NO. COA14-325

NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

DANIEL E. SKINNER,

Plaintiff,

v. Forsyth County
No. 13 CVS 2948

SUZANNE REYNOLDS, BLAKE MORANT, NATHAN HATCH, JAMES REID MORGAN, WAKE FOREST UNIVERSITY, and WAKE FOREST UNIVERSITY SCHOOL OF LAW,

Defendants.

Appeal by plaintiff from order entered 12 July 2013 by Judge A. Moses Massey in Forsyth County Superior Court. Heard in the Court of Appeals 11 September 2014.

Daniel E. Skinner, pro se.

Bell, Davis & Pitt, P.A., by William K. Davis, and Stephen M. Russell, Sr., for defendant-appellees.

STEELMAN, Judge.

Plaintiff's complaint was properly dismissed under N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) because it failed to state a claim for defamation based on libel *per se* or libel *per quod*. Plaintiff's claims for negligent supervision were properly dismissed as derivative of his substantive claims.

I. Factual and Procedural Background

Daniel Skinner (plaintiff) was enrolled at Wake Forest University School of Law, beginning in the fall of 2009. Plaintiff, who had received merit scholarships, was informed in June 2011 that the amount of his scholarships would be reduced by half because he had failed to remain in the top two-thirds of his law school class. Plaintiff disputed the reduction of his scholarships, arguing that the class rank requirement did not apply to certain scholarships. He pursued his challenge to the scholarship reduction over the following year. He first met with Melanie Nutt, then the school's Director of Admissions, who informed him that the condition applied to his entire financial aid award. He then appealed to Jay Shively, the Assistant Dean for Admissions and Financial Aid, who wrote to plaintiff in August 2011 informing plaintiff that all of his scholarships were subject to the requirement that he remain in the top two-thirds of his class. Plaintiff next submitted a grievance to Ann Gibbs, Associate Dean for Administrative and Student Services, who consulted with the law school's legal counsel. In September 2011 Dean Gibbs notified plaintiff that she and the school's legal counsel concluded that all of his scholarships were subject to the class rank requirement. Plaintiff's contentions were then reviewed by Law School Dean Blake Morant, who wrote to

plaintiff on 21 November 2011 "comprehensively addressing" his arguments and reiterating that the condition applied to all of his scholarships. In April 2012, plaintiff met in person with Dean Morant and Suzanne Reynolds, the Executive Associate Dean for Academic Affairs. Dean Reynolds also held a second meeting with plaintiff to discuss the terms of his scholarships.

On 10 May 2012 Dean Reynolds hand-delivered a letter to plaintiff, in which she stated that she had "two purposes in this letter. One is to set out our position about your scholarship award. The other is to remind you of the code of conduct expected of students." The letter first reviewed the events surrounding plaintiff's challenge to the reduction of his scholarship, and responded to plaintiff's assertion that the law school's review of plaintiff's grievance did not comply with the requirements of the American Bar Association. The second part of the letter discussed plaintiff's behavior during his challenge to the reduction of his scholarships, stated her opinion that plaintiff tended to react with suspicion to those who disagreed with him, and reminded plaintiff of the need to comply with the university's code of conduct. Dean Reynolds provided Dean Morant and Associate Dean Gibbs with copies of her letter to plaintiff.

On 9 May 2013 plaintiff filed this lawsuit, asserting claims of defamation against Dean Reynolds, Wake Forest

University, and Wake Forest School of Law; and claims of negligent supervision against Dean Morant and against Nathan Hatch and James Reid Morgan, the president and senior vice president of Wake Forest University. Plaintiff alleged that certain statements in the second part of Dean Reynolds's letter constituted libel *per se* and libel *per quod*, that the university and law school were vicariously liable for Dean Reynolds's libel, and that the other defendants were liable for failure to properly supervise Dean Reynolds.

On 24 May 2013 defendants filed an answer denying the material allegations of the complaint and moving for dismissal of plaintiff's suit under N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). On 12 July 2013 the trial court entered an order granting defendants' motion and dismissing all of plaintiff's claims.

Plaintiff appeals.

II. Standard of Review

"The motion to dismiss under N.C. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. In ruling on the motion the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted. '[D]espite the liberal nature of the concept of notice pleading, a complaint must nonetheless state enough to give the

substantive elements of at least some legally recognized claim or it is subject to dismissal under Rule 12(b)(6).'" *Malloy v. Preslar*, __ N.C. App. __, __, 745 S.E.2d 352, 355 (2013) (quoting *Stanback v. Stanback*, 297 N.C. 181, 204, 254 S.E.2d 611, 626 (1979)). "In our review of the trial court's ruling on a motion to dismiss under North Carolina Rule of Civil Procedure 12(b)(6), '[t]his Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct.' While we treat plaintiffs' factual allegations as true, we may ignore plaintiffs' legal conclusions." *McCrann v. Pinehurst*, __ N.C. App. __, __, 737 S.E.2d 771, 777 (quoting *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4 (2003), and citing *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974)), *disc. review denied*, 366 N.C. 593, 743 S.E.2d 221 (2013).

III. Analysis

A. Libel *Per Se*

"'Libel *per se* is a publication which, *when considered alone without explanatory circumstances*: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to

subject one to ridicule, contempt or disgrace.'" *Nucor Corp. v. Prudential Equity Grp., LLC*, 189 N.C. App. 731, 736, 659 S.E.2d 483, 486 (2008) (quoting *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 29, 568 S.E.2d 893, 898 (2002) (internal quotations omitted) (emphasis in *Nucor*). Further:

> "[D]efamatory words to be libelous *per se* must be susceptible of *but one meaning* and of such nature that *the court* can presume *as a matter of law* that they tend to disgrace and degrade the party or hold him up to public hatred, contempt or ridicule, or cause him to be shunned and avoided." "Although someone cannot preface an otherwise defamatory statement with 'in my opinion' and claim immunity from liability, a pure expression of opinion is protected because it fails to assert actual fact." This Court considers how the alleged defamatory publication would have been understood by an average reader. In addition, the alleged defamatory statements must be construed only in the context of the document in which they are contained, "stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The articles must be defamatory on its face within the four corners thereof."

Nucor, 189 can at 736, 659 S.E.2d at 486-87 (quoting *Renwick v. News and Observer and Renwick v. Greensboro News,* 310 N.C. 312, 317-18, 312 S.E.2d 405, 409 (1984) (citation and quotation marks omitted) (emphasis in original), and *Daniels v. Metro Magazine Holding Co., L.L.C.*, 179 N.C. App. 533, 539, 634 S.E.2d 586, 590 (2006), and citing *Boyce*, 153 N.C. App. at 31, 568 S.E.2d at 899).

Plaintiff's claims for libel are based on statements contained in the second part of Dean Reynolds's letter, which is reproduced below:

> II. The Code of Conduct Expected of Students
>
> I have no concern about law students having disputes with administrators. After all, part of what we teach in a law school is how to raise disputes and pursue them. I am deeply concerned, however, with your conduct in this process. In the course of this disagreement, you have claimed that several administrators have acted fraudulently and have accused another of lying. You have made these statements in the presence of other students. You have sent an email to the entire law school faculty calling for the removal of the Dean.
>
> I would be concerned about this conduct by any student, but it is of particular concern to me in a law student. In the practice of law, people often disagree with each other and must work to resolve those disagreements. From my experience with you on this issue, if people disagree with you, you appear to assume that those persons are acting in bad faith and you accuse them of fraud and deceit. If you had made similar accusations under similar circumstances to a client, you would be fired. If you had made similar accusations under similar circumstances to a judge, you would be held in contempt.
>
> We have tolerated your conduct because we have assumed that the issue has consumed you. I do not want our lenience to date to make you think we find such conduct acceptable. It is not. This letter puts you on notice that like all students, we expect you to abide by the code of conduct set out

in Chapter 7 of the Student Handbook, which provides in part:

> Members of the Law School community are expected to adhere to standards of conduct that will reflect credit upon themselves, the Law School, the legal profession, and Wake Forest University. Students aspiring to the Bar are expected to behave appropriately, to respect the rights and privileges of other[s], and to abide [by] the laws of the city, state, and nation and the regulations of the University and the School of Law.

> Now that this dispute is behind us, I will assume that you will abide by the code of conduct. We have given you so many audiences for your position because we want nothing but the best for you. That same desire motivates us now to put an end to the hearings about your scholarship award and to notify you that we expect appropriate conduct from you. We have tolerated inappropriate conduct in hearing you out, but we will not tolerate inappropriate conduct any longer.

> I want to close by highlighting our desire for your success - in your remaining year of law school and beyond. We admitted you with every expectation that you would succeed as a law student and as a lawyer. We continue to wish for you the brightest of futures.

Plaintiff focuses his arguments primarily on the following sentence in Dean Reynolds's letter: "From my experience with you on this issue, if people disagree with you, you appear to assume that those persons are acting in bad faith and you accuse them of fraud and deceit." We conclude that this sentence, whether

considered alone or in the context of the rest of the letter, does not constitute actionable libel.

The phrase "from my experience with you on this issue" is tantamount to "in my opinion" or "in my experience." The subjective nature of Dean Reynolds's statement is demonstrated by the rest of the sentence, which states her personal opinion that "if people disagree with you, you appear to assume that those persons are acting in bad faith and you accuse them of fraud and deceit." Plaintiff admits that he has accused various parties of fraud and deceit. Dean Reynolds's opinion that his accusations were motivated by suspicion of those who disagree with him is not a fact that is subject to being proven or disproved, and cannot constitute actionable libel *per se*.

In addition, the paragraph from which plaintiff extracts this sentence indicates that Dean Reynolds was providing guidance to plaintiff, then a student, regarding the standard of behavior to which he would be held if he chose to practice law:

> I would be concerned about this conduct by any student, but it is of particular concern to me in a law student. In the practice of law, people often disagree with each other and must work to resolve those disagreements. From my experience with you on this issue, if people disagree with you, you appear to assume that those persons are acting in bad faith and you accuse them of fraud and deceit. If you had made similar accusations under similar circumstances to a client, you would be fired. If you had made

> similar accusations under similar circumstances to a judge, you would be held in contempt.

The general tenor of the paragraph is that (1) during the course of plaintiff's challenges to the reduction in his scholarship amount he appeared to have an emotional reaction to disagreement, responding with accusations of fraud and deceit rather than objectively assessing the merits of opposing views, and; (2) plaintiff would be advised to develop other ways of dealing with dispute if he wished to succeed as an attorney. This paragraph expresses Dean Reynolds's opinions; neither plaintiff's inner motivation for his accusations, nor the hypothetical reaction of a future client or judge is a fact that can be proven. *Daniels*, 179 N.C. App. at 540, 634 S.E.2d at 591 (dismissing defamation claim in part because "whether or not plaintiff spoke in a 'sinister' or 'Gestapo' voice is a matter of [the defendant's] opinion, incapable of being proven or disproved"). Neither Dean Reynolds's views on plaintiff's personal reaction to disagreement, nor her advice regarding the practice of law were defamatory.

Plaintiff, however, argues that the cited language from Dean Reynolds's letter is defamatory because it would "subject the plaintiff to ridicule, contempt, and disgrace," and "impeach[es] the plaintiff in his profession." Plaintiff does

not support these conclusory allegations with alleged facts. Instead, plaintiff, who was a student at the time Dean Reynolds wrote to him, posits that if he graduated from law school, was licensed to practice law, and then, in a hypothetical case, engaged in baseless accusations, that he would then be subject to the negative consequences discussed by Dean Reynolds in her letter. As discussed above, the reaction of hypothetical parties to plaintiff's hypothetical future behavior is not a fact subject to proof, and thus cannot form the basis of a libel claim. Moreover, plaintiff's discussion of possible future occurrences constitutes the kind of "explanatory circumstances" that are not properly part of our analysis of whether a complaint states a valid claim for defamation. *Aycock v. Padgett*, 134 N.C. App. 164, 167, 516 S.E.2d 907, 909 (1999) (upholding dismissal of defamation claim where "there would seem to be a need for explanatory circumstances for the listener or reader here to know that plaintiff had committed an infamous crime").

Plaintiff also argues that other statements in Dean Reynolds's letter "implied defamatory facts." For example, he contends that the letter's warning that "we will not tolerate inappropriate conduct any longer" "implied that there were facts that would justify plaintiff's expulsion" from the university.

However, the letter does not identify specific examples of "inappropriate conduct," does not refer to particular sanctions available to the university in response to "inappropriate conduct," and does not mention expulsion. Similarly, plaintiff alleges that Dean Reynolds's caution that he could be subject to contempt proceedings if he responded to a judge's disagreement with accusations of fraud and deceit implied that plaintiff had committed a crime. As discussed above, for statements to constitute libel *per se*, "the alleged defamatory statements must be construed only in the context of the document in which they are contained, 'stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The articles must be defamatory on its face within the four corners thereof.'" *Nucor*, 189 N.C. App. at 736, 659 S.E.2d at 488 (quoting *Renwick* at 317-18, 312 S.E.2d at 409 (citation and internal quotation marks omitted). Plaintiff's arguments do not rest on the language of Dean Reynolds's letter, but on hypothetical scenarios and alleged "implications" of her statements. We reject these arguments, and hold that the letter did not defame plaintiff and that it does not support a valid claim for libel *per se*. Having reached this conclusion, we need not reach the parties' arguments regarding the letter's publication or whether it was privileged.

C. Claim for Libel *Per Quod*

Plaintiff next argues that his complaint sufficiently alleges facts to support a claim for libel *per quod*. We do not agree.

Libel *per quod* "may be asserted when a publication is not obviously defamatory, but when considered in conjunction with innuendo, colloquium, and explanatory circumstances it becomes libelous." *Nguyen v. Taylor*, 200 N.C. App. 387, 392, 684 S.E.2d 470, 474 (2009) (citing *Ellis v. Northern Star Co.*, 326 N.C. 219, 223, 388 S.E.2d 127, 130 (1990)). "To state a claim for libel *per quod*, a party must specifically allege and prove special damages as to each plaintiff." *Nguyen*, 200 N.C. App. at 393, 684 S.E.2d at 475 (citing *Griffin v. Holden*, 180 N.C. App. 129, 138, 636 S.E.2d 298, 305 (2006) ("the facts giving rise to the special damages must be alleged so as to fairly inform the defendant of the scope of plaintiff's demand.") (internal quotation omitted)), and *Stanford v. Owens*, 46 N.C. App. 388, 398, 265 S.E.2d 617, 624 (1980) ("[S]pecial damages must be pleaded with sufficient particularity to put defendant on notice.") (citations omitted)).

The only "special damages" asserted in plaintiff's complaint consists of an allegation that the letter "contained false statements . . . causing specific damages, including but

not limited to, lost wages and the expenses of mitigating the defamation[.]" **(Rp 19)** Plaintiff fails to state any facts indicating the circumstances of the alleged "special damages" or the amount claimed. The conclusory allegation that he suffered unspecified "lost wages" and "expenses" associated with "mitigating the defamation" is insufficient to inform defendants of the scope of his claim. *See Pierce v. Atlantic Group, Inc.*, __ N.C. App. __, __, 724 S.E.2d 568, 579 ("We do not believe that Plaintiff's allegation that the alleged defamation 'damaged . . . [Plaintiff's] economic circumstances' fairly informs Defendants of the scope of Plaintiff's demand. Therefore, we conclude the trial court did not err by dismissing Plaintiff's claim of libel *per quod* pursuant to Defendants' Rule 12(b)(6) motion."), *disc. review denied*, 366 N.C. 235, 731 S.E.2d 413 (2013). We conclude, based on the absence of specific allegations of special damages, that the trial court did not err by dismissing plaintiff's claim for libel *per quod*. Therefore, we need not address plaintiff's other arguments pertaining to libel *per quod*.

D. Claims for Negligent Supervision

Plaintiff's claims for negligent supervision of Dean Reynolds are predicated on his allegation that Dean Reynolds's letter defamed him. Since we hold that plaintiff's claims for

libel were properly dismissed, it follows that the derivative claims for negligent supervision were also subject to dismissal.

IV. Conclusion

For the reasons discussed above, we conclude that the trial court did not err and that its order dismissing plaintiff's complaint under N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) should be

AFFIRMED.

Judges HUNTER and GEER concur.