

IN THE COURT OF APPEALS OF IOWA

No. 8-410 / 97-1359
Filed November 30, 1998

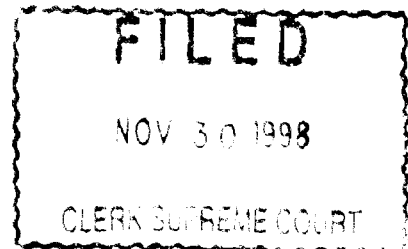
ANDREW CHRISTENSON,

Plaintiff-Appellant,

vs.

DUANE W. VAN HEMERT AND KEVIN BROWN,

Defendants-Appellees.



Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Andrew Christenson appeals the district court's ruling granting defendants' motions for summary judgment in this defamation action. **AFFIRMED.**

Frank Murray Smith of the Frank M. Smith Law Office, Des Moines, and Luis Herrera, Des Moines, for appellant.

William G. Enke, Fort Dodge, for appellee Kevin Brown.

Michael S. Jones, Des Moines, for appellee Van Hemert.

Heard by Cady, C.J., and Streit, and Vogel, JJ., but decided by Streit, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Andrew Christenson appeals a district court ruling dismissing his defamation action on summary judgment. We find no error in the court's finding that the element of malice was lacking and therefore affirm.

Background facts. In the fall of 1995, Duane Van Hemert wrote two letters to the editor of *The Johnston Advance*, Kevin Brown. The subject matter of both letters was Andrew Christenson, a city councilman who was running for mayor of Johnston, Iowa. The first letter was published on October 26, 1995. Christenson immediately demanded a retraction. Brown did not publish a retraction, and a second letter by Van Hemert was published on November 2, 1995.

Christenson filed a petition claiming defamation against Van Hemert and Brown. Both defendants filed motions for summary judgment. The district court granted the motions, finding that no genuine issues of fact existed with regard to whether the statements were written and published with actual malice. Christenson appeals.

Scope of review. We review a summary judgment ruling for error. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *See Id.*; Iowa R. Civ. P. 237(c).

A more stringent test applies to avoid summary judgment in defamation cases because of courts' solicitude for First Amendment rights. *See Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 904 (Iowa 1996) (citation omitted).

The question whether the evidence in the record in a defamation case is of the convincing clarity required to strip the utterance of First Amendment protection is not really a question for the trier of fact. Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of "actual malice."

Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 510, 104 S. Ct. 1949, 1965, 80 L. Ed. 2d 502, 523 (1984).

Element of malice. Christenson argues that the court erred in granting summary judgment because there was a genuine issue of material fact regarding the element of actual malice.

Defamation involves the publication of written or oral statements which tend to injure a person's reputation and good name. *Kerndt v. Rolling Hills Nat. Bank*, 558 N.W.2d 410, 418 (Iowa 1997); *Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994).

A public official or figure cannot recover damages for a defamatory statement except upon proof that the statement was made with actual malice. *Bitner v. Ottumwa Community School Dist.*, 549 N.W.2d 295, 300 (Iowa 1996) (citations omitted). A statement is made with actual malice if it is made with knowledge that it is false or

if made with reckless disregard for its truth or falsity. *Id.* Actual malice in this context must be established by clear and convincing evidence. *Id.*

Both letters contained specific complaints about Christenson in an effort to dissuade the citizens of Johnston from voting for him in the mayoral election. The letters contained allegations that Christenson had used his position on the city council to achieve his own personal gains and complained about Christenson's performance on the Johnston City Council. The October letter also contended that Christenson contributed to the "Flood of 93" by lowering and weakening a levee when he built an access road to his property, and further accused Christenson of inappropriate conduct during his dissolution of marriage trial.

The contents of the letters and the identity of the author and publisher are undisputed. Even the "gist" of the comments, as found by the trial court, are undisputed and therefore substantially true. As a result, we need only review whether the court erred in making a legal finding as to the issue of malice.

After reviewing the record, we agree that Christenson failed to establish malice by clear and convincing evidence. The statements made in the letters, while perhaps not entirely accurate, were based on information Van Hemert believed to be true. The letters were, as letters to the editor often are, a one-sided interpretation of the facts in a heated political campaign. There was no evidence to show that the letters

were written or published with the knowledge that they were false or with reckless disregard of their truth or falsity. We find no error by the district court.

Having addressed all issues properly before us on appeal, we hereby affirm the district court's entry of summary judgment.

AFFIRMED.