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Marion S. Carter v. Edward B. Jackson : Brief of Appellant

Utah Supreme Court

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In the Supreme Court of the State of Utah

MARION S. CARTER,
Plaintiff and Appellant,

—vs.—

EDWARD B. JACKSON,
Defendant and Respondent.

Case No.
9055

APPELLANT'S BRIEF

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STATEMENT OF FACTS

The problem involved in this lawsuit is relative to the nature of remarks made by a city councilman in and during a city council meeting and later reiterated and restated after said meeting was adjourned in same city council meeting room and as to whether or not said statements were priviledged, and if priviledged, ordinarily whether or not the priviledge was removed by the fact that said statements were untrue and reiterated after said meeting was adjourned.

On the 15th day of April, 1958, in an open and public meeting of the city council of South Salt Lake City the

Defendant, Edward B. Jackson, a commissioner in charge of the water department accused the Plaintiff herein, a deputy city marshall of the city of South Salt Lake of propositioning a woman whom the Plaintiff was alleged to have apprehended and arrested in his course of employment as a police officer.

That thereafter and after said meeting was adjourned the Plaintiff specifically on asking the Defendant to explain his previous remarks received a reiteration by the Defendant of the prior statement and accusation.

The Defendant herein did not personally have charge of the police department in his duties as city councilman, and the statements made about the Defendant were untrue.

As a result of said libelous statements by the Defendant the Plaintiff was held up to ridicule by the people among whom he worked and in the community in which he lived and therefore withdrew from his employment and was unemployed and had considerable loss of wages in addition to the humiliations suffered because of publications of said statement.

STATEMENT OF POINTS

POINT I.

THE CLASS OF ABSOLUTELY PRIVILEGED COMMUNICATIONS NOW AND IS PRACTICALLY LIMITED TO LEGISLATIVE AND JUDICIAL PROCEEDINGS AND OTHER ACTS OF STATE.

POINT II.

NO PRIVILEGE RESULTS MERELY FROM THE FACT THAT A DEFENDANT BELIEVES THAT HE OWES A SOCIAL DUTY TO GIVE CURRENCY TO RUMORS OF A LIBELOUS CHARACTER SO THAT THE VICTIM OF THEM MAY BE AVOIDED, AND PARTICULARLY IF SAID STATEMENTS ARE UNTRUE OR MADE RECKLESSLY WITHOUT CARE AS TO WHETHER THEY ARE TRUE OR FALSE.

POINT III.

COMMENTS MADE ON A MATTER OF PUBLIC INTEREST MAY BE PRIVILEGED IF FAIRLY MADE BUT COMMENT IS FAIR ONLY WHEN IT CONFINES ITSELF TO THINGS OR TO THE ACTS OF CONDUCT OF PERSONS, AND COMMENT GOING SO FAR AS TO ATTACK PERSONAL CHARACTER OR TO IMPUTE MORAL OR CORRUPT MOTIVES IS UNFAIR AND UNPRIVILEGED AND CERTAINLY NO PRIVILEGE EXTENDS TO MISSTATEMENTS OF FACT EVEN THOUGH MADE WITHOUT MALICE AND IN THE HONEST BELIEF THAT THEY ARE TRUE. THIS RULE HAS BEEN APPLIED EVEN THOUGH THE FALSE STATEMENT IS MADE UNINTENTIONALLY OR AS THE RESULT OF ACCIDENT OR MISTAKE.

POINT IV.

GENERAL DAMAGES ARE PRESUMED FROM THE PUBLICATION OF A LIBELOUS MATTER AND WHILE NOT SUSCEPTIBLE OF BEING ACCURATELY MEASURED THEY ARE GENERALLY MORE SUBSTANTIAL AND REAL THAN THOSE DESIGNATED AS ACTUAL AND MEASURED ACCURATELY BY THE DOLLAR STANDARD, AND THE MERE CIRCUMSTANCE THAT THE PLAINTIFF RETAINED HIS EMPLOYMENT FOR SOME CONSIDERABLE TIME AFTER PUBLICATION OF A LIBEL CONCERNING HIM DOES NOT ENTITLE THE DEFENDANT TO HAVE THE RECOVERY LIMITED TO NOMINAL DAMAGES IF

IT APPEARS THAT THE PLAINTIFF'S EMPLOYER IMMEDIATELY LOST CONFIDENCE IN HIM AND THE PLAINTIFF SUFFERED HUMILIATION THEREBY AND AN AWARD FOR COMPENSATORY DAMAGES FOR DEFAMATION MAY BE SUPPLEMENTED BY AN ALLOWANCE OF PUNITIVE DAMAGES WHEREINEVER IT IS MADE TO APPEAR THAT THE DEFENDANT ACTED WITH MALICE OR WITH SUCH GROSS AND RECKLESS NEGLIGENCE AS TO AMOUNT THERETO, AND FURTHERMORE, WHERE THE DEFAMATION COMPLAINED OF IS ACTIONABLE PER SE, IT IS GENERALLY HELD THAT PUNITIVE DAMAGES MAY BE AWARDED EVEN THOUGH THE AMOUNT OF ACTUAL DAMAGE IS NEITHER FOUND NOR SHOWN.

POINT V.

THE COURT ERRED IN NOT SUBMITTING THE QUESTION OF WHETHER OR NOT SAID COMMUNICATION WAS PRIVILEGED TO THE JURY BECAUSE IT WAS A QUESTION OF FACT BASED UPON CIRCUMSTANCES.

POINT VI.

THAT THE COURT ERRED IN MAKING A DIRECTED VERDICT AND DID NOT SUBMIT THE MATTER TO THE JURY, INASMUCH AS MALICE IS IMPLIED, WHERE THE STATEMENTS MADE WERE GIVEN RECKLESSLY WITHOUT EFFORT TO ASCERTAIN THEIR TRUTHFULNESS AND SAID STATEMENTS ARE FALSE AND THAT MALICE WOULD REMOVE ANY PRIVILEGE THAT THE DEFENDANT MAY HAVE HAD IN THE STATEMENTS MADE.

ARGUMENT

POINT I.

THE CLASS OF ABSOLUTELY PRIVILEGED COMMUNICATIONS NOW AND IS PRACTICALLY LIMITED TO LEGISLATIVE AND JUDICIAL PROCEEDINGS AND OTHER ACTS OF STATE.

The city council meeting which was hearing the Defendant herein speak, was not in the nature of legislative and judicial proceedings as were contemplated for the protection of a person making statements therein, therefore, there is no absolute privilege of the Defendant to say anything that he pleased regardless of the truth or falsity of the accusations by the Defendant. This particular session of the council was not a special one but a regularly scheduled meeting of said city council, and the communication herein was not priviledged because of it not being a hearing for legislative or judicial proceedings. This board was neither hearing evidence or gathering information for the passing of ordinances nor was it empowered to in any way proceed in a judicial hearing relative to the matters under discussion.

There is a complete discussion of this matter of absolute priviledge in 2 A.L.R. 1371, the sum and substance of which sets forth the above rule of law.

POINT II.

NO PRIVILEGE RESULTS MERELY FROM THE FACT THAT A DEFENDANT BELIEVES THAT HE OWES A SOCIAL DUTY TO GIVE CURRENCY TO RUMORS OF A LIBELOUS CHARACTER SO THAT THE VICTIM OF THEM MAY BE AVOIDED, AND PARTICULARLY IF SAID STATEMENTS ARE UNTRUE OR MADE RECKLESSLY WITHOUT CARE AS TO WHETHER THEY ARE TRUE OR FALSE.

Even where there is priviledge of legislative and judicial actions of governmental bodies there are limitations on said priviledge and rules that govern the bounds thereof. When statements are made as they were by the

Defendant herein without any regard to the truth or falsity of the same and made recklessly without care as to whether they were true or false and when the Defendant herein could have ascertained the truthfulness of it by merely calling on the telephone Commissioner V. Allen Olsen who was the commissioner in charge of the police department and who had the facts at his command, it would appear that the priviledge, if any there was, was removed. (Refer to transcript page ..... as to limitations on priviledge. There are extensive annotations in 50 A.L.R. 335 and 63 A.L.R. 643 which support and set forth the above limitations on priviledge and also another discussion of untrue or reckless statements being made and taking it out of the classification of priviledge communications is further discussed in 46 L.R.A. (N.S.) 106.).

The Defendant herein testified (see page 3 of Defendant's deposition, lines 21 to 27; Defendant's deposition page 4, lines 6 through 11) however testimony of other witnesses, Martha Toombs, (official transcript page 9 and 10) which were taken from her shorthand minutes and which also was recorded in the same language in the official minutes of South Salt Lake City for the meeting held April 15 which record was approved by the City Commission at the subsequent meeting as being correct; further testimony by Helen Fraizer (transcript page 36); Bell Davis, (transcript page 45); George H. Searle, (transcript page 50); LeRoy Woods, Sr., (transcript pages 59 and 60); June Adams, (transcript page 62); B. Allen Olsen, (transcript page 72); Marion

Carter, (transcript page 82).

The Defendant, Ed Jackson, spent considerable time and thought in preparing the statements for this meeting and therefore having given it such consideration he could easily have verified the truth or accuracy of the allegations he made by merely consulting with the Councilman, V. Allen Olsen, in charge of the police department. Mr. Olsen testified that the statements made about officer Carter were false. (transcript page 74) Therefore, the Defendant having prepared a written document and given this considerable time to prepare it either mentioned officer Carter maliciously or recklessly when he could easily ascertained the truth thereof.

POINT III.

COMMENTS MADE ON A MATTER OF PUBLIC INTEREST ARE PRIVILEGED IF FAIRLY MADE, BUT COMMENT IS FAIR ONLY WHEN IT CONFINES ITSELF TO THINGS OR TO THE ACTS OF CONDUCT OF PERSONS, AND COMMENT GOING SO FAR AS TO ATTACK PERSONAL CHARACTER OR TO IMPUTE MORAL OR CORRUPT MOTIVES IS UNFAIR AND UNPRIVILEGED AND CERTAINLY NO PRIVILEGE EXTENDS TO MISSTATEMENTS OF FACT EVEN THOUGH MADE WITHOUT MALICE AND IN THE HONEST BELIEF THAT THEY ARE TRUE. THIS RULE HAS BEEN APPLIED EVEN THOUGH THE FALSE STATEMENT IS MADE UNINTENTIONALLY OR AS TO THE RESULT OF ACCIDENT OR MISTAKE.

Inasmuch as the Defendant herein read from a prepared copy it cannot be presumed that he made a mistake in mentioning the name of the Plaintiff herein or that it was unintentional as he had definitely and with pre-

meditation on the same had the matters he wished to discuss and the language thereof prepared. (Defendant's deposition, page 7). Even if the Defendant had made the statement he did as a misstatement of fact and with honest belief that it was true he would not have had a priviledge to say the same. The Defendant herein used malice in uttering the false statement relative to the Plaintiff from the fact that he made no effort to verify the accuracy of the information he was imparting.

The Court held in Gott vs. Pulsifer (122 Massachusetts 235, 23 AM REP 322) "Malice may be inferred from false statements exceeding the limits of fair and reasonable criticism and recklessly uttered in disregard of the rights of those who might be affected by them."

In Stevenson vs. Morris (288 Pacific 405, 136 Atlantic 234, and Annotated in 50 A.L.R. in 335) it was held that in order to claim the benefit for privilege for his statements that the Defendant was bound to make reasonable effort to ascertain the truth of the charge made by him. Also in Barry vs. McCollom (81 Connecticut 293, 70 Atlantic 1035) it was held that the priviledge depended not on reasonable grounds for believing the statement true but rather on good faith and honest belief that it was true. This also is further annoated and discussed in 50 A.L.R. 347.

POINT IV.

GENERAL DAMAGES PRESUMED FROM THE PUBLICATION OF A LIBELOUS MATTER, WHILE NOT SUSCEPTIBLE OF BEING ACCURATELY MEASURED,

ARE GENERALLY MORE SUBSTANTIAL AND REAL THAN THOSE DESIGNATED AS ACTUAL AND MEASURED ACCURATELY BY THE DOLLAR STANDARD, AND THE MERE CIRCUMSTANCE THAT THE PLAINTIFF RETAINED HIS EMPLOYMENT FOR SOME CONSIDERABLE TIME AFTER PUBLICATION OF A LIBEL CONCERNING HIM DOES NOT LIMIT THE DEFENDANT TO HAVE THE RECOVERY LIMITED TO NOMINAL DAMAGES IF IT APPEARS THAT THE PLAINTIFF'S EMPLOYER IMMEDIATELY LOST CONFIDENCE IN HIM AND THE PLAINTIFF SUFFERED HUMILIATION THEREBY AND AN AWARD FOR COMPENSATORY DAMAGES FOR DEFAMATION MAY BE SUPPLEMENTED BY AN ALLOWANCE OF PUNITIVE DAMAGES WHEREINEVER IT IS MADE TO APPEAR THAT THE DEFENDANT ACTED WITH MALICE OR WITH SUCH GROSS AND RECKLESS NECLIGENCE AS TO AMOUNT THERETO, AND FURTHERMORE, WHERE THE DEFAMATION COMPLAINED OF IS ACTIONABLE PER SE IT IS GENERALLY HELD THAT PUNITIVE DAMAGES MAY BE AWARDED EVEN THOUGH THE AMOUNT OF ACTUAL DAMAGE IS NEITHER FOUND NOR SHOWN.

The question of whether or not that which was said was done with malice was a matter of fact for the jury to decide or also whether it was done with such reckless negligence is to amount thereto, and as much it would justify the Defendant to be entitled to punitive damages even though the amount of actual damages is neither found nor shown. However, in this case actual damages were indicated.

The Defendant herein was so intent on exercising his mandate from the people (see Defendant's deposition page 13, line 17 to 30) and issued these statements rock-

lessly and after recklessly and without regard to the truth of the matter which he could have easily ascertained.

POINT V.

THE COURT ERRED IN NOT SUBMITTING THE QUESTION OF WHETHER OR NOT SAID COMMUNICATION WAS PRIVILEGED TO THE JURY BECAUSE IT WAS A QUESTION OF FACT BASED UPON CIRCUMSTANCES.

Inasmuch as the matter of priviledge could be lost by malice in the acts done by the Defendant this was properly a question of fact to be determined by the jury from the circumstances of this case. Also, the further fact that the Defendant could have ascertained the truth of this statement days before it was made and that he spent several days in his prepartion would indicate that he was reckless or malicious in reciting an untrue statement and that the same was not priviledged as a matter of law.

POINT VI.

THAT THE COURT ERRED IN MAKING A DIRECTED VERDICT AND DID NOT SUBMIT THE MATTER TO THE JURY. INASMUCH AS MALICE IS IMPLIED, WHERE THE STATEMENTS MADE WERE GIVEN RECKLESSLY WITHOUT EFFORT TO ASCERTAIN THEIR TRUTHFULNESS AND SAID STATEMENTS ARE FALSE AND THAT MALICE WOULD REMOVE ANY PRIVILEGE THAT THE DEFENDANT MAY HAVE HAD IN THE STATEMENTS MADE.

The same argument as set forth under Point V also applies here.

CONCLUSION

The Plaintiff herewith submits that the evidence was clear and cogent to the effect that the Defendant herein uttered a false and untrue statement concerning the Plaintiff which was either done maliciously or recklessly as to take it from any privilege that the said Defendant might have had as a councilman to discuss such matters in a council meeting. Also, that the Defendant herein strenuously attempted to correct the minutes of the meeting to his liking and to have omitted therefrom any reference to the accusations against the Plaintiff herein. (see transcript pages 20, 21, 23, 48, 70, and 74.)

There is no absolute privilege, as such, except in an actual court of law or in direct and absolute legislative proceedings. Furthermore, inasmuch as there was evidently bad feelings on the part of the Defendant who was the former chief of police of South Salt Lake and the Plaintiff who was a former police officer indicates that malice was intended because of the unfriendly relationship apparent through the transcript of the Defendant and the written statement prepared by the Defendant for reading at the city council meeting. Therefore, the Plaintiff respectfully submits to the Court that the lower court erred in not submitting to the jury the questions that would properly come before it and that there was no priviledge here, or if there was, that the same was lost by the malicious or reckless false statement made by the Defendant herein and that the Defendant is entitled to

any general damages he sustained and also punitive damages. The amount of each to be properly determined by the jury.

Respectfully submitted,

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