

Court of Claims of Ohio

The Ohio Judicial Center
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BHAVIN MEHTA, PH.D.

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2006-06752

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiff brought this action against defendant, Ohio University (OU), alleging a claim of defamation arising out of the university's investigation into accusations of plagiarism in graduate student theses. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} Plaintiff's employment with OU began in 1992. By 2004, plaintiff was both a part-time associate professor and the director of the Computer-Aided Design/Computer-Aided Manufacturing laboratory. As part of his teaching duties over the years, plaintiff served as a thesis advisor for many graduate students in the field of mechanical engineering. In 2004, allegations were raised by a former student that within OU's Department of Mechanical Engineering certain graduate student theses contained plagiarized material.

{¶ 3} The Academic Honesty Oversight Committee (AHOC) was formed to investigate allegations of plagiarism and to ascertain the extent of student responsibility and accountability within the framework of the university policies and guidelines. Upon

review of “the materials supporting the allegations, the committee decided that in most cases plagiarism had been committed.” (Joint Exhibit N.) The committee identified several instances of plagiarism and attempted to categorize the offenses by amount, type, and degree of significance.¹ (Joint Exhibit N.) Prior to the release of the AHOC findings, Provost Kathy Krendl, in consultation with the Dean of the Russ College of Engineering, Richard Irwin, appointed a two-person committee consisting of an administrator, Gary Meyer, and the former chair of the faculty senate, Dr. Hugh Bloemer, to prepare for her review an internal advisory report that addressed faculty responsibility with regard to plagiarism.

{¶ 4} In late May 2006, Meyer and Dr. Bloemer submitted a draft copy of their report to the provost. According to Krendl, she asked them to revise the draft so as to tone down the emotional and passionate phrases contained therein; however, Meyer and Dr. Bloemer declined to make any changes. On May 31, 2006, a press conference was held during which Provost Krendl released the Meyer/Bloemer report to the news media. The report was also posted on OU’s website and stories about the report appeared in various newspapers. The report stated that “rampant and flagrant plagiarism had occurred in the graduate program of the Department of Mechanical Engineering for over twenty years” and that three faculty members had “blatantly chosen to ignore their responsibilities by contributing to an atmosphere of negligence toward issues of academic misconduct in their own department.”

{¶ 5} Plaintiff alleges that the statements published by OU’s employees were false and defamatory and that his professional reputation has been damaged. Plaintiff alleges additional instances of defamation; specifically, that Dean Irwin told members of the press that plaintiff had contributed to a “culture of plagiarism,” and that John Burns, the director of Legal Affairs, told a reporter that plagiarism issues were part of the reason why plaintiff’s contract of employment was not renewed.

{¶ 6} Defendant denies liability and contends that the statements in the Meyer/Bloemer report are not factual assertions but clearly opinions of the authors and

¹The committee differentiated between outright copying versus attribution errors. For example, some students copied vast amounts of material from textbooks without citing the original source while other students failed to designate or attribute work that had been produced from a collaborative effort with other students.

that such expressions of opinion are protected speech under the Ohio Constitution. In addition, OU contends that if the statements are determined by the court to be factual assertions, OU cannot be held liable to plaintiff because its employees are entitled to assert a qualified privilege. Finally, OU maintains that the decision to not renew plaintiff's contract was made in early 2006, and that plaintiff was aware of this prior to the time that the AHOC and the Meyer/Bloemer reports were finalized.

{¶ 7} Defamation is defined as “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. “Actionable defamation falls into two categories, defamation per quod or per se. In defamation per quod, a publication is merely capable of being interpreted as defamatory, and the plaintiff must allege and prove damages. To 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 a public hatred, contempt or scorn.’” (Internal citations omitted.) *Knowles v. Ohio State Univ.*, Franklin App. No. 02AP-527, 2002-Ohio-6962, ¶ 23-24; quoting *Moore v. P.W. Publishing Co.* (1965), 3 Ohio St.2d 183, 188, certiorari denied (1966), 382 U.S. 978. In order to prevail on a claim of defamation, 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.

{¶ 8} However, under the Ohio Constitution there is a “separate and independent guarantee of protection” for statements that constitute opinion. *Wampler v. Higgins*, 93 Ohio St.3d 111,119, 2001-Ohio-1293; citing *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 1995-Ohio-187. The Meyer/Bloemer report, in pertinent part states as follows:

{¶ 9} “To: Dr. Kathy Krendl, Provost, Ohio University

{¶ 10} “From: [Meyer/Bloemer]

{¶ 11} “Subject: Plagiarism in the Department of Mechanical Engineering in the Russ College of Engineering at Ohio University

{¶ 12} “We have assessed the issue of plagiarism in the above department over the past four months and we conclude that rampant and flagrant plagiarism has occurred in the graduate program of the Department of Mechanical Engineering for over twenty years. All members of the academic community, students and faculty alike, are responsible for the integrity and originality of their work. According to the documents that we read and investigated, there are seven faculty members in the department who supervised theses where plagiarism was found. However, the vast majority of the cases revolve around three faculty members who either failed to monitor the writing of their advisees theses or simply ignored academic honesty, integrity and basically supported academic fraudulence. We consider this most serious.

{¶ 13} “There can never be a time or reason at an academic institution, such as our Ohio University, when plagiarism can be justified. Equally, there can not be any tolerance of the individuals who participate in this serious misconduct. * * * The ad hoc committee of the college established some guidelines to mitigate the obvious problems but we do not concur that the problems are caused by the graduate students and subsequently it is up to the graduate students to remedy the situation. When a faculty member becomes the advisor/mentor of a graduate student, she/he automatically assumes the responsibilities to monitor the progress of the students as they advance to become professionals. Supervision of theses is part of the process. We are appalled that three members of the faculty in mechanical engineering have so blatantly chosen to ignore their responsibilities by contributing to an atmosphere of negligence toward issues of academic misconduct in their own department. * * *

{¶ 14} “We recommend the following:

{¶ 15} “1) A lack of faculty oversight on theses work is of particular concern in relation to two faculty members in the Department who served as advisors in many of the theses included in this investigation. * * * We recommend that, consistent with Ohio University policy, you * * * dismiss the Group II faculty member, who had the second highest incidences of plagiarism, 11 theses under his direction.²

{¶ 16} “ * * *

²The parties do not dispute that plaintiff was the only Group II faculty member in the department at the time the report was released.

{¶ 17} “3) * * * speak with the other four [faculty members] to ensure that they understand the gravity of their ‘oversights.’

{¶ 18} “* * *

{¶ 19} “10) We reviewed an additional 65 theses from 13 other disciplines across the campus based on similarities in titles (the same approach used to ascertain the problem in the Department of Mechanical Engineering) From this cursory review we conclude that this plagiarism issue is unique to the Department of Mechanical Engineering at Ohio University.

{¶ 20} “* * *

{¶ 21} “14) Act swiftly to get this unacceptable conduct at Ohio University behind us and let us move forward with our noble mission of educating the future professional from poets to CEOs of the world.

{¶ 22} “The highest courage is to dare to be yourself in the face of adversity. Choosing right over wrong, ethics over convenience, and truth over popularity . . . these are the choices that measure your life. Travel the path of integrity without looking back, for there is never a wrong time to do the right thing.’ (This quote came from a poster entitled: The Courage of Integrity.)” (Joint Exhibit P.)

{¶ 23} Gary Meyer testified that he teamed with Hugh Bloemer at the direction of the provost and that they both reviewed the text of select student theses which they had obtained from the OU library. Meyer stated that they did not interview the students or their faculty mentors. Based upon what he perceived as an extensive amount of duplication, Meyer concluded that plaintiff had supported fraudulence by his failure to detect or recognize duplication. Meyer acknowledged that there had been conflicts between plaintiff and himself prior to 2004 concerning plaintiff’s attempts to obtain approval for certain contracts and other research projects. Meyer stated that the provost never asked if he had any potential conflict of interest before assigning him to investigate the alleged cheating. Meyer maintained that Bloemer wrote the report; he merely edited the text and he specifically denied ever speaking to members of the press about the matter. Meyer also denied being asked by the provost to revise the report. Meyer reiterated that in his opinion plaintiff neglected to fulfill his duty as a mentor by his failure to detect any instance of plagiarism that was later found in the completed theses

of plaintiff's own advisees. Thus, Meyer opined that such negligence was tantamount to condoning and even encouraging plagiarism. According to Meyer, the primary advisor should be held accountable for citation errors or omissions in his student's work product, and that he considers even a single incident of plagiarism to be significant.

{¶ 24} Plaintiff presented the testimony of Dr. Patrick Scanlon, the writing director in the Department of Communication at the Rochester Institute of Technology. Dr. Scanlon defined plagiarism as the deliberate use of someone else's ideas expressed as one's own without proper attribution. According to Dr. Scanlon, plagiarism requires a finding of an attempt to deceive the reader by not directing the reader to the original source. Dr. Scanlon described three primary ways for the faculty advisor to detect plagiarism: 1) the faculty member may recognize text that is not attributed; 2) the faculty member may notice an abrupt change in the writing style; and 3) the faculty member may encounter irregularities in the document such as awkward transition, duplication, or internal inconsistencies.

{¶ 25} Dr. Robert Williams, a professor of mechanical engineering, testified that he had been employed at OU for 13 years and that he had served as an advisor for students completing theses at the Masters and Ph.D. levels. He explained that a faculty graduate student advisor is expected to help the students select a research topic and that the advisor has ultimate oversight for each advisee's thesis. Dr. Williams further explained that in the mechanical engineering department it is accepted practice for the introductory section of a student's thesis to contain historical or background material that is not the student's original work. Nevertheless, the student should place a number in brackets as close in the text to the copied or quoted material as possible, and the corresponding references are numbered in a list of citations placed at the end of the thesis, in the order that they appear in the text. Williams stated that prior to 2005 OU did not have computer software available to assist in the detection of plagiarism. However, he maintained that it was his custom and practice to review the theses for his advisees specifically for proper citation form and that he expected to find proper citations.

{¶ 26} Dr. Bloemer testified that, in his opinion, plagiarism had occurred and he referenced instances of widespread copying that at times included whole chapters

copied from textbooks, and other examples where source material was duplicated but not attributed. Dr. Bloemer further testified that, in his opinion, duplication without attribution equals plagiarism. Likewise, he opined that material used in common must identify the group's contribution; otherwise the author commits plagiarism. According to Dr. Bloemer, a faculty member is always to be held accountable if a student commits plagiarism. Dr. Bloemer contends that plagiarism occurred in theses that were prepared under plaintiff's direction and that they were subject to his review. Therefore, Dr. Bloemer maintains that, in his opinion, plaintiff is accountable for the content, including the plagiarism. Dr. Bloemer admitted that the provost asked him to tone down, remove, or rewrite the first portion of the report and that he refused to make the changes. Dr. Bloemer defended his choice of phrasing and pointed out that the words "either failed to monitor the writing of their advisees theses or simply ignored academic honesty * * *" applies to all three faculty members, and that his criticism was qualified by the use of "either/or."

{¶ 27} Plaintiff testified that he instructed his students always to cite the author when they included non-original work in their theses, with the exception that unpublished collaborative work could be copied verbatim and that the student need not attribute to a source any formulas, figures, or text, if such were considered common knowledge. Plaintiff admitted that he directed four of his students to copy text in each of their theses without identifying such as a report that summarized work produced from a group effort. Plaintiff also encouraged his advisees to seek assistance from senior students who had already worked on similar projects. According to plaintiff, using collaborative work without attribution and including background material from textbooks without citation to the source does not constitute plagiarism. Plaintiff further testified that it was not his custom or practice to check for or to verify citations. Although plaintiff scheduled only one hour per week to meet with his group of advisees, he testified that he relied on having an "open door policy" for students to seek further assistance. Plaintiff testified that he received chapters periodically from each graduate student and that when he received the completed draft thesis he would read it, make comments or corrections, and return the edited version to the student to complete any revisions. In contrast to the opinion offered by Dr. Bloemer, plaintiff stated that he did not believe that

he should be held accountable for instances of duplication, copying, or outright plagiarism committed by his students.

{¶ 28} Dean Irwin grudgingly conceded that plaintiff probably read the theses, but Dean Irwin's tone conveyed his belief that merely reading a thesis was not an acceptable level of participation for a faculty advisor. The court interpreted Dean Irwin's testimony as critical of plaintiff and the department as a whole for poor oversight that in all likelihood had existed for such a length of time that Irwin felt justified in opining that plaintiff's acquiescence contributed to a "culture of plagiarism."

{¶ 29} Upon review of the testimony and evidence presented, the court concludes that the term plagiarism means different things to different people. Some witnesses testified that plagiarism can be viewed in degrees that ranged from insignificant to very serious offenses. Thus, some opined that copying another's work and failing to identify such to the reader was deemed acceptable, while others stated that all non-original work must cite to the author and that failing to do so constitutes plagiarism. Plaintiff maintained that plagiarism should be quantified by some degree of misconduct. In addition, plaintiff consistently attempted both to minimize the number of instances of plagiarism identified and to blunt the import of the similarities found in the theses of his advisees. Upon careful consideration of the testimony presented, the court finds that a faculty member who mentors graduate students has a responsibility to ensure that the thesis is properly supported and that such duty includes proper attribution for non-original work. The court does not accept plaintiff's explanation of what constitutes plagiarism, or plaintiff's assertion that the theses produced in the Department of Mechanical Engineering should be held to an academic standard separate from other departments and colleges within the university, albeit to a lower standard with regard to what constitutes plagiarism. Furthermore, the court finds that based upon his testimony, plaintiff lacks insight into the academic standards relied upon and espoused in the Meyer/Bloemer report.

{¶ 30} The court finds that the language from the report that plaintiff identified as defamatory includes the following: "faculty members who either failed to monitor the writing of their advisees' theses or simply ignored academic honesty, integrity and basically supported academic fraudulence" and faculty who have "blatantly chosen to

ignore their responsibilities by contributing to an atmosphere of negligence toward issues of academic misconduct in their own department.”

{¶ 31} Defendant contends that the words and phrases used were a protected expression of Meyer and Bloemer’s opinions. The court agrees. “[E]xpressions of opinion are ‘generally protected’ under Section 11, Article I of the Ohio Constitution.” *Condit v. Clermont Cty.Review* (1996), 110 Ohio App.3d 755, 759. (Citations omitted.) “To determine whether a statement is fact or opinion, Ohio courts employ a totality of the circumstances test. Under this test, courts should consider: ‘the specific language used, whether the statement is verifiable, the general context of the statement, and finally, the broader context in which the statement appeared.’ This is not a ‘bright-line’ test; instead, the standard is fluid. The facts of each case must be analyzed in the context of the general test. Each of the four factors should be addressed, but the weight given to any one will conceivably vary depending on the circumstances presented.” *Id.* (Internal citations omitted.)

{¶ 32} Applying that test to the instant case, the court must determine first if the average reader would view the defamatory statements identified by plaintiff as factual; that is, having a meaning that is readily ascertainable, or an opinion where the meaning is ambiguous. The statement that faculty members “either failed to monitor the writing of their advisees theses or simply ignored academic honesty, integrity and basically supported academic fraudulence” by its very syntax creates ambiguity. Academic honesty, integrity, and fraudulence are terms that are prone to various meanings and interpretations by the reader. Likewise, the statements are not readily verifiable. Dr. Bloemer testified that he did not have specific knowledge that plaintiff knew that plagiarism was occurring and that he purposefully ignored it. Rather, Dr. Bloemer asserted that a faculty member must always be held accountable if plagiarism occurs in the work product that the faculty member oversees.

{¶ 33} A court is required to analyze “the specific language to determine ‘whether a reasonable reader would view the words used to be language that normally conveys information of a factual nature or hype and opinion.’” *Cooke v. United Dairy Farmers, Inc.*, Franklin App. No. 04AP-817, 2005-Ohio-1539, ¶ 21; quoting *Vail*, *supra*, at 282. The phrasing used throughout the report reflects tremendous pride in and loyalty to the

university; e.g. “our noble mission of educating the future professional” and “our Ohio University,” as well as a reminder of the rigorous standards that characterize institutions of higher learning – “members of the academic community, students and faculty alike, are responsible for the integrity and originality of their work.” Dr. Bloemer and Meyer litter the report with flamboyant, emotional, and passionate phrases that signify to the reader that they hold strong opinions about the topic of plagiarism which they equate with a lack of academic integrity. “The writer’s figurative use of sarcasm and hyperbole in expressing her ideas militates in favor of classifying the article as one of opinion rather than fact. * * * [Using rhetoric] gives the impression that it is the writer’s opinion that is being expressed rather than fact.” *Sikora v. Plain Dealer Publ. Co.*, Cuyahoga App. No. 81465, 2003-Ohio-3218, ¶ 17-18.

{¶ 34} In *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, the court stated that “[w]e examine more than simply the allegedly defamatory statements in isolation, because the language surrounding the statements may place the reasonable reader on notice that what is being read is the opinion of the writer. Courts should assess the entire article or column. * * * Considering the allegedly defamatory statements in the context of the entire [writing], we are convinced that the average reader would be unlikely to infer that the statements were meant to be factual. The entire [writing] was a call to action and meant to cause outrage in the reader. * * * With the [writing] viewed as a whole, it is obvious that it was meant to be persuasive. As the trial court concluded, it was advocacy, not objective news. * * * We conclude that, under this factor, the statements would most likely be regarded as opinion, not fact, and this factor weighs strongly against actionability.”

{¶ 35} When the Meyer/Bloemer report is read in its entirety, the statements selected by plaintiff clearly reflect the drafters’ opinions. The tone of the report is personal and impassioned. The authors employ hyperbole and rhetoric, advocate a “no excuses” atmosphere, and charge the entire academic community with culpability. Indeed, the words read more as an impassioned speech pleading for a return to the highest levels of academic integrity rather than a recitation of facts compiled by investigators. When the report is viewed overall, despite the manner in which the language was crafted, one can clearly appreciate the broader context and realize that

the authors are commenting on the situation, are conveying their views to the provost, and are suggesting corrective action. When a writer identifies improprieties and suggests that they rise to a level that “calls into question the care, knowledge and attitude” of another professional, it is apparent that “the writer was expressing an opinion rather than relying on factual information.” *Sikora*, supra, ¶ 22-23.

{¶ 36} Dr. Bloemer’s refusal to rewrite the passages at the behest of the provost also persuades the court that the authors were completely invested in their opinions and felt passionately about expressing such, inasmuch as the issue was relevant to their profession, in which they clearly take great pride. The report focuses on three main areas: 1) plagiarism occurred; 2) both the thesis author and the faculty advisor share some culpability; 3) no one in the academic community should tolerate plagiarism. Meyer and Dr. Bloemer are expressing their opinions based upon their understanding of the mentoring process expected of faculty advisors. In the court’s view, the language chosen by Dr. Bloemer was consistent both with the opinion of a senior faculty member with passionate regard for upholding strict academic standards, and with Meyer’s view that even one instance of plagiarism is significant. Upon review, the court finds the language in the report identified by plaintiff as defamatory and the comment made by Dean Irwin constituted protected expressions of opinion which are not actionable as a matter of law.

{¶ 37} Furthermore, with respect to the provost’s dissemination of the report to the media, such publication occurred in response to a pending public records request, in response to which OU was required by law to release the document. See *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St.3d 33, 42, 2006-Ohio-6365, (records compiled during an investigation of a public employee are not excepted from disclosure under the Public Records Act); *State ex rel. James v. Ohio State Univ.*, 70 Ohio St. 3d 168, 169, 1994-Ohio-246 (finding that a state university is a state agency and public office under R.C. 149.011, that any exception to disclosure of records must be strictly construed, and that the statute favors disclosure). Thus, such publication was not actionable, as a matter of law.

{¶ 38} Finally, turning to the allegation that John Burns communicated to a reporter that the plagiarism issues impacted the decision not to renew plaintiff’s

contract, the court finds that there is insufficient evidence that Burns ever made such statement. Burns testified that he did not specifically recall every comment he made to the reporter, and that he did not recall making that specific statement; however, he did convey that he did not believe he would have connected the two events causally. The court finds that Burns testified candidly and that there was nothing in his demeanor to suggest that his testimony lacked credibility. In light of the fact that the decision for non-renewal was made well before the AHOC and Meyer/Bloemer reports surfaced, the court finds it unlikely that legal counsel for OU would make any comments of such a nature. For the foregoing reasons, the court finds that plaintiff has failed to establish his claim for defamation and, accordingly, judgment shall be rendered in favor of defendant.

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Defendant

Case No. 2006-06752

Judge Joseph T. Clark

JUDGMENT ENTRY

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. 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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SJM/cmd
Filed August 18, 2009
To S.C. reporter September 4, 2009