IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY IMELLI AND DONALD LINDEMAN,
Appellants,
vs.
CHURCHILL COUNTY SCHOOL DISTRICT; THE BOARD OF TRUSTEES OF THE CHURCHILL COUNTY SCHOOL DISTRICT; PAUL HINZ; DEBBIE SMITH; AND DONALD A. LATTIN,
Respondents.

No. 44355

FILED

SEP 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a defamation action. Third Judicial District Court, Churchill County; Robert E. Estes, Judge.

Appellants Gary Imelli and Donald Lindeman are former school administrators employed by respondent Churchill County School District (CCSD). They allege that CCSD, respondent Donald Lattin (CCSD's attorney), and two members of the CCSD Board of Trustees, respondents Debbie Smith and Paul Hinz, made defamatory statements at a school board meeting concerning Imelli's and Lindeman's alleged improper use of compensatory time. The parties are familiar with the facts, and we do not recount them here except as necessary to our discussion.

06-20083

Standard of review

This court reviews an order granting summary judgment de novo.[1] Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that no genuine issue as to any material fact exists such that the moving party is entitled to judgment as a matter of law.[2]

Degree of constitutional fault

A necessary element of any claim for defamation is some degree of fault on the part of the defendant.[3] The level of fault required depends on whether the plaintiff is considered a public or private figure.[4] A person who voluntarily injects himself or is thrust into a particular public controversy or concern thereby becomes a public figure for this limited range of issues.[5] In a defamation action involving a limited public figure, the plaintiff must prove by clear and convincing evidence that the defendant acted with "actual malice."[6]

The district court concluded that Imelli and Lindeman, as school administrators, were limited public figures. We agree. Imelli and

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[1]Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

[2]NRCP 56; see also Great American Ins. v. General Builders, 113 Nev. 346, 350-51, 934 P.2d 257, 260 (1997).

[3]Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002).

[4]See New York Times v. Sullivan, 376 U.S. 254, 279-80 (1964).

[5]Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974).

[6]New York Times, 376 U.S. at 280.

Lindeman, as public school administrators, held positions of prominence in the community and influenced school district policy.[7] As such, the district court properly considered them public figures in disputes relating to the management of the school district. Thus, because Imelli and Lindeman were properly classified as limited public figures, they were required to prove by clear and convincing evidence that respondents acted with actual malice when they made the statements at issue in this case.[8]

Actual malice

The district court determined that no facts in the record could permit a reasonable jury to find that any respondents acted with actual malice when they made the allegedly defamatory statements. We agree.

To prove actual malice, a plaintiff must demonstrate that a statement was published with knowledge that it was false or with reckless disregard for its veracity.[9] This court has defined reckless disregard as "a high degree of awareness of the probable falsity of a statement. It may be found where the defendant entertained serious doubts as to the truth of the statement, but published it anyway."[10] The test is a subjective one,

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[7]Kefgen v. Davidson, 617 N.W.2d 351, 359 (Mich. Ct. App. 2000) (court concluded that school superintendent was a public figure because he voluntarily assumed a position of prominence in school affairs).

[8]See, e.g., Purvis v. Ballantine, 487 S.E. 14, 17-18 (Ga. Ct. App. 1997) (holding that retired superintendent was a limited public figure); Kefgen, 617 N.W.2d at 359; Beck v. Lone Star Broadcasting Co., 970 S.W.2d 610, 615 (Tex. App. 1998) (holding that assistant superintendent was a limited public figure for purposes of defamation suit).

[9]New York Times, 376 U.S. at 280.

[10]Posadas v. City of Reno, 109 Nev. 448, 454, 851 P.2d 438, 443 (1993) (citation omitted).

relying on "what the defendant believed and intended to convey, and not what a reasonable person would have understood the message to be."[11] Thus, there must be "sufficient evidence to conclude that 'the defendant in fact entertained serious doubts as to the truth of [the] publication.'"[12]

Imelli and Lindeman's only colorable argument is that respondents knew or should have known about long-standing CCSD policies permitting administrators to take compensatory time, and, as a result, acted with actual malice when they stated that the administrators' use of compensatory time was inappropriate.

However, we are unable to find any evidence in the record demonstrating that respondents were aware, much less approved, of Imelli's and Lindeman's use of compensatory time. First, Lattin's report to the School Board was based upon a lengthy, detailed investigation into the board's reports, interviews with CCSD employees (including Imelli and Lindeman), and a full review of relevant case law. The evidence indicates that the School Board never considered the issue of compensatory time, that the administrators' employment contracts contained no reference to the practice of taking compensatory time in lieu of vacation days, and that the majority of the board was wholly unaware of the practice until shortly before the meeting at issue in October 2002. Further, there is no evidence

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[11]Id.

[12]Nevada Independent Broadcasting v. Allen, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983) (citing St. Amant v. Thompson, 390 U.S. 727, 731 (1968)) (emphasis omitted); see also Garrison v. Louisiana, 379 U.S. 64, 74 (1964) (holding that only those false statements made with the high degree of awareness of their probable falsity demanded by New York Times may be the subject of either civil or criminal sanctions).

of bad faith or defamatory intent on the part of any respondents. Lattin, for example, was quick to emphasize that the School Board ascribed no ill motive to the former administrators, but merely wished to determine if their use of compensatory time was appropriate.

As a result, no evidence in the record indicates that respondents acted with actual malice. Respondents, therefore, were entitled to judgment as a matter of law since no genuine issue of material fact exists as to an essential element of appellants' defamation claim.

Conclusion

Imelli and Lindeman have failed to provide evidence from which a reasonable jury could find respondents acted with actual malice.[13] Accordingly, we

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[13]Because summary judgment was appropriate based upon the appellants' failure to demonstrate actual malice, we do not address whether the statements at issue were protected by an absolute or conditional privilege.

ORDER the judgment of the district court AFFIRMED.

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Hon. Robert E. Estes, District Judge
Wm. Patterson Cashill, Settlement Judge
Beasley & Ludwig/Reno
Lemons Grundy & Eisenberg
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Churchill County Clerk