Third District Court of Appeal

State of Florida

Opinion filed October 21, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1555
Lower Tribunal No. 18-30227

Alvaro H. Skupin, M.D.,
Appellant,

vs.

Hemisphere Media Group, Inc., etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Formoso-Murias, P.A., and Hector Formoso-Murias, for appellant.

Gelber Schachter & Greenberg, P.A., Brian W. Toth, Freddy Funes and Natalia B. McGinn; Dorta Law and Matias R. Dorta; Osorio Internacional, P.A., Carlos F. Osorio, Raúl A. Reichard, and W. Daniel Zaffuto; Reed Smith, LLP, Edward M. Mullins, and Daniel Alvarez Sox, for appellees.

Before FERNANDEZ, HENDON, and LOBREE, JJ.

FERNANDEZ, J.

Alvaro H. Skupin, M.D. ("Dr. Skupin") appeals the trial court's "Order Granting Hemisphere Media Group, Inc.'s Motion to Dismiss Alvaro Skupin's Complaint," which dismissed Dr. Skupin's complaint with prejudice, including all the claims he filed against eight defendants in the subject defamation and tortious interference lawsuit. Because the trial court correctly dismissed the complaint with prejudice, we affirm.

Dr. Skupin, a U.S. citizen and Miami-Dade County, Florida resident, filed a complaint against the following eight defendants: Hemisphere Media Group, Inc. d/b/a Television Dominicana and TV Dominicana; Hemisphere Media Holdings, LLC; Corporacion Dominicana de Radio y Television, S.R.L., d/b/a Color Vision Canal 9, Color Vision Internacional and Corporacion Dominicana de Radio y Television; Nuria Esperanza Piera Gainza a/k/a Nuria Piera a/k/a Nuria; Producciones Video S.R.L. d/b/a Provideo; Manuel de Jesus Estrella Cruz; Cadena de Noticias – Television (CDN-TV), S.A. d/b/a NCDN Canal 37 a/k/a CDN Canal 37; and Multimedios del Caribe, S.A. d/b/a Multimedios del Caribe. Skupin alleged defamation, libel, and tortious interference with advantageous business relationships based on alleged defamatory statements made against him in an investigative reporting series. Dr. Skupin alleged that in 2017, defendants broadcast/rebroadcast or published/republished four episodes of a weekly Spanish-language television news series called "Nuria: Investigacion Periodistica," (translated, "Nuria:

Journalistic Investigation") and "Casos Recientes" (translated, "Recent Cases"), which contained thirty-four (34) alleged defamatory statements against him.

The defendants refused to retract their statements after Dr. Skupin served them with pre-suit notices pursuant to section 770.01, Florida Statutes (2017). The broadcasts were viewed by Florida television viewers on Hemisphere Media's[1] television channel, Television Dominicana, and the four broadcasts were also televised throughout parts of the United States and on the Internet. After a hearing on defendants' motion to dismiss, the trial court granted the motion and dismissed with prejudice.

On appeal, Dr. Skupin claims that the trial court erred in dismissing the case because genuine issues of material fact existed as to whether the complaint alleged actionable defamation claims and because the trial court erred in dismissing the tortious interference claim under Florida's single action rule. We disagree.

"A trial court's ruling on a motion to dismiss is subject to *de novo* review." Kopel v. Kopel, 229 So. 3d 812, 815 (Fla. 2017), citing Mender v. Kauderer, 143 So. 3d 1011, 1013 (Fla. 3d DCA 2014). When ruling on a motion to dismiss, the Court "must limit itself to the four corners of the complaint, including any attached or incorporated exhibits, assuming the allegations in the complaint to be true and construing all reasonable inferences therefrom in favor of the non-moving party."

[1] Headquartered in Coral Gables.

Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP, 137 So. 3d 1081, 1089 (Fla. 3d DCA 2014). Furthermore, all allegations must be taken as true, and "'any reasonable inferences drawn from the complaint must be construed in favor of the non-moving party.'" Rolle v. Cold Stone Creamery, Inc., 212 So. 3d 1073, 1076 (Fla. 3d DCA 2017) (quoting Minor v. Brunetti, 43 So. 3d 178, 179 (Fla. 3d DCA 2010)). In addition, "[t]he conclusions of the pleader, as to the meaning of the exhibits attached to the complaint, are not binding on the court. Exhibits attached to the complaint are controlling, where the allegations of the complaint are contradicted by the exhibits, the plain meaning of the exhibits will control." Ginsberg v. Lennar Fla. Holdings, Inc., 645 So. 2d. 490, 494 (Fla. 3d DCA 1994) (internal citations omitted).

Commentary or opinion based on facts that are set forth in the subject publication or which are otherwise known or available to the reader or listener do not constitute libel. Turner v. Wells, 879 F. 3d 1254, 1262 (11th Cir. 2018) ("True statements, statements that are not readily capable of being proven false, and statements of pure opinion are protected from defamation actions by the First Amendment."); Hay v. Indep. Newspapers, Inc., 450 So. 2d 293, 295 (Fla. 2d DCA 1984); From v. Tallahassee Democrat, Inc., 400 So. 2d 52, 57 (Fla. 1st DCA 1981). In addition, in Florida, whether a statement is one of fact or opinion is a question of law for the court and not a jury. Hay, 450 So. 2d at 295; From, 400 So. 2d at 56. Furthermore, "[w]hether statements are privileged expressions of pure opinion or

unprivileged mixed expressions of opinion is a question of law properly resolved by the trial court." Sepmeier v. Tallahassee Democrat, Inc., 461 So. 2d 193, 195 (Fla. 1st DCA 1984). See also Turner, 879 F. 3d at 1269 ("Whether the defendant's statements constitute defamation by implication is a question [of] law for the court to determine."). When the court makes these determinations, it "must construe the statement in its totality, examining not merely a particular phrase or sentence, but all the words used in the publication." Hay, 450 So. 2d. at 295; see also Smith v. Cuban American Nat'l Found., 731 So. 2d 702, 705 (Fla. 3d DCA 1999).

In the case before us, the trial court did not deviate from the four corners of the complaint when considering Dr. Skupin's motion to dismiss because all the broadcasts, either via hyperlink or attached transcripts, were attached to the complaint and thus incorporated. As such, everything the trial court needed to review to decide the motion to dismiss was either attached to the complaint or incorporated into it. The complaint included hyperlinks to view the subject reports and a video including all the alleged defamatory statements was presented at the hearing on the motion to dismiss. Dr. Skupin also attached to the complaint transcripts of the reports in Spanish, as well as the translations of the reports into English. In its well-reasoned order granting the defendants' motion to dismiss, the trial court analyzed each count and provided the support it found in Dr. Skupin's complaint and attachments, as the basis for its decision. The trial court stated:

> It is the conclusion of this court that when viewed in its entirety with all reasonable inferences construed in the light most favorable to Dr. Skupin, the broadcasted series of four reports amount to no more than an expression of opinion and commentary gleaned from intensive investigation and stated facts.
>
> Each of the statements in the documentary program is either not capable of being proved true or false on a core of objective evidence; consists of so-called rhetorical hyperbole; or is protected commentary or opinion based on facts set forth in the reports that are otherwise known or available to the listener.

Thus, the trial court made the correct determination that Dr. Skupin failed to state a cause of action as to the defamation and libel counts in his complaint.

Turning to Dr. Skupin's tortious interference count, Dr. Skupin supports this count by alleging that defendants made defamatory statements when they broadcast and published a fifth and sixth news report, separate from the alleged defamatory statements alleged in the first four reports. However, the record indicates that there was no transcript of these two additional news reports attached to or incorporated into the complaint. Furthermore, this allegation was not argued to the trial court at the motion to dismiss hearing, nor did Dr. Skupin present video of these two additional reports at the hearing on the motion to dismiss. In addition, the record does not contain presuit notices regarding the defamatory statements made in the fifth and sixth reports, as required under section 770.01, Florida Statutes (2017).

Failure to comply with the notice provisions of section 770.01 requires dismissal of the complaint for failure to state a cause of action. Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So. 2d 1376, 1377 (Fla. 4th

DCA 1997). Consequently, the trial court was correct in dismissing the tortious interference claim, although for a different reason other than what the trial court stated in its order on appeal. Ruiz v. Policlinica Metropolitana, C.A., 260 So. 3d 1081, 1090-91 (Fla. 3d DCA 2018) ("Under the tipsy coachman rule, 'if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support judgment in the record.' Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644 (Fla. 1999)."). For this reason, this Court need not address the defendants' single action rule argument for dismissal of Dr. Skupin's tortious interference with advantageous business relationships count.

Accordingly, as everything the trial court needed to make its determination as a matter of law was in the complaint or incorporated into it, the trial court correctly dismissed the complaint with prejudice. The complaint was not actionable on any of the grounds alleged by Dr. Skupin, and no amendment of the complaint would change the non-defamatory statements to defamatory ones. We thus affirm the trial court's dismissal with prejudice on all counts against all the defendants.

Affirmed.