IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

TNI PARTNERS, AN ARIZONA GENERAL PARTNERSHIP DBA UNDER THE REGISTERED TRADE NAME, THE ARIZONA DAILY STAR,
Petitioner,

v.

HON. CYNTHIA T. KUHN, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF PIMA,
Respondent,

and

CAITLIN DAY WATTERS,
Real Party in Interest.

No. 2 CA-SA 2023-0013
Filed May 25, 2023

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f); Ariz. R. P. Spec. Act. 7(g), (i).

Special Action Proceeding
Pima County Cause No. C20220169

JURISDICTION ACCEPTED; RELIEF GRANTED

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MEMORANDUM DECISION

Judge Kelly authored the decision of the Court, in which Presiding Judge Eppich and Judge O'Neil concurred.

K E L L Y, Judge:

¶1 In this special action, petitioners Carol Ann Alaimo, Timothy Steller, and TNI Partners, the partnership operating The Arizona Daily Star (collectively "petitioners"), challenge the respondent judge's order denying their motion for summary judgment on defamation claims brought against them by Caitlin Watters. We accept jurisdiction, conclude the respondent erred by denying the motion, and grant relief.

Background

¶2 We construe the facts and reasonable inferences in the light most favorable to the party opposing summary judgment. *See Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 201 Ariz. 474, ¶ 13 (2002). On February 14, 2021, the Pima County Sheriff's Department received a report that a man had dumped trash in the driveway at the home of Caitlin Watters's father, Adam Watters, who was at the time a justice of the peace. The man, Fei Qin, had appeared in an eviction action before Judge Watters and had previously slashed vehicle tires and left trash at Judge Watters's home. An officer interviewed Caitlin Watters and she told him that she, her sister, and her father, according to the officer's description of her statement, "had been sitting in hidden areas within the front yard, watching and waiting for the individual to return." She pointed out where she and her sister had been sitting "in two folding chairs hidden behind a bush." The officer saw "a shotgun currently leaning against one of the chairs." Consistent with this account, another deputy noted "there were multiple lawn chairs set out in the driveway as well as in the front yard facing the road of the residence as if they had been waiting for the subject to come by."

¶3 As reported by the officer, Watters explained that when Qin had driven back past the home, her father had approached his vehicle, the

two had gotten "into a verbal argument," and Qin got out of the vehicle. Her father "fired his gun into the ground," not pointing the gun at Qin, but "just trying to scare him with a warning shot." Qin was arrested for stalking, and ultimately no charges were filed against Judge Watters.

¶4 The Arizona Daily Star reported on these events in articles written by Alaimo. An opinion piece about the family's actions written by Steller was also published. In response to these pieces, Caitlin Watters brought an action for defamation and false light invasion of privacy against Alaimo, Steller, and TNI Partners.

¶5 Watters alleged the petitioners were "motivated by animus, bias and a political anti-gun, anti-Republican, and anti-Conservative agenda" and had "willfully and maliciously published defamatory statements" about her. In her complaint, Watters quoted from an article written by Alaimo as follows:

> A judge has been placed on leave, a prosecutor has quit her job and authorities are investigating a criminal case that could test the limits on when it's legal to fire a gun in Arizona.
>
> Justice of the Peace Adam Watters, 59, was placed on paid administrative leave last month and is under investigation for firing what he called a "warning shot" — one that landed inches from an unarmed man on a recent Sunday afternoon outside Watters' home in the Foothills.
>
> . . .
>
> PROSECUTOR RESIGNS
>
> While the incident took place in Pima County, it is not being handled by the Pima County Attorney's Office, which typically prosecutes such cases.
>
> The Watters case isn't typical due to the involvement of the judge's daughter, a prosecutor with the Pima County Attorney's Office since late 2018.

> Caitlin Watters, who brought a loaded shotgun to the scene but did not use it, was interviewed as a witness in the case. Two days later, she quit her prosecutor's job.
>
> Her Feb. 16 resignation letter does not specify why she chose to leave but said the decision "has not been an easy one." The resignation takes effect March 12, said the letter the Star obtained through a public-records request.

(Alteration in original.)

¶6 Watters also quoted from an opinion piece written by Steller:

> But then, on Feb. 14, Watters and his daughters set up a sort of ambush, sitting on lawn chairs in areas hidden by bushes. They sat outside, armed, waiting for the man to come by who they suspected of the harassment.
>
> This alone makes you wonder. As frustrated and scared as Watters and his family may have been, setting up an ambush sounds like exactly the kind of dumb thing a person would do to win a date in Watters' court.

(Emphasis omitted.) Additionally, Watters included a quote from an "Editor's Pick Topical Alert Top Story," written by Alaimo, that repeated statements made in the earlier article.

¶7 Based on this language, Watters claimed that Alaimo and Steller had "falsely misled" the public to believe she "had been forced to resign" and "had committed a crime or had acted in a way that would have justified her termination." Instead, she asserted she had resigned to accept a position that was offered to her before the February 14 incident.

¶8 Before publishing her story, Alaimo had not contacted Watters to ask about her resignation, but Alaimo had sent the Pima County Attorney's Office a list of questions about the matter and a request for Watters's resignation letter and employment start date pursuant to the Freedom of Information Act. Watters contended that Alaimo's questions in the request demonstrated Alaimo's "political agenda and animus towards" Watters. Furthermore, Watters alleged Alaimo and Steller had omitted key facts about Qin.

¶9 The petitioners moved for summary judgment. They argued Watters was a public official, had "not identified any inaccurate information in the[ir] statements," and had not shown actual malice. In response, Watters asserted she was not a public official and, even were the court to conclude she was, Alaimo and Steller had acted with actual malice because they "fabricated facts in their stories in an effort to deliberately cast" her "in a negative light." The respondent judge determined that Watters was a public official, but that there were genuine issues of fact as to whether Alaimo and Steller "subjectively knew of the falsity of their statement[s] or had serious doubts as to their truth." The respondent therefore denied the motion for summary judgment.

Jurisdiction

¶10 Generally, we will only take "special action jurisdiction of the denial of a motion for summary judgment . . . 'in exceptional cases.'" *Ariz. City Sanitary Dist. v. Olson*, 224 Ariz. 330, ¶ 5 (App. 2010) (quoting *Sonoran Desert Investigations, Inc. v. Miller*, 213 Ariz. 274, ¶ 2 (App. 2006)). But we will "depart from this general rule" when an action raises First Amendment concerns. *Citizen Publ'g Co. v. Miller*, 210 Ariz. 513, ¶ 8 (2005).

¶11 In Arizona, "the First Amendment . . . limits the scope of state defamation law when applied to public figures and matters of public concern." *Rogers v. Mroz*, 252 Ariz. 335, ¶ 2 (2022) (citing *Dombey v. Phx. Newspapers, Inc.*, 150 Ariz. 476, 481 (1986)). Toward that end, "courts must ensure that only truly meritorious defamation lawsuits are allowed to proceed." *Id.* ¶ 4. Courts serve this gatekeeping function because "the expense of defending a meritless defamation case could have a chilling effect on First Amendment rights." *Read v. Phx. Newspapers, Inc.*, 169 Ariz. 353, 357 (1991). Indeed, this is consistent with direction from the United States Supreme Court "that appellate courts must engage in independent review of 'constitutional facts' in order to safeguard first amendment protections." *Dombey*, 150 Ariz. at 482 (citing *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 512 (1984)).

Discussion

¶12 In their petition for special action, petitioners acknowledge that the respondent judge "identified the correct legal standards," but they argue she "abused [her] discretion by incorrectly applying these standards" to their statements and denying their motion for summary judgment. Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a). We review the respondent's ruling de novo. *See Deal v. Deal*, 252 Ariz. 387, ¶ 11 (App. 2021).

¶13 "A defendant is subject to liability for defamation of a public official only if he, with actual malice, publishes to a third party a false and defamatory communication concerning the plaintiff." *Pinal County v. Cooper*, 238 Ariz. 346, ¶ 17 (App. 2015). "Because the threat or actual imposition of pecuniary liability for alleged defamation may impair the unfettered exercise of these First Amendment freedoms, the Constitution imposes stringent limitations upon the permissible scope of such liability." *Rogers*, 252 Ariz. 335, ¶ 4 (quoting *Greenbelt Coop. Publ'g Ass'n v. Bresler*, 398 U.S. 6, 12 (1970)).

¶14 "To be defamatory, a publication must be false and must bring the defamed person into disrepute, contempt, or ridicule, or must impeach plaintiff's honesty, integrity, virtue, or reputation." *Pinal County*, 238 Ariz. 346, ¶ 17 (quoting *Turner v. Devlin*, 174 Ariz. 201, 203-04 (1993)). Similarly, a "statement on matters of public concern must be provable as false before there can be liability." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990). A "communication is not actionable," however, "if it is comprised of 'loose, figurative, or hyperbolic language' that cannot reasonably be interpreted as stating or implying facts 'susceptible of being proved true or false.'" *Pinal County*, 238 Ariz. 346, ¶ 17 (quoting *Milkovich*, 497 U.S. at 21).

¶15 Further, although a defendant may be found liable for defamation by implication, "[a] mere implication derived from a concededly factual statement is a significant step removed from a statement that is expressly defamatory, requiring us to ensure that the implication is clear and fully capable of being proved false." *Rogers*, 252 Ariz. 335, ¶ 30. Thus, our supreme court has pointed out that it is "inherently difficult to prove the falsity of an implication," *id.* ¶ 35, whether the statement in question constitutes third-party defamation—a statement in which an unnamed person can be reasonably understood as the target—or defamation by implication—a statement implying "clearly defamatory meaning," *id.* ¶¶ 13-14.

¶16 In this case, Watters claims several statements in the petitioners' articles were defamatory. Some are clearly provable as true or false, including the assertion that she had "quit her job" with the Pima County Attorney's office, that she had "brought a loaded shotgun to the scene" without using it, that she had been sitting in a lawn chair "hidden by bushes," and that her resignation letter had not specified her reason for leaving and had given a resignation date. On the record before us, however, each of these statements are factually true. There is no dispute that Watters left her job at the Pima County Attorney's Office, and Alaimo's description of her resignation letter is accurate. Law enforcement reports

from the incident indicated folding chairs were seen "in a hidden area behind a bush" with a loaded "shotgun currently leaning against one of the chairs." Watters also told an officer that she had been sitting in "hidden areas" and had the shotgun with her.

¶17 Other statements to which Watters points, however, are less clearly provable statements of fact. These include statements in Alaimo's articles that the case was not "typical due to" Watters's involvement and that the case "could test the limits on when it's legal to fire a gun in Arizona." But the Pima County Attorney's Office does typically prosecute crimes committed in Pima County, making the transfer to Pinal County, which Watters does not dispute arose from her conflict, not typical.

¶18 Alaimo's statements about the gun laws, although not clearly provable as a question of fact, are also generally supported by the record before us. Relying on statements Alaimo made in her deposition, Watters contends Alaimo had no source to support her implication that Watters's actions were illegal and would "test the limits" of "when it's legal to fire a gun in Arizona."

¶19 In her deposition, however, Alaimo explained that although she did not remember who had given her "the idea that this criminal case could test the limits on when it's legal to fire a gun in Arizona," she had "talked to several people about it." She admitted that the "exact words" had been her "choice of words" but stated the claim was not "unsupported" by a source. Instead, she stated that "[e]very single source," including the Pinal County Attorney and Judge Watters's attorney, had talked to her about "[w]hen is it legal to shoot" and that she had paraphrased from those conversations. When describing his office's decision to decline charges, the Pinal County Attorney cited the unlikelihood of a conviction based on Arizona law justifying the use of physical force in defense of premises. Thus, when viewed in full, it is clear that Alaimo did not admit to creating the statement, merely to having paraphrased her discussions with attorneys involved in the matter.

¶20 Watters also contends that statements in Steller's article—that she and her family had "set up a sort of ambush" and that such an "ambush sounds like exactly the kind of dumb thing a person would do to win a date in [Judge] Watters' court"—were also defamatory. Watters argues that the word "ambush" could only be rationally interpreted as indicating a crime, and she had not been charged with any crime. She contends this was compounded by Steller's statement about ending up in court.

¶21 Steller's statements, made in an opinion piece, are "comprised of 'loose, figurative, or hyperbolic language' that cannot reasonably be

interpreted as stating or implying facts 'susceptible of being proved true or false.'" *Pinal County*, 238 Ariz. 346, ¶ 17 (quoting *Milkovich*, 497 U.S. at 21). As noted above, reports by investigating officers establish that Watters and her sister had been sitting on chairs hidden behind bushes and were armed. One officer specifically described the chairs set out in a manner "as if they had been waiting for the subject to come by." Watters later admitted in her deposition that she was sitting behind bushes with a shotgun.

¶22 The word "ambush" originates from a Germanic word for "bush" and is defined as: "to attack by surprise from a hidden place," "to lie in wait," or "a trap in which one or more concealed attackers lie in wait to attack by surprise." *Ambush*, Merriam-Webster.com Dictionary (last visited May 18, 2023). The facts above are entirely consistent with these definitions, regardless of whether or not a criminal implication might be drawn from the word.

¶23 Watters further argues, however, that when viewed in the broader context of the articles, factual statements about the incident and about her having left her job imply that she was forced to resign. But, as our supreme court explained, to support a defamation claim an implication must be "clear and fully capable of being proved false." *Rogers*, 252 Ariz. 335, ¶ 30. We cannot say that is the case here.

¶24 As the petitioners pointed out, Watters herself proposed several different implications that might be drawn from the articles. This diversity of possible implications militates against a conclusion that any one of them is clear. To the extent that those implications at least share a common theme—that Watters's departure from the County Attorney's Office had been involuntary and related to the incident—we cannot agree they are clear even under this broad interpretation. *See id.* Statements that Watters had left her job, when combined with statements about the investigation and Judge Watters's leave, might be read in the manner Watters suggests, but other portions of the articles discount such a reading, particularly making clear that her resignation letter did not specify why she was leaving and that she had given a resignation date herself. A reader could certainly conclude that by establishing her own final date of employment, Watters was not being forced to resign but did so of her own volition and for her own reasons. Accordingly, we cannot agree the article contained a clear implication that Watters was forced to resign her position.

¶25 Further, insofar as Watters suggests that elements of the stories related specifically to her father and the investigation of the incident overall gave rise to a third-party defamation claim, *see id.* ¶ 13, we disagree. As to legal issues relating to Judge Watters's use of a firearm and the

investigation of that use, Watters was largely "off-stage" or at most in "a supporting role." *Id.* ¶ 33. When viewed in conjunction with the weak negative implications of the statements, we cannot say the statements are sufficient to support a claim of defamation here. *See id.* ¶¶ 38-39.

¶26 Even were we to reach a contrary conclusion as to the defamatory nature of the statements in question, we would conclude the respondent judge erred in denying the motion for summary judgment based on a lack of actual malice. A public official bringing a defamation action is subject to the rule of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)—"that the plaintiff in such an action must prove that the defamatory publication 'was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.'" *St. Amant v. Thompson*, 390 U.S. 727, 728 (1968) (quoting *Sullivan*, 376 U.S. at 279-80).

¶27 Thus, in the context of summary judgment, "we must determine whether there are genuine issues of material fact which, if resolved in favor of plaintiffs, would permit a jury to determine by clear and convincing evidence that defendants knew the falsity of what was published or entertained serious doubts as to its truth." *Currier v. W. Newspapers, Inc.*, 175 Ariz. 290, 293 (1993). But, as noted above, the Supreme Court has directed we "must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of 'actual malice.'" *Bose Corp.*, 466 U.S. at 511.

¶28 Actual malice "has nothing to do with bad motive or ill will." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 666 n.7 (1989). Instead, "where a statement . . . reasonably implies false and defamatory facts regarding public figures or officials, those individuals must show that such statements were made with knowledge of their false implications or with reckless disregard of their truth." *Milkovich*, 497 U.S. at 20. "[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." *Time, Inc. v. Pape*, 401 U.S. 279, 291-92 (1971).

¶29 Indeed, as our supreme court set forth, "[t]he disregard must be more than 'reckless'—*conscious* disregard would be a better description of the test." *Dombey*, 150 Ariz. at 487. Because the question of actual malice "calls a defendant's state of mind into question," a plaintiff may draw inferences from "objective circumstances" to establish malice. *Selby v.*

Savard, 134 Ariz. 222, 225 (1982) (quoting *Hutchinson v. Proxmire*, 443 U.S. 111, 120 n.9 (1979), and *Herbert v. Lando*, 441 U.S. 153, 160 (1979)). Such "[i]nferences are for the finder of fact, unless only one inference may be drawn." *Dombey*, 150 Ariz. at 488.

¶30 In this case, Watters broadly based her claim of actual malice as to the petitioners collectively on their "political agenda." But allegations that the petitioners disliked Watters and her family, for political reasons or otherwise, even if they had been clearly shown, are not sufficiently probative because actual malice cannot solely be established through showings of bad motive or personal animosity. *See Heuisler v. Phx. Newspapers, Inc.*, 168 Ariz. 278, 282 (App. 1991); *see also Harte-Hanks*, 491 U.S. at 666; *Ross v. Duke*, 116 Ariz. 298, 301 (App. 1976); *but see Starkins v. Bateman*, 150 Ariz. 537, 548 (App. 1986) (ill will "standing alone" does not prove actual malice but may be considered as evidence thereof).

¶31 Beyond ill will, however, a plaintiff may rely on other circumstances to establish a speaker's state of mind. *See Selby*, 134 Ariz. at 225. Failure to investigate after being placed "on notice" of the potential falsity of a statement may show malice. *Dombey*, 150 Ariz. at 489; *Currier*, 175 Ariz. at 294-95 (fact question as to actual malice when reporter arguably demonstrated ill will, breached journalistic standards, and "ignored warnings about inaccuracies"); *Masson v. New Yorker Mag., Inc.*, 960 F.2d 896, 901 (9th Cir. 1992) ("where the publisher undertakes to investigate the accuracy of a story and learns facts casting doubt on the information contained therein, it may not ignore those doubts, even though it had no duty to conduct the investigation in the first place"). Likewise, a story having been "fabricated by the defendant" may be probative of actual malice. *St. Amant*, 390 U.S. at 732.

¶32 Watters does not make a separate argument of actual malice as to Steller, but as to Alaimo, Watters alleges she had "manufactur[ed] 'facts'" in her articles. As detailed above, we reject Watters's allegations that Alaimo had no source to support her statements that the incident could "test the limits on when it's legal to fire a gun."

¶33 Watters also claimed that Alaimo's malice was demonstrated by her having "'created' a false narrative that the Pima County Sheriff initiated an investigation into itself regarding the incident." In support of this argument, Watters points to Alaimo's June 18, 2021 article, which focused on the Pinal County Attorney Office's decision not to charge Judge Watters and the release of a video Judge Watters had taken during the incident. The article did not mention Caitlin Watters, nor did it refer to her role in the incident. Even assuming the article could be read to implicate

Watters, however, the record before us does not allow a reasonable inference that the statement was false or created by Alaimo.

¶34 Alaimo explained in the article that "detectives [had] allowed Watters' sister to keep, overnight, a cell phone the judge used to record his interaction with Qin just before the shooting." And, she noted, they "did not seize the phone for a forensic inspection to see if anything had been removed." She then stated that "Pima County Sheriff Chris Nanos ha[d] so far declined comment on the actions of his investigators, citing an ongoing internal review of the matter." She further wrote that "[t]he status of the review is unclear because the sheriff did not respond by deadline to a request for an update."

¶35 During her deposition, Alaimo was questioned about these statements and indicated she did not recall who she had spoken with specifically but that the Pima County Sheriff's public affairs office "must have" told her about the questions around the investigation. She explained she had gone "back and forth with the sheriff's department so many times" that she could not be specific. In September 2022, in response to a call to the Sheriff's Department, Watters received a letter stating its "Internal Affairs Division" had not investigated the case and that "no complaints" had been filed about it. But the article did not indicate a formal Internal Affairs investigation had been opened, only that the Sheriff had declined comment based on an "internal review." Further, the article expressly noted the status of that review was "unclear." Again, the record does not support a reasonable inference that Alaimo falsified Nanos's statement.

¶36 Watters further asserts that Alaimo demonstrated actual malice by certain actions: failing to further investigate the reason for Watters's resignation or to contact her directly about it, admitting in her deposition that she had not known if Watters's resignation was voluntary, and including certain questions in her letter to the Pima County Attorney's Office. We disagree.

¶37 Contrary to Watters's assertion that Alaimo "did absolutely no fact checking into the reason" for her resignation, the record shows that Alaimo emailed the Pima County Attorney directly. She asked several questions about the incident, whether Watters's actions were "a concern," and whether Watters had been asked to resign or had done so voluntarily. She also obtained Watters's letter of resignation through a Freedom of Information Act request. The letter did not state a reason for Watters's resignation, and the Pima County Attorney's Office did not respond to Alaimo's other questions, noting that it did "not comment on pending litigation." Thus, although Alaimo's questions certainly demonstrate that

she was questioning whether Watters's conduct had been wise, or even legal, they do not suggest that Alaimo had any reason to believe any of the facts set forth in the letter, or Alaimo's articles, were false. *See Pape*, 401 U.S. at 291-92.

¶38 Watters additionally presented evidence from Joe Mathewson, a journalism professor, about a journalist's standard of care and his opinion that Alaimo and Steller had fallen below that standard in their investigation and reporting of the February 14 incident. Evidence about "professional standards" may be considered as circumstantial evidence in determining whether defendants had recklessly disregarded the truth or falsity of their statements, but the Supreme Court has cautioned that "courts must be careful not to place too much reliance on such factors." *Harte-Hanks*, 491 U.S. at 667-68. Reckless disregard "requires more than a departure from reasonably prudent conduct"—beyond simply falling short of a professional standard, "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Id.* at 688 (quoting *St. Amant*, 390 U.S. at 731). In this case, as detailed above, nothing in the record before us suggests either of the writers were engaged in "purposeful avoidance of the truth." *Id.* at 692.

¶39 Ultimately, Watters acknowledges that "mere failure to conduct an investigation before publishing cannot itself establish actual malice." But, citing *Masson*,[1] she contends that the petitioners "had a 'pre-determined' argument to make against Judge Watters and his family" and they therefore published statements they "knew or should have known would carry a false negative inference." But, as the Supreme Court has instructed, that is not enough; "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing," *Pape*, 401 U.S. at 291. Rather, "[t]here must

[1]Watters also cites *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967) in support of the assertion, "[a]ctual malice may be inferred by the finder of fact if an investigation is grossly inadequate." But in *Curtis,* the Supreme Court declined to apply the *New York Times Co. v. Sullivan* standard to defamation claims brought by plaintiffs who were public figures, but not public officials, instead determining "a 'public figure' who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent, on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers." 388 U.S. at 155.

be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Id.* at 291-92.

¶40 Watters, however, asserts that "multiple questions of fact" exist as to whether such evidence exists and that, therefore, "[t]his is a 'look them in the eyes' case ripe for a jury." But in *Dombey*, the case from which the "look them in the eyes" quote is taken, the court was discussing the credibility of a reporter and editor who had denied awareness of contrary "facts in the newspaper's previous articles," a statement in denial, and a retraction request. 150 Ariz. at 489-90. Thus, the court explained, the case before it was one "in which the defendants had the correct information in their possession" and disputes about the facts "were called to [their] attention several times." *Id.* at 490. Thus, a jury would need to "look them in the eyes" to determine whether to believe the reporter and editor, and therefore find only "carelessness, negligence and bad journalism," or to disbelieve them, in which case "the evidence would support a finding of actual malice." *Id.*

¶41 In this case, as detailed above, no comparable evidence was produced to suggest that the petitioners had "published despite entertaining doubts as to the truth of the allegations" made. *Id.* Thus, although summary judgment should be denied if a finder of fact could draw inferences in favor of the non-moving party, when "only one inference may be drawn," *id.* at 488, in the context of a defamation claim against a public official, such a motion should be granted. It is only when statements are "provable as false," are not merely hyperbolic, and "there are truly two tenable views or interpretations of the statement," that the matter should be submitted to a jury. *Rogers*, 252 Ariz. 335, ¶¶ 22-23. For the reasons discussed above, that is not the case here.

Disposition

¶42 We accept special action jurisdiction and grant relief. We remand to the trial court with instructions to grant summary judgment in favor of the petitioners on the claims addressed above.