

STATE OF MINNESOTA

IN COURT OF APPEALS

Patrick Longbehn,

Appellant,

v.

A06-1021

Robin Schoenrock,

Respondent.

APPELLANT'S REPLY BRIEF

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LEGAL ISSUES

1. WHETHER RESPONDENT'S STATEMENT AT PAGE 7 OF RESPONDENT'S BRIEF THAT "THERE IS NO EVIDENCE ANYTHING DEFENDANT EVER SAID ABOUT PLAINTIFF WAS A FACTOR IN PLAINTIFF'S TERMINATION BY THE CITY OF MOOSE LAKE" IS IN ERROR AND WHETHER THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH A "CAUSAL NEXUS" BETWEEN RESPONDENT'S STATEMENT AND APPELLANT'S DAMAGES.
2. WHETHER RESPONDENT'S CLAIM AT ISSUE II ON PAGE 12 OF RESPONDENT'S BRIEF THAT "PLAINTIFF WAS NOT DEFAMED" IS IN ERROR.
3. WHETHER THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO RELY UPON TO CONCLUDE THAT RESPONDENT WAS RESPONSIBLE FOR APPELLANT'S EMOTIONAL PROBLEMS.
4. WHETHER THE PUNITIVE DAMAGES STATUTE REQUIRES THE APPELLANT TO SHOW "A DELIBERATE EFFORT TO HARM" AS ALLEGED BY RESPONDENT.

ARGUMENT

1. **WHETHER RESPONDENT'S STATEMENT AT PAGE 7 OF RESPONDENT'S BRIEF THAT "THERE IS NO EVIDENCE ANYTHING DEFENDANT EVER SAID ABOUT PLAINTIFF WAS A FACTOR IN PLAINTIFF'S TERMINATION BY THE CITY OF MOOSE LAKE" IS IN ERROR AND WHETHER THERE IS A "CAUSAL NEXUS" BETWEEN RESPONDENT'S STATEMENT AND APPELLANT'S DAMAGES.**

In Appellant's Brief, at page 9, Section III, A, Appellant demonstrated through the testimony of Chief Heaton that the name coined by Respondent was one of the main reasons for Appellant's termination. Further, at Appellant's Brief, Section III, B, page 9 – 11, Appellant was able to show that the Respondent coined the name, "Pat the Pedophile," and that he was able to transmit it to the community through his family.

2. **WHETHER RESPONDENT'S CLAIM AT ISSUE II ON PAGE 12 OF RESPONDENT'S BRIEF THAT "PLAINTIFF WAS NOT DEFAMED" IS IN ERROR.**

In determining this issue, we must first look to Black's Law Dictionary.

Under Defamation, it states:

"Holding up of a person to ridicule, scorn, or contempt in a respectable and considerable part of the community; may be criminal as well as civil. Includes both libel and slander.

Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy. ... The unprivileged publication of false statements which naturally and proximately result in injury to another. ...

A communication is defamatory if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably understands that it was intended to express. ..."

Black's Law Dictionary, 5th Edition, West, 1979, Page 375-76. Black's further states, in

regards to defamatory per se, the following:

“In respect of words, those which by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person to whom they are applied.”

Black’s Law Dictionary, 5th Edition, West, 1979, Page 376.

This matter involved an action of slander, as only the spoken word was used against Appellant. Once again looking to Black’s, we find the definition of slanderous per se:

“Slanderous in itself; such words as are deemed slanderous without proof of special damages. Generally an utterance is deemed ‘slanderous per se’ when publication (a) charges the commission of a crime; (b) imputes some offensive or loathsome disease which would tend to deprive a person of society; (c) charges a woman who is not chaste; or (d) tends to injure a party in his trade, business, office, or occupation. ...”

Black’s Law Dictionary, 5th Edition, West, 1979, Page 1245.

In this case, Respondent was found by the Jury to have called Appellant the name, “Pat the Pedophile.” While it is the position of Respondent and the Trial Court that this statement does not “accuse” Appellant of a crime, it does impute serious sexual misconduct and also injures Appellant in his occupation.

First, calling Appellant a “pedophile” is not an innocent misunderstanding of terms. A pedophile is defined as

“An adult who engages in pedophilila.”

Garner, B.A., Black’s Law Dictionary, Abridged Seventh Edition, West, 2000.

Pedophilia is defined in Black’s as:

“1. An adult’s sexual disorder consisting in the desire for sexual gratification by molesting children, esp. prepubescent children. 2. An adult’s act of child molestation. Pedophilia can but does not necessarily involve sexual intercourse. Cf Pederasty.”

By calling Appellant a pedophile, Respondent was imputing an act of serious sexual misconduct (molestation) to Appellant. A “statement is defamatory per se if it imputes serious sexual misconduct to the subject of the statement.” Baufield v. Safelite Glass Corp., 831 F.Supp. 713, 717 (D.Minn. 1987); Ritchie v. Paramount Pictures, 544 N.W.2d 21, 25, n.3 (Minn. 1996); see also Restatement (Second) of Torts, section 574. The words pedophile and pedophilia cannot be given any innocent interpretation or meaning. Regardless of the context in which the word pedophile is used it will not have an innocent meaning. By definition the use of the word pedophile accuses Appellant of pedophilia, a heinous crime. There is sufficient basis for the award by the Jury based upon a determination that defamation per se did occur in this matter.

Next, it must be remembered that at the time Respondent called Appellant this name, he was referring to Appellant in his capacity of a police officer for the City of Moose Lake. This was made clear through the testimony of witness Charles Wilson.

Q: “Okay. And in those statements, you used the phrase, ‘Pat the Pedophile.’ Had you heard that phrase before?”

A: “Just on the phone when I was talking to Mr. Schoenrock that night.”

Q: Okay. And what context was that brought up?”

A: “He said some about he had talked to ‘Pat the Pedophile,’ and he knew where the house - - we were at a party, and he knew where the house was because he had heard from Pat.”

Q: “Okay. And in your statement you indicated that it was Pat, the cop in Moose Lake, when you asked for clarification, is that right?”

A: “Yes.”

Q: “Okay. Who was Pat, the cop in Moose Lake, at that time?”

A: “The only Pat, the cop, that I’ve ever known is this one here.”

Q: “Okay. Pat Longbehn?”

A: “Yes.”

Transcript, Volume 1, Page 45, Line 12 – Page 46, Line 9. To refer to a police officer as a pedophile can cause that person injury, as police officers are those who are charged

with enforcing the law and protecting children from pedophiles.¹ As is noted in the testimony of Chief Heaton, the Appellant's credibility was undermined through the use of this name coined by the Respondent. See Transcript 1, Page 30, Line 8 – Page 34, Line 2 & Transcript 1, Page 40, Line 2 – 17.

Clearly, the words of the Respondent imputed a serious deviant sexual act to the Appellant, and also linked that act with his job as a police officer. By doing so, the Respondent caused emotional injury to the Appellant and further injured the Appellant in his occupation as a police officer. These multiple bases satisfy the criteria for finding that the words Respondent coined, used, and published amount to defamation per se.

3. WHETHER THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO RELY UPON TO CONCLUDE THAT THE RESPONDENT WAS RESPONSIBLE FOR APPELLANT'S EMOTIONAL PROBLEMS.

With regard to this issue, the Jury had the testimony of Appellant, who described his emotional injury resulting from the name coined by Respondent. His testimony is set out in the transcript at Transcript 2, Page 96-98; Page 102, Line 15 – 19; Page 108, Line 1 – Page 112, Line 12; Page 136, Line 20 – Page 137, Line 19; Page 174, Line 13 – Page 175, Line 1.

In addition, the Jury heard the testimony of Dr. Richard Hoffman, a licensed psychologist who described the emotional diagnosis of Appellant. See Dr. Hoffman 2/26/03 Deposition, Page 16, Line 9 – 12.

When this is combined with the evidence that Respondent coined the name

¹ In Gribble v. Pioneer Press Co., 34 Minn. 342, 25 N.W. 710 (1885), where a lawyer was called a "shyster," it was found that the name was actionable per se, as it related to the professional capacity of that person, as here, where the name was used in describing the Appellant in his capacity as a law enforcement officer. See also Anderson v. Kammier, 262 N.W.2d 366, 372, n.3 (Minn. 1977).

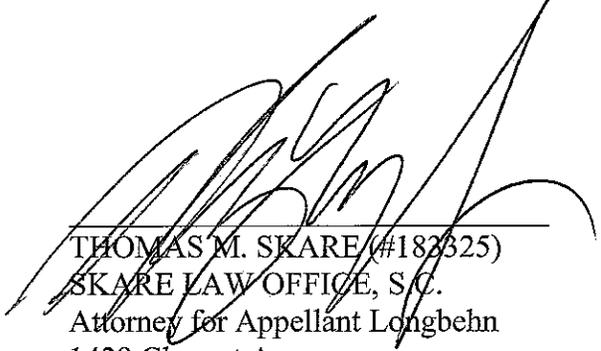
(Appellant's Brief, Section 3, B) there is sufficient evidence for the Jury to reach the decision it did.

4. **WHETHER THE PUNITIVE DAMAGES STATUTE REQUIRES THE APPELLANT TO SHOW "A DELIBERATE EFFORT TO HARM" AS ALLEGED BY RESPONDENT.**

In this case it is clear that Respondent was aware that Appellant was not a pedophile. Transcript 1, Page 70, Lines 5 – 7. Despite that knowledge, Respondent chose to call Appellant by the name, "Pat the Pedophile." As stated earlier, pedophile and pedophilia can not be interpreted innocently. He now claims that he did nothing deliberate to harm Appellant. "Willful indifference does not imply a purpose of actually intending to harm the Plaintiff, but a knowing disregard of the Plaintiff's rights or safety." Wirig v. Kinney Shoe Corp., 461 N.W.2d 374, 381 (Minn. 1990). Here, Respondent had knowledge that Appellant was not a pedophile, but acted with indifference to the probability of injury caused to Appellant by using the name, "Pat the Pedophile" to describe the Appellant to a third person.

There is sufficient evidence for the Jury to determine that Respondent acted with indifference to the injury he would cause to Appellant through the use of the words he chose. The credibility of witnesses and the weight given to their testimony rests within the province of the fact-finders (the Jury). Fontaine v. Hoffman, 359 N.W.2d 692, 694 (Minn.App. 1984). "Absent a finding that the jury's decision was clearly erroneous, this court may not set aside the jury's determination that punitive damages apply to the facts of this case." Wirig v. Kinney Shoe Corp., 448 N.W.2d 526, 533 (Minn.App. 1989)(citation omitted).

Dated: September 9, 2006



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