ignored” that mail theft is common, instead attributing the act to Mr. Seaquist and his

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 459

¹⁴⁵ CP 11, 14-15. (Emphasis added).

¹⁴⁶ *Sims*, 20 Wn. App. 229.

staff. But the burden is on Mr. Seaquist to prove the contention is false – that no one tampered with her mail. He cannot do so. And the malice standard does not require Ms. Caldier to discern between possibilities.

Finally, the Seaquists claim “[t]he combination of the photoshopped false images, false allegations and clear attempts to lay unrelated matters on the shoulders of Larry Seaquist, shaming him, at the same time she claims as a woman, to be a victim, feeling unsafe in her own home on the whole intentionally creates a false impression of Larry Seaquist, putting him in a false light, and invading his privacy.”¹⁴⁷ This “false impression claim” does not differ from claiming defamation by implication – that Ms. Caldier “juxtapose[d] a series of facts so as to imply a defamatory connection between them, or create[d] a defamatory implication by omitting facts.”¹⁴⁸

As such, the claim that Ms. Caldier’s advertisements are actionable because they created a “false impression”¹⁴⁹ is directly contrary to their representations to this Court, and the trial court, that the Seaquists do not rely on implication or “hints or innuendo”¹⁵⁰ to establish their claims.¹⁵¹

The implication claims were not dismissed by the trial court. But the Seaquists unequivocally waived these claims, stating that they are not bringing a claim by defamation by implication.¹⁵²

¹⁴⁷ BA 44.

¹⁴⁸ *Corey v. Pierce Cty.*, 154 Wn. App. 752, 761, 225 P.3d 367, 373 (2010).

¹⁴⁹ BA 44.

¹⁵⁰ Id.

¹⁵¹ CP 292.

¹⁵² Id.

Additionally, Washington courts reject the notion that a “false impression” is actionable. “The defamatory character of the language must be apparent from the words themselves. Washington courts are bound to invest words with their natural and obvious meaning and may not extend language by innuendo *or by the conclusions of the pleader.*”¹⁵³

In *Lee v. Columbian, Inc.*, the Court of Appeals refused to imply a disparaging message in statements that the plaintiff, a poker promoter, had “devised an unusual way to reduce his taxes and stay within the letter of the law on gambling activity” by lowering the fee at his tables by fifty cents and instituting a fifty-cent parking fee. The plaintiff claimed this gave the impression he was taking advantage of a tax loophole. The Court disagreed, stating “resolution in favor of a disparaging connotation is not justified.”¹⁵⁴

Instead the Seaquists argue that the court must look at the publications.¹⁵⁵ The trial court *did look at the publications as a whole and did not dismiss claims for defamation by implication.* But the Seaquists waived these claims and rely only on the theory that Ms. Caldier’s “false statements” and “express opinions based on omitted facts.”¹⁵⁶ None of the statements made were false. And Ms. Caldier’s opinions were expressions of her feelings.

¹⁵³ *Lee v. Columbian, Inc.*, 64 Wn. App. 534, 538, 826 P.2d 217 (1991).

¹⁵⁴ *Id.*

¹⁵⁵ BA 46.

¹⁵⁶ CP 928-930.

D. CONCLUSION

Ms. Caldier's statements were all based on an incident that Mr. Seaquist admits occurred. He took her picture. She was in her car. He did not ask permission. While Mr. Seaquist's motives may have been innocent – they made Ms. Caldier feel like her privacy was invaded.

Even if the statements she made are false, the Seaquists have not met their burden to show any evidence of malice. They simply rely on their argument that Ms. Caldier's statements were so outrageous that she must have known they were false. This is insufficient under the First Amendment and Washington defamation law. The trial court did not err in dismissing the defamation claims. And the Seaquists waived the remaining claims.

The trial Court's order dismissing all claims should be affirmed.

Dated this 20th day of February 2018.

TEMPLETON HORTON WEIBEL PLLC

A handwritten signature in blue ink, appearing to read 'D. Horton', is written over a horizontal line.

By: David P. Horton, WSBA# 27123
Attorney for Respondent
dhorton@thwpllc.com

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on February 20, 2018, a true and accurate copy of the document to which this Certificate is affixed was sent by email transmission and deposited in the mails of the United States of America, by regular mail, postage prepaid, a properly stamped and addressed envelope directed to:

Anthony Otto
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DATED this 20th of February, 2018.



TRACEY HAMILTON-ORIL,
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CERTIFICATE OF SERVICE

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