

BOISE, FRIDAY, AUGUST 21, 2020 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DUANE M. SIERCKE,

**Plaintiff-Counterdefendant-
Respondent,**

v.

**ANALLI S. SIERCKE,
nka ANALLI S. SALA,**

**Defendant-Counterclaimant-
Appellant.**

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Docket No. 47196

Appeal from the District Court of the First Judicial District, State of Idaho,
Kootenai County. Cynthia K.C. Meyer, District Judge.

Bolton Law, PLLC, Coeur d'Alene, for Appellant.

Ian Smith Law, PLLC, Coeur d'Alene, for Respondent.

Analli S. Sala appeals a judgment entered against her by the Kootenai County district court after a five-day jury trial. Duane M. Siercke was arrested after a domestic dispute in which Sala called the police and claimed that Siercke had ripped her earrings from her ears. Siercke was charged with misdemeanor domestic battery in the presence of a child, but the charges were ultimately dismissed. After the criminal charges against him were dismissed, Siercke filed a civil defamation claim against Sala. Before trial, Sala objected to the district court giving a defamation per se jury instruction and argued that her statements made to the police officers were protected by an absolute privilege because they were made during judicial proceedings. The district court ultimately gave the defamation per se jury instruction and determined that Sala's statements were not protected by absolute privilege because they were not intended to initiate a prosecution or judicial proceeding. The jury found in Siercke's favor on the defamation claim, awarding him \$25,000 in damages. Sala filed a motion for a new trial, which was denied. She timely appealed both the judgment and the order denying her motion for a new trial.

On appeal, Sala argues the district court erred in concluding that her statements were not protected by privilege, either qualified or absolute. She also argues the district court erred in giving a defamation per se instruction because such an instruction only applies to statements that

implicate a felony. Siercke argues that Sala failed to preserve her qualified privilege argument for appeal, that the district court did not err in determining that absolute privilege did not apply, and that the district court did not err in giving the defamation per se instruction because domestic battery in the presence of a child can be charged as either a misdemeanor or a felony.