STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0998

Kurt A. Maethner,
Appellant,

vs.

Someplace Safe, Inc.,
Respondent,

Jacquelyn Jorud, f/k/a Jacquelyn Hanson Maethner,
Respondent.

Filed February 12, 2018
Reversed and remanded
Bratvold, Judge

Otter Tail County District Court
File No. 56-CV-15-3097

Marshall Tanick, Edward E. Beckmann, Hellmuth & Johnson, PLLC, Edina, Minnesota (for appellant)

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Bratvold, Judge.

S Y L L A B U S

Allegedly defamatory statements about criminal conduct by the plaintiff that were made by an award recipient at a fundraising banquet and also in an article published by the sponsor organization for fundraising purposes were not protected by a qualified privilege.

O P I N I O N

BRATVOLD, Judge

Appellant Kurt Maethner challenges the district court's summary-judgment dismissal of his defamation and negligence claims against respondents Someplace Safe Inc. and his ex-wife, Jacquelyn Jorud. Maethner's claims arose four years after his divorce from Jorud and are based on Jorud's and Someplace Safe's statements about Jorud's experience as a survivor of domestic abuse. While the alleged defamatory statements did not name Maethner, the district court determined that the evidence raised a question of fact whether the statements were about Maethner. On appeal, Maethner argues the district court erred in three ways: (1) by determining that the allegedly defamatory statements were protected by a qualified privilege; (2) by concluding Someplace Safe did not owe a duty to investigate before publishing Jorud's statements; and (3) in dismissing his claims because he offered insufficient evidence of actual damages.

First, we conclude that the allegedly defamatory statements were not protected by a qualified privilege because they were made to raise funds for Someplace Safe and not to protect Jorud or to report a crime. Next, we decide Someplace Safe owed a duty to exercise reasonable care before publishing Jorud's statements. Finally, Maethner produced sufficient evidence of damages to survive summary judgment. Maethner produced evidence of emotional distress, the statements alleged criminal activity, and damages are presumed for statements that are defamatory per se. While Someplace Safe claims to seek affirmance on the alternative ground that the allegedly defective statements were not about Maethner, it failed to file a notice of related appeal on this issue, which was decided

adversely below. Thus, we do not consider this issue. For the reasons stated, we reverse and remand for the jury to determine Maethner's defamation claims.

FACTS

Maethner and Jorud[1] were married in 1995, and their marriage was dissolved in October 2010. The dissolution decree contained no reference to domestic abuse, and Jorud never sought or obtained an order for protection against Maethner. Someplace Safe is a nonprofit organization that provides advocacy and other services for victims of violence and domestic abuse in a nine-county area in northwestern Minnesota. During their separation and divorce, Jorud contacted Someplace Safe on "at least three occasions for advice and assistance." Jorud met with an advocate, and, on one occasion, an advocate accompanied Jorud as she attended court proceedings related to the dissolution.

On May 9, 2014, Someplace Safe celebrated its 35th anniversary at a fundraising banquet and gave a "Survivor Award" to Jorud as a "survivor of domestic abuse." The certificate stated that the award was given to "Jacki Maethner Jorud for empowering yourself and inspiring others to stand against violence." Someplace Safe issued a press release about the banquet and the award recipients and posted statements about the award on its Facebook page, mentioning Jorud by name and including a photograph of her receiving the award as a survivor of domestic violence. Regional newspapers republished some of the information from the press release.

[1] Following the dissolution, Jorud retained "Maethner" as her legal last name, but also uses "Jorud," her current married name.

After the banquet, Someplace Safe asked Jorud to write about “surviving domestic violence” and “thriving through recovery” for an upcoming newsletter. The newsletter was seven pages; the last page was a donation request. Jorud’s article was titled, “Jacki’s Story” and approximately one page in length. In his submissions to the district court and on appeal, Maethner points to the following language from the article in support of his claims:

> “I was asked to write a short article celebrating the fact of not just surviving domestic violence, but thriving through recovery.”
> “Getting out of an unhealthy, threatening and dangerous relationship is hard. It is scary.”
> “Just because you have left, or the divorce is final, . . . doesn’t mean the slate is []wiped clean and you can just start a new life.”
> “I don’t know if there will ever be a time when I can be certain I am no longer being stalked and watched.”
> “I didn’t want to live in a constant state of fear.”
> “I didn’t want daily conflict and fighting.”

Jorud signed the article “Jacki Maethner Jorud.” Jorud’s article does not mention Maethner by name, nor does it use the terms “ex-husband” or “former spouse.” Maethner contends that his last name is unique, and Jorud admits that their marriage was well-known in the community.

As evidence of his claim against Someplace Safe, Maethner submitted a deposition by Someplace Safe’s Director of Operations, who testified that the organization did not investigate Jorud’s statements about domestic abuse because “[w]e take people at face value when they come and tell us.” Someplace Safe stated in its brief to this court that it did not edit Jorud’s article, and it did not attempt to investigate the statements in the article.

Jorud also posted statements about the Survivor Award and about domestic abuse on the Facebook page for “Jacki Hansen Maethner.” In 2014, Jorud changed her Facebook

profile picture to a picture of her, holding the Survivor Award, with her current husband and her stepdaughter. On February 1, 2015, Jorud posted on Facebook that she would "continue to speak out and educate against domestic violence," and that she was "not just a survivor."

Maethner sued Jorud and Someplace Safe. Against Someplace Safe, Maethner claimed the organization defamed him through statements made in connection with the Survivor Award, press release, Facebook posts, and newsletter article because a reasonable person in the community would understand the statements to mean that Maethner had committed domestic violence and other crimes. Maethner also asserted that the statements "lowered the reputation of Maethner in the eyes of others." Maethner also brought a defamation claim against Jorud, making similar allegations, and pointed to her Facebook posts and the newsletter article. Maethner asserted that the allegedly defamatory statements by both respondents constituted "defamat[ion] per se." Finally, Maethner alleged that Someplace Safe was negligent in publishing the newsletter article and breached its duty to investigate the statements before publication.

Jorud and Someplace Safe filed motions for summary judgment, which the district court granted. The district court determined that there was a genuine issue of material fact about whether the defamatory statements were "about" Maethner, because the award, press release, newsletter article, and Facebook posts did not explicitly name him. The district court nonetheless granted summary judgment in favor of respondents for three reasons. First, the court concluded that the allegedly defamatory statements were protected by a "conditional or qualified" privilege. Because the court concluded that a qualified privilege

applied, it ruled that Maethner was required to show that the allegedly defamatory statements were made with malice, but found that Maethner failed to establish that there was a genuine issue of material fact on malice. Regarding Maethner's negligent investigation claim against Someplace Safe, the district court concluded that Someplace Safe had no duty to investigate Jorud's article before publishing it in the newsletter. Finally, the district court concluded that Maethner had not shown proof of actual damages. Maethner appeals.

ISSUES

I. Did the district court err in granting summary judgment on Maethner's defamation claims against Someplace Safe and Jorud because respondents' statements were protected by a qualified privilege?

II. Did the district court err in granting summary judgment to Someplace Safe because it had no duty to investigate before publishing Jorud's statements?

III. Did the district court err in granting summary judgment on Maethner's defamation claims because Maethner failed to raise a genuine issue of material fact regarding damages?

ANALYSIS

A motion for summary judgment shall be granted when "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 either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. This court reviews de novo the district court's legal conclusions on summary judgment, viewing the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). "In doing so, we determine

whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

"[A] plaintiff pursuing a defamation claim must prove that the defendant made: (a) a false and defamatory statement about the plaintiff; (b) in an unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community." *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 673 (Minn. 2003). The plaintiff bears the burden of establishing each element of defamation. *Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 537 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

Preliminarily, we address which issues are properly presented for our review. Truth is a complete defense to a defamation claim. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980). No party contends that the truthfulness of Jorud's statements may be resolved on summary judgment. Jorud testified in her deposition that Maethner abused her during their marriage; in his deposition, Maethner denied that any abuse occurred. Thus, whether the abuse allegations were true is not at issue in this appeal.

Additionally, Someplace Safe asks us to review the district court's determination that Maethner has presented a triable issue regarding whether the allegedly defamatory statements were about him. "For a defamatory statement to be actionable, it must first be about the plaintiff." *Huyen v. Driscoll*, 479 N.W.2d 76, 79 (Minn. App. 1991), *review denied* (Minn. Feb. 10, 1992). The alleged defamatory statements must refer to some "ascertained or ascertainable" person and that person must be the plaintiff. *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 306 (Minn. App. 2001) (quoting *Brill v.*

Minn. Mines, 200 Minn. 454, 458, 274 N.W. 631, 633 (1937)). The plaintiff must show that the alleged statement "concerns or is understood to concern the plaintiff." *Covey v. Detroit Lakes Printing Co.*, 490 N.W.2d 138, 143 (Minn. App. 1992). In *Covey*, this court held that whether an allegedly defamatory statement concerns the plaintiff is generally a question of fact for the jury. *See id.*

The district court rejected Someplace Safe's request for summary judgment on this issue after determining that there was a "factual issue, however slight" as to whether the statements relating to the Survivor Award, press release, Facebook posts, and newsletter article, were about Maethner. Although Jorud and Someplace Safe did not directly refer to Maethner in any of their statements, the district court found that the evidence raised a genuine issue as to whether a reasonable person in the community would believe the statements to be about Maethner and would conclude that Maethner had committed domestic violence.

Someplace Safe argues in its brief on appeal that the district court erred in its analysis of this issue and we may affirm summary judgment on this alternative ground. But Someplace Safe did not file a notice of related appeal and this issue was decided adversely to it. While a respondent on appeal may assert alternative grounds for affirmance so long as the respondent preserved the alternative argument by presenting it to the district court, *see Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 331 (Minn. 2010), where an issue is decided adversely to a respondent, the respondent must file a notice of related appeal. *City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996). Thus, we do not consider this issue.

I. The district court erred in granting summary judgment on the defamation claims because qualified privilege did not apply to these particular statements.

Under Minnesota law, a "person who makes a defamatory statement is not liable if a qualified privilege applies and the privilege is not abused." *Kuelbs v. Williams*, 609 N.W.2d 10, 16 (Minn. App. 2000) (citation omitted), *review denied* (Minn. June 27, 2000). A qualified privilege applies when a court determines that some statements "should be encouraged despite the risk that the statements might be defamatory." *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997) (quotation omitted). A qualified privilege protects a defamatory statement based on a court's assessment of four factors: whether the statement is "made in good faith, on a proper occasion, from a proper motive, and based on reasonable or probable cause." *Id*. Whether a statement is protected by privilege is a question of law for the court to determine. *Lewis v. Equitable Life Assurance Soc'y*, 389 N.W.2d 876, 889 (Minn. 1986). If a statement is protected by a qualified privilege, then a plaintiff must prove malice as an element of his defamation claim. *Stuempges*, 297 N.W.2d at 257.

Principally, the district court determined that a qualified privilege applied here because it likened the statements in this case to the statements in *Bol*, for which the Minnesota Supreme Court held that a qualified privilege applied. 561 N.W.2d at 150. In *Bol*, an alleged child abuser brought a defamation claim against a five-year-old child's psychologist, after the psychologist wrote letters summarizing the child's statements about his abuser and gave the letters to the child's mother, who repeated the statements to others. *Id.* at 145, 150. The supreme court held that the psychologist made the disclosure "in good faith and released the information upon a proper occasion, with a proper motive, and based

upon reasonable or probable cause," and therefore, the disclosure was "protected by a qualified privilege." *Id.*

Briefly restated, the supreme court analyzed the relevant factors, as follows: the psychologist chose the proper occasion to inform the mother because the child had identified his abusers during therapy; the psychologist had the proper motive because she believed the mother had a right to this information about her child; the psychologist had a reasonable belief that the child had been abused based on the content of the child's statements; and the psychologist also had "reasonable cause to believe" that releasing the letters to the mother "was necessary to protect" the child "who was otherwise unable to protect himself." *Id*. at 149-50. Finally, the supreme court discussed the "strong public interest in reporting child abuse and protecting children from future abuse." *Id.* at 150. The court added that if it did not apply a qualified privilege in this context, then psychologists would bear a heavy burden to "weigh the necessity of releasing the information against the potential civil liability for doing so." *Id*.

The district court did not analyze specifically the four factors set out in *Bol* and instead concluded that respondents' statements were privileged because, like the public interest described in *Bol*, there is a "strong public interest in raising public awareness of domestic violence and abuse, and encouraging victims to receive assistance." Maethner argues that the district court's reading of *Bol* is too broad. We agree that the psychologist's disclosure in *Bol* of the allegedly defamatory statements to the child's mother, to protect the child from future abuse, is not analogous.

First, while Maethner does not question the good faith underlying Someplace Safe's work on behalf of victims of domestic violence, the good faith analysis applied by the supreme court in *Bol* examined whether the defendant's good faith was connected to the dissemination of the defamatory statements. *Bol* concluded that the psychologist acted in good faith and upon a reasonable cause, in part, because releasing the letters to the mother was based on her right as a parent and "was necessary" to protect the child "who was otherwise unable to protect himself." *Id*. at 150. In contrast, nothing in this record indicates that the alleged defamatory statements were made to protect Jorud.

Neither the second nor the third factors weigh in favor of extending a qualified privilege to Someplace Safe. A banquet and newsletter were not the proper occasion to disseminate statements alleging criminal conduct, nor did the fundraising purpose for both of these activities reflect a proper motive for doing so. Someplace Safe acknowledged that the banquet's purpose was to raise money for the organization. Someplace Safe also stated that it published Jorud's article in a newsletter to "connect" with "funders and supporters" and to solicit donations. The fourth factor also weighs against applying the privilege because Someplace Safe did not claim to have a "reasonable belief" that Jorud was abused. Instead, Someplace Safe expressly stated that it accepted Jorud's statements at face value.

Previous caselaw has accorded a qualified privilege to allegedly defamatory statements that were made to a parent to protect a victim from further abuse, as in *Bol*, *id*. at 150, or to law enforcement to report a crime. *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 557 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995) (holding "that a qualified privilege may exist when an individual makes a good faith report of suspected criminal

activity to law enforcement officials"). Based on precedent that has cautiously extended qualified privilege and the facts in this case, we cannot conclude that a qualified privilege applied to defamatory statements made by Someplace Safe at a fundraising banquet, in a press release, or in a newsletter soliciting donations. Affording a qualified privilege for allegedly defamatory statements made to raise funds would decrease any incentive to exercise reasonable care in publishing similar information and would increase the risk of defamation.

Nor does existing caselaw favor extending a qualified privilege to protect statements that Jorud made on Facebook or in her article. The statements made on Facebook were not made to raise funds and we agree with the district court that domestic-abuse victims may be inspired by Jorud's statements. But Jorud admits that her statements on Facebook and in her article would be understood as describing criminal behavior by Maethner. Minnesota has classified such statements as defamation per se. *See, e.g.*, *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (holding claim that respondent referred to appellant as a "Pat the Pedophile" stated a claim for defamation per se). To extend a qualified privilege to a victim's statements accusing another of criminal activity would extend the privilege beyond the error-correcting role of this court. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

We conclude that the district court erred in ruling that the allegedly defamatory statements were protected by qualified privilege. Accordingly, we do not consider the

district court's determination that there was insufficient evidence of malice to overcome the privilege. *Kuelbs*, 609 N.W.2d at 16 (holding that if the court determines that statements are protected by the qualified privilege, plaintiff must prove that the qualified privilege "was abused because the statements were made with malice").

II. The district court erred by granting summary judgment to Someplace Safe because Someplace Safe had a duty to exercise reasonable care before publishing Jorud's statements.

Maethner alleged in his complaint that Someplace Safe was negligent in publishing allegedly defamatory statements about Maethner in its press release and in its newsletter. Maethner also claimed that Someplace Safe assumed a duty of care "to verify the accuracy of information contained in its publication," and breached that duty when it published Jorud's article. In its brief to this court, Someplace Safe acknowledged that it "takes all of its clients at their word" and that it does not "investigate or attempt to corroborate information provided by the crime victims it serves." Someplace Safe also admitted that it did not make any effort to "verify or corroborate or substantiate the statements made in the survivor stories." The district court granted summary judgment to Someplace Safe after determining that Maethner failed to provide "any case law or evidence" showing that Someplace Safe owed him a duty to investigate the accuracy of Jorud's statements before issuing a press release or publishing her article.

The Minnesota Supreme Court has held that a "private individual may recover actual damages for a defamatory publication upon proof that the defendant knew or in the exercise of reasonable care should have known that the defamatory statement was false. The conduct of defamation defendants will be judged on whether the conduct was that of

a reasonable person under similar circumstances." *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 491 (Minn. 1985). Both *Jadwin* and subsequent case law have clarified not only that a publisher has the duty to exercise reasonable care, but also that proof of negligence is an element of plaintiff's defamation claim against a publisher. *See, e.g.*, *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 329 (Minn. 2000) (recognizing private individual in defamation claim against publisher must prove negligence); *see also Cole v. Star Tribune*, 581 N.W.2d 364, 368 (Minn. App. 1998) (recognizing negligence standard). Based on this case law, we conclude that the district court erred in its determination that Someplace Safe did not owe a duty to exercise reasonable care in investigating Jorud's statements before issuing a press release or publishing her statements in its newsletter. We note, however, that case law requires Maethner to prove negligence as one element of his defamation claim against Someplace Safe and Maethner does not have a separate negligence claim.

Someplace Safe seems to assert that it cannot be held liable for negligence because it did not directly make the allegedly defamatory statements, and merely "printed an article [Jorud] wrote." But this narrow exception applies only when the publisher has reprinted a news item obtained from a reputable wire service. *Cole*, 581 N.W.2d at 368 ("The 'wire service' defense recognizes that a newspaper, under ordinary circumstances, cannot be found by a jury to have acted negligently by relying on the accuracy of a news item obtained from a reputable wire service."). Here, no wire or other news service was involved; Someplace Safe solicited, published, and disseminated Jorud's article containing the allegedly defamatory matters.

The district court also determined that Maethner's negligent publication claim failed as a matter of law because, even if Someplace Safe owed Maethner a duty to "reasonably verify the accuracy of the information contained in its newsletter," Someplace Safe must comply with data-privacy laws, and, therefore, it would have been unable to investigate Jorud's statements about alleged abuse. The district court reasoned that Minnesota data-privacy laws precluded Someplace Safe "from collecting data" about Jorud about the alleged abuse. Someplace Safe also claimed in its brief to this court that privacy laws prevent it from identifying those who seek its services and that efforts to corroborate victim statements would traumatize victims.

We disagree. The data-privacy statutes cited by the district court and Someplace Safe prohibit the *disclosure* of private information by government organizations or grantees, not the investigation or collection of information.[2] In fact, many of the data-

[2] Government agencies and other "[r]esponsible authorities" administering government programs or grants are bound by the data practices act. Minn. Stat. § 13.05, subd. 16 (2016); *id.*, at subd. 3 ("Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government."). Other statutes related to domestic abuse advocates and organizations similarly protect the disclosure of private information, but do not prohibit investigation of private information before publication. *See* Minn. Stat. § 595.02, subd. 1(l) (l) ("A domestic abuse advocate *may not be compelled to disclose* any opinion or information received from or about the victim without the consent of the victim unless ordered by the court." (emphasis added); Minn. Stat. § 611A.32, subd. 5 (2016) ("Personal history information and other information collected, used or maintained by a grantee from which the identity or location of any victim of domestic abuse may be determined is private data . . . ."); Minn. Stat. § 611A.371, subd. 3 (2016) ("Personal history information collected, used, or maintained by a designated shelter facility from which the identity or location of any battered woman may be determined is private data on individuals. . . .").

privacy laws recognize that nonprofit programs have the ability to collect and retain sensitive information, and regulate the storage and dissemination of that information. We conclude that Someplace Safe was not prohibited by law from taking reasonable care to investigate Jorud's statements before issuing a press release or publishing her article in its newsletter. Whether Someplace Safe breached its duty of reasonable care raised a fact question for the jury, and summary judgment was inappropriate.

III. Maethner produced sufficient evidence of damages to survive summary judgment.

A private plaintiff in defamation "may only recover compensation for actual injury supported by competent evidence when he or she proves only that the defendant acted negligently in publishing the defamatory matter." *Jadwin*, 367 N.W.2d at 492. Maethner offered evidence that he suffered from "anxiety, sleeplessness, and [was] upset." Although he did not seek medical treatment for these conditions, the record created a question of fact for the jury to determine whether Maethner is entitled to damages. *See Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 560 (Minn. 1996) ("Finally, a plaintiff may recover emotional distress damages when there has been a direct invasion of the plaintiff's rights such as that constituting slander, libel, malicious prosecution, seduction, or other like willful, wanton, or malicious conduct.") (quotation omitted).

Moreover, as already mentioned in this opinion, some false statements are considered defamation per se and are actionable without proof of damages. *See Stuempges*, 297 N.W.2d at 259. "[D]efamatory per se defines a rule of damages, not of defamatory meaning." *Schlieman*, 637 N.W.2d at 307 (quotation omitted). In Minnesota, defamation

per se includes statements that, "falsely accuse a person of a crime, of having a loathsome disease, or of unchastity," or that "refer to improper or incompetent conduct involving a person's business, trade, or profession." *Longbehn*, 727 N.W.2d at 158 (citing *Anderson v. Kammeier*, 262 N.W.2d 366, 372 (Minn. 1977)). With regard to false accusations of a crime, "the words need not carry upon their face a direct imputation of crime." *Longbehn*, 727 N.W.2d at 158 (quotation omitted). The test to determine whether a statement is defamation per se is "whether a reasonable person under similar circumstances would understand the statement as making an accusation or imputing criminal or serious sexual misconduct to another." *Id.* at 159.

Maethner argues that respondents' statements in connection with the Survivor Award, the press release, Facebook posts, and the newsletter, described conduct that amounted to an accusation of criminal behavior, including domestic violence, abuse, and stalking. Jorud and Someplace Safe do not contest this point. We agree with Maethner that a reasonable person encountering references to "surviving domestic violence," "being stalked," and "getting out of an unhealthy, threatening and dangerous relationship" would understand them to be accusations of criminal activity. These statements were, therefore, defamation per se and actionable without proof of actual damages. *Id.* at 160. The district court erred in determining that "a claim of defamation per se requires more of a showing than a mere claim of it."

The district court's reliance on *Richie v. Paramount Pictures Corp.* was misplaced. 544 N.W.2d 21, 26 (Minn. 1996). *Richie* is inapposite because it considered First Amendment restrictions on defamation claims against the media. *Id.* at 26-28. In *Richie*,

the defamatory statements “made by the media . . . involved a matter of public concern,” and the plaintiffs were, therefore, required to prove actual damages. *Id.* at 26. Here, the statements were made by Jorud and a non-profit organization that was soliciting donations. The media, and related concerns to protect constitutional rights under the First Amendment, were not involved.

D E C I S I O N

We conclude that the district court erred in granting summary judgment to Someplace Safe and Jorud because a qualified privilege did not protect allegedly defamatory statements that were made to raise funds. Because the district court erred in determining that Someplace Safe did not owe a duty to exercise reasonable care before publishing allegedly defamatory statements, and because Maethner offered sufficient evidence of emotional distress and the statements alleged criminal activity for which damages are presumed, we reverse the summary judgment in favor of Someplace Safe and Jorud and remand for trial on Maethner’s defamation claims.

Reversed and remanded.