

IF YOU THINK YOUR EX-SPOUSE IS A LOUSE, THINK TWICE BEFORE TELLING YOUR FRIENDS ON FACEBOOK...

19 JULY 2019 | SEPARATION & DIVORCE

The law on defamation arising from posts on social media platforms such as Facebook continues to expand as the law catches up with how society is using social media.

The takeaway for litigants in family law is not to post anything on social media about an ex-spouse or partner that could be considered, at worst, defamatory and, at best, assisting your ex's case against you.

In the case of *Dabrowski v Greeuw* (2014) WADC 17, a decision of the District Court of Western Australia, the plaintiff was awarded damages of \$12,500 after his estranged spouse was found to have defamed him via a post to Facebook.

Following separation after 20 years of marriage, Ms Greeuw posted to her personal Facebook page the comment:

"...separated from Miro Dabrowski after 18 years of suffering domestic violence and abuse. Now fighting the system to keep my children safe."

The plaintiff husband commenced proceedings in the District Court for defamation, citing the impact of the statement on his employment and standing in the community as a teacher.

To establish defamation, the plaintiff husband had to prove:

- That the words were "published" to persons other than himself;
- That the published matter led to Mr Dabrowski's standing in the community, or the estimation in which people held him, being lowered as result of reading the published material.

The court was satisfied the post was publically available to any person who accessed Ms Greeuw's Facebook page. It was sufficient for Mr Dabrowski to prove that three separate people (one being his brother) had read the post and their view of Mr Dabrowski was affected by it.

Despite arguing the defence of "justification" - that is - if the statement is true it cannot be defamatory - Ms Greeuw was unsuccessful.

The law on defamation was considered recently in the NSW Supreme Court decision of *Voller v Nationwide News and Ors* (2019) NSWSC 766. The court held that news sites that published on platforms such as Facebook were considered to be the primary publishers of the

comments made by third parties on those posts. As primary publishers of the comments, the news sites could be held liable in defamation for the content of the comments in response to their posts.

The court said that these posts by news sites were analogous to an online forum where the forum owners play an active role in encouraging responses and comments with the aim to attract followers and derive income from advertising.

The decision turned on the ability of the administrators of the pages to delete, hide or review the comments before they were published. With this capacity to control comment, the news sites were considered to be primary publishers of the third-party comments and not mere conduits. Hence, the defence of “innocent dissemination” may not apply.

This decision may be the subject of appeal as it has potentially wide reaching implications. If you'd like to know a little more about this case read our Insurance Alert - [Facebook public page posters beware](#).

Initially published in February 2015, this article was updated in July 2019.

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