

CASE NO. A06-1021

State of Minnesota
In Court of Appeals

PATRICK LONGBEHN,

Appellant,

vs.

ROBIN SCHOENROCK,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF ISSUES

Is the jury's finding of fact, that Defendant did not defame Plaintiff, supported by the evidence?

The trial court held in the affirmative.

Is there any evidence to support any damages award to Plaintiff?

The trial court held in the negative.

PROCEDURAL POSTURE

This is a defamation action. Although it had been originally joined with an employment contract claim against the City of Moose Lake and another defamation action against another individual defendant, those actions were dismissed by the Court on motions. Plaintiff proceeded to trial on the remaining claim against this individual defendant.

The jury returned a special verdict that found Defendant had used the term "Pat the Pedophile" but that Defendant had never accused Plaintiff of being a pedophile. The jury awarded Plaintiff nothing for past medical expenses (to include the hospitalization at Miller-Dwan Medical Center in Duluth in January, 2002).

Defendant moved for entry of Judgment after Trial (styled by Defendant as a motion for judgment notwithstanding the verdict, but re-cast by the court, since the hearing was held after the

effective date of pertinent amendments to the Rules of Civil Procedure for the District Courts), and the court granted his motion, entering judgment in favor of Defendant.

STATEMENT OF FACTS

Plaintiff obtained employment as a probationary police officer with the City of Moose Lake beginning in May of 2000. Trial Transcript (hereinafter "Tr."), p. 82. He secured this position after completing training and sending out 100-150 applications. Tr. p. 151. This was a full-time position he took when he was about 34 years old. Tr. p. 83.

While employed in his probationary capacity as a police officer by Moose Lake, Plaintiff met and began dating Melissa Jensen, a young woman living in Moose Lake aged 18 years. Tr. p. 83. Ms. Jensen moved in with Plaintiff and lived with him in his Moose Lake home beginning in October of 2000, some four or five months after Plaintiff's employment with the Moose Lake Police Department had begun. Tr. p. 140. Ms. Jensen's parents disapproved of the relationship and refused to speak with Plaintiff because of it. Tr. pp. 140 -1.

On January 25, 2001, Plaintiff was terminated from his probationary position as police officer for the City of Moose Lake. Tr. p. 94. A letter from the City Administrator (Trial Exhibit #3) formally notified Plaintiff of his termination. It made no mention of Plaintiff being called "Pat the Pedophile" as a reason for the termination. Tr. p. 36. Indeed, there is no evidence that anyone has ever told any of Plaintiff's prospective employers, at any time, of Plaintiff ever being called "Pat the Pedophile" or anything similar. Tr. p. 152.

Police Chief Heaton never heard Defendant call Plaintiff "Pat the Pedophile" but had heard, from school officials, that the schoolkids in the community were calling Plaintiff by that nickname. Tr.38-9. Chief Heaton never believed Plaintiff was a pedophile. Tr. p. 39. There is no evidence that anyone ever believed or thought Plaintiff was actually a pedophile.

Plaintiff never heard Patrick Schoenrock, the Defendant, call him "Pat the Pedophile". Tr. p. 162. Plaintiff contends Defendant uttered those words to a friend of a friend of Plaintiff's, Charles Wilson, in a telephone conversation between Wilson and Mr. Schoenrock occurring New Year's Eve, 2000-2001. Wilson testified, by deposition read at trial, that Mr. Schoenrock was planning to alert area law enforcement authorities to Wilson's transporting Mr. Schoenrock's juvenile step-daughter from a party after Wilson had been drinking, and described Plaintiff as one of those law enforcement officers, calling him "Pat the Pedophile" as he did so. Tr. pp. 43-50. This is the only alleged conversation relied upon by Plaintiff for his claim of defamation. There is no evidence of any other conversation in which Plaintiff contends Defendant called him "Pat the Pedophile."

Mr. Schoenrock denies ever calling Plaintiff "Pat the Pedophile". Tr. pp. 69, 72. There is no evidence Defendant ever discussed Plaintiff in any conversation with any city employee, or with anyone else besides Wilson on New Year's Eve. As mentioned above, Chief Heaton never heard Defendant call Plaintiff "Pat the Pedophile". As mentioned above, Plaintiff never heard Defendant call him "Pat the Pedophile." There is no evidence anything Defendant ever said about Plaintiff was a factor in Plaintiff's termination by the City of Moose Lake.

After losing his position with the City of Moose Lake, Plaintiff found employment with the State of Minnesota Department of Corrections as a probationary corrections officer at the Department's Faribault facility. He was joined there by Melissa Jensen, his live-in girlfriend, who was also a probationary corrections

officer at the same facility. There was no evidence of what Plaintiff was paid in this job.

Plaintiff was terminated from that position with the Department of Corrections in January, 2002, for failing to follow instructions and for inappropriate behavior towards Ms. Jensen while the two were on duty - he had assaulted her, threatened her and called her obscene names on more than one occasion. Trial Exhibit #2; Tr. pp. 143-5. The instructions he failed to follow included failing to cooperate with the investigation by the Department of Corrections. Tr. 145-6. Nothing in the decision to terminate Plaintiff from his employment there had anything to do with Plaintiff's time at the City of Moose Lake Police Department. Tr. p. 149.

At about the time Plaintiff began having trouble with Melissa Jensen and with his employment by the Department of Corrections in late 2001, he was the subject of an Order for Protection issued

by Carlton County District Court Judge Robert C. Macaulay. After Judge Macaulay's Order issued, Plaintiff was hospitalized at Miller-Dwan Medical Center in Duluth for emotional problems. Tr. pp. 109-110, 141-2, 146, 149. Plaintiff has testified he decided to enter Miller-Dwan when the Order for Protection was served. Tr. p. 165. Plaintiff was released from Miller-Dwan Medical Center in mid-January, 2002, and has had no care or treatment of any sort for his emotional troubles since then. Tr. p. 166.

The Plaintiff's damages witness testified that he thought any emotional problem Plaintiff suffered as a result of his problems with the City of Moose Lake was moderate. Deposition of Richard W. Hoffman, p. 23 (February 26, 2003). Dr. Hoffman also admitted that Plaintiff's loss of employment with the Department of Corrections, the issuance of the Order for Protection and the end of Plaintiff's relationship with Melissa Jensen could

serve as factors in bringing about the hospitalization, and that these were the culmination of events leading to Plaintiff's hospitalization. Hoffman deposition, pp. 31 -4.

Other than inquiry of Defendant regarding his occupation, there was no evidence produced at trial about his financial condition or means of paying any judgment entered against him. There was no contention Defendant attempted to profit from any of the actions attributed to him by Plaintiff.

Since losing his job with the Minnesota Department of Corrections, Plaintiff has sent out only two resumes for police work. Tr. p. 166. Plaintiff contends he lost interest in seeking police work. Tr. p 167. Little evidence of Plaintiff's earnings at the various jobs he has held since leaving the Moose Lake Police Department was offered at trial.

ARGUMENT

I. STANDARD OF REVIEW.

II. PLAINTIFF WAS NOT DEFAMED.

III. THERE IS NO EVIDENCE TO SUPPORT ANY DAMAGES
AWARD TO PLAINTIFF.

- A. No relationship exists between anything ever said by Defendant and Plaintiff's loss of any job, or his emotional disturbance
- B. Plaintiff alleges no action by Defendant giving support to a punitive damage award

I. STANDARD OF REVIEW

This Court reviews the evidence to determine whether any reasonable basis exists to support a finding in Plaintiff's favor. The trial court correctly styled Defendant's post-trial motion as one for Judgment after Trial. Such motions are to be granted by the trial court where there is no legally sufficient basis for a jury to find for Plaintiff. MN R. Civ. P. 50.01(a). Put differently, Defendant's motion ought to be granted

where there is no reasonable basis in the record for a contrary result. O'Neil v. Wells Concrete Products, 477 N.W.2d 534, 538 (Minn. App. 1991). This Court's review of Judge Wolf's order is de novo. Diesen v. Hessburg, 455 N.W.2d 449 (Minn. 1990).

II. PLAINTIFF WAS NOT DEFAMED

The jury explicitly found, consistent with the evidence at trial, that Plaintiff was never accused of being a pedophile. While Mr. Schoenrock may have uttered the term in the single telephone conversation, he was not accusing Plaintiff of any wrongdoing. In the context of this conversation, it is clear Mr. Schoenrock was not accusing Plaintiff of any wrongdoing, harming Plaintiff's reputation or otherwise lowering him in the community's estimation. Plaintiff's reliance on Baufield v. Safelite Glass Corp., 831 F. Supp. 713 (D. Minn. 1993) is misplaced - not only because the

decision lacks precedential effect in this Court, but also because Plaintiff was not accused of committing a crime in this case. In the context of this conversation, no such accusation was made. Gaare v. Melbostad, 186 Minn. 96, 242 N.W. 466 (1932).

Regardless, without proof of harm or damage, a defamatory statement is not actionable. As is shown below, there is no harm or damage flowing from Mr. Schoenrock's single statement made to Wilson, and so there is no actionable defamation. The jury's finding that no accusation of a crime was made removes the claim from being one for defamation of any sort, much less defamation per se. Without proof of damage or harm, there is no cause of action. Weissman v. Sri Lanka Curry House, 469 N.W.2d 471 (Minn. App. 1991); Beatty v. Ellings, 285 Minn. 293, 173 N.W.2d 12 (1969), cert. den. 399 U.S. 917 (1970). With no damage, and no accusation of misconduct in any event, Judge Wolf

was clearly correct in entering judgment for Mr. Schoenrock.

III. THERE IS NO EVIDENCE TO SUPPORT ANY DAMAGES
AWARD TO PLAINTIFF.

A. No relationship exists between anything ever said by Defendant and Plaintiff's loss of any job, or his emotional disturbance

Plaintiff must show that the statement made by Defendant was a direct, or proximate, cause of Plaintiff's economic damages, an unbroken sequence for the original alleged acts to the consequences. Christianson v. Chicago, St. Paul, M & O. Ry., 67 Minn. 94, 97, 69 N.W. 640 , 641 (1896).

Plaintiff has failed to produce evidence that Defendant has made any statements that affected his job status or emotional difficulties. Instead, the record demonstrates that Plaintiff's emotional troubles and inability to stay employed arise directly from his own personal actions and circumstances.

1. Plaintiff has not shown that Defendant had anything to do with his job termination.

The only allegedly defamatory statement upon which Plaintiff has based this lawsuit is a single telephone conversation between Defendant and a third party. Not only did Plaintiff fail to show that the conversation had an effect on his employment status, but the evidence instead shows that there were all sorts of other reasons to discharge Plaintiff from his duties.

Police Chief Heaton testified that not only did he not believe Plaintiff to be a pedophile, but also that he had not terminated Plaintiff because he believed Plaintiff to be a pedophile. Tr. P. 39. Plaintiff was not terminated from the City of Moose Lake because someone thought he was a pedophile.

Plaintiff later secured a position with the State of Minnesota Department of Corrections in Faribault, Minnesota. He was subsequently fired

from that job for reasons completely unrelated to his Moose Lake employment. Plaintiff had been terminated because he assaulted and threatened another employee. Tr. Ex. #2; Tr. Pp. 143 -5.

There is no evidence that either the City of Moose Lake or the State of Minnesota communicated with Defendant at any time regarding Plaintiff. There is no evidence that the City of Moose Lake or State of Minnesota had any knowledge whatsoever of that conversation involving Defendant.

On the other hand, there is substantial evidence that Plaintiff engaged in various stages of inappropriate behavior during his employment with each of these employers, not the least of which was an assault upon a co-employee. Tr. Ex. #2; Tr. Pp. 143 -6.

Because Plaintiff did not prove a causal nexus between a single allegedly defamatory statement and all of his job problems, he should not be permitted to recover any economic damages for his wage loss.

2. Plaintiff has not shown that Defendant had anything to do with his emotional problems.

As previously discussed, Plaintiff was having relationship problems with Melissa Jensen in late 2001. After the Order for Protection was issued, Plaintiff decided to go to Miller-Dwan Medical Center in Duluth, where he was then hospitalized for emotional problems. Tr. pp. 109-110, 141-2, 146, 149, 165. Plaintiff was released in mid-January of that same year, after spending only a short time in treatment. Tr. p. 166. He has not received any treatment for "emotional troubles" since then. Id. That short stint in Miller-Dwan Medical Center consists of the entirety of medical treatment Plaintiff has received for his claimed "emotional distress" arising out of the alleged defamatory statement which is the subject of this lawsuit.

Plaintiff has not shown that the original act of Defendant (the single statement) led, in an

unbroken sequence, to his job problems or psychological difficulties. Christianson v. Chicago, supra. Instead, the record is replete with Plaintiff's relationship problems, anger issues, and poor choices. Any "sequence" that may have existed was certainly broken by the several unfortunate personal decisions that Plaintiff made and for which Defendant should not be held responsible.

B. Plaintiff has failed to allege any action of Defendant that would support a punitive damage award.

Minnesota Statute Sec. 549.29 permits the award of punitive damages in civil actions "only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Subd. 1(a) (2005). This "clear and convincing evidence" standard can be satisfied only where the proof shows that the truth of the asserted facts is highly probable. Weber v. Anderson, 269 N.W.2d 892 (Minn. 1978). So, in

order to merit an award of punitive damages, Minnesota law requires Plaintiff to show that Defendant acted with deliberate disregard as defined by statute:

b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

MN Stats. Sec. 549.29 Subd. 1(b) (2005) (emphasis added)

In order to justify submitting the question of punitive damages to the jury, Plaintiff was supposed to have shown by clear and convincing evidence that not only did Defendant make the allegedly defamatory comment, but that he did so in a deliberate effort to harm Plaintiff. Minn.

Stats. Sec. 549.20, subd. 1 (2005) (emphasis added).

The record shows that Defendant did not make the allegedly defamatory comment in a deliberate effort to harm Plaintiff. Instead, the evidence demonstrates that Defendant did not accuse Plaintiff of being a pedophile; Defendant meant no harm to Plaintiff; Defendant made a brief statement that lasted only a moment; and Defendant had no idea he was affecting Plaintiff at all.

If Defendant did not accuse Plaintiff of being a pedophile, then Defendant certainly did not make the statement in a deliberate effort to harm Plaintiff or to disregard his rights. Rather, Defendant used the term in an effort to identify Plaintiff to a third party, not to accuse him of criminal activity.

Absent a deliberate effort to disregard Plaintiff's rights or safety, punitive damages will not lie. Minn. Stats. Sec. 549.20, subd. 1 (2005).

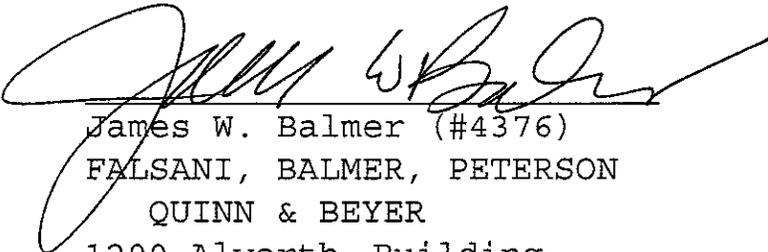
Plaintiff has failed to produce any evidence of Defendant's intentional or deliberate efforts to disregard Plaintiff's rights or safety.

CONCLUSION

Plaintiff's police career with Moose Lake ended for reasons unrelated to the single telephone conversation Mr. Schoenrock had with Mr. Wilson. The misfortunes he suffered after leaving the Moose Lake Police Department had nothing to do with Mr. Schoenrock. The jury found Mr. Schoenrock never accused Plaintiff of anything. This case ought to be permitted to come to a final end. Judge Wolf's order dismissing it ought to be upheld.

Respectfully submitted,

Dated: 08-29-06


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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).