

## North Carolina Court of Appeals Rules that Duke

### Digital Media and Data Privacy Law Blog

on 09.11.2009

Posted in Defamation

Earlier this month, the North Carolina Court of Appeals released an opinion paving the way for Michael Pressler, former coach of the Duke University lacrosse team, to sue Duke University and a university spokesperson for slander and libel related to statements made in the aftermath of the Duke lacrosse case.

Pressler was the Duke lacrosse coach in 2006 when the Durham District Attorney Mike Nifong initiated a high-profile, and later discredited, investigation into allegations that members of the lacrosse team raped a dancer at an off-campus party. The North Carolina Attorney General ultimately found the three accused lacrosse players innocent, and the North Carolina State Bar stripped Nifong of his law license.

As reported in 2008 by WRAL.com, Pressler was pressured to resign from the university in April 2006 shortly after the rape investigation began. Thereafter, Duke spokesman John Burness (a named defendant in Pressler's lawsuit) made statements to the press concerning Pressler's resignation, which are the basis of Pressler's lawsuit. Burness's statements were published by Newsday in April 2007 and the Associated Press in June 2007.

The decision in Pressler v. Duke University (No. COA08-859) turned on contract principles. As a university employee, Pressler was bound by a university policy that required employees to arbitrate employment disputes. However, after Pressler resigned, he and Duke negotiated a settlement agreement, executed in March 2007, to resolve disputes concerning Pressler's termination. The settlement agreement made no reference to any arbitration requirement.

When Pressler filed his libel and slander claims against Duke and Burness in January 2008 for comments made by Burness and published by the press, the defendants responded by invoking the arbitration policy—the defendants sought to stay the proceedings while the parties arbitrated the dispute or, alternatively, sought to dismiss the claims. The trial court denied the defendants' motion and held that the obligation to arbitrate was “extinguished, cancelled and voided” by the settlement agreement executed in 2007.

On appeal, the North Carolina Court of Appeals affirmed the trial court's decision based on either of two contract theories. The Court of Appeals wrote:

North Carolina Court of Appeals Rules that Duke Lacrosse Coach can Pursue Libel and Slander  
Claims

[Pressler's] claims against defendants arose from alleged defamatory and libelous actions by defendants in June 2007, after the execution of the mutual release. Therefore, under either a theory of agreement of rescission or a theory of mutual release [of claims], plaintiff is not bound to resolve his dispute by arbitration with defendants. Plaintiff's proceedings in litigation are not subject to a stay. We affirm the trial court's . . . order denying defendants' motion to stay proceedings pending arbitration.

With this ruling, Pressler is now free to pursue his libel and slander claims filed in Durham County Superior Court. We will continue to monitor this story and update you with significant developments.