

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THOMAS A. RANDALL : NO: 99-01,548

VS :

ALBERT C. OSWALD, individually and as :
Chairman of the Board of Unified Sportsmen
of Pennsylvania, and UNIFIED SPORTSMEN :
OF PENNSYLVANIA

OPINION AND ORDER

This matter is before the Court for Defendant, Unified Sportsmen of Pennsylvania's Motion for Summary Judgment. The parties have agreed to have the motion decided based upon a review of the transcripts of the depositions. After a review of the transcripts, the Court finds the following facts.

Plaintiff was affiliated with the Unified Sportsmen of Pennsylvania (USP), a group that addresses sportsman's issues.¹ Plaintiff testified that he became involved at the request of the group's president, Don Clemmer. Mr. Clemmer suggested that Plaintiff would be an asset to the group in addressing disabled sportsmen issues. Mr. Clemmer requested that Plaintiff take a position as vice-president of Disabled Unified Sportsmen of Pennsylvania (DUSP), a sub-organization of USP that was primarily funded through USP. (N.T. 8/20/01, p.12, 16) Plaintiff accepted the appointment in 1996. On October 6, 1997, Plaintiff was also appointed to a legislative liaison position. Plaintiff worked out of his home office to fulfill the responsibilities of these positions. (Id., p. 17-18) Plaintiff was provided with a fax machine to forward materials to the members. (Id., p. 41)

At some point, Mr. Clemmer asked Plaintiff if he would consider a position as Secretary of USP. Plaintiff was elected to the position in September of 1997, and took

office in January of 1998. (Id., p. 22) Plaintiff testified that when he took the secretary position, he was provided with a computer. Plaintiff attended the March 1998 meeting. At that meeting, disabled issues were raised and addressed by Defendant Oswald, and the members of USP voted to cut-off funding for DUSP. (Id., p. 25) The chief concern, apparently, were expenses submitted by Plaintiff through DUSP, for among other things, trips to Harrisburg lobbying on behalf of disabled sportsmen.² On May 8, 1998, Plaintiff, upset by USP's treatment of DUSP in cutting off funding, resigned as secretary of USP. In September of 1998, Plaintiff filed a suit in equity alleging discriminatory practices of USP and the members of the Board of Directors of USP. The suit was dismissed due to lack of jurisdiction.

In October of 1998, Plaintiff was requested by letter from Defendant Oswald, to return the computer furnished by USP. Plaintiff testified that he refused to return the equipment at that time, because he was "afraid with the attitude and so forth that was being conveyed by the board people of Unified Sportsmen, that the computer would have been broke, so I was going to be handed with a bill for this or that or something of that nature. So when I turned around – or, oh gee, you gave me the wrong computer, this wasn't the computer that was right. So in order to protect myself, I did not return it." (Id., p. 43) USP also requested cassette tapes from the March 1998 meeting. Plaintiff refused to return these materials as well, as he felt the group was in violation of federal law, and he sent the tapes to an investigator at the Attorney General's Office. (Ibid.)

¹ Plaintiff did not pay individual membership dues, he was affiliated through his membership with Hilltop Hunting Club.

² Prior to the March meeting, Plaintiff had agreed to make solicitations on behalf of DUSP to cover some of the expenditures he was encountering. (Id., p. 28) Plaintiff testified that he believed that he solicited between \$350.00 and \$500.00 on behalf of DUSP. Upon receipt of any checks made payable to USP², Plaintiff requested that USP sign over the checks to DUSP, since they terminated the group's funding. (Id., p. 32)

On September 3, 1999, Defendant Oswald wrote a letter on his personal letterhead, which he read at the September meeting, and circulated among USP's Board of Directors, asking for Plaintiff's membership to be revoked.³ At the time of reading the letter, Oswald turned the meeting over to Mr. Clemmer. Among the items in the letter was a statement that \$300.00⁴ belonging to DUSP had vanished, and alleging that Plaintiff had misappropriated the funds. Oswald admitted that he had no idea whether the money had been spent or not. (N.T. 8/20/01 Oswald, p. 29-42) Oswald testified that the statement had been made because Plaintiff had not submitted a report of expenditures to explain where the \$300.00 had gone. (Id., p.36) Also raised in the letter was the issue of the unreturned computer, fax and copier,⁵ and the money spent by USP and individual members defending Plaintiff's initial lawsuit.

Plaintiff testified that after the September 1999 meeting, he called connections, including individuals in State Representative Brett Feese's office, from whom he had previously received immediate responses. Plaintiff testified that he felt that he was receiving a "cold shoulder" from these individuals, and felt that it was probably because they had heard about Defendant Oswald's letter. (Id., p. 80) Plaintiff admitted that when he asked one of the individuals if they had heard about the situation with USP, they claimed that they had no knowledge of the situation. (Id., p. 79)

³ Plaintiff was present with counsel to respond to the allegations at the March, 2000 meeting. (Id., p. 52) At the meeting, it was raised to the attention of the board that Plaintiff was never a member of USP, he was a member of DUSP. There was therefore no membership to be revoked. (Id., p. 54)

⁴ Apparently, the \$300.00 was the amount of the two checks that had been made payable to USP. The checks were deposited into a USP account, then a check was made payable to DUSP from the USP account.

⁵ On 3/23/00, Trooper Brelsford of the Pennsylvania State Police sent correspondence to Plaintiff with a list of items requested by USP. Plaintiff eventually turned these items over to Trooper Brelsford. (Id., pp. 45 – 48)

On September 15, 1999, Plaintiff filed the instant complaint, alleging that the letter authored by Defendant Oswald was defamatory in nature. The complaint alleges that the letter was purposely and maliciously created and published with the intent to harm Plaintiff's reputation within the sporting, political and general community. Plaintiff alleges that Defendants purposely and maliciously created and published the letter either knowingly or having reason to know that the letter served no useful purpose due to the fact that Plaintiff was not an individual member of USP.

Defendant USP has filed a Motion for Summary Judgment, alleging that Plaintiff has failed to set forth facts needed to establish a defamation case against them. Summary Judgment is properly entered where the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits demonstrate that no genuine triable issue of fact exists and that the moving party is entitled to judgment as a matter of law. Smitley v. Holiday Rambler Corp., 707 A.2d 520, 525 (Pa.Super. 1998) In reviewing the motion, the record is examined in the light most favorable to the non-moving party. Long v. Yingling, 700 A.2d 508, 512 (Pa.Super 1997) Therefore, in order for a defendant to be successful in a summary judgment motion, the defendant must be able to show that the undisputed facts are such, when looked upon in a light most favorable to plaintiff, would entitle defendant at trial to the grant of a non-suit at the close of plaintiff's case. The issue before this Court is whether the facts the Court has gleaned from the depositions, when taken in the light most favorable to Plaintiff have established the elements of defamation.

In an action for defamation, the plaintiff has the burden of proving, when the issue is properly raised:

- 1) The defamatory character of the communication.
- 2) Its publication by the defendant.
- 3) Its application to the plaintiff.
- 4) The understanding by the recipient of its defamatory meaning.
- 5) The understanding by the recipient of it as intended to be applied to the plaintiff.
- 6) Special harm resulting to the plaintiff from its publication.
- 7) Abuse of a conditionally privileged occasion.

Instantly, the Court finds, after a careful review of the facts, that the Plaintiff has not shown that September 3, 1999 letter of Defendant Oswald was, in any way, a publication of Defendant USP. The letter was written solely by Defendant Oswald, on his personal letterhead, and read to the organization by him as a member of the organization. There are absolutely no facts indicating that the organization of USP participated in the publication of the letter. Since the Plaintiff has not established USP's participation in the publication of the letter, it is unnecessary to address the remainder of the elements. The Court finds that Summary Judgment must be granted in USP's favor.

ORDER

AND NOW, this ____ day of January, 2002, upon consideration of Defendant USP's Motion for Summary Judgment, it is hereby ORDERED and DIRECTED that the same is GRANTED. Defendant USP is DISMISSED from this cause of action.

By The Court,

Nancy L. Butts, Judge

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