

[Cite as *Jenkins v. Sullivan Twp. Trustees*, 2023-Ohio-2345.]

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DUANE JENKINS

Plaintiff-Appellant

-vs-

SULLIVAN TOWNSHIP TRUSTEES,  
et al.

Defendants-Appellees

JUDGES:

Hon. John W. Wise, P.J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

Case No. 2022 COA 042

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Case No. 20 CIV 103

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 7, 2023

APPEARANCES:

For Plaintiff-Appellant

JOSHUA J. BROWN  
3979 Main Street  
Hilliard, Ohio 43026

For Defendant-Appellees

GREGORY A. BECK  
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*Wise, P. J.*

{¶1} Plaintiff-Appellant Duane Jenkins appeals from the November 21, 2022, Judgment Entry by the Ashland County Court of Common Pleas granting summary judgment. Defendants-Appellees are Sullivan Township Trustees, Erica Bloom, Tab Bloom, Christina Ford, Rebecca Maurer, and Denise Herte. The relevant facts leading to this appeal are as follows.

### **STATEMENT OF THE FACTS AND CASE**

{¶2} On August 6, 2020, Appellant filed a complaint alleging defamation.

{¶3} On August 21, 2020, Appellant amended his complaint. The Amended Complaint alleged that Appellees had engaged in speech and actions which cast him as unfit for office and falsely claiming he improperly requested the disposal of public records.

{¶4} Specifically, Appellee Tab Bloom stated that Appellant is corrupt, that he committed crimes, and that he engaged in criminal activity. Tab Bloom made a video where he accused Appellant of committing crimes and of being a criminal. He stated he believes that Appellant committed a crime by asking him to shred documents.

{¶5} Appellee Erica Bloom called Appellant corrupt, said he committed crimes, and that he engaged in criminal actions. She believes Appellant is not fit to hold office and voiced her belief.

{¶6} Appellee Christina Ford wore a t-shirt which said Appellant committed crimes, admitted to making statements criticizing Appellant, made online comments accusing Appellant of committing crimes, and told people that Appellant committed a crime.

{¶7} Appellee Denise Herte admitted going door-to-door with a petition and telling people that Appellant committed crimes.

{¶8} Appellee Rebecca Mauer made statements calling Appellant corrupt, stating that he committed crimes and that he engaged in criminal activity.

{¶9} On October 13, 2020, Appellees Erica Bloom, Tab Bloom, Denise Herte, Christina Ford, Rebecca Maurer, and David Spiker filed an Answer and Counterclaim generally denying Appellant's claims.

{¶10} On December 14, 2020, Defendant Walker Hartman passed away and was ultimately dismissed from the case.

{¶11} On June 11, 2021 and June 14, 2021, Appellees filed Motions for Summary Judgment.

{¶12} On July 20, 2021, Appellant filed a response to Appellees' Motions for Summary Judgment.

{¶13} On July 30, 2021, Appellee Sullivan Township Trustees, and Defendant Samantha Shank filed a Reply Brief in Support of their Motions for Summary Judgment.

{¶14} On September 23, 2021 and September 29, 2021, the Magistrate agreed with Appellees' Motions for Summary Judgment and recommended granting the Motions.

{¶15} On October 7, 2021, Appellant filed an Objection to the Magistrate's Decision.

{¶16} On March 30, 2022, the trial court adopted the Magistrate's Decision and granted Appellees' Motions for Summary Judgment.

{¶17} On October 31, 2022, Appellees dismissed their Counterclaims.

{¶18} On November 1, 2022, the trial court filed a judgment entry concluding the case.

### **ASSIGNMENTS OF ERROR**

{¶19} Appellant filed a timely notice of appeal and herein raises the following four Assignments of Error:

{¶20} “I. THE TRIAL COURT ERRED IN FINDING THAT THE DEFENDANTS’ STATEMENTS AT ISSUE IN THIS CASE WERE OPINION AS IT PERTAINS TO FIVE DEFENDANTS: TAB BLOOM, ERICA BLOOM, DENISE HERTE, REBECCA MAUER, AND CHRISTINA FORD.

{¶21} “II. THE TRIAL COURT ERRED IN FINDING THAT THE FACTS OF THIS CASE DO NOT SHOW ACTUAL MALICE ON THE PART OF THE DEFENDANTS AS IT PERTAINS TO FIVE DEFENDANTS: TAB BLOOM, ERICA BLOOM, DENISE HERTE, REBECCA MAUER, AND CHRISTINA FORD.

{¶22} “III. THE TRIAL COURT ERRED IN FINDING THAT THE QUESTION AS TO WHETHER THE STATEMENTS OF DEFENDANTS IN QUESTION WERE OPINION OR FACT, AND WHETHER THE DEFENDANTS’ ACTIONS CONSTITUTE ACTUAL MALICE, IS NOT A GENUINE DISPUTE OF MATERIAL FACT, APPROPRIATE ONLY FOR THE JURY TO DECIDE.

{¶23} “THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT THE TOWNSHIP IS NOT LIABLE FOR THE DEFENDANTS’ DEFAMATION.”

### **Standard of Review**

{¶24} With regard to summary judgment, this Court applies a de novo standard of review and reviews the evidence in the same manner as the trial court. *Smiddy v. The*

*Wedding Party, Inc.*, 30 Ohio St.3d 35, 36, 506 N.E.2d 212 (1987). We will not give any deference to the trial court's decision. *Brown v. Scioto Cty. Bd. of Comms.*, 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (4<sup>th</sup> Dist.1993). Under Civ.R. 56 a trial court may grant summary judgment if it determines: (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267, 274 (1977).

{¶25} The record on summary judgment must be viewed in the light most favorable to the party opposing the motion. *Williams v. First United Church of Christ*, 37 Ohio St.2d 150, 151, 309 N.E.2d 924 (1974).

{¶26} The moving party bears the initial responsibility of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court which demonstrates the absence of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264, (1996). Once the moving party has met the burden, the nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth "specific facts" by the means listed in Civ.R. 56(C) showing that a "triable issue of fact" exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798, 801 (1988).

{¶27} For the purpose of judicial economy, we will address Appellant's assignments out of order.

### III.

{¶28} In Appellant's third Assignment of Error, Appellant argues a determination that Appellees statements are fact or opinion and constitute actual malice is a question of fact for a jury. We disagree.

{¶29} To establish defamation, the plaintiff must show (1) a false statement of fact was made, (2) that the statement was defamatory, (3) the statement was published, (4) the plaintiff suffered injury as a proximate result of the publication, and (5) the defendant acted with the requisite degree of fault in publishing the statement. *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶77, citing *Pollock v. Rashid*, 117 Ohio App.3d 361, 368, 690 N.E.2d 903 (1<sup>st</sup> Dist.1996). "Defamation can take the form of libel or slander. Libel refers to written or printed defamatory words and slander generally refers to spoken defamatory words." *Matikas v. Univ. of Dayton*, 2<sup>nd</sup> Dist. Montgomery No.19476, 152 Ohio App.3d 514, 2003-Ohio-1852, 788 N.E.2d 1108, ¶27.

{¶30} The tort of defamation may be either negligent or intentional, depending on the context. *Mayer v. Bodnar*, 5<sup>th</sup> Dist. Delaware, 2022-Ohio-4705, 204 N.E.3d 731, ¶51. Appellant is a public figure. "To establish defamation of a public figure, a complainant must also establish that the defendant acted with actual malice. *Ackison v. Gergley*, 5<sup>th</sup> Dist. Licking, 2022-Ohio-3490, 198 N.E.3d 139, ¶35, quoting *Lansky v. Brownlee*, 8<sup>th</sup> Dist., 2018-Ohio-3952, 111 N.E.3d 135, ¶23. Actual malice means that the statement was made with knowledge of falsity or a reckless disregard of the truth. *Jacobs v. Frank*, 60 Ohio St.3d 111, 573 N.E.2d 609 (1991).

Since reckless disregard is not measured by lack of reasonable belief or of ordinary care, even evidence of negligence in failing to investigate the facts is insufficient to establish actual malice. Rather, since ‘erroneous statement is inevitable in free debate, and \* \* \* must be protected if the freedoms of expression to have the “breathing space” that they “need \* \* \* to survive,” [*New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).], “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.”

{¶31} *Scott v. News-Herald*, 25 Ohio St.3d 243, 248, 496 N.E.2d 699 (1986), quoting *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 120, 413 N.E.2d 1187 (1980), quoting *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct.1323, 20 L.Ed.2d 262 (1968).

{¶32} Summary judgment is “especially appropriate in the First Amendment area.” *Dupler*, 64 Ohio St.2d at 120, 413 N.E.2d 1187. “It is for this reason that the plaintiff’s burden of establishing actual malice must be sustained with convincing clarity even when the plaintiff’s case is being tested by a defendant’s motion for summary judgment.” *Varanese v. Gall*, 35 Ohio St.3d 78, 81, 518 N.E.2d 1177 (1988) citing *Dupler*, at paragraphs one and two of the syllabus.

{¶33} Additionally, “the determination of whether allegedly defamatory language is opinion or fact is a question of law to be decided by the court.” *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 649 N.E.2d 182 (1995); *Spitzer v. Knapp*, 5<sup>th</sup> Dist. Delaware No. 19 CAE 01 0006, 2019-Ohio-2770.

{¶34} Therefore, the determination of whether Appellant has provided sufficient evidence of actual malice or if Appellees' statements were opinion or factual are not matters exclusively for a jury to decide.

{¶35} Accordingly, Appellant's third Assignment of Error is overruled.

#### I.

{¶36} In Appellant's first Assignment of Error, Appellant argues the trial court erred when it found Appellees Tab Bloom, Erica Bloom, Denise Herte, Rebecca Maurer, and Christina Ford's comments were opinion. We disagree.

{¶37} Appellant argues the trial court improperly granted summary judgment because whether a statement constitutes an opinion is a question of fact for the jury to determine, and that the trial court erred in failing to apply the "reasonable reader" standard in determining whether or not the statements were defamatory. However, upon review of the trial court's judgment entry the trial court did not grant summary judgment based upon the statements being opinion, but because Appellant failed to set forth sufficient evidence of actual malice to avoid issuance of summary judgment which Appellant argues in his third Assignment of Error.

{¶38} Accordingly, Appellant's first Assignment of Error is overruled.

#### II.

{¶39} In Appellant's second Assignment of Error, Appellant argues Appellees' alleged defamatory statements were made with actual malice. We disagree.

{¶40} Again, to establish defamation, the plaintiff must show (1) a false statement of fact was made, (2) that the statement was defamatory, (3) the statement was published, (4) the plaintiff suffered injury as a proximate result of the publication, and (5) the



defendant acted with the requisite degree of fault in publishing the statement. *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶77, citing *Pollock v. Rashid*, 117 Ohio App.3d 361, 368, 690 N.E.2d 903 (1<sup>st</sup> Dist.1996). “Defamation can take the form of libel or slander. Libel refers to written or printed defamatory words and slander generally refers to spoken defamatory words.” *Matikas v. Univ. of Dayton*, 152 Ohio App.3d 514, 2003-Ohio-1852, 788 N.E.2d 1108, ¶27.

{¶41} The tort of defamation may be either negligent or intentional, depending on the context. *Mayer v. Bodnar*, 5<sup>th</sup> Dist. Delaware, 2022-Ohio-4705, 204 N.E.3d 731, ¶51. Appellant is a public figure. “To establish defamation of a public figure, a complainant must also establish that the defendant acted with actual malice. *Ackison v. Gergley*, 5<sup>th</sup> Dist. Licking, 2022-Ohio-3490, 198 N.E.3d 139, ¶35, quoting *Lansky v. Brownlee*, 8<sup>th</sup> Dist., 2018-Ohio-3952, 111 N.E.3d 135, ¶23. Actual malice means that the statement was made with knowledge of falsity or a reckless disregard of the truth. *Jacobs v. Frank*, 60 Ohio St.3d 111, 573 N.E.2d 609 (1991).

Since reckless disregard is not measured by lack of reasonable belief or of ordinary care, even evidence of negligence in failing to investigate the facts is insufficient to establish actual malice. Rather, since ‘erroneous statement is inevitable in free debate, and \* \* \* must be protected if the freedoms of expression to have the “breathing space” that they “need \* \* \* to survive,” [*New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).], “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.”

{¶42} *Scott v. News-Herald*, 25 Ohio St.3d 243, 248, 496 N.E.2d 699 (1986), quoting *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 120, 413 N.E.2d 1187 (1980), quoting *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct.1323, 20 L.Ed.2d 262 (1968).

{¶43} Summary judgment is “especially appropriate in the First Amendment area.” *Dupler*, 64 Ohio St.2d at 120, 413 N.E.2d 1187. “It is for this reason that the plaintiff’s burden of establishing actual malice must be sustained with convincing clarity even when the plaintiff’s case is being tested by a defendant’s motion for summary judgment.” *Varanese v. Gall*, 35 Ohio St.3d 78, 81, 518 N.E.2d 1177 (1988) citing *Dupler*, at paragraphs one and two of the syllabus.

{¶44} Appellant argues Appellee Tab Bloom made defamatory statements that Appellant asked for public records to be destroyed, that he was corrupt and broke the law, that Appellees Erica Bloom, Tab Bloom, Ford, and Maurer circulated false and defamatory information, that Appellant committed crimes, and that he is corrupt.

{¶45} Appellant alleges that Appellees made statements that he is corrupt, he deleted Facebook posts from the Township Trustees account, that he improperly filed a Resolution, and that he committed the crime of destruction of public documents with knowledge of their falsity or with a reckless disregard as to their falsity.

{¶46} Appellant’s argument focuses on whether Appellees Tab Bloom, Erica Bloom, Ford, and Maurer knew or should have known that he did not commit a crime because he was not charged with any crime and that he denies committing any crime.

{¶47} However, Appellant provided a video of himself taking documents to Appellee Tab Bloom and asking him to shred them. He said they were documents belonging to the Township fiscal officer. Further, Tab Bloom stated that he believed that

the destruction of these documents was a crime showing that Tab Bloom truly did believe that Appellant was asking him to do something illegal. Appellee Erica Bloom admitted that she did not know if Appellant committed a crime or not. Appellant alleges that Appellee Christina Ford was aware an Assistant Prosecuting Attorney told Appellees that their claims were incorrect, but the letter does not absolve Appellant of all wrong doing. In addition, the letter from the Assistant Prosecuting Attorney was not properly before the trial court. Appellee Denise Herte saw the video of Appellant giving documents to Appellee Tab Bloom and instructing him to shred them. Finally, Appellee Rebecca Mauer only knew that Appellant was never charged with a crime.

{¶48} Appellant has offered no evidence to support the contention that Appellees entertained serious doubts as to the truth of their actions. In contrast, some of the evidence offered shows that Appellees believed that what they had said was true.

{¶49} Appellant had the burden of establishing that Appellees published the statements while entertaining serious doubts as to the truth of the statements with convincing clarity. We found no evidence in which a reasonable jury could find actual malice with convincing clarity.

{¶50} Based upon this Court's de novo review of the record, the trial court did not err in granting summary judgment in favor of Appellees.

{¶51} Appellant's second Assignment of Error is overruled.

#### IV.

{¶52} In Appellant's fourth Assignment of Error, Appellant argues the trial court erred as a matter of law in finding the Township is not liable for Appellees defamation. We disagree.

{¶53} Due to our disposition in Appellant's first, second, and third Assignments of Error finding that Appellant has not shown Appellees defamed Appellant, we decline to address Appellant's fourth Assignment of Error that the Township is liable for Appellees defamation.

{¶54} For the forgoing reasons, the judgment of the Court of Common Pleas of Ashland County, Ohio, is hereby affirmed.

By: Wise, PJ.

Delaney, J., and

Baldwin, J., concur.

JWW/br 0616