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Henry v. Media General Operations, Inc., 254 A.3d 822 (R.I. 2021)

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Tort Law. *Henry v. Media General Operations, Inc.*, 254 A.3d 822 (R.I. 2021). The Rhode Island Supreme Court decided an issue related to the standard of actual malice required to succeed in a defamation action in which allegedly false statements were made about a police officer. In Rhode Island, police officers are public officials for defamation actions, and the plaintiff bears the burden of proof when alleging the defendant acted with actual malice. Actual malice requires that the defendant either knew the statements were false or acted with reckless disregard as to whether they were false.

FACTS AND TRAVEL

On January 10, 2014, NBC 10 WJAR, owned and operated by Media General, aired a story on the evening news accusing several Cranston police officers of participating in what came to be known as the ‘Cranston Parking Ticket Scandal.’¹ Specifically, Mr. Taricani, an investigative reporter for WJAR, reported that the Police Union President, Captain Antonucci, told Captain Henry, an officer for the Cranston Police Department, to use his private cell phone to issue orders to Cranston Police officers.² Mr. Taricani reported Captain Henry ordered officers to issue overnight parking tickets in specific districts in retaliation against two City Councilmen who voted against the proposed police union contract.³ After WJAR aired the story, Mr. Taricani’s sources conceded they were not positive the police officer in question was Captain Henry;⁴ however, at the time of the story, Mr. Taricani believed the story about Captain Henry’s involvement to be true.⁵

Captain Henry, the plaintiff, commenced an action seeking damages against Media General, Mr. Taricani, and Mr. Taricani’s

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1. *Henry v. Media Gen. Operations, Inc.*, 254 A.3d 822, 827 (R.I. 2021).
 2. *Id.*
 3. *Id.*
 4. *Id.* at 830.
 5. *Id.* at 829.

sources alleging that the news report was false and defamatory.⁶ Captain Henry set forth four counts in his complaint: libel, slander, violation of Rhode Island General Laws section 9-1-28.1(a)(4),⁷ and intentional infliction of emotional distress.⁸ First, Captain Henry argued he should not be considered a public official for the purposes of a defamation action.⁹ Second, Captain Henry argued that Mr. Taricani and his sources acted with actual malice when making their statements.¹⁰

Defendants moved for summary judgement, arguing, to the contrary, that Captain Henry is a public official and, as such, would need to prove by clear and convincing evidence that the defendants acted with actual malice when making their statements.¹¹ The hearing justice granted the motion, finding that (1) Captain Henry was a public official and such determination was a matter of law and (2) Captain Henry failed to show that a jury could find actual malice despite taking all the evidence in the light most favorable to the plaintiff.¹² Plaintiff timely appealed that judgement.¹³ The Rhode Island Supreme Court affirmed the judgment of the Superior Court.¹⁴

ANALYSIS AND HOLDING

The Court organized its analysis into three parts when conducting its *de novo* review:¹⁵ (1) whether Captain Henry is a public official for a defamation action,¹⁶ (2) whether the defendants made the statements with actual malice,¹⁷ and (3) whether Counts Three and Four should fail.¹⁸

6. *Id.* at 826.

7. See 9 R.I. GEN. LAWS § 9-1-28.1(a)(4) (2023). Because the story “placed [him] before the public in a false position.” *Henry*, 254 A.3d at 847.

8. *Henry*, 254 A.3d at 828.

9. *Id.* at 827.

10. *Id.* at 840.

11. *Id.* at 833. For the purposes of the summary judgement motion only, the defendants conceded the statements were defamatory. *Id.* at 827 n.6.

12. *Id.* at 833-34.

13. *Id.*

14. *Id.* at 846.

15. *Id.* at 834.

16. *Id.* at 835.

17. *Id.* at 841-46.

18. *Id.* at 846-47.

A. *Public Official*

A public official is prohibited from recovering damages from defamation actions unless they prove such statements were made with actual malice.¹⁹ If Captain Henry was not a public official, he need not show malice, and his burden would be easier to meet.²⁰ The question of whether Captain Henry is a public official is preliminary to the finding of actual malice. The Court noted that such determination is a matter of law²¹ and noted the long history of both the Supreme Court and this Court holding that “government employees” are public officials when they have “substantial responsibility for or control over the conduct of government affairs.”²² The Court had previously determined in *Hall* that police officers are public officials under the test in *Rosenblatt*.²³ As such, the Court found no reason to deviate from precedent and held that Captain Henry is a public official for a defamation action.²⁴

B. *Actual Malice*

Concerning whether the defendants acted with actual malice, the Court conducted a longer analysis. The Court noted whether there is sufficient evidence in the record to support a finding of actual malice is also a question of law.²⁵ The Court must keep in mind the burden of proof required for a finding of malice and must determine there is evidence upon which a reasonable jury could find for the plaintiff.²⁶ The Court discussed that the First Amendment guarantees a commitment to the concept that debates on public issues and public officials should be uninhibited to the broadest

19. *Id.* at 838. *See also* *New York Times Co. v. Sullivan*, 376 U.S. 276, 726 (1964) (establishing the standard for recovery in defamation actions by public officials and noting public officials are required to meet a higher burden of demonstrating actual malice on the part of the defendant).

20. Instead, Captain Henry would need only show the statements were capable of being defamatory and were false; as such, he would have likely avoided summary judgement. *See generally* *New York Times Co.*, 376 U.S. at 715, 722.

21. *Henry*, 254 A.3d at 835. *See* *Hall v. Rogers*, 490 A.2d 502, 505 (R.I. 1985); *see also* *Rosenblatt v. Baer*, 383 U.S. 75, 86-88 (1966).

22. *Henry*, 254 A.3d at 835 (quoting *Rosenblatt*, 383 U.S. at 85).

23. *Id.*

24. *Id.* at 836-37.

25. *Id.* at 838.

26. *Id.*

extent possible.²⁷ In this context, for a statement to be made with actual malice, the person making the statement must have “knowledge that it was false” or have acted with “reckless disregard as to whether it was false.”²⁸ A court is *not* to consider this standard against what a reasonably prudent person would have done or consider if it were a deviation from professional standards, but instead, there must be evidence in the record to allow the factfinder to conclude the defendant had serious reasons to believe the statements may have been false.²⁹ More simply, actual malice requires some hint of ill will or intent to cause the resulting harm.³⁰

The plaintiff contended a jury could find actual malice in the action at hand for four reasons, including (1) Mr. Taricani disregarding Chief Palumbo’s denials constituted reckless disregard, (2) Mr. Taricani’s failing to speak to Captain Henry to confirm or deny the accusations was evidence of reckless disregard, (3) Mr. Taricani’s decision to pull the story was evidence of reckless disregard, and (4) Mr. Taricani’s sources having a motive against Captain Henry supported an “inference of malice.”³¹ The Court noted these arguments incorrectly applied a negligence standard to the finding of actual malice when instead, this action requires the plaintiff to meet a much higher standard and demonstrate the defendant had knowledge of the falsity or acted with reckless disregard as to whether it was false or not.³²

The Court reasoned Mr. Taricani believed he had used credible sources. The fact that the sources may have had some animosity toward Captain Henry was insufficient to make Mr. Taricani’s belief the sources were credibly unreasonable.³³ Additionally, the Court reasoned Chief Palumbo’s denials regarding Captain Henry’s involvement were insufficient to cause this level of doubt; officials commonly deny involvement to absolve themselves of

27. *Id.* at 839.

28. *Id.* at 841.

29. *Id.* at 842.

30. See John B. Lewis & Bruce L. Ottley, *New York Times v. Sullivan at 50: Despite Criticism, the Actual Malice Standard Still Provides “Breathing Space” for Communications in the Public Interest*, 64 DEPAUL L. REV. 1, 21 (2014) (discussing the actual malice standard).

31. *Henry*, 254 A.3d at 841.

32. *Id.* at 841-45.

33. *Id.* at 842.

responsibility.³⁴ Furthermore, the Court found Mr. Taricani's failure to investigate further before publishing—even if not contacting Captain Henry or not confirming information from his sources did constitute a deviation from professional standards—is insufficient to support a finding of actual malice. In addition, the Court noted prior case law supports the retraction of a story does not constitute an omission of guilt but, in fact, usually supports a finding that there was *not* any actual malice.³⁵ Lastly, the Court found insufficient evidence to find any malice on the part of the other defendants, who were Mr. Taricani's sources.³⁶ The Court reasoned being a disgruntled employee, failing to further confirm rumors before repeating them, or having a poor opinion of the plaintiff is not enough to support that the allegedly defamatory statements were made with actual malice on the part of the sources.³⁷ The Court took great care to explain the importance of the high standard of malice when considering statements made about public officials and the importance of protecting free discourse in the public realm, citing several supreme court decisions.³⁸

C. *Remaining Tort Claims*

Regarding Captain Henry's other tort claims (being placed in a false position before the public and intentional infliction of emotional distress), the Court held these claims must also fail. Case law has established that, in media law, a plaintiff cannot "recycle" a failed defamation claim into a tort claim premised on the exact same facts.³⁹ Consequently, the Court held the hearing justice did not err in finding for the defendants for summary judgment on all counts.⁴⁰

34. *Id.* at 843.

35. *Id.* at 844.

36. *Id.* at 845-46.

37. *Id.*

38. *Id.* See *Harte-Hanks Commc'n v. Connaughton*, 491 U.S. 657, 686 (1989); see also *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968); compare *NY Times Co.*, 376 U.S. at 727.

39. *Henry*, 254 A.3d at 846-47.

40. *Id.* at 847.

COMMENTARY

This case addresses the often-delicate balance between protecting the right to criticize public officials encapsulated within the right to freedom of speech and the right of individuals to be free from false and defamatory public statements.⁴¹ Almost apologetically, the Court explained their decision was an example of “*dura le sed lex*”: it is a harsh law, but it is the law.⁴² In Rhode Island, judicial interpretation of the State’s constitution has resulted in the common law creating a very high burden for public officials seeking to recover in defamation actions. The Court explained their decision is not without sympathy for public officials alleging they were defamed, but some individuals must suffer as a result of this “daunting burden” placed on those in public roles.⁴³ The Court relied on analysis by Learned Hand and referred to the test established in *Rosenblatt*,⁴⁴ both of which point to the importance of courts broadly interpreting the First Amendment as it relates to criticism of public officials and public issues.

Defamation actions must be difficult for public officials to succeed upon in order to protect the notion of freedom of speech which is so integral to the American political system. Public officials voluntarily surrender themselves to the public eye and should not be allowed to quell freedom of speech merely because the public, and particularly the press, criticizes their actions. Creating a lower standard would inhibit the press from pursuing stories which they believe to be true. As such, negligence is not the proper standard here. The Court was decidedly correct in following the precedent set forth in *New York Times Co.*: public officials cannot recover damages in defamation actions without showing actual malice, and actual malice requires showing the defendant either knew the

41. Judiciaries in many other countries disagree with the outcome of the balance struck here in the United States, noting public officials, too, have a right to maintain their character. Interestingly, however, many of these countries also do not provide immunity to public officials for defamatory statements made in the course of their campaigns or made when performing duties in their public capacity. See generally Michael S. Grimsley, Note, *Defamation of Public Figures: Is New York Times Outdated?*, 10 FLA. J. INT’L L. 293, 305-11 (1995).

42. *Henry*, 254 A.3d at 847.

43. *Id.* at 826.

44. *Id.* at 835.

statements were false or had reckless disregard as to whether they were false.⁴⁵

Tort law, in itself, hinders free speech.⁴⁶ The people forfeit some individual protections to ensure the perseverance of the right of free speech relating to matters of public concern. If the courts failed to keep the standard established in *New York Times Co.* or allowed a negligence standard of what a reasonably prudent person would do in the situation, that interpretation would challenge the very purpose of the First Amendment as it relates to the criticism of public officials. Giving priority to an individual public official's rights in these types of defamation actions would inherently deprive the public of benefits derived from the freedom of speech.

Furthermore, the Court correctly affirmed police officers are public officials for defamation actions. The Court correctly reasoned, under *Rosenblatt*, a person is a public official when the public has an "independent interest in the qualifications of the person."⁴⁷ Because police officers have the authority to use force which can result in "deprivation of constitutional rights, and personal freedoms," they qualify under the test in *Rosenblatt* as well as under the doctrine embodied in *New York Times Co.*⁴⁸ While not without criticism, the *New York Times Co.* standard controls precedent; a change in the actual malice standard may not arise from a state court decision.

CONCLUSION

The Rhode Island Supreme Court held a police officer is a public official for defamation actions. Furthermore, defamation actions brought by a public official requires the plaintiff acted with actual malice. Plaintiff must demonstrate the defendant either had actual knowledge the statements were false or acted with reckless disregard as to whether they were false. Proving reckless disregard is a heavy burden; thus, plaintiffs must do more than show the defendant acted not in adherence with professional standards or was not

45. *Id.* at 836.

46. David A. Anderson, *First Amendment Limitations on Tort Law*, 69 BROOKLYN L. REV. 755, 775-77 (2004) (discussing the many ways in which liability under tort law creates economic barriers to true freedom of speech).

47. *Henry*, 254 A.3d. at 836.

48. *Id.* at 836-37.

ordinarily prudent. Plaintiffs must demonstrate the defendant had legitimate doubts as to the truth of the statements or acted will ill will. Critically, the rights guaranteed by the First Amendment are integral to the American political system.

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