

Ohio Appellate Court Affirms Summary Judgment for Digital Media and Data Privacy Law Blog

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Posted in Defamation

A panel of the Court of Appeals for the Fifth Appellate District in Ohio has affirmed a lower court's grant of summary judgment in favor of an Ohio radio station in a defamation and false light invasion of privacy case involving a former candidate for judicial election. The Fifth District's opinion in *Christiansen v. WCLT et al.* is linked here.

Shortly before the November 2008 general election, radio station WCLT (Newark, Ohio) aired and posted to its website a political editorial in which the station's general manager expressed his opinion that two of three candidates were inappropriate for the position of Domestic Relations Court Judge. One of the two candidates quickly sought an *ex parte* temporary restraining order to enjoin the editorial from further distribution (which was later denied) and filed a defamation complaint. Later, because certain of the statements the plaintiff contended were defamatory were by her own admission literally true, the plaintiff amended her complaint to also allege a claim for false light invasion of privacy.

The statements in the editorial that the plaintiff challenged were these:

In July of 2007 a police report alleging assault was filed with the Newark Police Department against [the plaintiff]. In the report she is accused of striking a person in a courthouse elevator. She has also had several complaints concerning her behavior filed with the Ohio Supreme Court's disciplinary counsel.

The plaintiff admitted the statements were literally true, but claimed that the statements improperly created the inference that she had been charged with assault and disciplined by the Ohio Supreme Court's disciplinary counsel – neither of which had happened. (The Fifth District's opinion includes the full text of the editorial.)

On cross motions for summary judgment, the trial court denied the plaintiff's motion and granted the radio station's motion for summary judgment, finding that (1) the allegedly defamatory statements were not made with actual malice because the defendant believed them to be true (indeed, the plaintiff admitted they were literally true), (2) the statements were protected opinion, and (3) the statements could be construed as non-defamatory.

Ohio Appellate Court Affirms Summary Judgment for Radio Station on Defamation and False
Light Claims by Political Candidate

On appeal, the Fifth District, in a 2-1 decision, denied each of the plaintiff's five assignments of error by the trial court. The court held that:

- The lower court had not committed error by finding the allegedly defamatory statements to be literally true.
- The lower court properly applied the "innocent construction" rule to the statements. This rule requires that when an allegedly defamatory statement is subject to two interpretations, one defamatory and one not, the court must apply the non-defamatory meaning.
- The trial court did not err by finding that the factual statements made in the editorial were true and the rest of the editorial was protected opinion.
- The trial court properly held that the statements were not made with actual malice – knowledge of falsity or reckless disregard for the truth – because the statements were literally true. Actual malice could not be inferred from the plaintiff's evidence of common-law malice or personal animosity.
- The trial court properly distinguished the plaintiff's defamation claim from her false light claim, as both causes of action require the plaintiff to prove actual malice. Since the court affirmed the finding that the statements were literally true, the plaintiff could not prove actual malice.

The appellate decision represents an important victory affirming the right of news organizations and others to engage in political speech during election campaigns.