[Cite as *Watley v. Dept. of Rehab. & Corr.*, 2007-Ohio-4148.]

Court of Claims of Ohio
The Ohio Judicial Center
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RAYSHAN WATLEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2006-07741

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} On February 26, 2007, plaintiff filed a motion for summary judgment. On March 12, 2007, defendant filed both a response to plaintiff's motion and a cross-motion for summary judgment. On April 2, 2007, plaintiff filed a response to defendant's cross-motion. On April 20, 2007, an oral hearing was held on the motions. Plaintiff participated via telephone from the Ohio State Penitentiary (OSP).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff filed this case alleging libel. Specifically, plaintiff asserts that defendant's employee, Cynthia Davis, authored a false report wherein she stated that plaintiff was issued a conduct report for participating in an attempted riot. Plaintiff contends that as a result of the report, his security level was increased and he was transferred to OSP from the Southern Ohio Correctional Facility (SOCF). Defendant, Department of Rehabilitation and Correction (DRC), argues that although Davis made a misstatement about plaintiff's conduct report, plaintiff has failed to establish a prima facie case of defamation. Defendant further argues that even if plaintiff were able to establish a prima facie case, Davis' statements are protected by qualified privilege.

{¶5} Plaintiff submitted his own affidavit in support of his motion wherein he restated several of the allegations contained in his complaint.

{¶6} In support of its motion for summary judgment, defendant submitted the affidavit of Cynthia Davis, the unit management administrator for SOCF. Davis described her report as follows:

{¶7} "***

{¶8} "2. I filled out the Notice of Hearing Proposed Level 5 Security Placement form and authored the attachment that was served on [plaintiff] on December 7, 2006. ***.

{¶9} "3. The attachment contained the following statement: 'On July 19, 2006, [plaintiff] was issued a conduct report for participating in an attempted riot and attempting to cause physical harm to another.' The statement that [plaintiff] was issued a conduct report for participating in an attempted riot was a simple error. [Plaintiff] was in fact issued a conduct report for violations of Rules 1, 3, and 18. These violations include causing, or attempting to cause, serious physical harm to another, causing, or attempting to cause, the death of another, and encouraging or creating a disturbance.

{¶10} "***

{¶11} “5. The misstatement of fact contained in the attachment was a simple error. The report was written in good faith and in furtherance of my duties at the institution. I have never acted with, nor do I feel, any malice towards [plaintiff].

{¶12} “6. To my knowledge, apart from [plaintiff] himself, the Notice of Hearing for the Proposed Level 5 Security Placement was only disseminated to those DRC employees who were involved in the Security Placement hearing and overall process as part of their official duties ***.”

{¶13} “7. [Plaintiff] raised the issue of the erroneous statement at his Security Placement hearing. The entire committee conducting the hearing, of which I was a member, was made aware of the misstatement. [Plaintiff] was specifically advised at his hearing that this misstatement would not play any part in the committee’s decision regarding his security placement. Indeed, the error contained in the Notice of Hearing was not a factor in the committee’s decision to recommend increased security status for [plaintiff].

{¶14} “ ***.”

{¶15} “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 expose him to public hatred, contempt, ridicule, shame or disgrace ***.’ *McCartney v. Oblates of St. Francis deSales* (1992), 80 Ohio App.3d 345, 353. As suggested by the definition, a publication of statements, even where they may be false and defamatory, does not rise to the level of actionable defamation unless the publication is also unprivileged. Thus, the threshold issue in such cases is whether the statements at issue were privileged or unprivileged publications.” *Sullivan v. Ohio Dept. of Rehab.& Corr.*, Ct. of Cl. No. 2003-02161, 2005-Ohio-2122, ¶8.

{¶16} Privileged statements are those that are “made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has

a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances fairly warranted by the occasion and duty, right or interest. The essential elements thereof are good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, publication in a proper manner and to proper parties only." *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244.

{¶17} Furthermore, a qualified privilege can be defeated only by clear and convincing evidence of actual malice. *Bartlett v. Daniel Drake Mem. Hosp.* (1991), 75 Ohio App.3d 334, 340. "Actual malice" is "acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity." *Jacobs v. Frank* (1991), 60 Ohio St.3d. 111, 116.

{¶18} Based upon the unrebutted affidavit testimony of Cynthia Davis, the only reasonable conclusion to draw is that the statements contained in the "Notice of Hearing" and attachment thereto prepared by Davis do not rise to the level of "actual malice" and are protected by a qualified privilege. Therefore, the alleged defamatory statements were privileged as a matter of law. Accordingly, it is recommended that plaintiff's motion for summary judgment be denied and that defendant's motion for summary judgment be granted and judgment rendered in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

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MR/cmd	

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To S.C. reporter August 15, 2007