

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

JAMES LESLIE KELLY,
Appellant,

v.

DONNINI ENTERPRISES, INC. and BILL FAGAN,
Appellees.

No. 4D05-4603

[September 6, 2006]

PER CURIAM.

James Leslie Kelly, a former employee of a convenience store owned by Donnini Enterprises, Inc. (hereinafter "Donnini"), sued Donnini and Bill Fagan, one of its store managers, for negligence and defamation. The trial court entered final summary judgment in favor of defendant Donnini on both counts. "Summary judgment should not be granted unless the facts are so clear and undisputed that only questions of law remain." *Sulkin v. All Fla. Pain Mgmt., Inc.*, 932 So. 2d 485, 486 (Fla. 4th DCA 2006) (quoting *Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 643 (Fla. 1999)). We affirm the summary judgment on the negligence claim, but find that issues of fact remain regarding the defamation action and Donnini's vicarious liability for Fagan's statements, rendering summary judgment inappropriate at this juncture.

Affirmed in part and Reversed in part.

STEVENSON, C.J., STONE and POLEN, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Robert R. Makemson, Judge; L.T. Case No. 03-905 CA.

James Leslie Kelly, Crawfordville, pro se.

Louis E. Lozeau, Jr. of Wright, Ponsoldt & Lozeau, Trial Attorneys,

L.L.P., Stuart, for appellee Donnini Enterprises, Inc.

Not final until disposition of timely filed motion for rehearing.