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Miller v. Lowe

[NO NUMBER IN ORIGINAL]

CIRCUIT COURT OF GREENE COUNTY, VIRGINIA

2006 Va. Cir. LEXIS 122

July 7, 2006, Decided

**PRIOR HISTORY:** Miller v. Lowe, 2006 Va. Cir. LEXIS 3 (Va. Cir. Ct., Jan. 3, 2006)

**COUNSEL:** [\*1] David C. Dickey, Esquire, Stanardsville, Va.

Michael E. Derdeyn, Esquire, Feil, Pettit & Williams, PLC, Charlottesville, Va.

**JUDGES:** Daniel R. Bouton, Judge.

**OPINION BY:** Daniel R. Bouton

**OPINION:**

Demurrer to Amended Motion for Judgment

I write to advise you of the court's ruling with regard to the outstanding demurrer in the above referenced case.

The amended motion for judgment alleges that a number of statements made by the defendant are defamatory. There is no dispute that the defendant published the disputed statements and that they refer to the plaintiff. Moreover, the plaintiff's amended motion for judgment does not allege that any of the statements fall into the four categories that are actionable per se under Virginia law. Therefore, the court must address whether any of the statements create an apparent substantial danger to the plaintiff's reputation. There is no simple test that can be applied by the court to resolve this inquiry; however, whether a statement makes substantial danger to one's reputation apparent is a question of law that must be decided by the trial judge. *WJLA-TV v. Levin*, 264 Va. 140, 564 S.E.2d 383 (2003); *The Gazette, Inc. v. Harris*, 229 Va. 1, 325 S.E.2d 713 (1985). [\*2] A related issue in connection with each statement is whether the disputed statement is one of fact rather than opinion; expressions of opinion are not actionable under Virginia law *Chaves v. Johnson*, 230 Va. 112, 335 S.E.2d 97 (1985). Finally, it must be noted that the Supreme Court

of Virginia has found that innuendo may support a claim for defamation; however, any inferences from such innuendo must not exceed the ordinary meaning of the statements. Any innuendo that flows from a statement must not introduce new matter or extend the meaning of the words to make certain what is not certain. This principle must also be considered in ruling on the statements that are alleged to be defamatory in the present case. *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 82 S.E.2d 588 (1954).

The court will now turn to the statements that are referred to in the amended motion for judgment. First, the plaintiff alleges that the following statement is defamatory: "The courts made a statement to the effect that Mr. Miller was not trying to resolve a problem but to perpetuate it." In the court's view, the ordinary meaning of this statement contains nothing that can be construed as defamatory under [\*3] Virginia's common law principles. Arguably, it is offensive, unflattering, or insulting in that it portrays Mr. Miller as a difficult or litigious person; however, its common meaning does not render apparent substantial danger to one's reputation. Moreover, in the court's view, this is a statement of opinion rather than one of fact; in this regard, one could not prove as true or false whether a person was trying to resolve a problem rather than perpetuate it.

The plaintiff also alleges that the following statement is defamatory: "To top it off, his former lawyer had to pursue him for nonpayment of his professional fees." On this point, the plaintiff argues that this statement amounts to an accusation by the plaintiff that the defendant does not pay his bills. Nevertheless, the context of the statement must be considered in determining whether it is defamatory. On this point, it must be noted that the statement was made with reference to legal fees that arose from some type of litigation in Maryland. The statement was not a general accusation that the plaintiff fails to pay his lawful debts. Rather, it was a criticism of his conduct in connection with a case that was tried in another [\*4] jurisdiction. Therefore, any innuendo that

