

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

AL FRANKLIN

Plaintiff

v.

MIAMI UNIVERSITY

Defendant

Case No. 2005-11761

Judge J. Craig Wright

DECISION

{¶ 1} This case is sua sponte assigned to Judge J. Craig Wright to conduct all proceedings necessary for decision in this matter. Plaintiff brought this action alleging defamation. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} From 1997 to 2002, plaintiff was employed as a building services worker in defendant's Harris Dining Hall, where he performed various duties including cleaning restrooms. Plaintiff preferred that he not be disturbed when cleaning restrooms, and to that end, he routinely placed notes on restroom doors requesting that no one enter. Plaintiff's attempts to control restroom access were a source of recurring conflict with other Harris Dining Hall staff.

{¶ 3} On February 28, 2002, Building Services Worker John Johnston entered a staff restroom that plaintiff was purported to be cleaning, although according to Johnston, plaintiff was reading a newspaper. The two did not speak at the time, but after Johnston used the restroom and exited, plaintiff left to discuss the matter with

Harris Dining Hall Manager Veronica Collopy. As plaintiff and Collopy spoke, Johnston came upon the scene and a brief altercation ensued between him and plaintiff. The incident culminated in plaintiff's crudely stating that he should "knock out" Johnston, causing Collopy and Johnston to each immediately telephone the Miami University Police Department (police). Officer Donald Fox responded to the scene and conducted an investigation, which included gathering written statements from Collopy and Johnston. (Defendant's Exhibits C and D.) As a result of his investigation, Officer Fox arrested plaintiff on a charge of menacing and transported him to the police station for booking. The police released plaintiff on his own recognizance that afternoon.

{¶ 4} Upon learning of these events later that day, Building Services Worker Freeman Workman contacted the police to report that he had recently had a similar confrontation with plaintiff. Workman told the police that on February 12, 2002, he attempted to use a restroom that plaintiff was cleaning, but that plaintiff told him to leave and forced open the door of the stall he sought to use, causing him to suffer a wrist injury. On February 26, 2002, Workman received medical treatment for his wrist and filed an injury report with defendant. (Defendant's Exhibit A.) Workman's complaint to the police resulted in the filing of another menacing charge against plaintiff.

{¶ 5} Following an investigation by defendant's human resources staff and a disciplinary hearing, defendant terminated plaintiff's employment in April 2002, due in part to the above-described incidents, but also for such issues as absenteeism and neglect of job duties. In August 2002, all criminal charges against plaintiff relating to the incidents with Johnston and Workman were dismissed.

{¶ 6} Plaintiff brought this action claiming abuse of process, defamation, wrongful termination, negligent infliction of emotional distress, retaliation, and civil rights violations. On May 7, 2008, the court rendered summary judgment in favor of defendant on all but plaintiff's claims of defamation.

{¶ 7} The defamation claims allege both libel and slander resulting from reports and statements that Collopy, Johnston, and Workman made to the police and other employees of defendant regarding plaintiff's altercations with Johnston and Workman. Defendant contends that the statements were true, and that even if they were not true, the defense of privilege applies.

{¶ 8} At the close of trial in this matter, the court announced its decision that plaintiff had failed to prove his claims by a preponderance of the evidence.

{¶ 9} Specifically, defamation, which includes both libel and slander, is a false publication causing injury to a person's reputation, exposing the person to public hatred, contempt, ridicule, shame or disgrace, or affecting the person adversely in his or her trade or business. *Sweitzer v. Outlet Communications, Inc.* (1999), 133 Ohio App.3d 102, 108. Under Ohio law, truth is a complete defense to a claim for defamation. *Ed Schory & Sons, Inc. v. Francis*, 75 Ohio St.3d 433, 445, 1996-Ohio-194.

{¶ 10} Plaintiff testified that he had little recollection of the altercations with Johnston and Workman, and he could not even as much as summarize his own conduct in either incident. Despite plaintiff's claims that Collopy, Johnston, and Workman made false statements concerning his conduct in these incidents, he failed to produce evidence identifying such statements, much less establishing their falsity. Conversely, Collopy, Johnston, and Workman testified that their respective statements to the police and other employees of defendant accurately described plaintiff's actions in the incidents of February 12 and 28, 2002. Accordingly, the court finds that plaintiff failed to establish a prima facie case of defamation.

{¶ 11} Moreover, even if plaintiff were to establish a prima facie case of defamation, the defense of privilege would apply to shield defendant from liability.

{¶ 12} In the context of a defamation claim, the defense of privilege applies to statements that are "made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances fairly warranted by the occasion and duty, right or interest. The essential elements to be good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244. "Private citizens are qualifiedly privileged to give information to proper government authorities for the prevention or detection of crime." *Paramount Supply Co. v. Sherlin Corp.* (1984), 16 Ohio App.3d 176, paragraph two of the syllabus.

{¶ 13} A qualified privilege “can be defeated only by a clear and convincing showing that the communication was made with actual malice.” *Jacobs v. Frank* (1991), 60 Ohio St.3d 111, paragraph two of the syllabus. “[A]ctual malice’ is defined as acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity.” *Id.*

{¶ 14} The weight of the evidence demonstrates that the statements made by Collopy, Johnston, and Workman were properly occasioned by plaintiff’s conduct, were properly communicated in a limited scope to the police and other employees of defendant, and were made in good faith by properly interested persons. Finding no proof of actual malice, the court tfore concludes that the statements were protected by a qualified privilege.

{¶ 15} For the foregoing reasons, judgment shall be rendered in favor of defendant.

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

AL FRANKLIN

Plaintiff

v.

MIAMI UNIVERSITY

Defendant

Case No. 2005-11761

Judge J. Craig Wright

JUDGMENT ENTRY

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently with, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

Frederick H. Green
4015 Executive Park Drive, Suite 130
Cincinnati, Ohio 45241

James E. Michael Jr.
Special Counsel to Attorney General
5020-B College Corner Pike
Oxford, Ohio 45056-1103

Randall W. Knutti
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

RCV/cmd/Filed November 20, 2008/To S.C. reporter January 20, 2009