Circuit Court for Frederick County
Case No. 10-C-14-002915

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2089

September Term, 2015

MICHAEL SCOTT

v.

JAMES YOUNT

Kehoe,
*Woodward,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Woodward, J.

Filed: April 23, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

This case arises out of, as one witness described it, a "Hatfields and McCoy[s] issue." The feud between the former neighbors in this case reached its climax when James Yount, appellee, sent a letter ("Letter") dated August 15, 2014, to all twenty-eight members of the Saddle Ridge Community stating, among other things, that Michael Scott, appellant, was using his home for "a distribution center for medical supplies and prescription drugs" and was "accusing others with lies, slander and fraud."

On September 26, 2014, Scott filed a complaint against Yount in the Circuit Court for Frederick County for (1) defamation, (2) "false light" invasion of privacy, and (3) "unreasonable publicity given to private life" invasion of privacy. At the conclusion of Scott's case-in-chief, Yount made an oral motion for judgment, which the circuit court granted. In this timely appeal, Scott presents two questions for our review:

> 1.Did the Circuit Court err by granting Appellee's Motion for Judgment?
>
> 2.Did the Circuit Court err by excluding Appellee's tax returns?

For the reasons set forth below, we answer the first question in the negative and affirm the judgment of the circuit court. [1]

[1] Scott conceded in his brief that we need not address his second question if this Court affirms the circuit court's grant of the motion for judgment. Scott's brief contains the following conditional statement:

> In the event that this Court reverses the lower court's grant of Yount's Motion for Judgment, this Court should also address an evidentiary issues/rulings that took place during the trial below in order to avoid such issue/ruling necessitating a second appeal upon the conclusion of any re-trial. *See* Rule 8-131(a).

BACKGROUND

Scott and Yount were neighbors in the Saddle Ridge Community for approximately thirteen years. Sometime in 2012, Scott reported to the Saddle Ridge Homeowner Association, Inc. ("HOA") that Yount was operating a landscaping business from his home—sparking what would become an ongoing dispute between the parties. According to Scott, when the HOA did nothing to put an end to Yount's landscaping business or enforce any of the covenants, conditions, or restrictions of the HOA, he initiated a protest by refusing to cut the grass in his own front yard beginning in September of 2013. Eventually, in December of 2013, the HOA sent a cease and desist letter to Yount directing him to stop operating a landscaping business from his home because it was in violation of "Saddle Ridge Homeowner Association, Inc. Covenants, Codes, & Restrictions." According to Scott, however, Yount continued to use his home as a landscaping business without any further challenge by the HOA. Consequently, in February of 2014, Scott along with his wife, Ave Scott, filed a lawsuit against Yount, Yount's wife, the HOA, and Yount's grandson to enforce the HOA's cease and desist letter. The Scotts later voluntarily dismissed that case.

Around July of 2014, Yount sold his home and moved out of the Saddle Ridge Community. But, in the "first or second week of September" of 2014, Yount sent the Letter to twenty-eight members of the Saddle Ridge Community. The Letter stated, in relevant part:[2]

This letter is written as **a formal complaint against "Mike Scott**

[2] The grammatical and typographical errors therein have not been altered.

> who resides at 2505 [] **for conducting a full time medical type sales business within his occupied residence. Mike Scott is a full time Sales Manager and as a Pharmaceutical Sales Agent** and fully utilizes his resident at 2505 [] within the Saddle Ridge Community as a point office to go to and from while conducting business in his assigned regions. He told Mr. Yount himself that his Company's main office is in Jacksonville, Florida. **It is our observation that he has established and set up their house as a satellite office for performing his work while contacting, traveling to and from clients and regional clinics, stores and possibly doctors offices.** Also, **there are more than just frequent amount of UPS Trucks that make deliveries to their residence. It's on a regular basis weekly,** every week, **as much as 3 to 5 days a week**, which actually brings commercial grade business traffic directly to his house and into the community of Saddle Ridge. **Therefore the Scotts residence which is only to be used for residence only is actually considered a distribution center for medical supplies and prescription drugs and is a direct violation of <u>Section 2: Prohibited Uses and Nuisances "Residential Use"</u>**
>
> **The business use of the Scotts house has been really over looked over the past 13 years to a point now he is accusing others with lies, slander and fraud.** Some years back he actually was a Sales Manager days he never left the house and would work from his home office in the basement which is a known fact that exist based on neighbors and I who have visited their house. **He now is residing in his house as a Sales Agent for his company that is out of Jacksonville, Florida.** There were other known facts the Ave Scott over some past years actually received pay for working the office and doing business related activity for Mike Scott's during the days or evenings. **We and you as a community "need to know" the potential risk and the HOA needs to review his Security Plan of how he handles and Safeguards those Medical Products (Should they happen to fall into the wrong hands). Is there a liability issue here if a young person breaks in their house, steels some type of prescription drugs and dies or sells them to someone else and they possibly die! Who is liable if the HOA permits this conduct in business activity after being reported by the community to the Saddle Ridge HOA Board of Directors.**

(Underline in original) (bold emphasis added).

According to Scott, he and his wife received the Letter on September 13, 2014. In

response, Scott filed a complaint in the circuit court against Yount for (1) defamation, (2) "false light" invasion of privacy, and (3) "unreasonable publicity given to private life" invasion of privacy.

On October 27, 2015, a jury trial began in the circuit court. Scott's case-in-chief consisted first of the testimony of Joseph Normile. Normile became Scott's next-door neighbor around July of 2014, and testified that he had received the Letter. The following exchange on direct examination is of particular importance:

> Q. Okay, and what did you discuss with [ ] Scott [after receiving the Letter]?
>
> A. Uh, what in the world this was all about. Um, uh, uh, uh, I, I didn't understand it, uh, why I had received it in the first place. But I also didn't understand why it, **it was written the way it was, um, when it, uh, was, was clearly implying, uh, uh, that there were, uh, uh, drugs being stored in, in his house, and, uh, what it threat it was to the neighborhood, and all.** And, um, there was no indication of it. It was a surprise. So I asked what, what was going on.
>
> Q. And after reading the [L]etter, did you have any concerns about those allegations, in terms of the prescription drugs being in his residence?
>
> A. Well, I, I, I have to be honest to say I didn't, **didn't quite believe it, because, um, it was referring to, um, delivery trucks bringing them to his house.** And, of course, you know, you have got delivery trucks, UPS and FedEx, coming, uh, to the neighborhood all of the time. And you, you, you can't see any, any packages. **You can't see what's on them, or anything.** They are all - - they are all wrapped up, and, and delivered. So I, I, I couldn't understand how that would have been known. Uh, uh, it was bothersome. That's for sure.

(Emphasis added). On cross-examination, Normile further stated:

> Q. Okay, and after having spoken to [ ] Scott, you were satisfied that

there were no problems as far as drugs being stored there, or anything of that nature; is that correct?

A. Well, I mean - -

Q. I mean, were you satisfied that there was no danger after you spoke to [ ] Scott?

A. Well, uh, uh, uh, yes.

* * *

Q. Okay and you haven't, um, uh, spurned him as a result of this [L]etter. In other words, you have not refused to socialize with [Scott] because of this [L]etter that you got from [Yount], have you?

A. No.

(Emphasis added).

Edward Cannell, another neighbor of Scott, described the conflicts between Scott and Yount as a "Hatfields and McCoy[s] issue." Cannell testified that he too received the Letter, and everyone in the neighborhood was "talking about either having received the [L]etter, or the contents." When asked about Scott's reputation prior to him receiving the Letter, Cannell testified that he would describe Scott as being known as a "jackass" or "ignorant[,]" because Scott refused to mow his grass in protest to the HOA not enforcing any of the covenants and for Scott's decision to file a lawsuit against the HOA, Yount, Yount's wife, and Yount's grandson. Cannell then testified that he did not change his interactions with Scott after receiving the Letter.

During his testimony, Scott maintained that the allegations in the Letter were false: he was not a pharmaceutical sales representative, and he did not have a license to sell

pharmaceuticals. Scott explained his reaction to the Letter as follows:

> [A]: Shock, and fear.
>
> ***
>
> Q. And why is that?
>
> A. Well, because the [L]etter stated that, if somebody breaks in to steal these prescription drugs, or overdoses, or breaks in to steal them to sell them, and they overdose, essentially, my wife and I just - - we looked at each other, and [ ] [Yount] just put a target on our house, that we have prescription drugs here. So people don't need to break in to steal anything, to go sell it to buy the prescription drugs. It's right here.
>
> Q. Do you have an opinion as to whether or not this [L]etter harmed your reputation in any way?
>
> * * *
>
> [A]: I don't have any knowledge that it's harmed my reputation . . .

Scott later stated, however, that he believed that his reputation was harmed because he had to call his legal department at his employer, McKesson, to inform them about the Letter. Scott testified that he thought calling his legal department was not ideal because he did not want to be known as the employee who had to call the legal department after only being there a year. Scott further testified that the Letter had caused him to not sleep well and worry. Scott admitted that he had not suffered any economic harm, such as lost wages.

Ave Scott, Scott's wife, testified that after receiving the Letter, Scott was more worried, called the house more often, constantly checked to make sure the doors were locked, and slept less. Yount's wife, Adrienne Yount, testified that she saw Scott receive packages, but she did not know what was in those packages.

Yount testified that he sent the Letter to twenty-eight homes in the Saddle Ridge Community. When asked whether Yount had "any facts or evidence that [Scott's] residence was being used as a distribution center for prescription drugs[,]" he responded, "[n]o." The following colloquy occurred concerning Yount's statement that "[Scott] was accusing others with lies, slander and fraud":

> Q. It says, 'The business use of the Scotts' house has been really overlooked for the past 13 years, to the point, now, he is accusing other of lies, slander, or fraud.' Could you explain what you meant by that, or how you believed [Scott] was accusing others with lies, slander, or fraud?
>
> A. Yeah, that was - - **that was directed, uh, towards my household.** When I say "others," that was related to what was to be addressed as he contributed to **our, uh, having a business, landscaping business, in our house, uh, towards my grandson, as having a full operational landscaping business**, um, which was, was overstated, uh, by a point of, uh, statements, made, um, **which were lies**, and, um, overly exaggerated to a point that I felt - - **and the statements made, uh, were virtually, uh, ruining his, uh, character, his, his, uh, business to a point where he failed to, uh, function.**
>
> And the fraud, uh, was nothing more than, uh, a time where he was accused of having employees that he didn't have, equipment that was nothing more than a few riding lawn mowers and a trailer loading.
>
> And the slander, slander was made publicly, in front of a friend, while Eric was up a ladder, to his sister, which slandered his sister.

(Emphasis added).

Additionally, Tammy Sigman, another one of Scott's neighbors, testified that she received the Letter, discussed it with her husband, and threw it away. Chad Willis, Scott's co-worker and sales manager at McKesson, testified that Scott was an account manager and was not authorized to distribute prescription drugs. Ann McKelfey, the community

manager for Saddle Ridge, verified that there had been multiple communications and complaints back and forth between Scott and Yount.

At the close of Scott's case, Yount made a motion for judgment on all counts. The circuit court granted the motion as to all counts. On the defamation count, the court first observed that there was nothing in the Letter accusing Scott of committing a crime, "either directly or indirectly." Second, the court determined that, although Yount's assertion that Scott was selling pharmaceuticals from his home was false, Yount's belief to that effect was a mistake rather than a knowing falsehood. Third, because of such mistaken belief, the court concluded that Yount was not legally at fault for making the statement. Finally, the court addressed whether Scott had alleged sufficient harm to make out a prima facie case of defamation, which the court characterized as "a key element of the defamation law." The court held that Scott had failed to show the requisite harm, stressing that Scott himself testified that he did not feel that his reputation had been harmed, and that there was "not one shred of evidence…that [Scott's] reputation has suffered, that anybody thought of him differently." On the invasion of privacy counts, the court emphasized that Scott's employment by a pharmaceutical company was public knowledge and that he was not accused of a crime, concluding that there was "not one shred of evidence that [Scott's] privacy was invaded by sending this [L]etter."

The circuit court entered an order memorializing its oral ruling on November 2, 2015, and Scott filed this timely appeal.

STANDARD OF REVIEW

> We review, without deference, the trial court's grant of a motion for judgment in a civil case. We conduct the same analysis that a trial court should make when considering the motion for judgment. The court considers the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party.

District of Columbia v. Singleton, 425 Md. 398, 406-07 (2012) (internal quotation marks and citations omitted).

DISCUSSION

I. Defamation

Scott contends that the circuit court erred in granting Yount's motion for judgment as to the defamation count, because Scott claims that he established a *prima facie* case for defamation**.** Specifically, Scott argues that Yount made defamatory statements by accusing Scott of (1) "possessing/distributing prescription drugs from his residence and/or of operating a 'distribution' center for prescription drugs from his residence," and (2) "'fraud' and 'slander.'" Scott asserts that both of these statements are defamatory *per se*, but even if they are not, it was for the jury to decide whether these statements were defamatory. According to Scott, he also adduced evidence of actual malice, and therefore, his damages are presumed. Alternatively, Scott argues that, even if there was no malice, he still produced evidence of harm, such as his loss of sleep. Because he claims to have established a *prima facie* case of defamation, Scott concludes that the circuit court erred in granting Yount's motion for judgment. We are not persuaded.

In order to establish a *prima facie* case of defamation, a plaintiff must prove "(1) that the defendant made a defamatory statement to a third person, (2) that the statement

was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff thereby suffered harm." *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012). At trial, a defamation plaintiff is required to produce sufficient evidence that a reasonable jury could find by a preponderance of the evidence that the defendant defamed the plaintiff, and if a plaintiff fails to submit sufficient evidence on any element of the claim, a motion for judgment is warranted. *See Beall v. Holloway-Johnson*, 446 Md. 48, 69 (2016). As explained above, the trial court considered all four elements of Scott's defamation claim and determined that he had failed to adduce sufficient evidence for any element. Because we agree with the trial court that Scott failed to produce sufficient evidence to allow a reasonable jury to conclude that Yount's statements were defamatory, we need not consider whether Scott met his burden as to any of the other elements of his defamation claim. We shall explain.

Maryland continues to maintain the traditional common law distinction between libel *per se* and libel *per quod*. *Gooch v. Maryland Mechanical Systems, Inc.*, 81 Md. App. 376, 393, *cert. denied*, 319 Md. 484 (1990).

> In the case of words or conduct actionable *per se*, their injurious character is a self-evident fact of common knowledge of which the court takes judicial notice and need not be pleaded or proved. In the case of words or conduct actionable only *per quod*, the injurious effect must be established by allegations and proof of special damage and in such cases it is not only necessary to plead and show that the words or actions were defamatory, but it must also appear that such words or conduct caused actual damage.

Samuels v. Tschechtelin, 135 Md. App. 483, 549 (2000) (quoting *M & S Furniture Sales Co. v. Edward J. DeBartolo Corp.*, 249 Md. 540, 544 (1968)).

"The determination of whether an alleged defamatory statement is per se or per quod is a matter of law." *Shapiro v. Massengill*, 105 Md. App. 743, 773, *cert. denied*, 341 Md. 28 (1995). The Court of Appeals explained:

> The threshold question of whether a publication is defamatory in and of itself, or whether, in light of the extrinsic facts, it is reasonably capable of a defamatory interpretation is for the court upon reviewing the statement as a whole; words have different meanings depending on the context in which they are used and a meaning not warranted by the whole publication should not be imputed. If words are capable of more than one meaning or a defamatory meaning could be inferred, then the meaning to be attributed to them is a question of fact for the jury.

Batson v. Shiflett, 325 Md. 684, 723 (1992) (internal citation omitted). "A defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Id.* at 722-23.

A. Statement 1

Scott interprets the first statement in the Letter as accusing him of the felony of prescription drug distribution—an accusation of a crime and defamatory *per se*. *See A.S. Abell Company v. Barnes*, 258 Md. 56, 70-71 (1970) (holding that accusing someone of a crime is defamatory *per se*), *cert. denied*, 403 U.S. 921 (1971). Yount does not expressly accuse Scott of any crime in the Letter; *ergo*, the statements regarding prescription drug distribution are not defamatory *per se*. *See id*. Nevertheless, Scott asserts that "[s]uch statements need not explicitly accuse another of committing a criminal act or being a criminal in order to be per se defamatory," and cites to this Court's opinion in *Nistico v. Mosler Safe Co.*, 43 Md. App. 361, 365-67 (1979). Scott claims that a "prima facie

defamation claim" can be satisfied by a statement capable of supporting an inference that he was engaged in an illegal activity. We disagree.

In *Nistico*, the trial court sustained a demurrer to a declaration alleging defamation. *Id.* at 362-63. In reviewing the trial court's ruling, we accepted, as true, all well-pleaded facts, and reasonable inferences therefrom, as well as matters appearing in supporting documents referred to in the declaration. *Id.* at 363. In identifying the elements of a defamation action, we stated that the "second prong" was "(2) that the statement was one which appears on its face to be defamatory, as, *e.g.*, a statement that one is a thief, *or* the explicit extrinsic facts and innuendo which make the statement defamatory[.]" *Id.* at 366 (emphasis added). We then applied the "second prong" to the allegations:

> As we read the alleged defamatory statement it is capable of supporting the inference that appellant was engaged in an illicit activity in visiting the two Baltimore banks. While the statement does not explicitly assert that appellant was attempting some sort of illegal activity, a reasonable inference to that effect may be drawn from the words used. We conclude that the statement supports the innuendo ascribed to it in the declaration in that it implies appellant was untrustworthy and not a fit person to perform the type of work in which he specialized[.]

Id. at 367.

It is that the "second prong" of a defamation claim identified in *Nistico* includes statements that are both defamatory *per se* and defamatory *per quod*. *See id.* at 366. Consequently, our analysis of the defamatory statement in *Nistico* does not necessarily refer to a statement that is defamatory *per se*, as Scott argues. Indeed, our analysis strongly suggests that we were discussing a defamatory *per quod* statement, because we refer to the "innuendo" that makes the statement defamatory. *See id.* at 367.

Even if a defamatory *per se* statement can be a "reasonable inference…drawn from the words used," no such reasonable inference can be drawn in the case *sub judice*. *See id.* The Letter does not suggest in anyway that the sale or distribution of prescription drugs from Scott's house was a crime. The Letter states that such activity "is a direct violation" of a covenant, code, or restriction of the HOA. The Letter goes on to raise a concern about personal liability in the event that "a young person" breaks into Scott's house, steals prescription drugs, and then "dies or sells them to someone else and they possibly die!" For these reasons, we conclude that the statement in the Letter regarding prescription drug distribution from Scott's house is not defamatory *per se*.

Having decided that the first statement is not defamatory *per se*, we must now determine whether such statement is arguably defamatory *per quod*. In other words, this Court must determine, as a matter of law, whether Scott adduced sufficient evidence that a reasonable jury could find that the statement was defamatory. *See Batson*, 325 Md. at 723 (stating that "[t]he threshold question of…whether, in light of the extrinsic facts, [the statement] is reasonably capable of a defamatory interpretation is for the court upon reviewing the statement as a whole").

As we previously stated, "[a] defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Id.* at 722-23. Here, none of the testifying neighbors said that the Letter harmed Scott's reputation in the community or discouraged them from associating or dealing with him. Joseph Normile testified that he "didn't quite believe this [L]etter," and that he had

"not refused to socialize with [] Scott because of this [L]etter that [he] got from [] Yount…" Edward Cannell testified that the Letter did not "impact in any way whatsoever the way [he] interacted with [] Scott going forward[.]" Finally, Tammy Sigman testified that she discussed the Letter only with her husband and then they "threw it away."

In his own testimony, Scott stated that he did not know if the Letter harmed his reputation. However, later in his testimony, Scott qualified that statement by testifying that as a result of receiving the Letter, he had to call his employer's legal department. Scott said, "[D]o I want to be known as the guy who had to call [his company's] legal, being with them a year? Not necessarily." Scott, however, admitted that Yount never sent the Letter to Scott's employer. Scott also failed to adduce any evidence that any employee read the Letter or that the Letter caused any adverse consequences with Scott's employment. Therefore, we conclude that there was insufficient evidence for a rational trier of fact to find that the Letter's statement regarding Scott's use of his home as a distribution center for prescription drugs was defamatory *per quod*.

B. Statement 2

The second statement that Scott alleges is defamatory is as follows: "The business use of the Scotts house has been really over looked over the past 13 years to a point now he is accusing others with lies, slander and fraud." We must first determine whether, as a matter of law, this statement constitutes defamation *per se*. Scott argues simply that accusations of "'fraud' and 'slander'" are defamatory *per se*. To support his argument, Scott relies on *Nistico* and *Shapiro*.

Scott's reliance on these cases is misplaced. *Nistico* does not involve any allegation of "fraud" or "slander." 43 Md. App. at 363-65. *Shapiro* involves an employer's allegation of fraud by an employee. 105 Md. App. at 770. "When read as a whole, the clear implication [of the employer's statements] is that [the employee] had believed he was likely to be indicted for his own act of fraud upon the government, and deliberately concealed that information from [the employer]." *Id.* at 776. This Court held that the employer's statements were defamatory *per se*. *Id.* at 777.

The critical distinction between *Shapiro* and the instant case is that the statements in *Shapiro* identified the type of fraud allegedly perpetrated and the victim of such fraud. The employee in *Shapiro* was accused of committing fraud on the federal government in the performance of a specific government contract. *Id.* at 776. Thus those who heard the employer's statement required no additional, extrinsic facts to understand precisely what the employee was being accused of. By contrast, in the case *sub judice*, Yount writes in the Letter that Scott accused some unknown, unidentified "others" with unspecified "slander and fraud." In other words, the reader of the Letter had no idea what "slander and fraud" Scott allegedly committed, nor did the reader know who Scott was accusing "with lies, slander and fraud." Because a defamatory *per se* statement must be defamatory "on its face," we conclude that the second statement regarding "slander and fraud" is not defamatory *per se*. *See Metromedia, Inc. v. Hillman*, 285 Md. 161, 172 (1979) (holding that a defamatory *per se* statement is one where no "proof of extrinsic facts is necessary" to demonstrate its defamatory character).

Because the second statement is not defamatory *per se*, we must determine whether Scott produced sufficient evidence to allow a reasonable jury to conclude that this statement is defamatory *per quod*. As with the first statement, Scott did not adduce any evidence that this statement subjected him to "public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, [him]." *Batson*, 325 Md. at 722-23. "Where extrinsic facts must be shown in order to establish the defamatory character of the words sued upon, the omission to plead them makes the complaint demurrable for failure to state a cause of action." *Metromedia*, 285 Md. at 172-73. In sum, because neither of the statements at issue in the instant case are defamatory *per se* and Scott failed to produce sufficient evidence that either statement was defamatory *per quod*, we conclude that the trial court correctly granted Yount's motion for judgment on Scott's defamation count.

II. Invasion of Privacy

As a preliminary matter, we need not address Scott's arguments as to the count of "false light" invasion of privacy. Because "[a]n allegation of false light must meet the same legal standards as an allegation of defamation" *Piscatelli*, 424 Md. at 306, and this Court has held that Scott's defamation claim fails, the trial court did not err in granting Yount's motion for judgment on the false light count.

Regarding the count for "unreasonable publicity given to private life" invasion of privacy, Scott's argument on this count in his brief consisted of a recitation of the elements of the tort, and the following statement:

> A reasonable jury could certainly conclude that **falsely publishing** to one's entire neighborhood that one's residence is used as a distribution center for prescription drugs is highly offensive. . . . *Furman v. Sheppard*, 130 Md. App. 67, 74 (2000) ("[A]n individual's reasonable expectation of privacy reaches its zenith in the home.").

(Underline emphasis in original) (bold emphasis added).

Under Maryland law, invasion of privacy by unreasonable publicity to private life is defined as follows:

> One who gives publicity to a matter concerning the private life of another is subject to liability to the other for unreasonable invasion of his privacy, if the matter publicized is of a kind which (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public. In order to succeed on a claim of this nature, **the matter disclosed must be a private fact** and it must be made public.

Furman v. Sheppard, 130 Md. App. 67, 77-78 (2000) (emphasis added) (internal quotation marks and citation omitted). Maryland has adopted the Restatement (Second) of Torts § 652D concerning publicity given to private life invasion of privacy. *Hollander v. Lubow*, 277 Md. 47, 55 (1976). A special note to § 652D states that "[t]his Section provides for tort liability involving a judgment for damages for publicity given to *true statements of fact*." RESTATEMENT (SECOND) OF TORTS § 652D (AM. LAW INST. 1965) (Emphasis added).

In the case *sub judice*, Scott testified to the following:

> Q: And is it your contention that there are false statements made about you in this [L]etter?
>
> A: Yes.

Scott has consistently maintained that the contents of the Letter are false. Accordingly, the

circuit court did not err in granting Yount's motion for judgment as to the count of "unreasonable publicity given to private life" invasion of privacy, because by Scott's own admission, the Letter's statements were false, not true.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; APPELLANT TO PAY COSTS.