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2002 Survey of Rhode Island Law: Cases: Tort Law

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Tort Law. *Budget Termite & Pest Control, Inc. v. Bousquet*, 811 A.2d 1169 (R.I. 2002). The question whether a particular communication is defamatory or not is a question of law for the judge to decide, therefore summary judgment is appropriate if the defamatory nature of a communication is at issue and can be ascertained. The ordinary reader of a newspaper is not going to perceive defamatory remarks in the comics section.

FACTS AND TRAVEL

A cartoonist drew a cartoon for the Providence Journal Sunday comics section that depicted two comical pest control employees burning down a house in the course of a pest extermination.¹ One employee was shown to have a shirt with the words "Budget Pest Control" on it.² The plaintiff's president believed that the company had been defamed because a number of his employees and colleagues believed the reference was to the plaintiff's firm.³ The defendant cartoonist denied any knowledge of the company prior to drawing the cartoon, much less a desire to cast them in a poor light, even though he had done artwork for a rival firm in the past.⁴

After filing of the suit, defendant cartoonist moved for summary judgment and the motion justice granted the motion based, in part, on the placement of the alleged defamatory communication in the comics section of the paper.⁵ The court ruled that to attribute any defamatory interpretation to the communication would have required expanding the message well beyond the natural meaning of the cartoon.⁶ The motion justice also noted the cartoon referred to "Budget Pest Control," whereas, the plaintiff firm used the full name of "Budget Termite and Pest Control" in its advertising, signs and uniforms.⁷ Plaintiff appealed to the supreme court, which decided the issue summarily.⁸

1. *Budget Termite & Pest Control, Inc. v. Bousquet*, 811 A.2d 1169, 1171 (R.I. 2002).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

ANALYSIS AND HOLDING

In upholding the decision of the superior court motion justice to grant summary judgment, the Rhode Island Supreme Court rejected the plaintiff's contention that the name difference was negligible and the firm had been defamed.⁹ Although the court stated a communication causing damage to one's business reputation can be defamatory,¹⁰ it found the central fact to be the placement in the comics section of the paper.¹¹ Citing a number of cases, the court held the nature of cartoons is to impart an exaggerated opinion to a reader and, absent any undisclosed defamatory facts, which were not alleged,¹² no reasonable reader would construe the cartoon as a false statement against the plaintiff.¹³ In so deciding, the court held the "exaggerated comic tone" and the use of "budget" as a generic name for a firm doing low-quality work made any defamatory connection to the plaintiff to be "outlandish."¹⁴ The court upheld the summary judgment by affirming the question of whether a communication is defamatory or not is a matter of law for the judge to decide, not a factual issue for the jury to decide.¹⁵ Therefore, the cartoon was not defamatory as a matter of law and summary judgment was appropriate for this case.¹⁶

CONCLUSION

Summary judgment is appropriate for defamation actions when the motion justice decides that no reasonable person would perceive the communication in question to defame the plaintiff. A reasonable person will not normally find defamation in the comics section.

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9. *Id.* at 1173.

10. *Id.* at 1172 (citing *Swerdlick v. Koch*, 721 A.2d 849, 860 (R.I. 1998)).

11. *Id.*

12. *Id.* at 1174.

13. *Id.*

14. *Id.*

15. *Id.* at 1172 (citing *Beattie v. Fleet Nat'l Bank*, 746 A.2d 1129, 1142 (R.I. 2002)).

16. *Id.* at 1174-75.

Tort Law. *Cullen v. Auclair*, 809 A.2d 1107 (R.I. 2002). For both defamation and false light causes of action, opinions based on disclosed or non-defamatory facts are not actionable.

FACTS AND TRAVEL

Plaintiff, a member of the Lincoln Democratic Town Committee (Committee), attended the Committee meeting on October 27, 1997.¹ Defendant chaired the Committee.² Plaintiff began a “hotly contested debate” about the continued ability of the defendant to hold the position of chairman of the Committee after his recent election to the Lincoln Town Council.³ The defendant believed the participants in the meeting had become unruly and ended the meeting shortly thereafter.⁴ The Committee reconvened the meeting and removed the defendant from his position as chairman.⁵ The next day, the defendant contacted local newspapers to explain his actions in ending the meeting out of concern for the safety of others, but in doing so, referred to the plaintiff as acting in a “fit of rage” and like a “crazed person.”⁶ Based on these statements to the press, plaintiff filed suit alleging two separate torts: defamation and false light.⁷

The defendant filed a motion for summary judgment, which the motion justice granted after a hearing.⁸ The motion justice based the ruling on a determination that the defendant’s interviews to the press were opinion based on non-defamatory facts, and therefore were not supportive of either a defamation or a false light claim as a matter of law.⁹ The plaintiff appealed.¹⁰

ANALYSIS AND HOLDING

The Rhode Island Supreme Court first evaluated the defamation cause of action. To recover for defamation, the plaintiff must prove the utterance of a false and defamatory statement to a third

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1. *Cullen v. Auclair*, 809 A.2d 1107, 1109 (R.I. 2002).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.* at 1111-12.
 10. *Id.*

person that caused damage to the plaintiff.¹¹ The tort of defamation also requires fault; for most cases the standard is negligence,¹² but since this case involves the possible defamation and false light portrayal of a public official, the standard is that the statement must be defamatory and must be made with actual malice, as shown by clear and convincing evidence.¹³ The court concluded that the defendant's statements made to the press were not statements of facts, but statements of opinion.¹⁴

As opinions, the statements were actionable only if they were based on non-disclosed defamatory facts.¹⁵ Since the motion justice had concluded that the underlying facts in this case were disclosed and non-defamatory, the court held that the statements were to be afforded the "highest form of protection" under the United States Constitution and were not actionable.¹⁶ The court rejected plaintiff's contention that the reading public could not discern fact from opinion.¹⁷ Here, the court concluded that the defendant's statements, made in conjunction with the objectively reported facts of the debate during the meeting, would allow readers to conclude that the statements were opinion based on facts rather than statements of facts.¹⁸ In so concluding, the court reserved the use of the actual malice test from *New York Times v. Sullivan*¹⁹ for false statements against public officials to statements of fact, not statements of opinion.²⁰

On the second cause of action, false light, the plaintiff must show that the defendant published a false fact about the plaintiff that would infer "characteristics, conduct, or beliefs" objectionable to the reasonable man.²¹ The court followed reasoning similar to that of the defamation claim to conclude that, as statements of

11. *Id.* at 1110 (citing *Nassa v. Hook-SupeRx, Inc.*, 790 A.2d 368, 373 n.10 (R.I. 2002)).

12. *Id.*

13. *Id.* (citing *Lyons v. R.I. Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989)).

14. *Id.*

15. *Id.* (citing *Beattie v. Fleet Nat'l Bank*, 746 A.2d 717, 721 (R.I. 2000)).

16. *Id.* at 1110-11 (citing *Beattie*, 746 A.2d at 721).

17. *Id.* at 1111.

18. *Id.* (citing *Washington v. Smith*, 893 F. Supp. 60, 62 (D. D.C. 1995)).

19. 376 U.S. 254 (1964).

20. *Cullen*, 809 A.2d at 1111.

21. *Id.* at 1112 (citing *Swerdlick v. Koch*, 721 A.2d 849, 861 (R.I. 1998)).

opinion, the statements could not create such an inference and therefore could not support a false light claim as a matter of law.²²

In this case, the court held that the same protections for statements of opinion afforded to a defendant in a defamation suit should also be available in a false light claim.²³ Using different approaches for defamation and false light analysis could lead to successful false light claims for expressed opinions when they had failed as defamation claims because of constitutional protections, and this would be inconsistent.²⁴

CONCLUSION

The Rhode Island Supreme Court held that statements of opinion, if based on facts disclosed and non-defamatory, cannot support either defamation or false light claims and that these constitute matters of law for the trial court to decide.

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22. *Id.*

23. *Id.*

24. *Id.*