

N.C. Court of Appeals Holds Libel Complaint

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Posted in Defamation

Earlier this month, the North Carolina Court of Appeals affirmed the Rule 12(b)(6) dismissal of a defamation action, holding that the filing of the complaint was sanctionable under Rule 11. In *Ward v. Jett Properties, LLC*, the plaintiff filed an action *pro se*, contending that his landlord defamed him in a letter sent to a representative of the homeowners association of the development where the plaintiff lived.

The matter started with a letter the plaintiff sent to the defendant, complaining about various actions by neighboring tenants. In response, the defendant wrote back, threatening to evict the plaintiff, to direct the homeowners association to take over his parking spot, and to report him to local law enforcement for failing to obtain North Carolina tags on his vehicle. The plaintiff contended that the letter was delivered to the homeowners association as well.

The plaintiff filed a lawsuit, alleging that the letter was libelous *per se* and *per quod*, in that it accused the plaintiff of, among other things, engaging in "continued harassment" and "pestering behavior," "stalking" others in the neighborhood, being a "nuisance," lodging "irritating and unwarranted complaints," and causing "trouble" and "problems."

In considering whether these allegations stated a claim for libel *per se*, the Court of Appeals first set out the four categories of libel *per se*:

a publication which, when considered alone without explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace.

The plaintiff contended that the letter at issue satisfied the fourth category.

The Court of Appeals disagreed, holding that the statements in the letter, understood "as ordinary people would understand them," were not libelous *per se* because they amounted to rhetorical hyperbole. In particular, the court held that accusations of dishonesty, harassing behavior, and unfavorable or disreputable personal habits cannot support a *per se* claim for defamation. The court concluded that the trial court therefore properly dismissed the plaintiff's claim at the Rule

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12(b)(6) stage:

In this case, defendant's letter was sent in response to a demand letter by plaintiff, accusing defendant of misconduct. In this context and after reading the entire document, defendant's characterization of plaintiff's conduct as harassment, pestering, threatening, irritating, and nonsense amounts to statements of opinion or rhetorical hyperbole that are not actionable as libel *per se*.

The plaintiff's *per quod* claim likewise failed to state a claim because the plaintiff failed to allege any pecuniary loss from the letter at issue.

The Court of Appeals also affirmed the trial court's finding that the filing of the complaint was sanctionable under Rule 11. The trial court rested its sanction on a finding that the plaintiff had filed at least four previous complaints against the defendant, all of which had been dismissed, and had filed a number of other actions against others. The Court of Appeals held that these findings were sufficient to satisfy the standard under Rule 11 for imposing a sanction. However, the court remanded the matter for further findings of fact with respect to the \$2,000 sanction imposed.