Only a total idiot would have filed a defamation case over the term “total idiot”

The Nebraska Supreme Court reminds us in Steinhausen v. Homeservices of Nebraska, 289 Neb. 927 (Neb. 2015) that rhetorical hyperbole is not actionable as defamation. I can assure you that total idiots nationwide will fail to get the memo.

In this case, someone referred to a home inspector as a “total idiot.”

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> *Nitz argues that in the context of the Hotsheets– which she refers to as a place for HomeServices agents to “express their opinions without pulling punches”38–the phrase “total idiot” is not “a factual statement that [Steinhausen] is mentally defective.”39 Steinhausen responds that “[i]diocy is verifiable” and “can be defined and proved.”40 He notes that “idiot” is defined in one dictionary as “a stupid person or a mentally handicapped person” and asserts that he “is neither stupid nor mentally handicapped.”41 (Op. at 939)*

The Nebraska Supreme Court correctly analyzed its responsibilities in the case – something that I find lacking pretty often in trial courts nationwide.

> *The threshold question in a defamation suit is whether a*

> *reasonable fact finder could conclude that the pub- lished statements imply a provably false factual assertion.44 Statements of fact can be defamatory whereas statements of opinion—the publication of which is protected by the First Amendment—cannot.45 Put another way, "subjective impres- sions" cannot be defamatory, as contrasted with objective "expressions of verifiable facts."46 Distinguishing the two pre- sents a question of law for the trial judge to decide.47 In mak- ing this distinction, courts apply a totality of the circumstances test.48 Relevant factors include (1) whether the general tenor of the entire work negates the impression that the defendant asserted an objective fact, (2) whether the defendant used fig- urative or hyperbolic language, and (3) whether the statement is susceptible of being proved true or false.49 (Op. at 940)*

The court then explained Rhetorical Hyperbole.

> *As noted, whether the language is hyperbolic is relevant to distinguishing fact from opinion. Rhetorical hyperbole—"language that, in context, was obviously understood as an exaggeration, rather than a statement of literal fact"—is not actionable.54 In particular, "[t]he ad hominem nature of abu- sive epithets, vulgarities, and profanities,"55 which some writ- ers "use to enliven their prose,"56 indicates that the statement is hyperbole. (Op. at 941)*

Then the court showed what a total idiot you have to be to file under these facts.

> *Exercises in "name calling" (See Chang v. Cargill, Inc., 168 F. Supp. 2d 1003, 1011 (D. Minn. 2001)) generally fall under the category of rhetorical hyperbole. (See, e.g., Blomberg v. Cox Enterprises, Inc., 228 Ga. App. 178, 491 S.E.2d 430 (1997)). For example, courts have held that " 'idiot,' "(Robel v. Roundup Corp., 148 Wash. 2d 35, 56, 59 P.3d 611, 622 (2002). Accord Blouin v. Anton, 139 Vt. 618, 431 A.2d 489*

(1981)) " 'raving idiot,' "(DeMoya v. Walsh, 441 So. 2d 1120, 1120 (Fla. App. 1983)) " '[i]diots [a]float,' " (Cowan v. Time, Inc., 41 Misc. 2d 198, 198, 245 N.Y.S.2d 723, 725 (N.Y. Sup. 1963)). and more vulgar variants (See Chang v. Cargill, Inc., 168 F. Supp. 2d 1003, 1011 (D. Minn. 2001)) were rude statements of opinion, rather than lay diagnoses of mental capacity. Similarly, courts have held that statements calling the plaintiff " 'stupid,' " (Chang v. Cargill) a " 'moron,' " (Purcell v. Ewing, 560 F. Supp. 2d 337, 343 (M.D. Pa. 2008)) and a " 'nincompoop' " (Stepien v. Franklin, 39 Ohio App. 3d 47, 49, 528 N.E.2d 1324, 1327 (1988)) were not actionable. Courts have also held that statements potentially referring to the plaintiff's mental health, such as "'raving maniac'" (DeMoya v. Walsh, 441 So. 2d 1120, 1120 (Fla. App. 1983)); "'pitiable lunatics'" (Thomas v. News World Communications, 681 F. Supp. 55, 64 (D.D.C.1988)); "wacko," "nut job," and "'hysterical'" (Lapine v. Seinfeld, 31 Misc. 3d 736, 752, 754, 918 N.Y.S.2d 313, 326, 327 (N.Y. Sup. 2011)); "'crazy'" (Stepien v. Franklin, supra note 65, 39 Ohio App. 3d at 49, 528 N.E.2d at 1327); and "crank," (See Dilworth v. Dudley, 75 F.3d 307 (7th Cir. 1996)) were statements of opinion. (Op. at 941-942) (citations added in from footnotes)