[Cite as *Jaber v. Wright State Univ.*, 2014-Ohio-5927.]

Court of Claims of Ohio
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MOHAMMED JABER

Plaintiff

v.

WRIGHT STATE UNIVERSITY

Defendant

Case No. 2013-00045

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On December 23, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On January 23, 2014, the court issued an order granting plaintiff's motion for an extension of time, until January 31, 2014, to file a response. Plaintiff filed his response on February 3, 2014. The motion for summary judgment is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also*

Gilbert v. Summit Cty., 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff, who is of Palestinian descent and emigrated from Jordan to the United States, brought this action for defamation and "racial discrimination" arising from allegations that on or about September 20, 2012, employees of defendant's college of business falsely stated that he is a "terrorist" and had browsed a website "that dealt with automatic weapons," and that, as a result, he was evicted from defendant's premises.

{¶5} In support of its motion for summary judgment, defendant submitted a transcript of plaintiff's deposition. Plaintiff testified therein that he enrolled in a master's of information systems degree program with defendant in early 2011, but later that year was accused of, and admitted to, submitting a plagiarized proposal for his "capstone" course, which he stated is considered to be the most important course in the program. Plaintiff testified that he was consequently required to take an academic integrity course, which he did, and to then attend a meeting on March 27, 2012, to discuss his status with Dr. Dwight Smith-Daniels, the department chair. Plaintiff stated that he misunderstood the date of the meeting and thus failed to attend, and that he called Smith-Daniels' office later that day and was informed that if he did not meet with Smith-Daniels the following day he would be dismissed from the program. Plaintiff related that he missed that meeting too due to a work conflict and that indeed, Smith-Daniels sent him a letter informing him that the department faculty had voted unanimously to dismiss him from the program based upon both his academic dishonesty and his failure to attend several meetings with faculty advisors.

{¶6} Plaintiff testified that he subsequently met with the dean of the business school about the matter, at which time it was suggested that plaintiff send Smith-Daniels a letter apologizing for his actions and seeking readmission into the program. Plaintiff explained that he did so, and that in July 2012 Smith-Daniels agreed

to meet and consider a new capstone course proposal from him. Plaintiff testified that he traveled to Jordan that summer, and so the meeting was set for September 6, 2012. Plaintiff stated that they discussed his proposal and that he sent Smith-Daniels a written proposal afterward, but that on September 20, 2012, Smith-Daniels formally rejected the proposal as insufficient.

{¶7} According to plaintiff, he returned to campus on Monday, September 24, 2012, to once again discuss the matter with the dean, but when he learned that she was away from her office, he went to the MBA program office to talk to with one of the employees there, Mike Evans, about the possibility of enrolling in the MBA degree program. Plaintiff testified that once he got there, however, campus police arrived and escorted him away, and issued him a warning not to trespass on defendant's premises.

{¶8} According to plaintiff, he did not know why this happened until two weeks later, when he requested and obtained a copy of the police report. Plaintiff stated that the report indicated, among other things, that an unidentified student had reported seeing plaintiff browsing a website dealing in automatic weapons, and that Smith-Daniels reported plaintiff was loud and abusive during their September 6, 2012 meeting. Plaintiff stated that he telephoned Mike Evans to see if he could get any more information, and that Evans told him the police report had been prepared in his office, after plaintiff's removal, and that those present were himself, Smith-Daniels, Assistant Dean Michael Bernstein, and the police officer preparing the report. According to plaintiff, Evans told him that Smith-Daniels made a remark during that meeting to the effect that "we need to get this Middle Eastern terrorist out of here." (Deposition, p. 142.)

{¶9} "In Ohio, defamation occurs when a publication contains a false statement 'made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a

person adversely in his or her trade, business or profession.'" *Jackson v. Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, ¶ 9, quoting *A & B-Abell Elevator Co., Inc. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 7 (1995). "'Slander' refers to spoken defamatory words, while 'libel' refers to written or printed defamatory words." *Schmidt v. Northcoast Behavioral Healthcare*, 10th Dist. Franklin No. 10AP-565, 2011-Ohio-777, ¶ 8.

{¶10} "To succeed on a defamation claim, a plaintiff must establish: (1) a false statement, (2) about the plaintiff, (3) published without privilege to a third party, (4) with fault of at least negligence on the part of the defendant, and (5) the statement was either defamatory per se or caused special harm to the plaintiff." *Watley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-902, 2008-Ohio-3691, ¶ 26. "Whether a publication is defamatory on its face (defamatory *per se*), or, if not, whether a publication is capable of being interpreted as defamatory (defamatory *per quod*), are questions of law for the trial court." *Matalka v. Lagemann*, 21 Ohio App.3d 134, 136 (10th Dist.1985).

{¶11} With respect to the statement in the police report that a student had reported seeing plaintiff browsing the Internet for automatic weapons, plaintiff has presented no evidence that the report was published to a third-party by defendant. To the contrary, plaintiff stated that he obtained a copy of the police report and then sent it to others himself. Accordingly, as to the police report, plaintiff has failed to demonstrate an issue of fact on the essential element of publication. *See Fenley v. Athens Cty. Genealogical Chapter*, 4th Dist. Athens No. 97CA36 (May 28, 1998). Additionally, plaintiff, who testified that he eventually gained readmission with defendant and is currently enrolled in a degree program, admitted that he did not suffer any special harm as a result of either the police report or the "terrorist" remark that he

claims Smith-Daniels orally made in the presence of Bernstein, Evans, and the police officer. (Deposition, p. 164.)

{¶12} Nonetheless, plaintiff argues that as to the "terrorist" remark, harm must be presumed insofar as this statement constitutes defamation per se. "In order to be actionable per se, the alleged defamatory statement must fit within one of four classes: (1) the words import a charge of an indictable offense involving moral turpitude or infamous punishment; (2) the words impute some offensive or contagious disease calculated to deprive a person of society; (3) the words tend to injure a person in his trade or occupation; and (4) in cases of libel only, the words tend to subject a person to public hatred, ridicule, or contempt." *Woods v. Capital Univ.*, 10th Dist. Franklin No. 09AP-166, 2009-Ohio-5672, ¶ 28. "When a statement is found to be defamation per se, both damages and actual malice are presumed to exist." *Roe v. Heap*, 10th Dist. No. 03AP-586, 2004-Ohio-2504, ¶ 20.

{¶13} Plaintiff contends that the "terrorist" remark satisfies the first class of per se defamatory statements, that it imputed a charge of an indictable offense involving moral turpitude or infamous punishment. The alleged remark, however, did not accuse plaintiff of having engaged in some actual conduct that would constitute a criminal offense. *See* Restatement of the Law 2d, Torts, Section 571, Comment c (1977) ("[I]t is not enough merely to suggest that another is capable of committing a crime or that he would commit it if sufficient opportunity were presented. Neither is it sufficient to charge another with a criminal intention or design, if no criminal act is charged."); *Biondi v. Nassimos*, 300 N.J.Super. 148, 692 A.2d 103 (1997) (statements that one has "mob connections" and would "order a hit" were not defamatory per se).

{¶14} Moreover, "[t]he expression of an opinion is generally immune from liability under the Ohio Constitution and United States Constitution." *Mehta v. Ohio Univ.*, 194 Ohio App.3d 844, 2011-Ohio-3484, ¶ 27 (10th Dist.). "In order 'to determine whether a

statement is fact or opinion, Ohio courts employ a "totality of the circumstances" test.' * * * Under this test, courts consider 'the specific language used, whether the statement is verifiable, the general context of the statement, and finally, the broader context in which the statement appeared.' * * * It has been noted that this is not a 'bright-line' test, but, rather, a fluid standard in which the 'facts of each case must be analyzed in the context of the general test.' * * * Thus, 'each of the four factors should be addressed, but the weight given to any one will conceivably vary depending on the circumstances presented.'" *Mallory v. Ohio Univ.*, 10th Dist. Franklin No. 01AP-278 (Dec. 20, 2001), quoting *Condit v. Clermont Cty. Review*, 110 Ohio App.3d 755, 759 (12th Dist.1996). Furthermore, the use of rhetorical hyperbole and epithets is recognized as constitutionally protected speech. *Greenbelt Coop. Publishing Assn., Inc. v. Bresler*, 398 U.S. 6 (1970); *Scott v. News-Herald*, 25 Ohio St.3d 243 (1986).

{¶15} Smith-Daniels allegedly made the remark to an officer with defendant's police department just after the police had escorted plaintiff off the premises for trespassing following an allegation that he was looking at automatic weapons on the Internet, plaintiff had not been an enrolled student for several months and came to campus that day uninvited, four days earlier Smith-Daniels formally rejected plaintiff's proposal for readmission into the information systems program, plaintiff has testified that the police report included a statement that Smith-Daniels felt plaintiff had been abusive toward him during their recent meeting, plaintiff had been appealing to Smith-Daniels for readmission throughout the summer, and Smith-Daniels and the other department faculty had removed plaintiff from the program in the first place due to his admitted academic dishonesty and his repeated failure to attend scheduled meetings with faculty. The alleged remark neither accused plaintiff of any particular act that could be verified, nor was it accompanied by other assertions from Smith-Daniels that would confer a factual context, and the remark instead appears to reflect a general

suspicion or denunciation. Upon review, the only reasonable conclusion that can be drawn is that the alleged remark amounted to an opinion and is therefore not actionable.

{¶16} Finally, with respect to plaintiff's claim of "racial discrimination," while there is no specific statutory or common law theory of relief identified in the complaint, plaintiff states in his memorandum that this claim arises under R.C. 4112.02. Still, plaintiff has identified no specific unlawful discriminatory practice in that statute as supporting his claim, and there is no suggestion that his claim arises from any matter related to employment. The only authority plaintiff identifies in support of this claim is *Ihenacho v. Ohio Inst. of Photography & Technology*, 2nd Dist. Montgomery No. 24191, 2011-Ohio-3730, ¶ 32-36, which plaintiff cites for the proposition that "a student can sue a school under R.C. 4112.02." Although the opinion in *Ihenacho* reflects that the plaintiff in that case did assert such a claim, it does not hold that the claim was a viable one upon which relief could have been granted. Moreover, in this case, it is clear that plaintiff was not an enrolled student in September 2012, when the pertinent events alleged in the complaint took place. The court concludes that plaintiff has failed to state a claim for relief as to his allegation of racial discrimination.

{¶17} Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH
Judge

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