[Cite as *Knowles v. Ohio State Univ.*, 2005-Ohio-3330.]

IN THE COURT OF CLAIMS OF OHIO
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DR. TIMOTHY S. KNOWLES	:	
Plaintiff	:	CASE NO. 2001-03780 Judge Joseph T. Clark
v.	:	DECISION
OHIO STATE UNIVERSITY	:	
Defendant	:	

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{¶ 1} This matter came before the court for trial upon remand from the Tenth District Court of Appeals, wherein the Court reversed this court's decision dismissing plaintiff's claims of breach of contract and defamation.[1] The case was retried to a different judge of this court.

{¶ 2} Plaintiff's contract claim arose as a result of the termination of his employment with defendant, Ohio State University (OSU). His defamation claims concern both spoken and written comments allegedly made about him after his termination.

{¶ 3} Plaintiff was employed as OSU's vice provost of the Office of Minority Affairs (OMA) from August 1, 1999, to July 31, 2000. He was hired by OSU's Vice President and Provost, Dr. Edward Ray following a two-year search for a suitable candidate. There is no question that plaintiff commenced his leadership of OMA at a very difficult time.

{¶ 4} By way of background, the OMA came into existence in 1970, in response to a variety of minority student concerns brought to

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[1] The Court of Appeals affirmed this court's determination with respect to plaintiff's claim of denial of due process.

light during a period of intense student unrest that had occurred in the 1960s. By the 1990s, the OMA began to experience serious difficulties. One project that generated controversy was the OMA's efforts to incorporate the Young Scholars Program (YSP) into its purview. The two entities "merged" in 1993; however, significant problems developed when OMA and YSP employees and budgets were combined. In addition to those issues, morale was low, and at least five different vice provosts or acting vice provosts had become involved in attempting to correct the problems. The OMA was also experiencing difficulties in meeting its primary goals of recruiting and retaining minority students and addressing their scholastic needs. Consequently, students became more vocal and more involved in the management, goals, and direction of OMA.

{¶ 5} In May 1998, as a result of certain changes that the interim vice provost was attempting, the Afrikan Student Union staged a lengthy sit-in at the Bricker Hall Administration Building. Thereafter, Ray called a halt to any further restructuring of OMA until a new, permanent vice provost could be appointed. A search committee, which included members of the Afrikan Student Union, was formed and plaintiff was ultimately selected for the job.

{¶ 6} As might be expected, problems soon developed as plaintiff attempted to institute changes. There were complaints about the way plaintiff handled his restructuring efforts and the way he interacted with employees. In September 1999, Larry Lewellen, OSU's associate vice president of Human Resources (HR), along with one of the HR consultants on his staff, met with plaintiff to develop strategies to resolve the inherited organizational problems

and the negative responses that he had thus far received. Other meetings with HR staff followed, but complaints persisted.

{¶ 7} On June 12, 2000, Lewellen notified Ray, in writing, of the complaints concerning plaintiff's leadership and management of OMA. For example, employees alleged that plaintiff had an autocratic style; that he lacked vision; that he was unable to communicate effectively; that his actions tended to promote conflict; and that he had a distinctly aggressive and coercive manner. Lewellen's letter stated that "[m]anagement issues in the Office of Minority Affairs have reached a critical point." On June 16, 2000, Ray and Lewellen met with plaintiff to advise him of the complaints and to continue their investigation into the matter.

{¶ 8} At about this same time, plaintiff was due for an annual review. He met with Ray for that purpose on June 28, 2000. On that date, Ray gave plaintiff a letter, dated June 21, 2000, in which he stated that he "treated a 3.5% raise as a signal of satisfactory performance" and "[w]ith that in mind," he was forwarding a salary increase for plaintiff of four percent.

{¶ 9} On July 12, 2000, Lewellen sent Ray the results of the interviews he had conducted. The results were almost entirely negative. Ray and Lewellen met with plaintiff and discussed the findings. Ray then presented plaintiff with two options: either resign or be fired. When plaintiff refused to resign, Ray terminated his employment, effective July 31, 2000, and approved one year's salary for plaintiff as severance pay.

{¶ 10} Plaintiff contends that he performed satisfactorily; that he received a positive review on June 28, 2000; and that the subsequent termination breached the terms of his contract with OSU.

{¶ 11} The terms of plaintiff's contract are set forth in a letter written by Ray, dated June 9, 1999, and countersigned by plaintiff on June 15, 1999. Such agreement provided, in pertinent part:

{¶ 12} "This appointment will begin August 1, 1999 and is for a period of five years subject to the results of an annual performance review and continued acceptable performance. You will be eligible for reappointment to a second term subject to a broad-based performance review toward the end of your first term of service. Should I determine that terminating your appointment before the end of the five-year period is appropriate, severance pay of one year's cash salary will be provided."

{¶ 13} This court previously construed plaintiff's contract to be a subjective satisfaction contract. That is, it was held that the employment contract was to be performed to the "sole satisfaction" of Ray, who could terminate plaintiff's employment for any reason, without limitation, except to provide severance pay. The Court of Appeals stated in its opinion that: "[e]ven if the trial court correctly construed plaintiff's contract as requiring Provost Ray's subjective satisfaction, the court nevertheless erred in failing also to determine whether Provost Ray acted in 'good faith' in concluding plaintiff had not performed satisfactorily." *Knowles v. Ohio State University*, Franklin App. No. 02AP-527, 2002-Ohio-6962.

{¶ 14} Accordingly, the issues now presented with respect to the contract claim are: 1) whether the contract should be construed as an objective or subjective satisfaction contract[2] and; 2) if

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[2] Plaintiff also contends, as in the first trial of this case, that the contract should be construed as allowing

construed as a subjective satisfaction contract, whether Ray acted in good faith in terminating plaintiff's employment.

{¶ 15} In defining "good faith," the Court of Appeals stated that "in all cases, [such determination] requires at least to some extent that the determination be informed." *Knowles*, supra, at ¶45, quoting *Worth v. Huntington Bancshares, Inc.* (1989), 43 Ohio St.3d 192, 198. The Court of Appeals went on to state that "[w]e generally presume that the intent of the parties can be found in the written terms of their contract. [Citations omitted.] Here, the constructive intent of the parties, as expressed in the language of the contract, suggests that an informed, or good faith, decision by Provost Ray to terminate plaintiff's employment is one that is made 'subject to the results of an annual performance review and continued acceptable performance.' We are unable to discern whether Provost Ray made his decision to terminate plaintiff's employment in 'good faith' because the trial court improperly precluded evidence that would have explained what constituted a satisfactory annual performance review and acceptable performance pursuant to the contract."

{¶ 16} Upon retrial to this branch of the court, the parties submitted voluminous exhibits and extensive witness testimony on the question of whether plaintiff performed satisfactorily within the meaning of the contract. Among other things, it is clear from the evidence that plaintiff and Ray had defined a set of goals from the outset. Those goals included strengthening the OMA organization; developing a mission statement; enhancing management

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termination only upon a finding of just cause. However, the Court of Appeals' decision clearly construes the contract as a satisfaction contract. Therefore, this court interprets the decision as foreclosing any further discussion of the just cause issue.

and recruitment; and expanding campus and community outreach. At a minimum then, continued acceptable performance required demonstrated progress, if not successful accomplishment, of those goals.

{¶ 17} After thorough review of the evidence, and upon consideration of the parties' arguments and post-trial briefs, this court makes the following determination.

{¶ 18} Whether the contract is construed as either a subjective or objective satisfaction contract, this court finds that OSU did not breach the agreement when it terminated plaintiff's employment.

{¶ 19} There is no bright-line rule for determining whether an objective or subjective standard applies. See *Hutton v. Monograms Plus, Inc.* (1992), 78 Ohio App.3d 176, 181, citing *Mattei v. Hopper* (1958), 51 Cal.2d 119, 121. Simply stated, where the subjective standard is applied, the test is whether the party is "actually satisfied," subject only to the limitation that the party act in good faith. Id. However, it is important to note that under the subjective standard, "the party can avoid the contract as long as he is genuinely, albeit unreasonably, dissatisfied." Id. The subjective standard has generally been applied to contracts involving "fancy, personal taste, or judgment." Id.

{¶ 20} By contrast, the test associated with an objective standard is whether the performance would satisfy a reasonable person. Id. The objective standard has been applied to contracts involving matters of "commercial value or quality, operative fitness, or mechanical utility ***." Id. "In the absence of a specific expression in the instrument or a clear indication from the nature of the subject matter, the preference of the law is for

the less arbitrary standard of the reasonable man." Id. at 186, quoting *Kadner v. Shields* (1971), 20 Cal. App.3d 251, 262-263.

{¶ 21} In this case, the preponderance of the evidence demonstrates that Ray acted in good faith and that he acted as a reasonable man would have under the same or similar circumstances. The court does not agree with the arguments plaintiff has asserted to the contrary.

{¶ 22} Addressing those arguments individually, the court finds as follows:

{¶ 23} The evidence fails to establish plaintiff's claim that, even before his first official day on the job, Ray and Larry Lewellen conspired against him because they feared he would take action to demote or reduce the salaries of several OMA employees whom they had previously "favored" with very generous salaries and/or promotions. Rather, the evidence is clear that Ray had the authority to, and could have, vetoed any salary and/or personnel recommendations that plaintiff may have proposed. There was, however, no evidence that Ray did so during plaintiff's employment with OMA.

{¶ 24} Further, plaintiff contends that the complaints of favored individuals carried more weight than others. Although the so-called favored individuals did complain about plaintiff, the evidence shows that Ray's decision to terminate plaintiff was not based solely on information obtained through those individuals. From the outset of plaintiff's employment, the HR office assigned a consultant to him to advise him with respect to employee relations, compensation, classification, performance management and training. The consultant to plaintiff was Tyrome Alexander, who had extensive contact with OMA staff. In addition, Shari Mickey-Boggs,

the head of the HR consulting services staff, also had a great deal of contact with OMA. The evidence shows that, at one point, Mickey-Boggs had assigned Alexander and three other consultants to work on OMA issues.

{¶ 25} Both Alexander and Mickey-Boggs testified that they had heard complaints from many of OMA's 120 employees, not just the "favored" few; the evidence corroborates that testimony. Additionally, Ray met weekly with all of his vice provosts and monthly with each individual; thus, he himself had some firsthand knowledge of plaintiff's performance capabilities. In short, the court does not find that Ray or Lewellen actively worked against plaintiff; or that they attempted to protect favored employees; or that they gave greater credence to the complaints of any so-called favored staff members.

{¶ 26} The evidence also fails to establish plaintiff's claim that Ray demonstrated a lack of good faith because he relied on Lewellen's report and did not independently verify its accuracy. Plaintiff has not pointed to any evidence or case law that would impose a duty upon Ray to do so. The court finds from the testimony that the HR personnel who provided information to Lewellen were capable and competent individuals who were highly skilled in their field. Lewellen himself had a degree in personnel and industrial relations and more than 25 years experience in HR, including over 15 years at OSU. He had worked with Ray in the past on other difficult personnel matters.

{¶ 27} Moreover, the court finds that the method by which Lewellen conducted his interviews was fair and reasonable. Specifically, a meeting was held on June 16, 2000, at which time plaintiff was advised that the interviews were going to take place

and why they were being conducted. Plaintiff was further advised that Ray would make a decision about how to proceed after reviewing the report. Plaintiff requested, and it was agreed, that the interviews would be conducted with employees other than those whom he felt were not performing well or who just wanted to complain. Lewellen thereafter interviewed 19 of such persons, including a member of the Afrikan Student Union and three members of the Student and Urban Affairs organization. The interviews were conducted using a script that allowed each interviewee to state first their positive comments and then, based upon their interactions with plaintiff, to voice any concerns they had had with his management practices and leadership. The comments were recorded by Lewellen and read back to each interviewee for approval. Although the names of the persons who were interviewed were listed, the comments were presented separately without identifying the interviewee. The court finds that Ray acted reasonably and in good faith in relying on the accuracy and fairness of Lewellen's report.

{¶ 28} Additionally, plaintiff contends that Lewellen's interview process was "tainted" by a news release and subsequent Columbus Dispatch article captioned "OSU minority-affairs chief under investigation." The article will be further discussed below; however, the court is convinced from the evidence that publication of the article did not encourage interviewees to comment negatively. To the contrary, the weight of the evidence demonstrates that the comments made by interviewees had their genesis in personal interactions with plaintiff that occurred long before such article appeared. The complaints received about plaintiff were generally consistent throughout his tenure at OSU. The court does not find that the comments made after the Dispatch

article appeared differed in any respect from those made previously.

{¶ 29} The evidence also fails to establish plaintiff's claim that Ray demonstrated a lack of good faith in reaching his decision because plaintiff was never advised of any problems with his performance until the June 16, 2000, meeting and that, even then, he was not told that he could potentially be fired. Ample evidence was presented at trial to establish that plaintiff was advised of concerns about his management and leadership style, starting as early as September 1999. As noted previously, the HR department had extensive contact with plaintiff and made great efforts to assist him in dealing with personnel and management issues. The weight of the evidence demonstrates that Ray, Lewellen, Alexander, and many others, including then OSU President William Kirwan, genuinely wanted plaintiff to succeed, particularly in light of the long history of turmoil at the OMA and the expense and effort involved in the two-year search for a suitable candidate for the position. In sum, the court is persuaded that Ray and OSU acted reasonably and in good faith in keeping plaintiff apprised of his perceived strengths and weaknesses and what was needed for plaintiff to succeed.

{¶ 30} Nevertheless, plaintiff contends that he satisfied the contract's requirement for "acceptable performance," because he merited and received a positive evaluation and salary increase. Specifically, plaintiff cites the June 21, 2000, letter (which was given to him at the June 28, 2000, meeting) wherein Ray stated that he considered a 3.5 percent raise to be a signal of satisfactory performance and, with that in mind, he was forwarding a salary increase for plaintiff of four percent. However, the full context

of that statement is: "As you know the raise package that has been approved for FY01 is 4%. In order to provide for variation in increases, I have treated a 3.5% raise as a signal of satisfactory performance. With that in mind ***." The letter further stated that:

{¶ 31} "I know that this has been a particularly difficult year in which we have contended with labor disputes, demonstrations, public complaints about administrative salaries and job performance, while striving to make substantive progress on many fronts, including the Academic Plan and the Diversity Plan. Please know how much I have appreciated your patience, hard work and professionalism during this period."

{¶ 32} The evidence shows that the first paragraph of the letter was a boiler-plate format for notifying staff of their annual increases. The rest of the letter, which plaintiff contends memorializes his positive annual review, could be personalized for each recipient to convey appreciation for work throughout the year. Further, the evidence shows that OSU sent its notices of raises at the same time each year, and that the raises became effective on the first day of July.

{¶ 33} In plaintiff's situation, he had been advised by Ray and Lewellen, approximately two weeks before his scheduled annual review, that students were going to be interviewed concerning his management, leadership, and communication styles, and that the outcome would help determine how Ray proceeded. The court finds from the evidence that Ray was not committed to either continuing or terminating plaintiff's employment at the time of the review. The results of Lewellen's interviews were not yet known; however, the fiscal year was ending. If a raise were going to be budgeted

for plaintiff, it had to be submitted with any others that Ray was going to grant. Consequently, the court is convinced that Ray gave plaintiff the notice of his raise in lieu of a formal annual review. Moreover, as stated previously, the court is persuaded that Ray genuinely wanted plaintiff to succeed. By submitting the raise, Ray's options were left open while he waited for Lewellen's results. Unfortunately, the results came back worse than was expected.

{¶ 34} In short, the court does not find that plaintiff received a positive annual review but, rather, that he simply received a fiscal year-end raise and a personalized letter expressing appreciation for his work. However, appreciation for a year's work does not equate with genuine satisfaction that the work was well done. Accordingly, the court finds that Ray did not act unreasonably or without good faith in deciding to terminate plaintiff after earlier meeting with him and presenting him with a salary increase.

{¶ 35} In the final analysis, the court is convinced that plaintiff had many laudable goals for OMA and that he was highly qualified for the vice provost position. However, the court is equally convinced that the manner in which he attempted to achieve his goals was not acceptable to Ray, the OMA staff, the HR department, or the students whom the OMA served. Despite plaintiff's ambitions, it is clear from the evidence that during plaintiff's tenure, OMA's internal organization was not strengthened; that a clear vision statement was not developed; that management and recruitment were not enhanced; and that campus and community outreach was not expanded. Simply stated, the parties' goals for OMA were not reached. For these reasons, the court

concludes that Ray made an informed, good faith decision in terminating plaintiff based upon the lack of "an annual review and continued acceptable performance"; that he was genuinely dissatisfied with plaintiff's performance; and that a reasonable man in the same or similar circumstances would also have made the same decision. Therefore, plaintiff's contract claim must fail.

{¶ 36} Plaintiff has also asserted claims of defamation. The first claim concerns an allegation of slander, which is based upon a statement that Ray made at a post-termination meeting with students where he allegedly remarked that plaintiff had been fired from his previous position at Meharry Medical College and had lied on his employment application to OSU.

{¶ 37} Upon review of the evidence, and upon consideration of the arguments and post-trial briefs of the parties, this court finds that plaintiff was defamed by the comment made by Ray at the student meeting.

{¶ 38} The evidence on this issue turns on the testimony of Ray and that of Love Ali, a student at OSU, who claimed to have been present at the meeting and who alleged that Ray made the offending statement. Ray had met with various student groups and OMA staff to explain plaintiff's departure. Ali testified that she heard Ray make the comment at a meeting of work-study students that was held at the Frank Hale Student Cultural Center in mid-July 2000.

{¶ 39} Ray testified that he did not make the comment; he did, however, admit that if such statement had been made, it would have been false. Thus, the decision on this issue necessarily depends on witness credibility.

{¶ 40} In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; the manner of testifying; the reasonableness of the testimony; the opportunity that the witness had to see, hear, and know the things included in the witness's testimony; accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony. *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶ 41} Applying these factors to the instant case, the court finds that Love Ali was a candid and credible witness. Although Ray was also a credible witness, the court finds that, considered in light of the surrounding facts and circumstances, he lacked frankness on this issue. Ray had a greater interest to protect than did Ali; he had hired plaintiff; he was accountable; he had a reputation to maintain; and, despite all efforts at helping plaintiff to succeed, the OMA was once again without a leader.

{¶ 42} On the other hand, Ali had no compelling interest to protect; she was a student who had graduated in June 2000, had taken a trip to Africa, and had returned to discover that plaintiff had been fired. Ali had been involved in several student groups, including the Afrikan Student Union, she had been the leader of the 1998 student sit-in, and had been on the search committee to locate a permanent OMA vice provost. Ali attended the meeting because she was interested in learning more about why plaintiff had been fired.

{¶ 43} Defendant insists that Ray did not make the statement and thus attempts to discredit Ali's testimony on several grounds. For example, defendant takes issue with the fact that Ali was not sure when the meeting had occurred; that she could not name any

other students who were present, even though some of them were also work-study students who had worked in the same building with her for two years; and that she could not recall that newly-appointed OMA interim Vice Provost, Dr. Mac Stewart, had been present at the meeting, even though Dr. Stewart testified that he clearly recalled having been there. Additionally, defendant asserts that Ray spoke from a script of prepared remarks that contained nothing about plaintiff's having been fired from his former position. The court finds those arguments to be without merit.

{¶ 44} The court is simply not persuaded that Ali had any motive to lie about hearing the comment. Moreover, prior to hiring plaintiff, Ray had been concerned about "rumors" that plaintiff had been fired from Meharry College. The rumors were investigated by Dr. Issac Mowoe, chairperson of the search committee, and found to be false. Ali, as part of the search committee, was likely aware of the allegations, and that they had turned out to be false. However, in October 1999, Ray again became suspicious about the circumstances under which plaintiff had left Meharry College. Dr. Mowoe made a second investigation and, again, the rumors proved to be false. It is not clear whether Ali knew about the second investigation; however, the weight of the evidence demonstrates that she knew enough about the matter that her testimony cannot be dismissed merely as something that she just didn't hear correctly. Thus, the court finds that Ali was the more credible witness on this issue and, accordingly, concludes that the defamatory comment was made.

{¶ 45} A statement is deemed to be defamatory if it consists of "the unprivileged publication of a false and defamatory matter about another *** which tends to cause injury to a person's

reputation or exposes him to public hatred, contempt, ridicule, shame or disgrace or affects him adversely in his trade or business." *McCartney v. Oblates of St. Francis deSales* (1992), 80 Ohio App.3d 345, 353. In order to prevail on such a claim, plaintiff must show a false and defamatory statement made by defendant, a publication of that statement, and fault on the part of defendant amounting to, at least, negligence. *Black v. Cleveland Police Dept.* (1994), 96 Ohio App.3d 84. In the present case, plaintiff's burden is simplified by the fact that the defamatory statement was plainly false and Ray admitted that in his testimony.

{¶ 46} Additionally, the Court of Appeals noted in its opinion that: "*** the defamatory statement Provost Ray allegedly made, if proven to have been made, would constitute slander per se ***." *Knowles*, supra, at ¶26. The court cited *Moore v. P.W. Publishing Co.* (1965), 3 Ohio St.2d 183, 188 (additional citations omitted) for the proposition that: "[t]o constitute defamation per se, the 'words must be of such a nature that courts can presume as a matter of law that they tend to degrade or disgrace the person of whom they are written or spoken, or hold him up to public hatred, contempt or scorn.'" Id. at ¶24.

{¶ 47} Thus, in accordance with the Court of Appeals opinion, this court finds that Ray's statement constitutes slander per se. Not only was it of such nature as would tend to degrade or disgrace a person, it was also of a nature that would injure plaintiff's professional reputation. Therefore, as noted by the Court of Appeals, damages and malice may be presumed and need not be proven. Id. at ¶26. (Additional citations omitted.)

{¶ 48} Nevertheless, defendant contends that plaintiff was a public figure or official and, as such, that he was required to prove that he suffered actual injury regardless of whether Ray's comment was classified as defamation per se. Defendant contends that actual injury was not shown because plaintiff presented no evidence that any of the students at the meeting had any influence over his career prospects or reputation, nor did he testify that the comment damaged his relationship with any of the students. The court does not agree with those arguments.

{¶ 49} In this case, plaintiff does not qualify as a public official because he did not hold a public office nor was he "among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." *Milkovich v. News-Herald* (1984), 15 Ohio St.3d 292, 297.

{¶ 50} Neither does plaintiff qualify as a public figure. Public figures are divided into two categories: public figures for all purposes and public figures for a limited purpose. It is well-settled that "[a]bsent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life." *Gilbert v. WNIR 100 FM* (2001), 142 Ohio App.3d 725, 737, quoting *Gertz v. Robert Welch, Inc.* (1974), 418 U.S. 323, at 352. In this case, plaintiff's position at OSU, albeit prestigious and highly visible in the academic community, simply does not rise to the level of general fame or notoriety contemplated in *Gertz*.

{¶ 51} To become a limited-purpose public figure an individual must voluntarily inject himself or be drawn into a "particular public controversy." Id. at 738 quoting *Gertz* at 351.

{¶ 52} In *Gilbert*, plaintiff was an attorney who had been named in newspaper articles and had held press conferences in cases in which he served as counsel. He was also deeply involved in local politics and was a member of various civic and community organizations; he belonged to Ohio State and Akron bar associations. Gilbert sued WNIR because of radio broadcasts that falsely implicated both he and his wife in the murder of a prominent physician from their community.

{¶ 53} The court held that Gilbert was not a limited-purpose public figure because he had not thrust himself into the public controversy surrounding the investigation of the murder but, rather, that the investigation had been thrust upon him. Thus, the court concluded that, while plaintiff could be a limited-purpose public figure under some circumstances, there was no nexus between his possible public-figure status and the murder of the physician. Id. at 739.

{¶ 54} Here, unlike in *Gilbert*, the court finds that there was no "particular public controversy" involved inasmuch as the functioning of the OMA and plaintiff's employment as its vice provost was not a matter of particular public notoriety at the time Ray made the offending statement. However, even assuming that there was such controversy, the court finds that there was no nexus between plaintiff's employment at OMA, his termination from his position, and the subject of the defamatory comment, i.e., the circumstances under which he left his former employment.

Therefore, the court concludes that plaintiff was not a limited-purpose public figure with regard to the issues in this case.

{¶ 55} However, as argued by defendant, the court in *Gilbert* did find that, even though the comments made by WNIR were defamatory per se, plaintiff nevertheless was required to prove actual injury because he was a private individual involved in "a matter of public concern." Id. at 744. The court held that murder was a matter of public concern because it was "a heinous crime that affects the public because of its disruption of society." Id. quoting *Talley v. WHIO TV-7* (1998), 131 Ohio App.3d 164, 170. Here, as stated in regard to limited-purpose public figure status, the court finds that the issues in this case were not a matter of general public concern as contemplated by the case law.

{¶ 56} Moreover, unlike *Gilbert*, *Talley*, and *Gertz*, this case does not involve a media defendant. As such, the First Amendment interest in freedom of speech is less important because matters of purely private concern are at issue. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*(1985), 472 U.S. 749; 759.

{¶ 57} Finally, even assuming that a matter of public concern was involved, the court in *Gilbert* went on to state that: "actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Gilbert*, supra, at 745, citing *Gertz*, 418 U.S. at 350. Thus, contrary to defendant's assertion, the court can presume damages in this case.

{¶ 58} As a general rule, damage awards in defamation cases are conceived of as serving three separate purposes: 1) to compensate plaintiff for injury to his reputation and his emotional

distress; 2) to vindicate him and to aid in restoring his reputation and; 3) to dissuade defendant and others from publishing defamatory statements. See Restatement of the Law 2d, Torts (1977) Section 623. With those factors in mind, and based upon the testimony of both plaintiff and his spouse, the court finds as follows.

{¶ 59} The testimony establishes that plaintiff did suffer personal humiliation, mental anguish and suffering and that, at least among the students present at the meeting, some impairment of his reputation and standing in the academic community. However, in assessing the amount of damages, the court must take into account the limited audience to whom the statement was made. Moreover, the court must also consider the extent of injury that can be attributed to the false statement that plaintiff had been fired from his former position, as compared to any injury that can be attributed to the other claims in this case, such as the termination of his employment with OSU, and the injury that may be attributable to his remaining defamation claims. Based upon the totality of the evidence presented, the court assesses damages in the amount of $25,000, to compensate plaintiff for the humiliation, mental anguish, suffering, and impairment of reputation suffered as a direct and proximate result of this single defamatory statement.

{¶ 60} Plaintiff's second defamation claim concerns allegedly libelous statements that appeared in the Columbus Dispatch and the Call and Post which were subsequently copied and republished by OSU in a July 24, 2000, issue of the Ohio State News Digest. The articles reported that plaintiff was "under investigation for allegations of mismanagement, inappropriate communication with staff, harassment, retaliatory behavior and violation of other

University policy." Plaintiff contends that the "republished" articles were false, since he was never under an "investigation" for "harassment" as noted in the re-circulated articles. Plaintiff supports that claim by reference to an e-mail from President Kirwan in which he took issue with the negative connotation associated with characterizing Lewellen's interviews as a formal investigation. The court finds that the e-mail is not an admission of falsity but, rather, an indication that OSU wanted to minimize the negative effect of its actions upon plaintiff. It was not clear, even at the time of trial, how the information was obtained by the media.

{¶ 61} In any event, in Ohio, truth is a complete defense to a claim for defamation. *Ed Schory & Sons, Inc., et al. v. Society National Bank, et al.* (1996), 75 Ohio St.3d 433, 445. As discussed, supra, with regard to plaintiff's contract claim, Lewellen did interview 19 individuals concerning plaintiff's management, leadership, and communication styles. The evidence demonstrates that the interviews were conducted to obtain more information on a variety of complaints, including claims that plaintiff verbally "harassed" certain OMA employees. While the interview process may not have been an "investigation" in the classic sense, the use of that term was not a falsehood, nor was the use of the word "harassment." Therefore, the court finds that this libel claim must fail.

{¶ 62} Lastly, plaintiff presented evidence of an allegedly libelous statement contained in an interview of Ray that was published in Black Issues in Higher Education. The comment in question was that there were "issues of trust" associated with plaintiff. Although plaintiff challenges the accuracy of that

comment, the court finds, as with the previous libel claim, that truth is a complete defense. Again, as discussed in regard to plaintiff's contract claim, the evidence shows that issues of trust did, indeed, exist. The comments contained in Lewellen's report, as well as the trial testimony of numerous witnesses, establishes that the comment was true, even if the terminology could have been more precise. Accordingly, for the same reasons stated with regard to the republished articles, this libel claim must also fail.

{¶ 63} For all of he foregoing reasons, the court concludes that plaintiff has failed to prove his contract and libel claims by a preponderance of the evidence. However, judgment shall be entered in his favor on the slander claim, and damages will be awarded in the amount of $25,025, which includes $25 for payment of the filing fee.

IN THE COURT OF CLAIMS OF OHIO
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DR. TIMOTHY S. KNOWLES	:	
Plaintiff	:	CASE NO. 2001-03780 Judge Joseph T. Clark
v.	:	
		JUDGMENT ENTRY
OHIO STATE UNIVERSITY	:	
Defendant	:	

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This case was tried to the court on the issues of liability and damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiff, on his claim of slander, in the amount of $25,025, which includes the filing fee

paid by plaintiff. As stated in the court's decision, judgment is rendered in favor of defendant on plaintiff's contract and libel claims. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
JOSEPH T. CLARK
Judge

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