

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 18

MILWAUKEE COUNTY

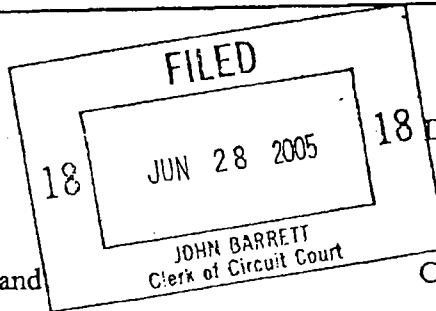
GRANT E. STORMS,

Plaintiff,

vs.

ACTION WISCONSIN, INC. and
CHRISTOPHER OTT,

Defendants.



18 DECISION and ORDER

Case No. 04-CV-002205

Plaintiff, Grant Storms, commenced this defamation action against defendants Action Wisconsin, Inc, and Christopher Ott (Defendants). Defendants have filed a motion for summary judgment and plaintiff filed a motion for a Court Ruling on Matters of Law. The court has had the opportunity to review the submissions of the parties and the record in the case. For the reasons set forth herein, defendants' motion for summary judgment is granted and plaintiff's motion is denied.

STATEMENT OF FACTS

The material facts are not in dispute. Defendants contend there are no disputes of fact. Plaintiff has failed to identify any genuine disputes of material fact.

Plaintiff Grant Storms is the pastor of a non-denominational fundamentalist church in Louisiana who is also a radio talk show host at a New Orleans AM radio station. He considers himself a Christian activist. Storms has appeared on others' radio shows in Louisiana, on a nationally broadcast Christian radio show, Internet radio shows,

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and television. He has engaged in anti-homosexuality protest activities. In 2002 Storms founded an organization called the Christian Conservatives for Reform, an active lobbying group; one of its goals is to raise its voice loudly against the homosexual movement.

Defendant, Action Wisconsin, Inc., is a statewide organization dedicated to advancing and protecting the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people. Action Wisconsin is involved in education advocacy, grass roots organizing, coalition-building, and electoral involvement. The organization works to educate the general voting public, sensitize the media, promote a politically active and effective organizational membership, and better inform policy makers on issues of concern to its members. Defendant Christopher Ott at all times relevant to this action was the Executive director of Action Wisconsin, Inc. Timothy O'Brien at all times relevant to this action was the President of the Board of Directors of Action Wisconsin, Inc. At all times relevant to this lawsuit, both Ott and O'Brien acted within their official capacities as Executive Director and President, respectively.

In the fall and winter of 2003, state legislation and later an amendment to the Wisconsin Constitution were proposed which would have explicitly reserved marriage for opposite-gender couples and prohibited the recognition of any marriage, whether in Wisconsin or elsewhere, not composed of an opposite-gender couple. Many of those who publicly supported this legislation cited religious opposition to homosexuality as their basis for supporting it. Defendants have publicly opposed this legislation and have worked to increase public awareness of the issues of civil rights for LGBT persons.

Wisconsin Christians United (WCU) is an organization whose stated mission is to educate the citizens of Wisconsin and the nation regarding the sin of homosexuality and the agenda of the homosexual movement. WCU advocates the criminalization of intimate conduct between same-sex couples.

Because the mission of WCU is contrary to defendants mission of advancing and protecting the civil rights of lesbian, gay, bisexual and transgender people, defendants monitored their activities and the WCU website.

In October 2003, WCU held a conference in Milwaukee titled "International Conference on Homo-Fascism." Plaintiff Grant Storms was an invited speaker at the conference. Defendants later learned that a Wisconsin senator had been present at the conference and was at Storms speech. Because the conference appeared to be anti-LGBT and because of the public debate of the issue of equal rights for gay and lesbian couples, defendants obtained a copy of the compact disc containing the speeches made at the conference.

Timothy O'Brien, then President of the Action Wisconsin Board of Directors listened to all of the CDs including Storms' entire speech. O'Brien was shocked by what he heard and concerned about the vitriolic nature of Storms speech and the use of violent imagery. Others at Action Wisconsin, including defendant Christopher Ott, listened to some or all of Storms' speech. All expressed concern that Storms' speech encouraged violence against gay and lesbian people. O'Brien and Ott had never heard of Grant Storms before listening to this speech.

Defendants were also concerned that a state senator had been present. Plaintiff does not dispute that there are gay and lesbian people residing in every county of

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Wisconsin and thus no matter which senator attended the conference, that senator has gay and lesbian constituents. Given their concerns, defendants issued a press release and published it on its website to inform the public about the speech and call for discipline of the senator who had been in attendance.

Plaintiff filed this defamation action alleging that defendants statements "tended and do tend to harm the reputation of the plaintiff so as to lower the plaintiff in the estimation of the community, and to deter others from associating or dealing with the plaintiff." Plaintiff alleges the press release defamed him with respect to two statements.

The first statement is: "Another speaker made sounds like gunfire as if he were shooting gay people, saying, 'God has delivered them into our hands . . . Boom boom boom . . . there's twenty! Ca-ching! Glory, glory to God.' Excerpts of the speeches are attached."

The second statement from the press release is: "We trust that Senator Panzer will be as appalled as we were to find one of her colleagues in the audience for a speech apparently advocating the murder of his own constituents."

Defendants filed a motion for summary judgment, arguing that plaintiff is a "limited purpose public figure," that plaintiff has failed to meet his burden of proving actual malice on the part of defendants, and that the statements made by defendants were substantially true. Plaintiff filed a cross motion for summary judgment, asking the Court to find, as a matter of law, that the statements made by defendants were false, that defendants acted with actual malice, and that the statements met the elements of a defamation claim.

STANDARD OF REVIEW

Summary judgment is appropriate when: “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” §802.08(2), Wis. Stats. The purpose of summary judgment is to avoid trials when there is nothing to try. *Kasbaum v. Lucia*, 127 Wis. 2d 15, 24 (Ct. App. 1985). “Summary judgment may be particularly appropriate in defamation actions in order mitigate the potential ‘chilling effect’ on free speech and the press that might result from lengthy and expensive litigation.” *Bay View Packing Co. v. Taff*, 198 Wis. 2d 653, 672 (Ct. App. 1995), citing, *Time, Inc. v. Hill*, 385 U.S. 374, 401-02 (1967) (Douglas J., concurring). Summary judgment is a favored method for adjudicating public figure defamation claims. *Torgerson v. Journal/Sentinel, Inc.*, 210 Wis. 2d 524, 539-40 (1997).

In the instant case, plaintiff has filed a cross motion for summary judgment and failed to identify any material fact disputes. “When both parties move by cross-motions for summary judgment, it is ‘the equivalent of a stipulation of facts permitting the trial court to decide the case on the legal issues.’ ” *Friendship Village v. City of Milwaukee*, 181 Wis.2d 207, 219 (Ct. App. 1993)(citations omitted)

The elements of a defamation claim are as follows: “(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Van Straten v. Milwaukee Journal Newspaper-Publisher*, 151 Wis. 2d

905, 912 (Ct. App. 1989), *cert. denied*, 496 U.S. 929 (1990). Additionally, if the plaintiff in a defamation action is a "public figure," that plaintiff must also prove that the statement was made with "actual malice." *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), *see also*, *Denny v. Mertz*, 106 Wis. 2d 636, *cert. denied*, 459 U.S. 883 (1982).

ANALYSIS

The first issue before the court is the determination of the status of plaintiff. This issue is not disputed. Plaintiff concedes that he is both a general purpose public figure and a limited purpose public figure.

The second issue is whether plaintiff can meet his burden to show actual malice on the part of the defendants. *Bay View Packing Co.*, 198 Wis. 2d at 685. Actual malice has been defined as "knowledge that [the statement] was false or with reckless disregard of whether it was false or not." *New York Times*, 376 U.S. at 279-80. "Whether the undisputed facts at summary judgment 'fulfill the legal standard of actual malice is a question of law.'" *Bay View Packing Co.*, 198 Wis.2d at 685, *quoting*, *Van Straten*, 151 Wis.2d at 917. "Actual malice is not determined by whether a reasonably prudent person would have published the challenged statements. The test is subjective." *Torgerson*, 210 Wis.2d at 542. Plaintiff must show that defendant knew the statement was false, and "in fact entertained serious doubts as to the truth of the publication, or had a high degree of awareness of probable falsity." *Id.* (citations omitted)

There is no dispute about what Storms said during his speech. A recording of the speech is part of the record and neither party disputes its accuracy. In considering these motions the court listened to the recording. Plaintiff offered two exhibits that purported

to include transcripts of the speech but neither was in a form to be admissible. On a motion for summary judgment the parties must submit affidavits in a form as would be admissible at trial. §802.08(3), Wis. Stats. The court has disregarded those exhibits and will grant defendants' motions to strike them from the record.¹ In addition, the press release was written after O'Brien and Ott *listened* to the recording that is in the record in this case. The manner in which Storms made the statements, the volume, inflection, cadence, are important to the listener's interpretation of the statements.

There is no dispute about the contents of the press release. Defendants' press release is also in the record and there is no dispute about what Action Wisconsin said in interpreting Storms speech.

There is no dispute that the press release accurately quoted what Storms said. Storms originally conceded that defendants had accurately quoted him but now in argument has raised some minor disagreements with the quoted language. Plaintiff fails to identify how such errors are material to the legal issues raised by these motions. There is no legal significance to the differences now claimed by Storms.

The issue before the court, therefore, is whether the statements of Action Wisconsin interpreting Storms statements were false and whether they were said with actual malice. This court is satisfied that on the undisputed facts of this case, plaintiff has failed to present sufficient evidence to meet his burden to show falsity or actual malice.

Plaintiff contends that defendants failed to conduct an investigation before issuing the press release and that defendants failed to listen to the entire speech. But O'Brien did listen to the speech in its entirety as well as the entire CD of the conference. Defendant

¹ Plaintiff also submitted an affidavit as Exhibit 6 to plaintiff's Brief in Opposition of Defendants' Motion for Summary Judgment. The Court will disregard paragraphs 7 through 19 and the last two sentences of paragraph 6 of this exhibit, as these portions of the affidavit are neither relevant nor admissible.

Ott as well as another Action Wisconsin employee listened to portions indicated by O'Brien. It is undisputed that when Ott later listened to the entire speech it did not change his interpretation.

The only significance to the fact that Ott did not listen to the speech in its entirety until after the issuance of the press release is if in doing so he identified parts of the speech that changed his interpretation. Ott testified that nothing in the speech did so. Nor has plaintiff shown any language in the speech that challenges his interpretation. Moreover, it is undisputed that before issuing the press release O'Brien, President of Action Wisconsin, did listen to the speech in its entirety.

The issue of the rights of same-gender couples to marry in Wisconsin was a matter of active debate among the citizens of Wisconsin. Given the violent and derogatory language used about and against gay and lesbian people by speakers at the conference, and the information that a Wisconsin senator attended the conference, defendants decided to issue a press release to inform the public about the conference, tell them what was said, and seek discipline of the senator who had attended.

The press release quoted statements made by plaintiff and directed persons to the CD recording provided by the WCU. Thus defendants invited others to reach their own conclusions and fully disclosed the entire speech and the surrounding circumstances.

There is no dispute that the issue of civil rights for LGBT persons and particularly access to civil marriage was a public controversy in the fall and winter of 2003--and continues to today. The discussion of the issue in Wisconsin has been passionate and divided. At that time the Wisconsin legislature was considering legislation to limit

marriage to opposite gender couples. The activity of defendants in opposing the legislation as well as a proposed constitutional amendment is detailed in the record.

One of the groups strongly supporting the legislation and opposing civil rights for LGBT was WCU--the conference sponsor. WCU invited Storms to speak. There was also information that a member of the state senate was present at the conference.

Once defendants heard the speech given by Storms, they were concerned and shocked. The First Amendment protects a person's right to speak. Defendants did not seek to interfere with plaintiff's right to speak but acted to expose to the public what was said at the conference and who was present. This action is consistent with the established principle that "debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. V. Sullivan*, 376 U.S. 254, 271(1964). Speech from all sides of a public controversy is protected. "The First Amendment, said Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly' but we have staked upon it our all." *Id.* (citations omitted)

With respect to the issue of actual malice, plaintiff has failed to meet his burden. There is no evidence that defendants or any of its officers or employees had actual knowledge that the statements were false. Plaintiff contends that malice is shown by defendants' failure to conduct an extensive investigation. But the law does not impose such a standard.

In challenging defendants' failure to investigate, plaintiff has failed to provide evidence of any publicly available materials that could have or should have changed defendants' interpretation of the speech. Contacting plaintiff is not a requirement but if

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he had been contacted, any statements by him now would not change the words he actually stated in October 2003. As indicated, plaintiff does not dispute that the CD accurately reflects the speech he gave.

The evidence is undisputed that defendants through its officers and employees verified that Storms did in fact state the words quoted in the press release. Although plaintiff concedes the words spoken by Storms were accurately reported, plaintiff contends that defendants' interpretation was wrong. There is no evidence that defendants believed their interpretation was wrong and published it anyway. The only evidence is that defendants honestly believed the words spoken by Storms advocated violence against gay people. Defendants' initial reaction to the speech is shock and fear is consistent with their interpretation as expressed in the press release.

Defendants' interpretation must also be considered in the context of the entire speech. For example, plaintiff also stated:

It's us or them. There is no in between. There is no having this peaceful co-existence. They have to eliminate us and the word of God if they want to succeed. It's almost like capitalism and communism--it is going to be one or the other. You can't have both . . . Either they're right, or we're right. Either we're going to succeed, or they're going to succeed. Either it's going to be a homosexual, anti-God nation, or it's going to be a nation that stands for God and says that thing is sin. Can't be both, won't be both. Something is going to happen. Either they'll crush us and . . . silence us and kill the ones that won't be silent or imprison the ones that won't be silent. Or the church of the Lord Jesus Christ will rise up and say this is a Christian nation: this is the way it will remain. Go back in the closet.

Storms discussed his frustration with judges, legislators, and other public officials and spoke of the futility of letter writing, petitions, and other protests. He urged his listeners to make a difference, that "you alone can make a difference." He stated, "we need some

people that will get up with radical ideas and go forward in the name of Jesus.” Storms urged his audience to “take it to the streets.” It is in this context that Storms discussed the story of Jonathan and his armor bearer who killed the Philistines. Storms denies he advocated murder because murder is a sin. But Storms concedes that when Jonathan killed the Philistines this was not considered wrong by God. Moreover, it is significant to note what Storms did not say. At no time did Storms say he did not mean to encourage people to get into physical confrontations with gay and lesbian people. At no time did he tell his listeners that his words should not be taken literally. Defendants’ statements were a rational interpretation of Storms speech.

In their moving papers, defendants have extensively and accurately set forth the words and sounds used by plaintiff. Defendants have extensively and accurately explored the entire speech. Defendants’ interpretation that Storms did appear to advocate the murder of gay people is not unreasonable. The language used was “God had delivered them into our hands. Hallelujah-Boom, boom, boom, boom, boom --There’s twenty! Ca-ching. Glory, glory to God. Let’s go drive through the McDonalds and come back and get the rest.” with loud sounds made to sound like explosions. In addition Storms drew a parallel between the Philistines who were slain by the Israelites and gay and lesbian people. It is also significant that earlier in the speech Storms stated he intended to “liken the Philistines unto the homosexual movement today.” Defendants’ statements expressed their understanding of the meaning of this analogy.

In response, plaintiff contends there is an alternative “common sense” interpretation of the speech and thus defendants cannot have an honest belief in the truthfulness of their statement. Plaintiff’s interpretation is strained and inconsistent with

the speech as a whole. But even if plaintiff honestly believes in his interpretation--that does not make defendants belief false. Plaintiff's bare allegation of actual malice in the face of defendants' testimony is insufficient evidence of actual malice to support a jury verdict in favor of plaintiff in this case. Taking into account the entire record, this court cannot conclude that defendants did not honestly believe the assertions in the press release.

On the undisputed facts in this case, no reasonable jury could find actual malice by clear and convincing evidence.

Finally, plaintiff has submitted no evidence that he was defamed. In his deposition plaintiff concedes that no person has stopped associating with him because of defendants' press release, nor has he suffered a loss of membership in his organization or his church. Plaintiff has offered no facts to support a finding of harm to his reputation.

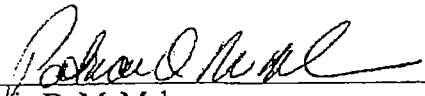
CONCLUSION

Defendants' press release presented a fair interpretation of plaintiff's speech. There is no evidence that the statements made were false or in reckless disregard to whether they were true or false. Summary judgment is appropriate where it is clear that plaintiff cannot recover under any circumstance. Thus on the undisputed facts, defendants' motion for summary judgment is granted and this action is dismissed.

Dated: June 28, 2005



By the Court:


Patricia D. McMahon
Circuit Court Judge