

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Stedson R. McIntyre, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 12AP-1062
 : (Ct. of Cl. No. 2011-11394)
 Ohio Bureau of Workers' Compensation, :
 : (REGULAR CALENDAR)
 Defendant-Appellee. :

D E C I S I O N

Rendered on June 6, 2013

Stedson R. McIntyre, pro se.

Mike DeWine, Attorney General, *Randall W. Knutti* and
Emily M. Simmons, for appellee.

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} Stedson R. McIntyre is appealing from the summary judgment granted in his lawsuit against the Ohio Bureau of Workers' Compensation ("BWC"). He assigns two errors for our consideration:

FIRST ASSIGNMENT OF ERROR: THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANT BUREAU OF WORKERS-COMPENSATION ON PLAINTIFF STEDSON R. MCINTYRE COMPLAINT FOR DEFAMATION AND FALSE LIGHT DEFAMATION.

SECOND ASSIGNMENT OF ERROR: THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF'S

**MOTION FOR SUMMARY JUDGMENT FOR FALSE LIGHT
DEFAMATION AND GRANT SUMMARY JUDGMENT IN
FAVOR OF APPELLEE.**

{¶ 2} For many years McIntyre purchased information regarding workers' compensation claims and claimants from a BWC employee, Marlene Woodruff. Woodruff was the subject of a criminal investigation and ultimately entered a guilty plea to a charge resulting from the investigation.

{¶ 3} As a result of the investigation, letters were sent to claimants to advise them that their private workers' compensation information may have been accessed. Some of the claimants responded negatively, even to the point of filing a lawsuit against the BWC.

{¶ 4} Because McIntyre had been purchasing BWC information from Woodruff, his name was included in media reports about the "scandal." McIntyre always asserted that he was permitted to access such records because he was regularly hired by employers to investigate workers' compensation claimants to see if the claimants were cheating the workers' compensation system. At the time, employers had extensive rights to access BWC records to defend against workers' compensation claims.

{¶ 5} Following media coverage of the situation, McIntyre filed a lawsuit in the Court of Claims of Ohio alleging that he had been defamed and placed in a false light by letters the BWC sent to claimants regarding their private information being accessed.

{¶ 6} The Court of Claims' judge who was assigned to McIntyre's case granted summary judgment for the BWC because the judge found that the letters were privileged communications and that the BWC's privileged right to communicate with the claimants in those privileged letters was not defeated by clear and convincing proof of actual malice. The trial court reached the conclusion that the letters and associated e-mails were privileged communications by following the dictates of *Hahn v. Kotten*, 43 Ohio St.2d 237 (1975). Privileged statements are those that are:

"[M]ade 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, and publication in a proper manner and to proper parties only."

(Emphasis deleted.) *Id.* at 244, quoting 50 American Jurisprudence 2d, Libel and Slander, Section 195, at 698.

{¶ 7} The trial court was clearly correct to find the letters and associated e-mails to be privileged communications.

{¶ 8} In finding that McIntyre had not defeated the privilege, the trial court followed *Bartlett v. Daniel Drake Mem. Hosp.*, 75 Ohio App.3d 334 (1st. Dist.1991). The trial court was correct to find evidence was lacking that the BWC acted with actual malice, namely knowledge that statements were false or with reckless disregard for the truth or falsity of the statements.

{¶ 9} As to most of his claims, McIntyre faces an independent bar. Actions in libel and slander are subject to a one-year statute of limitations. McIntyre filed his lawsuit on September 26, 2011. The letters to 49 workers' compensation claimants which informed them that their private records may have been accessed were sent January 2, 2008. A lawsuit alleging that the letters were defamatory had to be filed by January 2, 2009. The lawsuit McIntyre filed was over two years beyond the period allowed by the statute of limitations for a filing based upon the 49 letters.

{¶ 10} The reports in the news media about the accessing of BWC information by McIntyre were broadcast in 2008 and 2009. Actions for libel or slander based upon the media reports therefore had to be filed by the end of 2010 or were barred by the statute of limitations. Again, McIntyre's lawsuit was filed too late for libel and slander to be pursued.

{¶ 11} On February 19, 2010, a claims specialist from the BWC's Portsmouth office inquired of her supervisor about the possibility of McIntyre still using information obtained from former BWC employee Woodruff. Libel or slander claims based upon these inquires were also barred.

{¶ 12} False light claims are arguably subject to a two-year statute of limitations, so the only communication not barred by the pertinent statute of limitations was the false light claim based upon the e-mail sent by the claims specialist in Portsmouth and a response generated as a result of the e-mail. These two e-mails, as noted above, were

privileged communications. These communications were not known to be false by the individuals who sent them or sent with reckless disregard for the truth and hence sent with actual malice. Hence, the trial court correctly granted judgment for the BWC as to the only claims not clearly barred by the application of the pertinent statute of limitations based upon the e-mails being privileged communications for which the privilege was not waived or defeated.

{¶ 13} Both assignments of error are overruled. Both assignments of error having been overruled, the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

KLATT, P.J., and BROWN, J., concur.
