FILED
SUPREME COURT
STATE OF WASHINGTON
9/5/2025 1:21 PM
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CLERK

SUPREME COURT NO. 1044445
Court of Appeals No. 603519

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ISAAC M. NSEJJERE,

Petitioner,

v.

CARYN ANDERTON,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

RESPONDENT'S MOTION TO SEAL PETITION FOR WRIT OF CERTIORARI

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I. RELIEF REQUESTED.

COMES NOW Respondent Caryn M. Anderton, by and through her attorneys of record, Colleen A. Lovejoy and James G. Fick, and respectfully requests that the Court hold a hearing to seal Petitioner Issac M. Nsejjere's Petition for Writ of Certiorari, enter written findings that the sealing is justified by compelling privacy and safety concerns, and thereafter order the sealing of the Petition for Writ of Certiorari, as well as this Motion to Seal Petitioner's Writ of Certiorari.

II. INTRODUCTION.

Petitioner filed a baseless and frivolous lawsuit against Respondent Caryn Anderton, claiming defamation. Petitioner was found to have engaged in bad faith discovery and litigation practices, and his suit was dismissed with prejudice. Petitioner was barred from filing litigation against Respondent Anderton and others without written approval of the Snohomish County Presiding Judge after Petitioner was found to be a vexatious litigant and was sanctioned for filing his suit for an improper

purpose; to insert knowingly false statements about Respondent Anderton and innocent third parties into the public record. These findings were all affirmed on appeal. Petitioner's Writ of Certiorari constitutes yet another baseless, frivolous pleading containing grotesque language submitted for the purpose of harassing and harming Respondent Anderton as well as innocent third parties by defaming them in the public record. Respondent asks that this Court order a hearing to seal Petitioner's Writ of Certiorari and thereafter seal the Writ of Certiorari as well as this Motion to Seal Petitioner's Writ of Certiorari.

III. FACTUAL & PROCEDURAL BACKGROUND

Petitioner Nsejjere has a long history of representing himself pro-se, and has filed 89 lawsuits in King, Snohomish and Skagit County Superior Court in the last 10 years. CP 29.

Petitioner Nsejjere's claims against Respondent Anderton stem from a brief relationship between the parties which ended in acrimony. CP 27. Petitioner subsequently sued Respondent for defamation "with the intent to hurt and publicly shame Ms.

Anderton." CP 27. After Respondent moved to dismiss, Petitioner's response "contained personal attacks on Anderton's character." Ex. A, at 4. The trial court dismissed all of Petitioner's claims with prejudice and ordered Petitioner to pay Respondent Anderton $15,000.00 for violations of CR 11 for filing a baseless complaint for an improper purpose. CP 4. The trial court also found Petitioner to be a vexatious litigant as to Respondent Anderton and those associated with her. CP 5. Petitioner was found to be "utilizing the court system for the improper purpose of harming Ms. Anderton and invading her privacy and the privacy of others." CP 5. The trial court found that Petitioners written discovery requests contained "knowingly false statements about third parties, all of which are completely unrelated to the assertions in [his] Complaint." CP 5.

Petitioner had threatened to contact Respondent Anderton's family members and employers under the guise of 'discovery' with the apparent intention of telling them false and grotesque things about Respondent or that he claimed

Respondent had said about them. CP 52. Petitioner's discovery requests also made similarly awful, untrue statements about Respondent Anderton's family members themselves. CP 52. In one instance, Petitioner actually contacted one of Respondent Anderton's family members, her brother-in-law Bret Johnson, and threatened to make public record his discovery requests containing false, defamatory statements about that family member. CP 53. Bret Johnson was forced to retain an attorney and send Petitioner a Cease and Desist letter after this contact, yet Petitioner still refused to refrain from filing the discovery requests in the public record. CP 53-4.

Petitioner's Complaint itself was found to "unnecessarily include grotesque language that [was] unrelated to any alleged defamation." CP 5. The trial court noted that there was "no legitimate reason to publicize that language, except to harm [Respondent Anderton] and innocent third parties." CP 5. Overall, the trial court found that "the frivolous and offensive nature of [Petitioner's] complaint, the harassing *discovery*

practices, significant harm caused to innocent third parties and [Petitioner's] litigation history" all required a finding "that the interests of justice require protection for [Respondent Anderton] and those associated with her." CP 5. The trial court therefore ordered that Petitioner could not file a lawsuit of any nature against Respondent Anderton, her family, her employers, associates or friends without first obtaining written approval from the Snohomish County Presiding Judge. CP 5. Petitioner thereafter appealed.

At the appellate level, the trial court's findings were affirmed, and Petitioner was ordered to pay Respondent Anderton's reasonable attorney fees for filing a frivolous appeal. Ex. A, at 13. The Appellate Court also affirmed the $15,000 sanctions award, noting that "the [trial] court's unchallenged findings amply support both the imposition of CR 11 sanctions and the conclusion that Nsejjere was a vexatious litigant." Ex. A, at 12. The order preventing Petitioner from filing additional suits against Anderton and her family, employers, associates, or

friends without written approval from the presiding judge of Snohomish County Superior Court was likewise found to be reasonable and affirmed. Ex. A, at 11. Finally, the Appellate Court found the appeal to be frivolous and awarded reasonable attorney fees to Respondent Anderton, stating that "Nsejjere's claims are completely without merit and he does not challenge the [trial] court's finding that he filed his 'frivolous and offensive' complaint for an improper purpose." Ex. A, at 13. Petitioner Nsejjere thereafter filed a writ of certiorari to this Court.

IV. EVIDENCE RELIED UPON.

This Motion relies upon

V. ISSUES PRESENTED.

a. Whether the sealing of Petitioner's Writ of Certiorari is justified by compelling privacy and safety concerns.

VI. LEGAL AUTHORITY.

The Washington Constitution requires that "[j]ustice in all cases shall be administered openly." Wash Const. art. I, § 10.

However, court records may be redacted pursuant to GR 15 upon a court's written finding that doing so "is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2). GR 15 "applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record." GR 15. The General Rules define "court record" in broad terms, stating that a court record "includes, but is not limited to … [a]ny document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding." GR 31(c)(4); GR 15(b)(2). This includes writs of certiorari.

A court considering whether to seal a court record must determine whether the sealing would violate Washington Constitution article 1, section 10. *In re Dependency of M.H.P.*, 184 Wn.2d 741, 766, 364 P.3d 94 (2015). To make this determination, a court must analyze the five factors set forth in *Ishikawa*. *Id*. The five *Ishikawa* factors are:

1. The proponent of closure or sealing must make some showing of the need for doing so, and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.

4. The court must weigh the competing interests of the proponent of closure and the public.

5. The order must be no broader in its application or duration than necessary to serve its purpose.

Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 210-11, 848 P.2d 1258 (1993) (citing *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36-39, 640 P.2d 716 (1982)).

As in his past pleadings throughout this frivolous litigation, Petitioner has used his Writ of Certiorari "as an excuse to intentionally and recklessly cause harm to numerous people, most of whom are not parties to this lawsuit and have no ability to defend their reputation against [Petitioner]." CP 55. The Writ

includes numerous, egregious examples of the same type of "grotesque" language that has colored his previous filings. As determined by the trial court, the Writ is yet another instance of Petitioner "utilizing the court system for the improper purpose of harming Ms. Anderton and invading her privacy and the privacy of others." CP 5. Ordering the sealing of Petitioner's Writ of Certiorari would not violate Wash Const. art. I, § 10.

a. Petitioner's Writ Constitutes a Serious and Imminent Threat to Respondent and others Safety and Privacy.

Petitioner's Statement of the Case begins with mention of the murder of George Floyd. It is littered with all-caps, bolded declarations of the N-word and other racially charged language Petitioner attributes to Respondent. In one instance, Petitioner terms Respondent Anderton "a *Karen run amok*, degrading and devaluing black lives… present[ing] egregious falsehoods against black Africans that Anderton categorizes 'in writing' as

automatic criminals and thus deserving of such vitriol."[1] Petitioner's Writ uses violent rhetoric and calls to action, such as the following; "This must be resolutely condemned, absolutely admonished, and perpetrators must be disciplined – WITHOUT EXCEPTION."[2] These unsubstantiated claims of racism present significant and compelling privacy and safety concerns for Respondent Anderton and her friends and family, especially as Petitioner elsewhere includes the ***full address, including apartment number***, of Anderton's daughter Jordan.[3] Respondent's daughter Jordan Anderton is an innocent third party to this suit and her **full address** was included for the sole reason of harassing Respondent and causing her to fear for her daughter's safety. This constitutes a serious and imminent threat to her safety and privacy.

Petitioner also includes several irrelevant, false, and offensive claims about Bret Johnson, who is Respondent

[1] Petition for Writ of Certiorari, page 11.
[2] Petition for Writ of Certiorari, page 13.
[3] Petition for Writ of Certiorari, page 12.

Anderton's brother-in-law. Petitioner alleges in one instance that Respondent Anderton "threatened to use her powerful Brother-in-law Bret Johnson (CFO at Space X) to have CIA kill Nsejjere."[4] In another, Petitioner alleges affairs between Bret Johnson and his secretary and sister-and-law.[5] Bret Johnson has previously been forced to retain an attorney and send Petitioner a Cease and Desist letter. Bret is a third-party to this action and the unnecessary inclusion of such grotesque falsehoods about him constitutes a serious and compelling threat to his privacy, safety and livelihood. As with the discovery requests for which he has previously been sanctioned, Petitioner included these "knowingly false statements about third parties, all of which are completely unrelated to the assertions in [his] Complaint" for the singular purpose of harassing Respondent Anderton and invading her privacy and the privacy of innocent third parties such as Bret Johnson. CP 5.

[4] Petition for Writ of Certiorari, page 11.

[5] Petition for Writ of Certiorari, page 12.

b. Sealing Petitioner's Writ of Certiorari is the Least Restrictive Means of Protecting the Threatened Interests.

The Trial Court in this matter determined that the interests of justice required protection for Respondent Anderton. In that instance the protection granted was in the form of a sanction against Petitioner's ability to misuse the court system and further file baseless and frivolous litigation against Respondent Anderton. However, as is evidenced by the Writ of Certiorari, Petitioner persists in his harassment and misuse of the courts system. Petitioner's extensive litigation history, his failure to cure the numerous fatal deficiencies which defeat the crux of his defamation claims and resulted in their dismissal with prejudice below, and his continued inclusion of offensive, harmful and untrue allegations against both Respondent and third parties reveal his true goal in filing the Writ of Certiorari is simply to harass Respondent and others by the inclusion of such claims in a public forum. As stated by the Trial Court; there is "no

legitimate reason to publicize [such] language, except to harm [Respondent Anderton] and innocent third parties." CP 5.

As such, the interests of justice compel sealing Petitioner's Writ of Certiorari in its entirety, as well as this Motion to Seal Petitioner's Writ of Certiorari. Doing so is the only way to prevent Petitioner from successfully circumventing the previously imposed sanctions and continuing his improper harassment of Respondent Anderton and others through the court system.

c. Respondent's Privacy and Safety Interests Far Outweigh the Public's Interest in this Matter.

Washington's Constitution firmly establishes that the public has a fundamental interest in the open administration of justice. Wash Const. art. I, § 10. However, the public interest in disclosure of Petitioner's Writ of Certiorari is substantially outweighed by Respondent's privacy and safety concerns.

Petitioner's defamation claims against Respondent Anderton are fatally flawed and were dismissed with prejudice

at the Trial Court level. This dismissal was affirmed by the Appellate Court. Petitioner's Writ of Certiorari fails to cure any of the defects which resulted in the dismissal of his claims below and serves only to further harass Respondent by publishing offensive and private details (such as complete home addresses of third parties). The defects in Petitioner's claims are numerous.

Petitioner failed to comply with RCW 7.96.040, which requires defamation claimants to make a request to the defendant for clarification or correction of the alleged defamatory statements. Many of the allegedly defamatory messages were texts sent by Respondent only to Petitioner. As a matter of law, these claims cannot constitute defamation as they were never published to third parties. *See Pate v. Tyee Motor Inn, Inc.*, 77 Wn.2d 819, 821, 467 P.2d 301, 302 (1970) ("Tort liability for slander requires that the defamation be communicated to someone other than the person or persons defamed.").

Other allegedly defamatory messages were either in the form of questions, or opinions, neither of which can form the

basis of a defamation claim. *See Life Designs Ranch, Inc. v. Sommer*¸191 Wn. App. 320, 331, 364 P.3d 129, 135 (2015) (A claim of defamation requires a false statement of fact.).

Yet other allegedly defamatory messages were made to persons who themselves knew the facts underlying the assertions and could therefore judge the truthfulness of the allegedly defamatory statements themselves. These likewise cannot serve as the basis for a defamation claim. *Id*. at 332.

While Petitioner included other allegedly defamatory messages in his complaint, these too fail, as he has not pled any specific, basic factual details that would allow the Court or Respondent to evaluate the sufficiency and plausibility of his claims.

Petitioner does not attempt to rectify any of the numerous defects which resulted in the dismissal of his defamation claims below. Instead, the claims Petitioner focuses on in his Writ of Certiorari are offensive, for the most part irrelevant to his defamation suit, and grotesque in nature. There is no public

interest in disclosure of Respondent's daughters **full home address**, or in disclosure of allegations that a third party to this matter had affairs, or that Respondent "likes the word LICK." Such statements are irrelevant, offensive, intended to harass Respondent and others, and warrant the sealing of Petitioner's Writ of Certiorari.

d. An Order to Seal Petitioner's Writ of Certiorari, as well as this Motion to Seal Petitioner's Writ of Certiorari is no Broader than Necessary to Protect Respondent's Interests.

Petitioner has previously been sanctioned for filing a baseless complaint for an improper purpose. CP 4. Petitioner has also been found to be a vexatious litigant due to his utilization of the courts system and discovery process to harass Respondent and publish offensive, knowingly false statements about her and others in a public forum. CP 4. Despite an order preventing Petitioner from filing a lawsuit of any nature against Respondent, her family, her employers, associates or friends without first obtaining written approval from the Snohomish County

Presiding Judge Petitioner persists in harassing Respondent by filing frivolous appeals in this matter, and including offensive, grotesque language about Respondent and others in further attempts to misuse the court system and harass Respondent. Allowing Petitioner's Writ of Certiorari to enter the public record would undermine the intent of the previously imposed sanctions upon Petitioner's ability to file lawsuits against Respondent. Sealing Petitioner's Writ of Certiorari, as well as this Motion to Seal Petitioner's Writ of Certiorari would be no broader of an order than is truly necessary to protect Respondent's privacy and safety interests as well as the privacy and safety interests of innocent third parties which Petitioner references in his Writ.

VII. CONCLUSION.

For the foregoing reasons, Respondent respectfully requests that this Court hold a GR 15 hearing to seal Petitioner Issac M. Nsejjere's Petition for Writ of Certiorari, enter written findings that the sealing is justified by compelling privacy and

safety concerns, and thereafter order the sealing of the Petition for Writ of Certiorari, as well as this Motion to Seal.

This document contains 2,758 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted: September 5, 2025.

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By: */s/ Colleen A. Lovejoy*

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Schlemlein Fick & Franklin, PLLC, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness here. On the date stated below, I caused to be served a true and correct copy of the above document on the below-listed attorney(s) of record by the method(s) noted:

☒ Via Appellate Portal and Email to the following:

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DATED: September 5, 2025.

s/ Lacey Georgeson
Lacey Georgeson, Legal Assistant

EXHIBIT A

Filed
Washington State
Court of Appeals
Division Two

July 8, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ISAAC M. NSEJJERE, Appellant, v. CARYN M. ANDERTON, Respondent, DOES 1-25 inclusive, Defendants,	No. 60351-9-II UNPUBLISHED OPINION

GLASGOW, J.—Isaac Nsejjere had a brief romantic relationship with Caryn Anderton. Nsejjere, who was in his 50s, had also been romantically involved with 16-year-old ASR. Shortly after Anderton and Nsejjere broke up, Anderton formed a friendship with ASR where they discussed Nsejjere. Anderton criticized Nsejjere for having intercourse with someone so young, characterizing Nsejjere as a rapist and a pedophile.

Nsejjere then sued Anderton for defamation, alleging that Anderton defamed him by sending him graphic text messages; telling ASR that Nsejjere's contact should be considered rape; and telling a mortgage loan officer that Nsejjere was a thief and a pedophile who lied about his education, among other alleged statements. Anderton moved to dismiss the claims, sought CR 11 sanctions, and sought a finding that Nsejjere was a vexatious litigant.

The trial court dismissed the complaint, imposed $15,000 in sanctions, and based in part on Nsejjere's litigation history, ordered that Nsejjere could not file new suits against Anderton or

her friends, family, and associates without written permission from the Snohomish County presiding judge. Nsejjere appeals. We affirm the trial court and order that Nsejjere pay Anderton's reasonable attorney fees for filing this frivolous appeal.

FACTS

I. BACKGROUND

Nsejjere has filed dozens of civil complaints since 2019 unrepresented by counsel. Nsejjere had a brief romantic relationship with Anderton, and they broke up when Anderton learned that Nsejjere had been unfaithful. After the breakup, Nsejjere had possession of Anderton's car and refused to return it, despite Anderton and her family members repeatedly asking for the car back.

Nsejjere, who was in his 50s, also had a romantic relationship with 16-year-old ASR, who became pregnant twice as a result of intercourse with Nsejjere. Anderton and ASR became close and had conversations about Nsejjere's conduct. According to Nsejjere, Anderton told ASR that Nsejjere's sexual contact with ASR should be considered rape. Anderton also allegedly told a mortgage loan officer that Nsejjere was a thief and a pedophile who lied about his education.

II. DEFAMATION SUIT

Shortly after Anderton broke up with him, Nsejjere sued Anderton for defamation. Nsejjere was not represented by counsel. In his complaint, Nsejjere raised claims based on statements that Anderton allegedly made to Nsejjere, ASR, and a loan officer.

Specifically, Nsejjere claimed that Anderton defamed him by sending Nsejjere text messages expressing disgust with him as a person and accusing him of sex crimes and theft. Nsejjere also claimed that Anderton defamed him by sending him text messages regarding sexual fantasies. Additionally, Nsejjere alleged that Anderton made derogatory and racist comments in

texts sent directly to Nsejjere. Nsejjere claimed that Anderton later showed the text messages to ASR and others.

Nsejjere also claimed that Anderton defamed him by asking ASR for details about her relationship with Nsejjere and telling ASR that Nsejjere's contact with ASR should be considered rape because ASR was underage. Nsejjere quoted an alleged text message from ASR to Nsejjere indicating that ASR did not consider the contact rape and did not tell Anderton that Nsejjjere raped her. Nsejjere did not allege that Anderton's rape accusation was published to anyone else besides ASR.

Nsejjere also claimed that Anderton defamed him by contacting a mortgage loan officer and telling him that Nsejjere was a thief and a pedophile and discouraging the loan officer from doing business with Nsejjere. Nsejjere also alleged that Anderton told the loan officer and ASR that he lied about his education by saying he did not have a degree from City University of Seattle. Nsejjere alleged, "[Anderton] knows that [Nsejjere] – IN FACT – holds a master's degree and completed his doctoral courses at City University of Seattle." Clerk's Papers (CP) at 76. But the complaint did not specify what degree, if any, Nsejjere held from that school.

In Anderton's answer, she admitted making some of the alleged statements to Nsejjere but denied making any statements to third parties. Anderton also raised the defense that Nsejjere failed to state a claim, but did not specify whether she intended to assert that motion under CR 12(b)(6) or 12(c). Nsejjere does not challenge on appeal factual findings that during discovery, Nsejjere served discovery requests that contained knowingly false statements about third parties that were unrelated to his claims against Anderton. The court stayed discovery based on a finding that Nsejjere had "engaged in bad faith discovery and litigation practices." CP at 25.

Anderton moved to dismiss the complaint under CR 12(b)(6) focusing on how the complaint failed as a matter of law, but Anderton appears to have relied on declarations and attachments submitted with the motion. She argued that the complaint did not state a claim because it failed to plead facts showing the allegedly defamatory statements were false or published negligently to third parties. Specifically, she argued that many of the statements were not defamatory as a matter of law because they were stated directly to Nsejjere; were not factual statements but instead were opinions, threats, or accusations; and any underlying facts were either true or known to the recipient, or both. Anderton also requested sanctions under CR 11 and restrictions preventing further vexatious litigation by Nsejjere because the complaint was filed for the improper purpose of harassing Anderton, and because Nsejjere engaged in harassing discovery practices.

Nsejjere responded that Anderton's facts were untrue but did not present argument to address the legal deficiencies Anderton relied on and did not provide responsive declarations. His response contained personal attacks on Anderton's character and screenshots of Anderton's alleged text messages, some apparently sent during their relationship showing sexual fantasies and others apparently after the relationship, with vulgar insults toward Nsejjere.

The trial court dismissed the case with prejudice and granted Anderton's request for CR 11 sanctions and vexatious litigation restrictions. The order indicated that the trial court considered Anderton's declarations and attached exhibits, but it is unclear whether the court considered these facts for purposes of evaluating the motion to dismiss or only for purposes of evaluating the other motions.

The final order contained a conclusion that Nsejjere was a vexatious litigant and violated CR 11 based on the court's finding that Nsejjere was using the court system for an improper

purpose, namely invading Anderton's privacy and the privacy of others. Specifically, the court found that Nsejjere's complaint "unnecessarily include[d] grotesque language that [wa]s unrelated to any alleged defamation. There was no legitimate reason to publicize that language, except to harm the Defendant and innocent third parties." CP at 5. The court also found that Nsejjere's discovery requests contained "knowingly false statements about third parties" that were "completely unrelated" to his complaint. *Id.* The court also found that protective sanctions were needed based on the "frivolous and offensive nature of Plaintiff's complaint, the harassing discovery practices, significant harm caused to innocent third parties and Plaintiff's litigation history." *Id.* Thus, the trial court ordered Nsejjere to pay $15,000 in sanctions and barred him from filing litigation against Anderton or her family, employers, associates, or friends without the written approval of the Snohomish County presiding judge.

Nsejjere appeals.

ANALYSIS

I. DISMISSAL

Nsejjere argues that the court erred by dismissing his defamation claims against Anderton. We disagree.

A. Standard of Review

Dismissal under CR 12(b)(6) is warranted if the pleadings do not state a claim upon which relief could be granted.[1] A party can also move for judgment on the pleadings under CR 12(c) based on failure to state a claim. We review de novo a trial court's dismissal for failure to state a

[1] The Supreme Court of Washington amended CR 12 effective September 1, 2025, but the amendments are immaterial to the issues in this appeal. Gen. Ord. 25700-A-1636 (Wash. Jun. 5, 2025).

claim. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). We ask whether "it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, [that] would justify recovery." *Id.*

However, if the court considers matters outside the pleadings, "the motion shall be treated as one for summary judgment." CR 12(c). Here, the trial court listed declarations in the materials it considered, so we can review the ruling under the summary judgment standard. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860 (2013); *Mason v. Mason*, 19 Wn. App. 2d 803, 821, 497 P.3d 431 (2021). Under this standard, we view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in the nonmoving party's favor. *Lakey*, 176 Wn.2d at 922. We affirm if "'there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.'" *Id.* (quoting *Qwest Corp. v. City of Bellevue,* 161 Wn.2d 353, 358, 166 P.3d 667 (2007)).

We note that Nsejjere argues that the motion to dismiss was untimely because a CR 12(b)(6) motion must be made before the responsive pleading. We need not consider this argument because under the plain language of the rule, the motion was converted into a summary judgment motion when the parties filed, and the court did not exclude, matters outside the pleadings. CR 12(b). Additionally, even if we were to treat it as a CR 12 motion, Anderton's answer raised the defense of failure to state a claim so the defense was not waived. Moreover, CR 12(c) permits a motion for judgment on the pleadings after the answer, so in any event, Nsejjere's untimeliness argument is without merit.

B. Nsejjere Failed to Plead or Present Facts That Would Constitute Defamation

Nsejjere's complaint raised claims based on Anderton's alleged text communications to Nsejjere, ASR, and the mortgage loan officer. Nsejjere failed to state a claim and failed to establish a genuine issue of material fact as to each group of statements.

Baseless defamation lawsuits, even before trial, may chill the exercise of free speech guaranteed by the First Amendment to the United States Constitution. *Mohr v. Grant*, 153 Wn.2d 812, 821, 108 P.3d 768 (2005) (plurality opinion); *see also id.* at 831-34 (Chambers, J., concurring in relevant part and dissenting in result). Accordingly, the Washington Supreme Court has explained that "summary judgment plays a particularly important role in defamation cases." *Id.* at 821. Therefore, to defeat summary judgment, "the plaintiff has the burden of establishing a prima facie case on all four elements of defamation: falsity, an unprivileged communication, fault, and damages." *LaMon v. Butler*, 112 Wn.2d 193, 197, 770 P.2d 1027 (1989); *accord Mohr,* 153 Wn.2d at 822. "The prima facie case must consist of specific, material facts, rather than conclusory statements, that would allow a jury to find that each element of defamation exists." *LaMon*, 112 Wn.2d at 197.

The first element, falsity, requires showing that the allegedly defamatory statement "is provably false, either in a false statement or because it leaves a false impression." *Mohr*, 153 Wn.2d at 825. In reviewing falsity, we ask not whether the statement is literally true but instead whether "the statement is substantially true" or "the gist of the story, the portion that carries the 'sting,' is true." *Mark v. Seattle Times*, 96 Wn.2d 473, 494, 635 P.2d 1081 (1981). Determining the "sting" is a question of law, at least in some cases. *Mohr*, 153 Wn.2d at 826; *Haueter v. Cowles Pub. Co.*, 61 Wn. App. 572, 585, 811 P.2d 231 (1991). A statement of pure opinion cannot be the basis of a defamation claim, and the determination of whether a statement is actionable fact or

nonactionable opinion is a question of law for the court. *Benjamin v. Cowles Publ'n Co.*, 37 Wn. App. 916, 922, 684 P.2d 739 (1984). Additionally, "[w]hen the audience knows the facts underlying an opinion and can judge the truthfulness of the allegedly defamatory statement themselves, the basis for liability for the opinion is undercut." *Duc Tan v. Le*, 177 Wn.2d 649, 664, 300 P.3d 356 (2013).

The second element requires a communication to someone other than the plaintiff. *Lunz v. Neuman*, 48 Wn.2d 26, 33, 290 P.2d 697 (1955). The issue of privilege is not relevant here.

The third element, fault, requires a different showing depending on the plaintiff's status as a private or public figure. *See LaMon*, 112 Wn.2d at 197. Where, as here, the plaintiff is a private individual and the communications are of a private concern, the plaintiff must show by a preponderance of the evidence that the defendant was negligent, meaning the defendant knew or in the exercise of reasonable care should have known that the statement was false or would create a false impression in some material respect. *Id.*; *Maison de France, Ltd. v. Mais Oui!, Inc.*, 126 Wn. App. 34, 44, 108 P.3d 787 (2005); *Valdez-Zontek v. Eastmont Sch. Dist.*, 154 Wn. App. 147, 157, 225 P.3d 339 (2010).

Finally, the fourth element, damages, is not argued here. *See Purvis v. Bremer's Inc.*, 54 Wn.2d 743, 747, 344 P.2d 705 (1959).

1. Anderton's alleged text messages to Nsejjere cannot support a defamation claim

The trial court properly dismissed those claims and portions thereof that were based on text messages sent from Anderton to Nsejjere. As a matter of law, communications from Anderton to Nsejjere cannot constitute defamation because the law requires publication to third parties. *Lunz*, 48 Wn.2d at 33. Moreover, even if the alleged messages were later shown to third parties, the text messages from Anderton to Nsejjere do not indicate anything defamatory because if true, they

reflect only Anderton's alleged opinions and sexual fantasies and are not statements of fact regarding Nsejjere. *See Duc Tan*, 177 Wn.2d at 662. Therefore, we hold Nsejjere failed to plead or present facts that would state a claim for defamation based on Anderton's alleged text messages to him, and these claims were properly dismissed as a matter of law.

2. Anderton's alleged statements, directives, and questions to ASR regarding Nsejjere's conduct toward ASR cannot support a defamation claim

The trial court also properly dismissed Nsejjere's claims based on the alleged statements from Anderton to ASR regarding Nsejjere's conduct toward ASR. To the extent Nsejjere claimed that Anderton defamed him by telling ASR that Nsejjere had raped ASR when ASR was a minor, this cannot be defamation because ASR would know whether the underlying fact was true or false, and Nsejjere did not claim that Anderton published this allegation to anyone else besides ASR. *See Duc Tan*, 177 Wn.2d at 664. To the extent Nsejjere claimed that Anderton defamed him by asking questions about his relationship with ASR, this cannot be defamation because the complaint does not allege any statement of fact from Anderton to Nsejjere, only that she asked questions seeking information from ASR. The rest of the alleged communications from Anderton to ASR fail as a matter of law for the same reason—they do not contain express or implied statements of fact.

Thus, we hold Nsejjere failed to plead or present facts showing that any statements Anderton made to ASR regarding the relationship between ASR and Nsejjere would constitute defamation. These claims were also properly dismissed as a matter of law.

3. Nsejjere did not plead or make a prima facie showing that Anderton's alleged statements regarding Nsejjere's education, pedophilia, and theft were false or made negligently

Finally, the court properly dismissed the remaining claims, including that Anderton defamed Nsejjere by telling others that he was a pedophile and a thief who lied about his education.

Again, Nsejjere's claim is deficient as a matter of law because he failed to plead facts showing the statements were false, and his own admissions show that the "sting" of each allegedly defamatory statement was true.

First, these claims were properly dismissed because Nsejjere's admissions show that the "sting" of each allegedly defamatory statement was true, an issue we may determine as a matter of law. To the extent Anderton told others that Nsejjere was a pedophile, Nsejjere admitted to engaging in sexual intercourse with a 16 year old child when Nsejjere was in his 50s, and he did not specifically deny being sexually attracted to minors. We are permitted to determine the "sting" of the allegedly defamatory statement as a matter of law and here, Nsejjere's own admissions establish that the "sting" is essentially true. *Mohr*, 153 Wn.2d at 826. Given the context, if Anderton used the term "pedophile" colloquially to describe Nsejjere's sexual relationship with a minor, this cannot be defamation because Nsejjere admits to the relationship itself. Thus, Nsejjere failed to state a claim based on the accusation that he was a pedophile, and this claim fails as a matter of law because he admitted facts supporting the core truth of the statement.

Similarly, Nsejjere admitted to having possession of Anderton's car and that he did not return it despite Anderton and her relatives repeatedly asking for the car back. Again, Nsejjere's admissions show that the "sting" of the allegedly defamatory statements was true, so his claim is legally deficient to the extent he relies on Anderton's comments that he was a thief. *Id.* Even if this were not the case, Nsejjere did not adequately plead that Anderton made any false statements negligently, and his admissions make it impossible for us to infer the requisite level of fault. *See LaMon*, 112 Wn.2d at 197. Thus, we hold Nsejjere's claims based on Anderton allegedly saying he was a pedophile and a thief were legally deficient and properly dismissed.

Lastly, Nsejjere did not plead facts that would support a claim for defamation based on Anderton saying that Nsejjere lied about his education. The most Nsejjere alleged in his complaint was, "[Anderton] knows that [Nsejjere] – IN FACT – holds a master's degree and completed his doctoral courses at City University of Seattle." CP at 76. This does not clearly indicate what degree, if any, Nsejjere holds from that school. And although Anderton pointed this out and argued the failure to allege falsity was fatal to this claim, Nsejjere did not seek to amend his complaint or even argue that he did in fact hold a degree from City University of Seattle. Moreover, like the other alleged statements, Nsejjere did not plead facts that would support an inference that Anderton was negligent in making any false statements about his education. *See LaMon*, 112 Wn.2d at 197. Thus, Nsejjere's complaint is legally insufficient to state a claim for defamation based on Anderton's statements about Nsejjere's education, and we hold that these claims were properly dismissed.

We affirm the dismissal of all of Nsejjere's claims.[2]

II. SANCTIONS AND VEXATIOUS LITIGANT RESTRICTIONS

We also affirm the $15,000 sanctions award and the order preventing Nsejjere from filing additional suits against Anderton and her family, employers, associates, or friends without written approval from the presiding judge of Snohomish County Superior Court.

CR 11 is intended to deter baseless filings and abusive use of the judicial system. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). The rule authorizes sanctions for certifying pleadings, motions, and legal memoranda that are baseless or are interposed for an improper purpose. CR 11. We review CR 11 sanctions for an abuse of discretion, meaning the

[2] Given our resolution of these issues, we need not address Anderton's argument that the complaint was facially deficient because it did not comply with RCW 7.96.040.

ruling was manifestly unreasonable or based on untenable grounds or reasons. *Watness v. City of Seattle*, 11 Wn. App. 2d 722, 735-36, 457 P.3d 1177 (2019).

In addition to imposing CR 11 sanctions, courts may "'enjoin a party from engaging in litigation upon a specific and detailed showing of a pattern of abusive and frivolous litigation.'" *Bay v. Jensen*, 147 Wn. App. 641, 657, 196 P.3d 753 (2008) (internal quotation marks omitted) (quoting *Yurtis v. Phipps,* 143 Wn. App. 680, 693, 181 P.3d 849 (2008)). The injunction must be reasonable and should not completely bar a party from accessing the courts. *Id.* We review vexatious litigation orders for abuse of discretion. *Id.*

Here, the trial court found that Nsejjere was using the court system for an improper purpose, namely invading Anderton's privacy and the privacy of others by including "grotesque language" with "no legitimate reason." CP at 5. Nsejjere does not challenge the factual findings underlying the sanctions, instead arguing that the court erred because his claims had merit. But the court imposed sanctions for filing the complaint for an improper purpose, not for filing a baseless complaint, so Nsejjere's arguments are completely disconnected from the court's reasoning. We hold that the court's unchallenged findings amply support both the imposition of CR 11 sanctions and the conclusion that Nsejjere was a vexatious litigant.

We also conclude that the court's vexatious litigation restriction was reasonable because it allowed Nsejjere to access the courts so long as he obtained written approval from the Snohomish County presiding judge. This restriction was necessary to protect Anderton and her listed associates based on the "frivolous and offensive nature of Plaintiff's complaint, the harassing discovery practices, significant harm caused to innocent third parties and Plaintiff's litigation history." CP at 5. Therefore, we affirm the CR 11 sanctions and the vexatious litigation restriction.

ATTORNEY FEES

Finally, Anderton requests attorney fees under RAP 18.9(a), which authorizes an award of attorney fees as a sanction for filing a frivolous appeal. An appeal is frivolous "'if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal.'" *State v. Chapman*, 140 Wn.2d 436, 454, 998 P.2d 282 (2000) (alteration in original) (quoting *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998)). Here, as we conclude above, Nsejjere's claims are completely without merit and he does not challenge the court's finding that he filed his "frivolous and offensive" complaint for an improper purpose. CP at 5. We award reasonable attorney fees to Anderton in an amount to be determined by a commissioner of this court.

CONCLUSION

We affirm the trial court and grant Anderton's request for reasonable attorney fees in an amount to be determined by a commissioner of this court.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

GLASGOW, J.

We concur:

CRUSER, C.J.

PRICE, J.

SCHLEMLEIN FICK & FRANKLIN, PLLC

September 05, 2025 - 1:21 PM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	Isaac M. Nsejjere v. Caryn M. Anderton
Superior Court Case Number:	24-2-01311-1

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