VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of August, 2024.

Present: All the Justices.

DENNIS CRUMPLER, APPELLANT,

against Record No. 230606
Court of Appeals No. 0940-22-3

DANIEL JAMES STARK, ET AL., APPELLEES.

UPON AN APPEAL FROM A
JUDGMENT RENDERED BY THE
COURT OF APPEALS OF VIRGINIA.

Dennis Crumpler challenges a judgment of the Court of Appeals reversing a judgment of the Circuit Court of Franklin County. Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the judgment of the Court of Appeals should be affirmed in part and reversed in part, and that this case should be remanded for further proceedings.

I.

Crumpler is the manager and developer of The Coves, a private residential waterfront community at Smith Mountain Lake. Daniel and Catherine Stark are a married couple who previously owned property in The Coves. Crumpler and the Starks have a long history of conflict relating to The Coves.

In 2016, Mr. Stark admitted to vandalizing pavement in The Coves by spinning his truck tires on fresh asphalt. The parties subsequently reached a settlement agreement wherein the Starks agreed to convey their property in The Coves to Crumpler for $1.00.

As part of the agreement, the trial court entered a permanent injunction order on March 13, 2018, restricting the Starks' access to certain geographical areas surrounding The Coves' subdivision. The order allowed the Starks to use Ivy Lane, a public street which abuts The Coves, for "vehicular transient use only." Significantly, however, the order specifically

prohibited the Starks from "loitering or using the said roadway for any purpose other than to travel past the said subdivision."

Crumpler filed separate civil complaints against each of the Starks individually in 2019, asserting substantially similar defamation claims against them. Crumpler sought damages, attorney fees, and permanent injunctive relief restraining the Starks from making false and defamatory statements about him. In August 2020, the trial court entered orders that permanently enjoined the Starks "from making false and defamatory statements about [Crumpler] and his business interests to third parties." These orders dismissed both defamation cases with prejudice.

On September 10, 2020, Crumpler filed petitions for orders to show cause and for civil contempt relief against the Starks individually, alleging violations of the defamation injunction. On December 14, 2020, the trial court entered orders holding the Starks in contempt for violating the defamation injunction and granted Crumpler damages, attorney fees, and costs. The trial court also extended the permanent geographical restrictions set forth in the March 13, 2018, injunction order, and prohibited the Starks from "loitering or using Rock Cliff Road and/or Cedar Ridge Road for any purpose or use other than vehicular transient use" (the "Travel Injunction").

In June 2021, Crumpler filed a show cause petition against each of the Starks individually, alleging that they had violated the existing defamation and travel injunctions. The trial court reinstated the cases on the docket, issued rules to show cause, and held an evidentiary hearing on July 14, 2021.

Carol Hott, an insurance adjuster, testified that she had recorded a conversation with the Starks in April 2021 as part of a claim they filed against the paving contractor for The Coves. Clips from the recording were entered into evidence and played before the trial court. In the recording, the Starks were questioned about the initiation of the previous court proceedings following the 2016 asphalt vandalism incident. Mr. Stark responded that the court proceedings were initiated "[b]ecause Dennis Crumpler is vindictive." Mrs. Stark added,

> Because [Crumpler] believed that [Mr. Stark] did it intentionally, that he was trying to be malicious, [Crumpler] sued for conspiracy and tortious business interfering, saying that [Mr. Stark] did this intentional vandalism to drive him crazy, which, in turn, turned out to be this multi-million dollar lawsuit and our lives have been turned upside down for many, many years.

Mr. Stark then stated, "Dennis Crumpler is vindictive, and he'd rather sue you than even speak to you." Later in the recording, Mr. Stark said, "[Crumpler's] vindictive, . . . [and] that's why he hasn't been selling property because he'd rather sue you than [try] to work with you."

Jeff Dupier, who lives on Cedar Ridge Road and had testified against the Starks in the prior proceedings, testified at the July 14, 2021, hearing about alleged travel violations. Dupier specifically stated that the Starks frequently rode their bikes past his home. Dupier testified that on one such occasion, Mr. Stark stopped his bike, glared at Dupier, and accused Dupier of stalking him after Dupier waved at him.

Crumpler testified that the Starks' statements about him were false, caused him stress, and negatively affected his business and professional relationships.

Mrs. Stark admitted to riding her bike in restricted areas around The Coves and stopping her bike in those areas at least once. Mr. Stark admitted to making statements to Hott about Crumpler being vindictive, maintaining that it was his opinion based on his prior dealings with Crumpler.

On September 24, 2021, the trial court issued a letter opinion holding the Starks in civil contempt of the court's orders. The trial court found that the Starks' recorded statements to Hott "d[id] not reflect the reality of the litigation between the parties." Additionally, the trial court stated that the Starks "kn[ew] this, or lack[ed] any reasonable grounds to believe their statements to be true[.]" The trial court also found that Crumpler "ha[d] not been vindictive in prior court proceedings."

The trial court determined that the Starks violated the terms of the December 2020 Travel Injunction by riding their bicycles on Cedar Ridge Road and stopping in prohibited areas, emphasizing the occasions the Starks rode past and stopped in front of Dupier's home. The trial court specifically stated that "bicycling is not an exemption to [the trial court's] order."

The trial court ordered the Starks to pay $15,000 each to Crumpler "as compensation for damages sustained and punishment for willful disobedience of the [c]ourt's [o]rders," and $13,533.40 each to reimburse Crumpler for attorney fees and costs. The trial court again modified and expanded the geographical restrictions, naming additional areas and public roadways to be restricted, as well as making the restrictions more severe by "prohibit[ing] any

use or loitering within such area and use of roadways therein for any purpose." On November 22, 2021, the trial court entered a final order, incorporating the letter opinion.

The Starks appealed to the Court of Appeals, contending, among other things, that the trial court erred by ruling that bicycling violated the order and justified punishment for contempt and by finding contempt of vague and overbroad defamation orders based on non-actionable opinion statements and no proof of falsity.

In an unpublished decision, the Court of Appeals reversed the judgment of the trial court and dismissed the contempt proceedings. *Stark v. Crumpler*, 2023 Va. App. LEXIS 494 (July 25, 2023). Citing Code §§ 46.2-100 and 46.2-800, the Court of Appeals held that the trial court's interpretation of the December 2020 Travel Injunction was unreasonable because, in Virginia, "bicycles are classified as vehicles when being ridden on public highways." *Id*. at *7. Therefore, the Court of Appeals reasoned that a plain reading of the injunction's "vehicular transient use" clause would render bicycling an approved exception to the restrictions. *Id*. Because the injunction contained no "definite" or "express" language indicating that "vehicular transient use" excluded bicycling, the trial court "erred in finding the Starks in contempt for bicycling[.]" *Id*.

The Court of Appeals further found that the trial court "erred in finding the Starks in contempt for committing defamation against Crumpler." *Id.* at *9. The Court of Appeals held that "the Starks' statements to [Hott] that Crumpler was 'vindictive' and 'would rather sue you than even speak to you' are non-actionable statements of opinion." *Id*. at *8. The Court of Appeals noted that Crumpler could have sued the Starks for legitimate reasons while also pursuing a vindictive intent. *Id.* at *8-9. The Court of Appeals further reasoned that the Starks' perception of Crumpler's "vindictive" attitude toward them cannot be proven true or false. *Id.* at *9.

Crumpler appealed to this Court, contending that the Court of Appeals' opinion that the Starks were engaged in "vehicular transient use" contradicted the trial court's findings that the Starks stopped and engaged in confrontations with residents of The Coves while bicycling through the areas restricted by the Travel Injunction. Crumpler further contends that the Court of Appeals erred in reversing the trial court's finding that the Starks violated the injunction against defamation.

II.

A. Travel Injunction

Crumpler contends the Court of Appeals' holding that the Starks were engaged in "vehicular transient use" contradicts the trial court's factual finding that the Starks stopped while biking through restricted areas in The Coves.

"A court has discretion in the exercise of its contempt power," thus we review the exercise of that power under an "abuse of discretion" standard. *Petrosinelli v. People for the Ethical Treatment of Animals, Inc.*, 273 Va. 700, 706 (2007). "'[F]or a proceeding in contempt to lie,' there 'must be an express command or prohibition which has been violated.'" *DRHI, Inc. v. Hanback*, 288 Va. 249, 255 (2014) (quoting *Petrosinelli*, 273 Va. at 707).

"An injunction is an extraordinary remedy." *Unit Owners Ass'n v. Gillman*, 223 Va. 752, 770 (1982). This Court has held that "[a] first principle of justice is that an injunction not be so vague as to put the whole conduct of a defendant at the peril of a summons for contempt." *Tran v. Gwinn*, 262 Va. 572, 584-85 (2001). An injunction "must be specific in its terms, and it must define the exact extent of its operation so that there may be compliance." *Gillman*, 223 Va. at 770. An injunction "should set forth what is enjoined in a clear and certain manner and its meaning should not be left for speculation or conjecture." *Id.* "[W]hen construing a lower court's order, a reviewing court should give deference to the interpretation adopted by the lower court." *White v. Commonwealth*, 276 Va. 725, 731 (2008) (quoting *Fredericksburg Constr. Co. v. J. W. Wyne Excavating, Inc.*, 260 Va. 137, 144 (2000)).

The Travel Injunction specifically prohibited the Starks from "loitering or using Rock Cliff Road and/or Cedar Ridge Road for any purpose or use other than vehicular transient use only." However, the term "vehicular transient use," as used in the injunction, does not provide sufficient specificity or certainty to hold the Starks in contempt for violation of the trial court's order under the present circumstances. *See, e.g.*, *Petrosinelli*, 273 Va. at 707 (quoting *Winn v. Winn*, 218 Va. 8, 10 (1977)) ("[B]efore a person may be held in contempt for violating a court order, the order must be in definite terms as to the duties thereby imposed upon him and the command must be expressed rather than implied.").

As stated by the Court of Appeals, "under Virginia law, bicycles are classified as vehicles when being ridden on public highways." *See* Code § 46.2-100 ("For purposes of Chapter 8 (§ 46.2-800 et seq.), a bicycle shall be a vehicle while operated on the highway."); Code §

46.2-800 ("Every person riding a bicycle . . . on a highway shall be subject to the provisions of this chapter and shall have all of the rights and duties applicable to the driver of a vehicle[.]"); *see also, e.g.*, *Kim v. Commonwealth*, 293 Va. 304, 311 (2017) (as defined in Code § 46.2-100, a "highway" includes, *inter alia*, "the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys"). Consequently, it is unclear whether the phrase "vehicular transient use" exempts bicycling from the Travel Injunction. The Court of Appeals properly reversed the trial court's finding of contempt based on the Starks' acts of riding bicycles through restricted areas.

Although the Court of Appeals correctly determined that the "vehicular transient use" exception of the Travel Injunction could potentially apply to bicycling, it nevertheless erred when it dismissed the contempt violation in its entirety. The Starks' actions of stopping and engaging in confrontational behavior with residents of The Coves were clearly prohibited by the language of the injunction.

In pertinent part, the injunction states that the Starks are prohibited from "loitering or using [the restricted areas] for any other purpose or use" other than traveling through The Coves. Dupier testified that Mr. Stark stopped his bike in front of Dupier's home, which was located on Cedar Ridge Road, and addressed Dupier in an accusatory manner. In addition, Mrs. Stark admitted to stopping her bicycle on Cedar Ridge Road. The record, therefore, supports the trial court's finding that the Starks violated the terms of the Travel Injunction based on the Starks' acts of stopping and engaging with residents of The Coves.

Because the trial court's sanctions were based on the Starks' violations of both "biking on prohibited roads" and "stopping on Cedar Ridge Road," this case is remanded to the Court of Appeals, with instructions to further remand the case to the trial court for the reconsideration of the sanctions imposed upon the Starks.

B. Defamation Injunction

Crumpler contends that the Court of Appeals failed to account for the totality of the circumstances in which the statements at issue were made and published.

"Generally, under our common law, a private individual asserting a claim of defamation first must show that a defendant has published a false factual statement that concerns and harms the plaintiff or the plaintiff's reputation." *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 46

(2009). In order to be "actionable," a purported defamatory statement "must have a provably false factual connotation and thus [be] capable of being proven true or false." *Handberg v. Goldberg*, 297 Va. 660, 666 (2019) (quoting *Schaecher v. Bouffault*, 290 Va. 83, 98 (2015)). "The verifiability of the statement in question [is] a minimum threshold issue." *Id.* "If the defendant's words cannot be described as either true or false, they are not actionable." *Id.* (quoting *Potomac Valve & Fitting, Inc. v. Crawford Fitting Co*., 829 F.2d 1280, 1288 (4th Cir. 1987)).

"Statements that are relative in nature and depend largely upon the speaker's viewpoint are expressions of opinion." *Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 714 (2006). "[P]ure expressions of opinion are constitutionally protected and cannot form the basis of a defamation action." *Tharpe v. Saunders*, 285 Va. 476, 481 (2013) (quoting *Williams v. Garraghty*, 249 Va. 224, 233 (1995)). "Whether an alleged defamatory statement contains a provably false factual connotation or is a 'pure expression[] of opinion' is a question of law that we examine de novo." *Schaecher*, 290 Va. at 103 (quoting *Tharpe*, 285 Va. at 481-82). In reviewing such a statement, this Court does not determine whether it is in fact true or false, "but whether it is capable of being proved true or false." *Tharpe*, 285 Va. at 482.

The Starks' statements to Hott that Crumpler is "vindictive," that he "would rather sue you than even speak to you," and that he "hasn't been selling property because he'd rather sue you than [try] to work with you" are non-actionable statements of opinion that "depend largely upon the speaker's viewpoint." *Tronfeld*, 272 Va. at 714. "[A]n average person could identify the language used as being relative or hyperbolic statements of opinion." *Schaecher*, 290 Va. at 103; *see also Yeagle v. Collegiate Times*, 255 Va. 293, 296 (1998) (holding that "language that is insulting, offensive, or otherwise inappropriate, but constitutes no more than 'rhetorical hyperbole'" is not defamatory).

The Starks' statements were made in response to Hott's questions asking them to summarize several years of contentious litigation with Crumpler. Therefore, the Court of Appeals correctly concluded that the statements "relate entirely to [the Starks'] own perception

of Crumpler's subjective attitude towards them" and are not "truly capable of being proven true or false." *Stark*, 2023 Va. App. LEXIS 494, at *9.[*]

III.

For the reasons stated, the Court finds that the Court of Appeals erred in reversing the trial court's finding of contempt in its entirety. However, the Court finds no error in the Court of Appeals' reversal of the trial court's finding of contempt as to the alleged defamatory statements. Accordingly, the judgment is affirmed in part and reversed in part. The case is remanded in part, with instructions to further remand the case to the circuit court for additional proceedings consistent with this order.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Franklin County.

A Copy,

Teste:

Clerk

[*] While the Court of Appeals failed to address the third statement at issue – that Crumpler "hasn't been selling property because he'd rather sue you than [try] to work with you," – the Court finds that this omission constitutes a harmless error as this statement also constitutes a non-actionable statement of opinion.