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William L. Beezley v. Elias Hansen : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

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WILLIAM L. BEEZLEY,
Plaintiff and Appellant,

vs.

ELIAS HANSEN,
Defendant and Respondent.

Case No.

8287

BRIEF OF APPELLANT

W. R. HUTCHINSON, JR.
Attorney For Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM L. BEEZLEY,
Plaintiff and Appellant,

vs.

ELIAS HANSEN,
Defendant and Respondent.

Case No.

8287

BRIEF OF APPELLANT

STATEMENT OF FACTS

This action was originally instituted by plaintiff against the defendant based on slander. The words spoken were as follows; "That guy isn't honest and if he were honest, he would admit that she paid that money on the property." That the words so spoken were published to Ella H. Beezley, wife of the plaintiff and daughter of the defendant, on the 17th day of

July, 1953 and reiterated thereafter on the 9th day of January, 1954 while the deposition of defendant was being taken in case No. 95289 Ella H. Beezley vs. William Beezley, defendant and Elias Hansen, third party defendant. That after this cause was at issue pursuant to the respective pleading the defendant filed a motion for summary judgment in the premises, and in support thereof filed his affidavit together with affidavit of Ella H. Beezley and the plaintiff filed a counter affidavit which placed the issue as to whether or not the defendant was acting as the attorney for Ella H. Beezley squarely before the court. Further, defendant introduced at the hearing from the files in case No. 95289 the following pleadings; answer to plaintiff's pleadings denominated as Amended Reply to Amended Answer and Counterclaim and Supplemental Complaint, together with plaintiff's answers to Interrogatories in this cause. Thereafter, the court entered a Summary Judgment in favor of defendant, holding that the statement made to Ella H. Beezley by the defendant was privileged by virtue of the relation of attorney and client and that the statement reiterated at the time of taking the deposition of defendant was privileged, and that said words so spoken on both of said occasions were not actionable.

STATEMENT OF POINTS

1. The court erred in rendering the summary judgment herein, and by virtue thereof, plaintiff was deprived of having his day in court, and disproving the allegations of said petition and affidavits attached thereto, and proving the allegations contained in his complaint of record herein.

2. That the words spoken to plaintiff's wife injured and damaged plaintiff in his profession and occupation, and destroyed the confidence of plaintiff's wife which was reposed in her during their marriage.

3. That this court should take judicial knowledge of the fact that plaintiff was at all times mentioned herein as a duly licensed and practicing attorney at law, and further, as such, the statement spoken would damage and injure his profession and business, due to the fact that the same is based upon confidential relations with his clients and patrons both in legal and business affairs.

4. That the statement so made, if true, shows in the trial of this cause that plaintiff was guilty of embezzlement, and fraudulently appropriated money entrusted to him by another, his wife, therefore the words spoken were and are slanderous per se.

5. That the statement made to Ella H. Beezley

on the 17th day of July, 1953 and reiterated on the 9th day of January, 1954 at which time the deposition of Elias Hansen was being taken were not privileged. The first statement was made relative to an account between Ella H. Beezley and this plaintiff, and at best the defendant would be acting as an agent and not as an attorney. The taking of the deposition was administrative and not judicial, therefore not privileged. That in any event the defendant in making said statements exceeded his authority and scope of his employment as alleged by him and had no bearing upon his duties as an attorney.

ARGUMENT

Point 1. Should be a part of the entire argument herein and will be treated as such, as it goes directly to the final conclusion in this case. As to Points 2 and 3 the same is well taken as a matter of law. We call your attention to the case of Harbison vs. Chicago R. I. Ry. Co., 37 S.W. (2nd) 609 (Mo.).

“There is no question but that words defamatory of the husband alone, spoken in the presence and hearing of his wife, would be publication. In that situation the wife would be a third person within the meaning of the law of publication, because the alleged defamatory words would of been no application to her, and she would not be connected with the defamation in any way.”

Reading by blind man's wife of libelous letter written to him constitutes a publication, where defendant writing letter had reason to believe that wife would read it to husband, and if such publication destroyed or weakened confidence of wife in integrity of husband, to such extent as to cause him mental anguish or loss of consortium, damages therefore could be recovered.

Lane vs. Schilling, 279 P. 267 (Or.);

See also Fordson Coal Co. vs. Carter, 108 S.W. (2nd) 1007 (Ky.);

Weidman vs. Ketchum, 15 N.E. (2nd) 246 (N.Y.);

Batten vs. Cox, 23 P. 1040 (Kan.).

A statement charging one with wilful falsehood in a serious business transaction must necessarily expose such person to contempt and lower him in the common estimation of citizens, and is therefore actionable per se. Dwyer vs. Libert, 167 P. 651 (Idaho).

Where the words used have such a relation to the profession or occupation of the plaintiff that they directly tend to injure him in respect to it, or to impair confidence in his character or ability, when from the nature of his business great confidence must

necessarily be reposed, they are actionable although not applied by the speaker to the profession or occupation of the plaintiff. When however, they convey only a general imputation on his character, equally injurious to any one of whom they might be spoken, they are not actionable unless such application be made. *Sanderson vs. Caldwell*, 6 American Reporter 105 (N.Y.)

It was held to be actionable, slanderous words need not be applied by the speaker to the profession or occupation of the one referred to, if they are such as naturally convey to the hearers a meaning applicable to such profession or occupation.

Pathangall vs. Morrers, 94 A. 561 (Me.);

See A.L.R. 1918 E 14 Ann. Cas. 1917 D 689.

As to the form of statement used by the defendant we call your attention to the case of *Logan vs. Steele*, 4 Am. Dec. 659 (Ky.).

“But it is again objected that the words in question are not actionable because they contain no positive affirmation but are expressive merely of the belief of the speaker. Were such an objection to be sustained to an action for slanderous words, it would be easy for one who designed to injure the character of another to effect his malicious purpose without incurring any responsibility by circulating the slander, clothed in expressions of opinion or

belief, he might destroy the fairest reputation with impunity. But the law will not permit any injury done to character to be without remedy by such an artifice as this: Whatever may be the mode of expression used, if an assertion of guilt is implied or intended the words will be actionable." "I am persuaded in my conscience," is a sufficient affirmation. So the expression, "I am thoroughly convinced," "I think or I dreamed it," For aught I know."

The case of *Williams vs. Riddle*, 140 S.W. 661 (Ky.) states the following:

"Actionable words are therefor of two kinds: (1) Those that are actionable in themselves, without proof of special damage or injury; and (2) those that are actionable only by reason of some actual special damage or injury sustained by the party slandered. It is equally clear that where words naturally and necessarily producing injury an action must lie. But a third class of cases also exists where the words, though not in themselves such as naturally lead to an inference of damage, do, as a matter of fact, produce it, and in this case the person injured has a clear right of redress. Had the law of defamation developed itself in what maybe termed a natural way the cases would have classified themselves under this head in accordance with the actual facts; but an arbitrary rule, introduced in the law of England in the early times, has to a certain extent made the law of slander artificial. Instead of inquiring under the rule of certainty and proximate cause, into the

effect of the words spoken, the courts early layed it down, as a matter of law, that in the following case only where words slanderous, or actionable per se; (1) Words falsely spoken, imputing the commission of a crime involving moral turpitude, for which the party might be indicted and punished; (2) Words imputing an infection of disease, likely to exclude him from society; (3) Words imputing unfitness to perform the duties of an office or employment; (4) Words prejudicing him in his profession or trade; (5) Word tending to disinherit him. In all other cases words spoken are either (a) not actionable at all or only actionable (b) on proof of special damages. This classification is recognized. This classification is recognized in the leading case of Pollard vs. Lyon, 91 U.S. 225, 23 L. Ed. 308. To sustain a recovery plaintiff must not only show damage, but the damage must be the natural and probable consequence of the words used. Field vs. Colson, 20 S.W. 264 (Ky.).”

Point 4. The words spoken involve the plaintiff's moral turpitude arising out of a money transaction between plaintiff and his wife, Ella H. Beezley involving approximately \$1,000.00. That it is claimed she paid said sum to plaintiff for a specific purpose, and plaintiff denied such accusation. That in the event such money was paid to plaintiff he would be guilty of converting same to his own use and benefit, which would constitute embezzlement. The words spoken by defendant went to the transaction as set forth herein and the deposition on file herein shows the defendant made such statement based on hear-

say, and that he knew nothing concerning the payments of his own knowledge.

Point 5. The summary judgment entered in this matter is based entirely upon privilege as claimed by the defendant, which alleged privilege is in dispute, and at issue. The matter seems to resolve itself in the proposition of a party taking judgment based upon two affidavits and the plaintiff being deprived of a judicial hearing on the transactions involved in this litigation. As heretofore stated the statement arose out of a disputed account between plaintiff and his wife, we therefor call your attention to the case of Burraston vs. First National Bank of Nephi 62 P. 25 (Utah) wherein the court stated, "Merely to straighten out account" relationship of attorney and client, in ordinary acceptation of terms, did not exist, but attorney was merely plaintiff's agent, and statements by attorney in plaintiff's presence, expressive of satisfaction with account, were admissible in evidence tending to support defendant's plea of account stated.

As to the reiteration of the statement by defendant when his deposition was taken; the deposition does not become a part of court proceeding within law of liable until it is transcribed, signed, sealed and witnessed and transmitted to Clerk of Court and introduced in evidence. Thus such evidence is admissible to show that a communication Prima

facie privilege was made maliciously and when subsequent libel has reference to one sued on it will be admitted as a necessary part of the *res gestae*. We think Judge Kanzly in taking the deposition in question was acting in an administrative capacity and not in a judicial capacity.

See *Mannix vs. Portland Telegram*, 23 P. 2nd 138-144 (Or.),

CONCLUSIONS

In summing up the position of the plaintiff in this matter we respectfully contend that plaintiff should prevail on this appeal.

First: That there was not sufficient showing to justify the trial court to enter a summary judgment herein. That said cause should have been tried and that the matters and things decided by a jury.

Second: That the words spoken damaged and injured plaintiff's profession, that of an Attorney at Law, which involves at all times explicit confidence between attorney and client. That said statement made to plaintiff's wife, was very detrimental, due to the relationship of husband and wife.

Third: That the words spoken are actionable *per se*, and if not may be sued upon with proof of damages.

Fourth: That the alleged privilege is untenable. That defendant in making said statements exceeded his alleged employment as an attorney and had no bearing whatsoever upon legal advise given his client and would not in any manner come within the purview of representing his client in the capacity of an attorney. That statements were outside of legal employment, and service to his daughter as an attorney.

Fifth: That the statement made contained in deposition was an administrative function in the taking of same and was not a judicial proceedings.

Sixth: That the statements arose out of an account between the plaintiff and his wife and at best the defendant was merely an agent for his daughter in regard to the same.

Respectfully submitted,

W. R. HUTCHINSON, JR.

Attorney For Appellant