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Torts -- Defamation -- Punitive damages -- Amendment of complaint to add claim for punitive damages -- Finding that plaintiff established a reasonable evidentiary basis to permit her to plead punitive damages did not foreclose trial court from concomitantly concluding that counterclaimant also established reasonable basis for recovering punitive damages -- Counterclaimant established essential elements of defamation per se by filing affidavit attesting that plaintiff/counter-defendant falsely told others that counterclaimant was mentally ill, an alcoholic, and a drug user who physically abused plaintiff

ELIZABETH ROQUE, Appellant, v. LEWIS SWEZY, Appellee. 3rd District. Case No. 3D25-0235. L.T. Case No. 23-16395-CA-01. January 21, 2026. An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge. Counsel: Young, Berman, Karpf & Karpf, P.A., and Andrew S. Berman, and Alexandra D. Mendez, for appellant. Armstrong Teasdale LLP, and Glenn H. Waldman, for appellee.

(Before EMAS, MILLER, and LOBREE, JJ.)

(MILLER, J.) This appeal involves the extent to which the trial court must critically examine the veracity of a proffer filed in furtherance of a claim for punitive damages. Appellant, Elizabeth Roque, filed a tort lawsuit against her former intimate partner, appellee, Lewis Swezy, alleging she suffered a sustained campaign of verbal and physical abuse. Swezy counterclaimed for defamation, contending Roque fabricated the allegations. Both parties simultaneously moved for leave to amend to assert punitive damages. The trial court granted the dueling motions. On appeal, Roque contends that once the trial court found a reasonable evidentiary basis to permit her to plead punitive damages, it was foreclosed from concomitantly concluding the counterclaim established a basis for recovering punitive damages. We affirm.

I

Roque and Swezy were involved in a romantic relationship for a decade and cohabitated for seven years. During that time, they worked together at Swezy's company, Centennial Management Corporation (“CMC”). Their relationship eventually deteriorated, and Roque filed suit against Swezy alleging assault, battery, defamation, and intentional infliction of emotional distress. Swezy answered and counterclaimed for defamation. He alleged that Roque slandered him by telling CMC employees that “[he] was crazy, an alcoholic, a drug user,” and that “[he] abused her, both physically and verbally.”

Both parties moved to amend their pleadings to assert punitive damages. *See* § 768.72, Fla. Stat. (2025). Roque filed several items in support of her claim, including photographs, evidence of a 911 call, video stills, testimony from third parties, including her housekeeper, and medical records. Swezy argued the proffer was insufficient, and in furtherance of his claim, filed an affidavit attesting that “Roque . . . falsely told other [common workplace] employees that, among other things, I was mentally ill, an alcoholic, a drug user and that I physically abused her.” Roque opposed Swezy's motion with the same materials filed to support her claim. The trial court granted both motions, and this appeal ensued.

II

A

We have jurisdiction. *See* Fla. R. App. P. 9.130(a)(3)(G). This court conducts a de novo review of a nonfinal order granting leave to assert a claim for punitive damages. *Gattorno v. Souto*, 390 So. 3d 134, 137 (Fla. 3d DCA 2024). In so doing, we consider the proffer in the light most favorable to the movant, *id.*, but remain vigilant that section 768.72, Florida Statutes, “requires the trial court to act as a gatekeeper and precludes a

claim for punitive damages where there is no reasonable evidentiary basis for recovery.” *Bistline v. Rogers*, 215 So. 3d 607, 611 (Fla. 4th DCA 2017).

B

Punitive damages are a form of extraordinary relief, reserved for sufficiently outrageous or egregious conduct. *See Monsanto Co. v. Behar*, 417 So. 3d 383, 387 (Fla. 3d DCA 2025). The purpose of such damages “is not to further compensate the plaintiff, but to punish the defendant for [his or her] wrongful conduct and to deter similar misconduct by [him or her] and other actors in the future.” *BDO Seidman, LLP v. Banco Espirito Santo Int’l*, 38 So. 3d 874, 876 (Fla. 3d DCA 2010).

In line with these basic tenets, punitive damages are only authorized where “there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.” § 768.72(1), Fla. Stat. This is because a defendant is afforded a “substantive legal right not to be subject to a punitive damage claim until the trial court rules that there is a reasonable evidentiary basis for punitive damages.” *Holmes v. Bridgestone/Firestone, Inc.*, 891 So. 2d 1188, 1191 (Fla. 4th DCA 2005) (citing *Globe Newspaper Co. v. King*, 658 So. 2d 518 (Fla. 1995)).

We concede that our case law has been less than a model of clarity in this arena. As both parties point out, we have stated on the one hand that “[a] trial court must weigh both parties' showings when considering whether the evidence or proffer is sufficient” *Gattorno*, 390 So. 3d at 136-37 (quoting *Manheimer v. Fla. Power & Light Co.*, 403 So. 3d 257, 261 (Fla. 3d DCA 2023)). Yet on the other hand, we have observed that “[t]he trial court's gatekeeping function doesn't ‘weigh evidence or evaluate witness credibility.’” *McLane Foodservice Inc. v. Wool*, 400 So. 3d 757, 761 (Fla. 3d DCA 2024).

The latter statement aligns with our recent decisions and those by our sister courts. *See Fed. Ins. Co. v. Perlmutter*, 376 So. 3d 24, 34 (Fla. 4th DCA 2023) (“We stress that the preliminary determination of whether the movant made a reasonable showing by evidence of a reasonable basis for allowing a punitive damages claim is to be made without weighing evidence or witness credibility.”); *River Front Master Ass’n, Inc. v. N. Inv. Grp., LLC*, 399 So. 3d 1106, 1108 (Fla. 3d DCA 2024) (court is not charged with weighing evidence when considering a punitive damage claim); *Mercer v. Saddle Creek Transp., Inc.*, 389 So. 3d 774, 777 (Fla. 6th DCA 2024) (“Like the trial court, we view the evidence in the light most favorable to [movant] As below, we do not weigh evidence or evaluate witness credibility.”).

C

Roque urges us to weigh the competing proffers, while Swezy contends we are bound by *Wool* and the cases that follow. We conclude that under either approach, the trial court correctly determined the evidentiary proffer was sufficient.

Defamation ordinarily has five elements: “(1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory.” *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008). But some defamatory statements are actionable per se, occupying a unique rung in the hierarchy of Florida jurisprudence. Falsely implicating another in the commission of a crime, particularly one of moral turpitude, is actionable per se. *See Alan v. Wells Fargo Bank, N.A.*, 604 F. App’x 863, 865 (11th Cir. 2015) (applying Florida law).

“Florida has . . . singled out defamation per se for special rules in civil tort litigation.” *Lawnwood Med. Ctr., Inc. v. Sadow*, 43 So. 3d 710, 727 (Fla. 4th DCA 2010). This is because “[t]he personal interest in one's own good name and reputation surpasses economics, business practices or money.” *Id.* at 729. Because such an interest is “a fundamental part of personhood, of individual standing[,] and one's sense of worth,” *id.*, courts

have concluded that punitive damages may be awarded for defamation per se “even though the amount of actual damages is neither found nor shown, for in such a case the requirement of a showing of actual damages as a basis of an award of exemplary damages is satisfied by the presumption of injury which arises from a showing of libel or slander that is actionable per se.” *Saunders Hardware Five and Ten v. Low*, 307 So. 2d 893, 894 (Fla. 3d DCA 1974).

Here, Swezy established the essential elements of defamation through his affidavit. Florida courts have long recognized that falsely labeling someone as a criminal, an alcoholic, or an addict constitutes defamation per se. *See Le Moine v. Spicer*, 1 So. 2d 730, 733 (Fla. 1941); *Glynn v. City of Kissimmee*, 383 So. 2d 774, 775 (Fla. 5th DCA 1980). Accordingly, we conclude that Swezy satisfied the requisite statutory showing, and we therefore affirm the order under review.

Affirmed.

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