STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1486

Dalvin Cook,
Respondent,

vs.

Gracelyn Trimble,
Defendant,

Daniel Cragg, et al.,
Appellants.

Filed May 5, 2025
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-21-14617

Janel M. Dressen, Kathryn E. Campbell, Anthony Ostlund Louwagie Dressen & Boylan P.A., Minneapolis, Minnesota; and

Gary L. Manka, Katz & Manka, Ltd., Minnetonka, Minnesota (for respondent)

Kelly A. Putney, Christopher R. Morris, James C. Kovacs, Bassford Remele, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and Bond, Judge.

SYLLABUS

1. This court reviews de novo a district court decision on a special motion for expedited relief under the Minnesota Uniform Public Expression Protection Act, Minn. Stat. §§ 554.07-.19 (2024).

2. Statements made by an attorney to the media regarding a lawsuit do not generally fall within the protections of the judicial-proceedings privilege.

OPINION

BJORKMAN, Judge

This interlocutory appeal arises under the Minnesota Uniform Public Expression Protection Act (UPEPA), an anti-SLAPP (strategic lawsuit against public participation) statute that allows defendants to bring a special motion for expedited relief to dismiss certain types of claims, and to immediately appeal if the district court denies their motion, in whole or part. *See* Minn. Stat. §§ 554.11, .14, .15. Here, appellants challenge a district court order denying their special motion for expedited relief to dismiss respondent's defamation and invasion-of-privacy claims. The claims are based on statements made by appellants—two attorneys and their law firm—to the media and in a court filing in relation to a lawsuit brought by their client against respondent. We conclude that the district court erred in denying appellants' motion to dismiss respondent's defamation claims because (1) the judicial-proceedings privilege protects the statements appellants made in a legal memorandum they filed in district court and (2) the evidence is insufficient to support a finding that appellants' statements to the media before they commenced the lawsuit were made with actual malice. But we conclude that the district court did not err by denying appellants' motion to dismiss respondent's claim for invasion of privacy. We therefore affirm in part, reverse in part, and remand for further proceedings.

FACTS

In November 2021, appellants Daniel Cragg, Anne St. Amant, and their law firm, Eckland and Blando, LLP (appellants), commenced a lawsuit in Dakota County District Court (the Dakota County action) on behalf of Gracelyn Trimble, who asserted personal-injury claims against respondent Dalvin Cook stemming from an altercation between the two that took place on November 19-20, 2020. Cook is a professional football player who played for the Minnesota Vikings and was romantically involved with Trimble at the time of the altercation. Trimble and Cook settled the Dakota County action in May 2024. Events related to that action form the basis for Cook's claims in this case.

Cook's Defamation and Invasion-of-Privacy Allegations

In December 2021, Cook commenced this action in Hennepin County District Court (the Hennepin County action), alleging appellants defamed him. He subsequently amended his complaint three times. His currently operative Third Amended Complaint asserts claims for defamation and publication of private facts (invasion of privacy).[1] The claims arise out of statements made by appellants at two different times.

[1] Cook designated his Third Amended Complaint as confidential in the district court, citing a protective order issued by the court in relation to discovery. Court records "are presumed to be open to any member of the public," unless there is a specific exception in the access rules. Minn. R. Pub. Access to Recs. of Jud. Branch 2; *see also* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1 (identifying certain types of records not available to public). But materials filed as confidential in the district court remain nonpublic on appeal. Minn. R. Civ. App. P. 112.02. We are not precluded "from mentioning the contents" of confidential or sealed documents when the information is "relevant to the particular issues or legal argument being addressed in the proceeding." Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4. Nor are we constrained from disclosing information contained in the publicly filed briefs. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 4; *see also Coursolle v. EMC Ins. Grp., Inc.*, 794 N.W.2d 652, 655-66 n.1 (Minn. App. 2011), *rev.*

First, Cook asserts that appellants made maliciously false statements to the media in November 2021, shortly before commencing the Dakota County action. Cook contends the unfiled, unserved complaint appellants provided to the media contained false statements, including statements that on November 19, 2020, Cook "physically abused" Trimble, held her "hostage," caused mace to enter her eyes, and "beat her with a broomstick," causing severe injuries. Cook also alleges that appellants made false statements in a press release issued the day after the complaint was released, including that Trimble was a "victim" of an assault by Cook. In essence, Cook claims that Trimble's complaint and the press release defamed him because Trimble's allegations in the Dakota County action were untrue. We refer to the allegedly defamatory statements in Trimble's complaint and the press release together as the 2021 media statements.

Second, Cook alleges that appellants made defamatory statements and publicly disclosed private facts regarding settlement offers he made to Trimble in a legal memorandum appellants filed in the Dakota County action in July 2023. Appellants filed the memorandum in opposition to Cook's motion in limine that sought to exclude evidence of the two confidential settlement offers. Cook filed his motion—with supporting documents that included the two offers—as confidential. Appellants' responsive memorandum disclosed and discussed the terms of the offers. Appellants did not file the responsive memorandum as confidential and contend public filing was required under the

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denied (Minn. Apr. 19, 2011). Here, both appellants and Cook discuss the contents of the Third Amended Complaint in their publicly accessible briefs filed with this court. We limit our discussion in this opinion to information disclosed in publicly filed documents, and we express no opinion on the propriety of the access designations made by the district court.

Minnesota Rules of Public Access to Records of the Judicial Branch. The responsive memorandum includes statements characterizing Cook's settlement offers in a manner that Cook asserts are defamatory. We refer to these statements as the 2023 court filing statements.

Dispositive Motions in the Hennepin County Action

Appellants repeatedly sought dismissal of Cook's claims, arguing that they are barred by the judicial-proceedings privilege[2] and attorney immunity and that Cook had not adequately pleaded or offered evidence to prove actual malice as required when a public figure brings a defamation claim. In October 2022, the district court denied appellants' motion to dismiss the First Amended Complaint, which included only the defamation claim based on the 2021 media statements, concluding that the judicial-proceedings privilege did not apply and that Cook had adequately pleaded actual malice. In May 2023, the district court denied appellants' motion for summary judgment on the claims based on the 2021 media statements, reasoning that there were genuine issues of material fact as to actual malice and attorney immunity. Neither of these decisions was immediately appealable.

[2] The parties and the district court have used the term "litigation privilege" to refer to the absolute privilege that applies to certain statements made in relation to judicial proceedings. *See Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007). Some of the caselaw simply refers to this as "absolute privilege." *See id.* But absolute privileges are also recognized in other contexts. *See, e.g.*, *Zutz v. Nelson*, 788 N.W.2d 58, 62 (Minn. 2010) (recognizing constitutional absolute privilege for state legislators in discharge of their official duties and caselaw extending absolute privilege to other government officials). We believe that the term "judicial-proceedings privilege" most accurately describes and reflects the scope of the absolute privilege at issue. *See, e.g.*, *Matthis v. Kennedy*, 67 N.W.2d 413, 417 (Minn. 1954) (recognizing the "general rule . . . that, with certain recognized exceptions, defamatory matter published in the due course of a judicial proceeding is absolutely privileged").

See Kokesh v. City of Hopkins, 238 N.W.2d 882, 884 (Minn. 1976) (stating that orders denying motions to dismiss and for summary judgment generally are not appealable). Cook subsequently obtained leave to file and serve the Third Amended Complaint, which added claims based on the 2023 court filing statements.

In May 2024, the legislature adopted UPEPA. 2024 Minn. Laws ch. 123, art. 18, at 2412-17.[3] When it applies, UPEPA allows a defendant to bring a "special motion for expedited relief to dismiss the cause of action or part of the cause of action." Minn. Stat. § 554.09. Appellants then brought a special motion for expedited relief seeking dismissal of all Cook's claims. The district court denied the motion, determining that the claims are not barred by the judicial-proceedings privilege or attorney immunity and that Cook established a prima facie case as to each essential element of his claims. Appellants filed this interlocutory appeal from the district court's order denying their special motion for expedited relief under UPEPA. *See* Minn. Stat. § 554.15 (allowing for immediate appeal from order denying motion to dismiss under UPEPA).[4]

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[3] UPEPA is a uniform anti-SLAPP (strategic lawsuit against public participation) statute. *See* Unif. Pub. Expression Prot. Act § 1 cmt. (Unif. L. Comm'n 2020). When it adopted UPEPA, the legislature repealed the state's previous anti-SLAPP statute, Minn. Stat. §§ 554.01-.06 (2022), which the supreme court had ruled unconstitutional as applied to tort claims in *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 635-36 (Minn. 2017). 2024 Minn. Laws ch. 123, art. 18, § 16, at 2416.

[4] While this appeal was being briefed, we issued a decision in an appeal from the Dakota County action. *Trimble v. Cook*, No. A24-0403, 2024 WL 4927650 (Minn. App. Dec. 2, 2024), *rev. denied* (Minn. Feb. 26, 2025). In that case, the district court awarded sanctions based on appellants' conduct in publicly filing the memorandum in opposition to Cook's motion in limine. *Id.* at *1-2. We affirmed the monetary sanctions but reversed "any purported sanction precluding appellants from relying on the litigation privilege as a

ISSUES

I. What standard of review applies to appellate review of a district court order denying a special motion for expedited relief under UPEPA?

II. Does the judicial-proceedings privilege protect appellants' allegedly defamatory statements?

III. Has Cook presented evidence sufficient to prove actual malice in relation to any defamation claim that is not barred by the judicial-proceedings privilege?

IV. Have appellants demonstrated a basis for dismissing Cook's invasion-of-privacy claim?

ANALYSIS

Appellants challenge the district court's order denying their special motion for expedited relief under UPEPA. Because this is the first UPEPA appeal to come before our court, we begin by determining the appropriate standard of review before turning to the merits of appellants' arguments.

I. We review de novo whether the district court erred by denying a special motion for expedited relief under UPEPA.

The parties assert that the district court's order under UPEPA is subject to de novo review. We agree with the parties.

UPEPA is a procedural statute. *See* Unif. Pub. Expression Prot. Act § 2, cmt. 2 (stating that the act "operates in a procedural manner" to protect substantive rights); *see also Davenport Extreme Pools & Spas, Inc. v. Mulflur*, 698 S.W.3d 140, 153 (Ky. Ct. App.

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defense to civil claims that Cook might file against appellants." *Id.* at *6. We also reversed the district court's disqualification of appellants from representing Trimble. *Id.*

2024) (noting that UPEPA is "solely procedural").[5] When it applies, UPEPA provides an accelerated method through which a party may seek rulings on the sufficiency of claims and provides for interlocutory appellate review of orders denying dismissal of claims. *See* Minn. Stat. §§ 554.11, .14, .15.[6] A defendant may obtain dismissal under UPEPA by demonstrating either that a plaintiff has failed to state a claim upon which relief can be granted or that there are no genuine issues of material fact and judgment is appropriate as a matter of law. Minn. Stat. § 554.13(a)(3)(ii).[7]

Because UPEPA provides an accelerated procedure for obtaining rulings under standards articulated in Minn. R. Civ. P. 12.02(e) and 56, we conclude that it is appropriate to apply the same de novo review that we apply to decisions under those rules. *See DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019) (rule 12.02(e)); *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (rule 56); *see also Davenport*, 698 S.W.3d at 150 (reasoning that de novo review is appropriate because "UPEPA is most akin to an

[5] We may rely on caselaw from other jurisdictions that have adopted UPEPA as persuasive authority because "[l]aws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Minn. Stat. § 645.22 (2024).

[6] The causes of action to which UPEPA does and does not apply are delineated in Minn. Stat. § 554.08(b)-(d). Because no party challenges the applicability of the statute here, we assume without deciding that UPEPA applies to Cook's claims.

[7] Dismissal may also be appropriate if the plaintiff "fails to establish a prima facie case as to each essential element of the cause of action." Minn. Stat. § 554.13(a)(3)(i). Here, appellants moved for summary-judgment dismissal of the claims based on the 2021 media statements and dismissal of the claims based on the 2023 court filing statements for failure to state a claim. Thus, we need not consider what showing is required to demonstrate a prima facie case under UPEPA.

expedited motion to dismiss for failure to state a claim upon which relief may be granted or a motion for summary judgment"). Accordingly, we hold that de novo review applies to a district court decision on a special motion for expedited relief under UPEPA.

II. The judicial-proceedings privilege does not protect the 2021 media statements from defamation liability but does protect the 2023 court filing statements.

To prevail on his defamation claim, Cook must prove that appellants made "(a) a false and defamatory statement about [him]; (b) in an unprivileged publication to a third party; (c) that harmed [his] reputation in the community." *Maethner*, 929 N.W.2d at 873.[8] Thus, privilege is a defense to a defamation action, and a privilege may be absolute or qualified, the difference being that absolute privilege "is given even for intentionally false statements, coupled with malice." *Matthis*, 67 N.W.2d at 416. Absolute privilege is based in public policy and "confined within narrow limits." *Id.* at 417.

Under the judicial-proceedings privilege, statements may be protected from claims that sound in defamation if "(1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) the statement at issue is relevant to the subject matter of the litigation." *Mahoney & Hagberg*, 729 N.W.2d at 306.[9] The

[8] As we discuss further below, as a public figure, Cook must also prove that appellants acted with actual malice. *Maethner*, 929 N.W.2d at 873.

[9] The judicial-proceedings privilege is related to but distinct from the attorney immunity doctrine, which provides "that an attorney within the scope of [their] employment as attorney is immune from liability to third persons for actions arising out of that professional relationship." *McDonald v. Stewart*, 182 N.W.2d 437, 440 (Minn. 1970). Appellants nominally invoke both the judicial-proceedings privilege and attorney immunity. But they do not meaningfully develop an argument that the 2021 media statements are protected by attorney immunity, and that argument is therefore forfeited. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that inadequately briefed issues are not properly

judicial-proceedings privilege is absolute, grounded in the public policy of encouraging witnesses to testify frankly "without fear of civil liability for their statements" and ensuring that "[t]he final judgment of the tribunal" is based on facts as candidly disclosed by witnesses who are not "hampered by fear of private suits for defamation." *Id.* (quotation omitted). The privilege fully extends to statements of attorneys "for the interest and benefit of the party [they] represent[] and to allow [them] full scope and freedom in support or defense of the rights of that party." *Matthis*, 67 N.W.2d at 417.

But application of the privilege is limited; it does not apply unless "the administration of justice requires complete immunity from being called to account for language used." *Id.* "In the context of [this] absolute privilege, statements may be relevant, and therefore protected, if the statements have reference and relation to the subject matter of the action and they are connected therewith." *Mahoney & Hagberg*, 729 N.W.2d at 306 (quotation omitted). "The relevance of a statement to litigation is a question of law, and any doubts as to relevance of a statement must be resolved in favor of finding the statements pertinent." *Id.* at 306-07 (quotation omitted).

We address in turn whether the judicial-proceedings privilege applies to bar Cook's defamation claims as they relate to the 2021 media statements and the 2023 court filing statements.

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before appellate court). Moreover, we need not address the application of attorney immunity to Cook's defamation claims because we conclude that they are subject to dismissal on other grounds.

A. The judicial-proceedings privilege does not apply to protect appellants' 2021 media statements.

Appellants first assert the privilege in relation to the 2021 media statements, which include statements in Trimble's then-unfiled complaint and in a press release, both of which characterized Cook as the aggressor during the November 2020 altercation. Appellants assert that the judicial-proceedings privilege applies to these statements because they were made in the course of representing Trimble. We disagree.

Although our supreme court has not addressed the issue, "[t]he majority of states have determined that the [judicial-proceedings] privilege does not apply when the communications are made to the media." *Jacobs v. Adelson*, 325 P.3d 1282, 1286 (Nev. 2014); *see also Landry's, Inc. v. Animal Legal Def. Fund*, 631 S.W.3d 40, 50 (Tex. 2021) (noting "weight of authority" that judicial-proceedings privilege does not apply to media communications); Restatement (Second) of Torts § 586 Reporter's Note (Am. L. Inst. 1977) ("The absolute privilege does not extend to a press conference."); Rodney A. Smolla, 2 *Law of Defamation* § 8:17 (2d ed. 2024) (explaining that "[s]tatements made at press conferences or in other circumstances not related to the proceeding are not covered by the absolute privilege"); Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 539 (2d ed. 2011) ("An attorney who makes defamatory remarks at a press conference or other media presentation would not ordinarily enjoy the absolute privilege."). As the Nevada Supreme Court explained in *Jacobs*:

> [C]ourts have concluded that the policy considerations underlying the absolute privilege rule are not applicable to statements made to the media. Statements made to the media do little, if anything, to promote the truth finding process in a

> judicial proceeding. They do not generally encourage open and honest discussion between the parties and their counsel in order to resolve disputes; indeed, such statements often do just the opposite. And allowing defamation claims for statements made to the media will not generally hinder investigations or detailing of claims. Thus, the need for absolute privilege evaporates. Because the privilege's purpose is not to protect those making defamatory comments but to lessen the chilling effect on those who seek to utilize the judicial process to seek relief, these courts have declined to extend the privilege in this context.

325 P.3d at 1286 (quotations and citations omitted). The Texas Supreme Court similarly noted that "[t]he judicial-proceedings privilege . . . does not exist to promote publicity or public awareness outside the courtroom. Its purpose is to facilitate open and vigorous litigation of matters inside the courtroom." *Landry's*, 631 S.W.3d at 49.

A determination that the judicial-proceedings privilege does not extend to media communications is also consistent with our decision in *Chafoulias v. Peterson*, No. C2-01-1617, 2003 WL 23025097 (Minn. App. Dec. 30, 2003), *rev. denied* (Minn. Feb. 25, 2004). In that case, we declined to extend the judicial-proceedings privilege to statements made by an attorney to the media even though the statements "simply reiterated the content of the pleadings" in a pending lawsuit. *Chafoulias*, 2003 WL 23025097, at *3. We reasoned that the attorney's

> televised statement, while made during the pendency of a judicial proceeding, was not made in the course of a judicial proceeding; and . . . the statement was not an integral part of the . . . proceeding or necessary to preserve [the attorney's] client's rights in [the] proceeding. . . . [M]ere relation cannot trigger the privilege if the communication is not made in the conduct of—and is not integral to—the judicial process.

Id. And we concluded that "the policy justifying the judicial [proceedings] privilege as applied to attorneys does not favor extending the privilege to [the attorney's] statement[s]." *Id.* Although *Chafoulias* is not precedential, we rely on it as persuasive authority in concluding that appellants' 2021 media statements are not protected by the judicial-proceedings privilege. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).[10]

Appellants urge us to conclude otherwise, citing *Cardtoons, L.C. v. Major League Baseball Players Ass'n* for the proposition that "[judicial-proceedings] privilege commonly attaches to statements made in anticipation of litigation." 335 F.3d 1161, 1166 (10th Cir. 2003). This proposition is accurate but incomplete. Although prelitigation statements *may* fall within the judicial-proceedings privilege, they must be sufficiently related to the judicial proceedings to do so. *See id.* (recognizing that privilege is limited to "statements . . . relevant to the proceeding"); *see also Mahoney & Hagberg*, 729 N.W.2d at 306; Restatement (Second) of Torts § 586 cmt. e. Importantly, *Cardtoons* did not involve prelitigation statements to the media—the statements were made in a prelitigation cease-and-desist letter to another party. 335 F.3d at 1166-67. And there was no dispute in *Cardtoons* that the prelitigation statements related to the judicial proceedings. *Id.* at 1166. Rather, *Cardtoons* focused on another requirement for application of the privilege—whether the defendant had "an actual subjective good faith belief that litigation [was]

[10] Appellants attempt to distinguish *Chafoulias*, but in doing so they cite to portions of the opinion addressing whether the statements in that case were protected by qualified privilege. 2003 WL 23025097, at *6. Appellants do not argue that their statements were protected by qualified privilege, and we discern no meaningful distinction between *Chafoulias* and this case in relation to the absolute judicial-proceedings privilege.

seriously contemplated." *Id.* (quotation omitted); *see also* Restatement (Second) of Torts § 586 cmt. e (stating that privilege applies to prelitigation statements "only when the communication has some relation to a proceeding that is contemplated in good faith and under serious consideration"). For these reasons, *Cardtoons* does not guide our analysis.

Based on the weight of the relevant authority, and consistent with our persuasive analysis in *Chafoulias*, we hold that attorney statements to the media generally do not fall within the scope of the judicial-proceedings privilege. Accordingly, the district court did not err by rejecting this asserted basis for dismissing Cook's defamation claims based on appellants' 2021 media statements.[11]

B. The judicial-proceedings privilege applies to protect the 2023 court filing statements.

Appellants next assert the privilege in relation to the 2023 court filing statements. Those statements characterized Cook's settlement offers to Trimble in a manner that he claims is defamatory. Appellants assert that the 2023 court filing statements are protected by the judicial-proceedings privilege because they were made in a court filing and relevant to the Dakota County action. We agree.

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[11] Some courts have recognized exceptions to this general rule in particular circumstances. *See Jacobs*, 325 P.3d at 1286 n.2 (collecting cases recognizing exceptions including when media is party to litigation and when class lawsuit is contemplated); *Chafoulias*, 2003 WL 23025097, at *3-4 (recognizing that privilege may apply when media outlet is a party to the litigation). Appellants do not claim that any exception applies, and the facts in this case bear no resemblance to those in which exceptions have been recognized. We therefore need not determine whether those exceptions apply under Minnesota law.

We also note that attorney statements to the media may be protected by other privileges or protections, including the requirement that public figures prove actual malice to prevail on defamation claims, which we address in section III below.

As explained above, the judicial-proceedings privilege protects, from claims sounding in defamation, statements that are "(1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) the statement at issue is relevant to the subject matter of the litigation." *Mahoney & Hagberg*, 729 N.W.2d at 306. Appellants' 2023 statements easily satisfy this test. They were made by attorneys in a memorandum filed in court in response to a motion in limine. And the statements were relevant to the subject matter of the litigation because they explained why appellants believed that the settlement offers should be admissible at trial notwithstanding the general inadmissibility of such evidence under Minn. R. Evid. 408. Indeed, this may be the quintessential example of statements falling within the protections of the judicial-proceedings privilege.

In concluding that the judicial-proceedings privilege did not apply, the district court focused on appellants' decision to file the responsive memorandum publicly, rather than filing it as a confidential document. In an appeal from the Dakota County action, we concluded that the Dakota County District Court did not abuse its discretion by awarding financial sanctions based on appellants' failure to file the memorandum under seal. *Trimble*, 2024 WL 4927650, at *4 (distinguishing sanctions from civil liability). But Cook's defamation claim turns on the alleged falsity of the statements made in the memorandum—not the fact that appellants filed the memorandum in the public court file. The district court also seems to have relied on a decision in the Dakota County action that the judicial-proceedings privilege would not apply to the statements made in the publicly filed memorandum. But we addressed that decision in *Trimble*, reversing "any purported

sanction precluding appellants from relying on the litigation privilege as a defense to civil claims that Cook might file against appellants." 2024 WL 4927650, at *6. The district court erred by declining to apply the judicial-proceedings privilege to the 2023 court filing statements.

In sum, we conclude that the judicial-proceedings privilege does not apply to protect the 2021 media statements but does protect the 2023 court filing statements. We therefore reverse the denial of appellants' special motion for expedited relief with respect to Cook's defamation claim based on the 2023 court filing statements. And, based on our conclusion that the 2021 media statements are not privileged, we consider the related defamation claim on the merits.

III. Dismissal of Cook's defamation claim based on appellants' 2021 media statements is warranted because Cook has not presented evidence sufficient to prove actual malice.

Because he is a public figure, Cook cannot prevail on a defamation claim unless he proves actual malice, meaning that the allegedly defamatory statements were "made with the knowledge that [they were] false or with reckless disregard of whether [they were] false or not." *Maethner*, 929 N.W.2d at 873.

> [R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

Britton v. Koep, 470 N.W.2d 518, 524 (Minn. 1991) (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). Actual malice "has nothing to do with motive or ill will in the

publishing of otherwise defamatory statements." *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 329 (Minn. 2000).

Actual malice must be proved by clear and convincing evidence; thus, "the appropriate summary judgment question [is] whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986). "[W]hether the evidence in the record is sufficient to support a finding of actual malice by clear and convincing evidence is a question of law which [an appellate] court reviews de novo." *Chafoulias v. Peterson*, 668 N.W.2d 642, 655 (Minn. 2003).

Cook argues that he has presented evidence sufficient to support a finding of actual malice in this case, pointing to documents and video recordings that his counsel shared with appellants before they spoke to the media. Because these documents and recordings were filed as confidential documents in the district court, we do not discuss their contents here. *See supra* note 1. But we have carefully reviewed them, and we are not persuaded that the evidence Cook relies on is sufficient to "permit the conclusion that [appellants] in fact entertained serious doubts as to the truth" of the allegations in Trimble's complaint in the Dakota County action. *Britton*, 470 N.W.2d at 524 (quotation omitted). This is particularly true when we view the evidence, as we must, through the prism of Cook's clear-and-convincing evidentiary burden. *See Anderson*, 477 U.S. at 254 (explaining that, "in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden").

The Dakota County action stemmed from a tumultuous relationship and presented a classic he-said-she-said dispute regarding the events of November 19-20, 2020. Cook points to nothing in the record indicating that appellants doubted the version of the events advanced by their client. Both Cragg and St. Amant testified and resisted any such suggestion. For instance, Cragg testified that Cook's counsel was inferring from a document that Trimble started things; Cragg did not believe that inference was supported by the evidence. St. Amant testified that the video recordings shared by Cook's counsel did not depict "any actual physical violence" but showed Cook and Trimble "having a heated conversation." And both Cragg and St. Amant pointed to messages that Cook sent to Trimble following the altercation, including one in which he said:

> I know what I did can't be rewind but I just want you to know I'm sorry I love you so much despite you thinking I don't or never did but I do! Whatever you need I'm here for you! And if you wanna go to the police I'll respect that I'll take my punishment for what I did!

Cook further stated, in response to Trimble saying that her "face [was] so messed up," that he was "sorry for that! But the situation just got out of hand from the jump."

In short, the record demonstrates that there clearly was a factual dispute as to what transpired between Trimble and Cook on November 19-20, 2020. But even assuming that Trimble's version of the events is false, we conclude that no reasonable juror could find, by clear and convincing evidence, that appellants acted with actual malice in making the 2021 media statements. In other words, the evidence is insufficient to prove that appellants made those statements either knowing that they were false or with reckless disregard for their truth. Because Cook cannot prove an essential element of his defamation claim in

relation to the 2021 media statements, appellants are entitled to summary judgment. *See Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) ("A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim."). We therefore reverse the denial of appellants' special motion for expedited relief to dismiss Cook's defamation claim based on appellants' 2021 media statements.

IV. Cook's invasion-of-privacy claim is not subject to dismissal.

"Publication of private facts is an invasion of privacy when one 'gives publicity to a matter concerning the private life of another * * * if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.'" *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 233 (Minn. 1998) (quoting Restatement (Second) of Torts § 652D (Am. L. Inst. 1977)). The claim "focus[es] on a very narrow gap in tort law—to provide a remedy for the truthful but damaging dissemination of private facts, which is nonactionable under defamation rules." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 557 (Minn. 2003).

As a threshold matter, it is not clear from appellants' briefing whether they argue that the judicial-proceedings privilege applies to Cook's invasion-of-privacy claim. To the extent that they do so, we reject the argument. The judicial-proceedings privilege applies to claims that "sound[] in defamation—that is claims where the injury stemmed from and grew out of the defamation." *Mahoney & Hagberg*, 729 N.W.2d at 309. Appellants do not assert that Cook's invasion-of-privacy claim sounds in defamation, and we note the distinction between the two claims; one is premised on falsity and the other on truth. *See*

Bodah, 663 N.W.2d at 557 (explaining that claim for publicity of private facts provides "a remedy for the truthful but damaging dissemination of private facts, which is nonactionable under defamation rules"). Because we conclude that Cook's invasion-of-privacy claim does not sound in defamation, the judicial-proceedings privilege does not apply. *Cf. Mahoney & Hagberg*, 729 N.W.2d at 310 (determining that "claims that ar[o]se as a consequence of [the respondent's] purported defamatory statements" sounded in defamation "[r]egardless of the label").

We also reject any argument that Cook's invasion-of-privacy claim is barred by attorney immunity as a matter of law. Attorney immunity "may not be invoked if the attorney, exceeding the bounds of this unique agency relationship, either is dominated by [their] own personal interest or knowingly participates with [their] client in the perpetration of a fraudulent or unlawful act." *McDonald*, 182 N.W.2d at 440; *see also Rucker v. Schmidt*, 768 N.W.2d 408, 412 (Minn. App. 2009) (explaining that "summary judgment based on general principles of attorney immunity is not appropriate" when attorney is accused of fraud). It would be premature to apply attorney immunity at this juncture because of factual issues as to whether appellants were "dominated by [their] own personal interest or knowingly participate[d] with [their] client in the perpetration of a fraudulent or unlawful act." *McDonald*, 182 N.W.2d at 440.

Appellants' argument on the merits of Cook's invasion-of-privacy claim is limited. They focus on the second element of the claim—that the matter publicized is not of legitimate concern to the public—and argue that true statements regarding Cook's settlement offers are "a legitimate concern of the public given the issues being litigated in

the *Trimble* case." And they attempt to draw comparison to the public concern regarding the "life history" of a person accused of murder, citing Restatement (Second) of Torts § 652D cmt. h. We are not persuaded by this analogy, and appellants cite no other authority to support their assertion that the settlement offers are a matter of public concern. We therefore affirm the district court's denial of the special motion to dismiss the invasion-of-privacy claim and remand for further proceedings on it. In doing so, we express no opinion on the overall merits of the claim.

DECISION

This court reviews a district court decision on a special motion for expedited relief under UPEPA de novo. The judicial-proceedings privilege generally does not apply to statements made to the media, and the district court did not err in declining to apply it to appellants' 2021 media statements. But Cook's defamation claim based on the 2021 media statements still fails as a matter of law because the evidence is insufficient to prove by clear and convincing evidence that appellants made the statements with actual malice. The judicial-proceedings privilege does protect appellants from Cook's defamation claim related to the 2023 court filing statements. Finally, Cook's invasion-of-privacy claim is not protected by the judicial-proceedings privilege or otherwise subject to dismissal. Accordingly, we reverse the district court's denial of the UPEPA motion with respect to Cook's defamation claims, affirm the denial of the motion with respect to the invasion-of-privacy claim, and remand for further proceedings on the invasion-of-privacy claim.

Affirmed in part, reversed in part, and remanded.