

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                         |   |                                  |
|-------------------------|---|----------------------------------|
| TIMOTHY J. MEADES, SR., | § |                                  |
|                         | § | No. 376, 2004                    |
| Plaintiff Below,        | § |                                  |
| Appellant,              | § | Court Below--Superior Court      |
|                         | § | of the State of Delaware, in and |
| v.                      | § | for New Castle County in C.A.    |
|                         | § | No. 03C-05-013.                  |
| WILMINGTON HOUSING      | § |                                  |
| AUTHORITY and FRED      | § |                                  |
| PURNELL,                | § |                                  |
|                         | § |                                  |
| Defendants Below,       | § |                                  |
| Appellees.              | § |                                  |

Submitted: February 18, 2005

Decided: May 12, 2005

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

**ORDER**

This 12<sup>th</sup> day of May 2005, upon consideration of the briefs of the parties, it appears to the Court that:

(1) The pro se appellant, Timothy J. Meades, Sr., was employed as a district supervisor with appellee, Wilmington Housing Authority (WHA).<sup>1</sup> On May 3, 2001, WHA fired Meades. An arbitrator later determined that WHA had just cause to terminate Meades' employment.<sup>2</sup>

---

<sup>1</sup>Appellee, Fred Purnell, is the Executive Director of the Wilmington Housing Authority. This Order refers to the appellees collectively as "WHA."

<sup>2</sup>*AFSCME Local Union 563 v. Wilmington Housing Auth.*, Am. Arbitration Ass'n, No. 143900083601 (June 6, 2002) (Turner, Arb.) (finding that Meades was guilty of neglect

(2) In July 2002, Meades filed an action to vacate the arbitration award. By opinion issued on March 6, 2003, the Court of Chancery granted WHA's motion for judgment on the pleadings and upheld the award.<sup>3</sup>

(3) On May 2, 2003, Meades filed a complaint in the Superior Court. Meades alleged that WHA had wrongfully terminated him and had falsely accused him of mishandling WHA funds and misappropriating WHA property. Meades sought a judgment against WHA for "wrongful termination, loss of wages, loss of benefits, defamation of character, emotional distress and punitive damages." WHA filed a motion to dismiss.

(4) At a hearing on WHA's motion to dismiss on November 24, 2003, the Superior Court ruled that Meades' wrongful termination claim was barred under the doctrine of *res judicata*.<sup>4</sup> The Superior Court granted Meades 30 days to file an amended complaint setting forth the details of his defamation claim.

---

of duties, gross incompetency, carelessness and poor job performance).

<sup>3</sup>*Meades v. Wilmington Hous. Auth.*, 2003 WL 939863 (Del. Ch.).

<sup>4</sup>*Bailey v. City of Wilmington*, 766 A.2d 477, 481 (Del. 2001). "It is well-settled that a plaintiff who receives a decision on the merits of a controversy from a court of competent jurisdiction is precluded thereafter by the doctrine of *res judicata* from bringing a subsequent action in another court based upon the same matter." *Townsend v. Chasanov*, 1995 WL 622452 (Del. Supr.).

(5) In an amended complaint filed on December 23, 2003, Meades again alleged that WHA had falsely accused him of having mishandled WHA funds and misappropriated WHA property. Specifically, Meades claimed that WHA defamed him in (a) a written communication that was distributed to persons involved in the termination process; (b) statements that were directed to the Wilmington Police Department and the Federal Bureau of Investigation; and (c) statements that were directed to WHA staff and residents and to Meades' family and friends.

(6) WHA filed a motion to dismiss the amended complaint pursuant to Superior Court Civil Rule 12(b)(6) for failure to state a claim upon which relief could be granted. Meades filed an answer in opposition to the motion, and the Superior Court held a hearing.

(7) By memorandum opinion dated July 30, 2004, the Superior Court granted WHA's motion and dismissed Meades' complaint pursuant to Rule 12(b)(6) for failure to state a claim. The Superior Court determined that WHA's communications, specifically to those involved in Meades' termination and to law enforcement personnel, were protected by conditional privilege that WHA had not waived or forfeited. With respect to the other communications that WHA allegedly made to its staff and residents and to Meades' friends and

family, the Superior Court determined that the amended complaint failed to make sufficient allegations of fact to support a claim of defamation.

(8) The Court reviews de novo the Superior Court's Rule 12(b)(6) dismissal of a complaint for failure to state a claim.<sup>5</sup> A dismissal under Rule 12(b)(6) is appropriate only where it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.<sup>6</sup> The Court must draw all reasonable inferences in favor of the plaintiff.<sup>7</sup>

(9) In Delaware, a communication is defamatory if it tends to harm the reputation of another as to lower the person in the estimation of the community or to deter others from associating or dealing with the person.<sup>8</sup> For statements made in certain contexts, however, conditional privilege is an affirmative defense to a prima facie case of defamation.<sup>9</sup>

(10) The defamation alleged in this case, *i.e.*, that WHA communicated false information that imputed crimes to Meades, falls into one of four

---

<sup>5</sup>*Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978).

<sup>9</sup>*Pierce v. Burns*, 185 A.2d 477, 479 (Del. 1962)

categories of defamation that are presumed actionable.<sup>10</sup> Nonetheless, the Superior Court dismissed Meades' claim on the basis that WHA was shielded from liability by conditional privilege.

(11) A conditional privilege must be exercised "with good faith, without malice and absent any knowledge of falsity or desire to cause harm."<sup>11</sup> If the conditional privilege is abused, the benefit of the privilege may be waived or forfeited.<sup>12</sup> Upon a finding of conditional privilege, the burden shifts to the plaintiff to show abuse of the privilege.<sup>13</sup> Whether a conditional privilege has been abused is ordinarily a question of fact.<sup>14</sup>

(12) This Court has held that the affirmative defense of conditional privilege may not be considered in the context of a motion to dismiss pursuant

---

<sup>10</sup>*Spence v. Funk*, 396 A.2d 967, 970 (Del. 1978) (discussing the four categories of presumed actionable defamatory statements, *i.e.*, statements that (a) "malign one in a trade, business or profession," (b) "impute a crime," (c) "imply that one has a loathsome disease," and (d) "impute the unchastity of a woman").

<sup>11</sup>*Burr v. Atlantic Aviation Corp.*, 348 A.2d 179, 181 (Del. 1975).

<sup>12</sup>*See Id.* (discussing abuse of conditional privilege (a) by excessive or improper publication, (b) by use of the privilege for an improper purpose, or (c) when a statement is made which the speaker knows is false).

<sup>13</sup>*Henry v. Delaware Law School of Widener*, 1998 WL 15897 (Del. Ch.), *aff'd*, 1998 609682 (Del. Supr.).

<sup>14</sup>*Burr v. Atlantic Aviation Corp.*, 348 A.2d 179, 181 (Del. 1975).

to Rule 12(b)(6).<sup>15</sup> Here, the Amended Complaint alleges that WHA initiated two criminal investigations without any evidence or justification to do so. This allegation is sufficient to state a claim that WHA abused its conditional privilege.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED, and the case is remanded for further proceedings consistent with this Order.

BY THE COURT:

/s/ Carolyn Berger  
Justice

---

<sup>15</sup>*Klein v. Sunbeam*, 94 A.2d 385, 392 (1952).