IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

HARRY J. ROGERS, JR., Plaintiff	)	
v.	)	NO. 09 - 00,733 CV
WILLIAM HALL and STEVEN CAPPELLI, Defendants	)	

ORDER GRANTING SUMMARY JUDGMENT

Defendants Hall and Cappelli both seek summary judgment in their favor. For the reasons set forth hereafter, we agree Plaintiff's Complaint must be dismissed.

Plaintiff concedes that the trial court bears the initial burden of determining whether a communication is capable of a defamatory meaning, that is, a statement which tends to harm the reputation of another so as to lower him in the estimation of a community or to deter third persons from associating and dealing with him. Plaintiff contends he can easily meet that burden because the alleged defamatory statements of Defendants implicate him in criminal activity, specifically false reports of a crime and obstruction of justice. Defendants contend this bright line proposition is modified by a line of cases which suggest that a statement in the form of an opinion is actionable as defamation only if it may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion and that a simple expression of opinion based on disclosed facts is not itself sufficient for an action of defamation, citing Braig v. Fields Communications, 310 Pa. Super. 569 (1983) and Kurowski v. Burroughs, 2010 Pa. Super. 69, 994 A.2d 611 (2010).

Based on the allegations in the Complaint and the content of various depositions which we have thoroughly reviewed, it is clear that the statements of Defendants about which Plaintiff complains could reasonably be interpreted as suggesting that Plaintiff made a false report of criminal activity (to wit - drunk driving) although it is not so clear that such report would constitute obstructing government operations in violation of 18 Pa. C.S.A. § 5101. Notwithstanding the suggestion that a criminal offense may have been committed, any statements by the Defendants were made in the form of their own opinion based on an unusually full and complete disclosure of the background of the incident which led to the opinions. As our Superior Court has ruled in both Braig, supra, and Kurowski, supra, a statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion. The simple expression of opinion based on disclosed facts is not sufficient for an action of defamation. We are satisfied the statements made by both Defendants would have been clearly understood by the general public as expressions of their own opinions and that there was no implication that any undisclosed defamatory facts existed justifying the opinions. Under such circumstances, we are bound by our intermediate appellate court to find that the challenged statements are not capable of a defamatory meaning and, therefore, there is no basis for the matter to proceed to trial.

Defendants next contend because they are high public officials, any statements made by them were absolutely privileged if the statements were made within the scope of their authority. Plaintiff, while acknowledging that "under certain limited circumstances Defendants would qualify as high public officials" suggests the statements were not made within the scope of their authority as representatives of the City of Williamsport. In order to resolve this issue, we must examine the context in which the statements were made.

On the morning following the initial incident, Defendant Hall began an inquiry within City Hall which inquiry included Defendant Cappelli, Mayor Campana, and Council President Whaley. During the course of the day, a reporter from the Williamsport Sun-Gazette was summoned and various statements were made by Hall, Cappelli, Campana, and Whaley, which eventually made their way into the media. Hall contends his motivation for the inquiry was to determine why so many Williamsport police officers converged on the scene (a question which looms large in our mind also) and why the Williamsport Police Department did not have a functioning portable breath test device. These issues are clearly within the scope of the duties of an elected municipal official and Defendant Hall had policy-making powers with respect to those issues. Our Supreme Court has declared that the Doctrine of Absolute Privilege exempts a high public official from damages and civil suits arising out of false defamatory statements even if there is a showing they were motivated by malice, so long as the statements are made or actions are taken in the course of the official's duties or powers and within the scope of his authority or, as sometimes expressed, within his jurisdiction." Mattson v. Margiotti, 371 Pa. 188, 88 A.2d 892 (1952). We are satisfied that the statements of Hall made on City turf, as accurately or inaccurately reported by the media, were absolutely privileged.

On the other hand, we agree with Plaintiff that Defendants are not entitled to absolute immunity with respect to the communications by them to their "fellow Republicans" or the voters generally in the context of the Cappelli/Yaw Senate race. Such communications were for purely political motives, having nothing to do with the general welfare of the City of Williamsport or its citizens. If, therefore, the appellate court should disagree with our rationale for granting the Defendants' Summary Judgment Motions, this case would proceed only with respect to the "political" communications.

Finally, Defendants contend Plaintiff is a public figure who must prove by clear and convincing evidence that Defendants realized their statements were false or subjectively entertained serious doubt as to the truth of their statements, citing Curran v. Philadelphia Newspapers, Inc., 439 A.2d 652 (1981), and New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Plaintiff agrees it is the function of the trial court to determine whether Plaintiff is a public or private figure.

An all purpose public figure is one who has assumed a role of special prominence in the affairs of society, or has attained a position of such persuasive power and influence that he is deemed a public figure for all purposes. Rutt v. Bethlehem's Globe Pub. Co., 335 Pa. Super. 163 (1984). The rationale for the public figure distinction is that public figures usually enjoy significantly greater access to the channels of effective communication and have a more realistic opportunity to counter-act false statements than private individuals normally enjoy. While Plaintiff's Brief focuses on the specific issue involved in this litigation, we believe a resolution of the "public figure" issue requires an examination of Plaintiff's role in the public realm in the years preceding the incident in controversy.

A review of the depositions clearly establishes that Plaintiff has been actively involved in Republican politics for a number of years, having served as a Duboistown Borough Committeeman, the Chairman of the Lycoming County Republican Party, and a State Committeeman of the Republican Party. Plaintiff has actively and publicly campaigned for various candidates and specifically endorsed some of those candidates seeking to convince the voters that they should vote for "his" candidate. Plaintiff's deposition contains several references to trips to adjoining counties to introduce his candidates to individuals in those counties with whom he had established a relationship over the years. Based on this admitted

political involvement, we conclude beyond any question that Plaintiff is a public figure, at least in the political context, and particularly in the context of the Cappelli/Yaw Senatorial campaign which is the background of this litigation.

In determining that Plaintiff is a public figure, the burden shifts to Plaintiff to demonstrate with clear and convincing evidence that Defendants realized their statements were false, or subjectively entertained serious doubt as to truth of their statements. In addressing this issue, Plaintiff's Brief focuses on what Plaintiff said to Officer McGhee outside Joey's Place and the nature of the continuing enmity between Plaintiff and Hall both prior to and during the Cappelli/Yaw Senatorial campaign. In reaching our conclusion that Plaintiff is unable to establish actual malice, we are not concerned with what Plaintiff said to McGhee but, rather, the state of mind of each Defendant in responding to the consequences of that report. Indeed, the discovery produced so far in this litigation would suggest that a jury might have a very difficult time determining what Plaintiff said to McGhee.

Based on the pleadings and the depositions produced for review, we are satisfied that the suggestions made by Defendants that Plaintiff's report to Officer McGhee was erroneous or intentionally false was based on several factors:

a. Hall's yet-to-be rebutted testimony that he had consumed no alcoholic beverages on the evening in question.

b. The fact that he "blew zeroes" on the portable test device.

c. The presence of an unusually high number of Williamsport police officers at the scene.

d. The failure of Plaintiff to identify the two individuals who were with him at Joey's Place and who allegedly observed Hall's condition, which individuals have been identified through discovery as Senatorial Candidate Yaw and Yaw's campaign manager.

While Officer Dockery appears to remain satisfied that Hall was intoxicated, no other evidence of intoxication has been produced. Indeed, Plaintiff acknowledged in his deposition that he never observed Hall consuming alcoholic beverages at Joey's Place. The inconsistency in the various reports of the exact language Plaintiff used in describing Hall's movements within Joey's Place is also disturbing. The bottom line is that nothing in this record would establish that either Defendant realized their statements were false or subjectively entertained serious doubt as to the truth of their statements regarding the quality of Plaintiff's report to Officer McGhee. Because Plaintiff cannot establish actual malice, he cannot prevail.

NOW, this 25th day of March, 2011, for the reasons set forth herein, IT IS HEREBY ORDERED as follows:

1. The Motions for Summary Judgment of William Hall and Steven Cappelli are GRANTED, and Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

2. Jury selection scheduled for May 25, 2011, and trial scheduled for June 15, 16, and 17, 2011, are CANCELED.

BY THE COURT:

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J. Michael Williamson, President Judge

xc: J. David Smith, Esquire
Joseph Orso, III, Esquire
Robert A. Hoffa, Esquire
Terra Koernig, Esquire
Eileen Dgien, Deputy Court Administrator