

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 0767

DENNIS GLASS

VERSUS

BRYAN GALLEY AND MAURICE L. TYNES

Judgment Rendered: FEB 06 2013

* * * * *

On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 2006-10371

Honorable Peter J. Garcia, Judge Presiding

* * * * *

Harry P. Pastuszek, Jr.
David S. Pittman
Faith E. Richard
Covington, LA

Attorneys for Plaintiff-Appellee,
Dennis Glass

Thomas J. Gayle
Lake Charles, LA

Attorney for Defendant-Appellant,
Bryan Galley

Glen Vamvoras
Lake Charles, LA

Attorney for Defendant-Appellant,
Maurice Tynes

James R. Madison
Shreveport, LA

Attorney for Defendant-Appellee
The State Fair of Louisiana, Inc.

* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

Following a bench trial on the merits in the Twenty-Second Judicial District Court, defendant-appellant, Bryan Galley, appeals a judgment rendered against him and his former attorney, Maurice L. Tynes, *in solido*, awarding \$70,000.00 to plaintiff-appellee, Dennis Glass, for defamation.¹ The trial court issued extensive and comprehensive written reasons for judgment that more than adequately explain the decision. After a careful review of the record and an evaluation of the relevant jurisprudence, including all authority cited in the trial court's thorough reasons, we find no manifest error, legal error, or abuse of discretion in the trial court's factual findings and conclusions of law. We agree with the trial court's conclusions and adopt as our own the written reasons for judgment signed by the trial court on October 12, 2011, because we find that those reasons effectively discuss the factual and procedural background of this case and provide an excellent analysis of the applicable law.²

We note in addition, that our review of the record supports the trial court's conclusions that *both* Galley and Tynes made unquestionably defamatory statements about Glass.³ Words that convey an element of personal disgrace,

¹ While Galley and Tynes filed a joint motion for suspensive appeal, the appellant brief was filed only on behalf of Galley, through his counsel of record. Tynes attempted to file a separate brief on his own behalf. However, Tynes's brief was rejected as non-compliant. Despite notification that the brief was rejected, Tynes failed to file a brief on his behalf with this court. This matter was submitted for decision on November 7, 2012, and no brief has been filed on Tynes's behalf. Accordingly, the record before us presents nothing for separate review as to this appellant. For these reasons, the judgment is affirmed as to appellant Tynes.

² The trial court's written reasons for judgment are attached to this summary opinion and labeled as Exhibit "A".

³ Galley assigns error to the trial court's finding of solidary liability; however, we find no error given Galley's and Tyne's candid testimony, and the record evidence of the actual letters, that repeatedly refer to "we" when discussing the statements that were made about Glass. Solidary liability among individuals for defamatory statements is contingent upon proof of a conspiracy among them to defame someone. **Trentecosta v. Beck**, 96-2388 (La. 10/21/97), 703 So.2d 552, 558. The record supports a finding that Galley and Tynes conspired to defame Glass when together they continued to accuse Glass of criminal conduct after the State Fair discounted their allegations. Moreover, contrary to Galley's assertions in his brief, there is no evidence in the record that the State Fair played any part in the defamatory statements made about Glass. Therefore, Galley's assignments of error regarding liability are without merit.

dishonesty, or disrepute are defamatory. **Cook v. American Gateway Bank**, 2010-0295 (La. App. 1st Cir. 9/10/10), 49 So.3d 23, 32. The question of whether the words convey a particular meaning that is defamatory is ultimately a question of law, which requires an appellate court to simply decide whether the trial court's decision was legally correct. **Id.**, 49 So.3d at 32-33; see also **Cangelosi v. Allstate Ins. Co.**, 96-0159 (La. App. 1st Cir. 9/27/96), 680 So.2d 1358, 1360, writ denied, 96-2586 (La. 12/13/96), 692 So.2d 375. The statements at issue in this case were published in a series of letters written by Tynes on behalf of and fully acknowledged by Galley. The trial court found, and we agree, that statements in several of the letters (as extensively outlined in the trial court's written reasons) were defamatory *per se*, because they accused Glass of committing fraud and violating state and federal criminal laws in connection with possession rules at the junior livestock show at the 2005 State Fair in Shreveport, Louisiana.

By the specific accusations of criminal conduct, the letters injured Glass's reputation. Copies of some of the letters were mailed to the Fair's representatives as well as Louisiana state legislators, governor, various representatives of Louisiana State University Agricultural Center, and members of the 4-H/junior livestock system. The evidence reveals that a few of the letters were sent to third parties that had absolutely no connection to investigations of possible rules violations at the 2005 State Fair livestock show. Thus, Galley's argument that the statements pertaining to Glass in the letters were somehow a privileged communication is without merit.⁴

⁴ Louisiana courts have recognized that the public has an interest in possible criminal activity being brought to the attention of the proper authorities, and have extended a conditional privilege to reports made in good faith. **Kennedy v. Sheriff of East Baton Rouge**, 2005-1418 (La. 7/10/06), 935 So.2d 669, 683. However, there is no evidence that Galley and Tynes made their accusations of Glass's alleged fraud and criminal conduct to the *proper* authorities for prosecution of the alleged crimes. The conditional privilege was abused when Galley and Tynes did not limit the scope of their interest in reporting a possible livestock show rules violation to the State Fair. Their continued published allegations of Glass's criminal conduct after the State Fair declined further action showed a reckless disregard as to the truth or falsity of their allegations. See Kennedy, 935 So.2d at 684.

We also find that the amount of damages awarded to Glass for the convincing and un-refuted testimony about his personal humiliation and embarrassment, as well as mental anguish, anxiety, and depression that he suffered because of the defamatory statements made by Galley and Tynes, does not constitute an abuse of the trial court's vast discretion. Thus, we may not disturb the trial court's damage award. See **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1260-1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). Galley's assignment of error on damages is without merit.

Having found no error,⁵ we affirm the trial court's judgment by summary opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2(A)(2), (5)-(8). All costs associated with this appeal are assessed against defendant-appellant, Bryan Galley.

AFFIRMED.

⁵ Even though the issues of privilege and solidary liability are ultimately legal questions, we applied the manifest error standard of review to the trial court's factual determinations. The appellate court must not re-weigh the evidence or substitute its own factual findings because it would have decided the case differently. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Detraz v. Lee**, 2005-1263 (La. 1/17/07), 950 So.2d 557, 561.

D1

EXHIBIT "A"

DENNIS GLASS

DKT NO. 2006-10371 DIVISION "D"

V.

22nd JUDICIAL DISTRICT COURT

PARISH OF ST. TAMMANY

BRYAN GALLEY, ET AL

STATE OF LOUISIANA

FILED: October 13, 2011

Omilia West
DEPUTY CLERK

REASONS FOR JUDGMENT

This suit arises out of events allegedly occurring before and after the junior livestock show at the 2005 Louisiana State Fair ("Fair") in Shreveport, Louisiana. On January 25, 2006, plaintiff, Dennis Glass ("Glass"), sued Bryan Galley ("Galley") and his attorney, Maurice Tynes ("Tynes") for defamation. Glass's allegations include contentions that Galley and Tynes defamed him by accusing Glass of committing fraud and various other violations of state and federal laws in connection with the 2005 State Fair Grand Champion Steer competition.

On October 31, 2006, Galley individually and on behalf of his minor son, Connor, filed a reconventional demand against Glass, and a third party demand against The State Fair of Louisiana, Inc. ("State Fair"), Bobby King, a county extension agent working for the LSU AgCenter, and Louisiana State University and Agricultural and Mechanical College ("LSU"). Galley, individually and on behalf of Connor Galley, seeks damages from Glass and State Fair for conversion of show premiums and sales revenue which he alleges Connor would have received had Glass not cheated, as well as attorneys fees he has incurred in defending against the defamation suit, alleging that the third party defendants are responsible to him under a breach of contract theory. Galley contends that Glass and the State Fair are liable in solido for these damages. LSU and the county agent, Bobby King, have been released from this litigation by Galley.

FACTUAL BACKGROUND

The grandchildren of Dennis Glass participated in the junior Market Steer portion of the livestock show, as did Bryan Galley's children. Galley's son's steer was named the

MAJESTIC PRINCE
OCT 13 4 13 PM '11
STATE OF LOUISIANA
FILED FOR RECORD
ST. TAMMANY PARISH

770
OCT 19 2011
SCANNED

Handwritten initials

Reserve Champion; however, he was later disqualified for having left the Fair early and was unable to sell his steer for this violation of an, at that time, recently changed rule. Upon hearing that he had broken the rule regarding disqualification for sale for not remaining through the date of the sale, Galley informed Fair officials that others were in violation of the rules, too. Galley specifically advised Fair officials that Glass's grandsons had broken the rules pertaining to possession and tagging. JT Exhibit 5, November 1, 2005 letter. Louisiana State Fair Association Rules (introduced as JT Exhibit 1) for time of possession and verification of same by ear-tagging prior to the showing of the animals are alleged by the defendants, Galley and Tynes, to have been violated by plaintiff, Glass, at the Fair.

ORIGINAL PETITION FILED AGAINST TYNES AND GALLEY BY GLASS

The allegations of defamation and intentional infliction of emotional distress arise from both verbal and written communications including correspondence sent by Galley and/or Tynes as outlined in the exhibits referenced below. For example, the correspondence from Tynes to Madison, attorney for the State Fair, dated January 4, 2006, went not only to the attorney for the State Fair but also to state legislators, the Department of Agriculture Commissioner, and the Governor, among others. Glass contends that the verbal and written defamation continued from 2005 through 2008, causing humiliation, embarrassment, mental anguish and suffering, as well as damage to his reputation and that of his grandchildren. Glass further contends that he was removed from the Board of the State Fair as a result of Galley and Tynes' efforts (after having been a Board member for 13 years). Glass has also made a claim for intentional or reckless infliction of emotional distress.

THE DEFAMATION CLAIM

Defamation is a tort involving the invasion of a person's interest in his or her reputation and good name. Four elements are necessary to establish a claim for defamation: (1) a false and defamatory statement concerning another, (2) an unprivileged

OCT 19 2011

2

771

SCANNED

publication to a third party, (3) fault (negligence or greater) on the part of the publisher, and (4) resulting injury.¹ The fault requirement is generally referred to in the jurisprudence as malice, actual or implied.²

The court must determine whether a false or defamatory statement was made by either defendant, Tynes or Galley. Galley and Tynes' communications which are alleged in the original pleadings to be defamatory are:

JT Exhibit 5 (November 1, 2005, letter from Tynes to Shamsie)

JT Exhibit 6 (November 1, 2005, 2d letter from Tynes to Shamsie correcting the date alleged in the first letter)

JT Exhibit 8 (November 22, 2005, letter from Tynes to Shamsie)

JT Exhibit 10 (January 4, 2006, letter from Tynes to Madison).

Although not referenced in the original pleadings, the following additional communications were included in later filings including the pretrial order as evidence of defamatory statements and were admitted without objection at trial.

JT Exhibit 7 (November 4, 2005, letter from Tynes to Shamsie)

JT Exhibit 11 (January 24, 2006, letter from Tynes to Madison).

The court finds that no satisfactory proof was made of any other written or verbal defamatory statements.

An initial determination to be made is by whom these statements were made in light of the unusual relationship between the two co-defendants. During the course of the trial, the court determined that a possible conflict might exist between defendant, Bryan Galley, and his attorney, Maurice Tynes, who was also a co-defendant. The court's concern was raised by the direct examination of defendant Galley by his attorney, co-defendant Tynes, when Tynes asked his client on direct whether Galley had directed him to write the letter about the "black steer" (JT Exhibit 10, letter dated January 4, 2006).

¹*Cyprien v. Bd. of Sup'rs ex rel. U. of La.*, 2008-1067 (La. 1/21/09), 5 So.3d 862; *Mbarika v. Bd. of Supervisors of Louisiana State University*, 992 So.2d 551 (La. App. 1st Cir. 2008).

²*Id.*

Although this relationship would seem to present a conflict on its face, *i.e.*, wherein the attorney for a defamation suit defendant was also named as a defendant, no one raised the issue of a conflict and the court did not feel it presented an issue until co-defendant Tynes asked his client Galley if Galley had requested him to write a letter about the black steer. (JT Exhibit 8). This question was raised in such a way that it began to appear that defendant Tynes was attempting to shift any potential culpability on his part to his co-defendant client. The court immediately stopped the proceedings, advised Galley of the potential conflict, and recommended he get separate counsel. The trial was recessed while the defendants obtained separate counsel, and the trial thereafter resumed.

The exhibits referenced above all indicate and the court finds that both Galley and Tynes were making these "statements." This is made clear by the language of the letters which use the first person plural pronoun "we," consistently refers to "my client and I," and makes allegations based on information provided to Tynes by Galley (which precludes Galley from asserting that this was all concocted by his attorney). Further, Galley testified under cross-examination by Madison, the attorney for The State Fair of Louisiana, that the letter by his attorney was his "official complaint" and that he had read through the letters and stands by them. Tynes cannot absolve himself of any responsibility based on an assertion that he was relying on information provided by his client or that he was merely following instructions. He testified that he had a "legal right and probable cause to say everything he did" and that he would not change anything in the letters. Tynes further testified that the whole series of letters was intended to elicit a reaction and that he wanted a reaction to his allegations.

Proof of the truth or substantial truth of a defamatory remark is a valid defense in a civil suit for defamation. La. R.S. 13:3602; *Batiste v. Guiteau*, 413 So.2d 559, 563 (La. App. 1 Cir.) *writ denied*, 414 So.2d 776 (La. 1982). Privilege is also a defense to a defamation action. *Aranyosi v. Delchamps*, 98-1325, p.6 (La. App.1 Cir. 6/25/99), 739 So.2d 911, 915, *writ denied*, 99-2199 (La. 11/5/99), 750 So.2d 187. Privileged communications are divided into two general classes: (1) absolute or unqualified; and (2) conditional or qualified. An absolute privilege exists in a limited number of situations, such as certain statements by judges and legislators in their official capacities. In a broader number of instances, statements enjoy a

773

OCT 19 2011

SCANNED

conditional privilege. *Id.*, 98-1325 at pp.6-7, 739 So.2d at 915-16. A conditional privilege is applicable if the communication is made (a) in good faith, (b) on any subject matter in which the person communicating has an interest or in reference to which he has a duty, (c) to a person having a corresponding interest or duty. *Id.*, 98-1325 at p.7, 739 So.2d at 916. This privilege arises from the social necessity of permitting full and unrestricted communication concerning a matter in which the parties have an interest or duty, without inhibiting free communication in such instances by the fear that the communicating party will be held liable in damages if the good faith communication later turns out to be inaccurate. *Id.*³

Even when a plaintiff makes a prima facie showing of the essential elements of defamation, recovery may be precluded if the defendant shows either that the statement was true, or that it was protected by a privilege, absolute or qualified.⁴

As stated by the court in *Costello*,⁵ defamatory words are, by definition, words which tend to harm the reputation of another so as to lower the person in the estimation of the community, to deter others from associating or dealing with the person, or otherwise expose a person to contempt or ridicule. Words which convey an element of personal disgrace, dishonesty, or disrepute are defamatory.⁶ The question of whether a communication is capable of a particular meaning and whether that meaning is defamatory is ultimately a legal question for the court.⁷ The question is answered by determining whether a listener could have reasonably understood the communication, taken in context, to have been intended in a defamatory sense.⁸

Words are defamatory per se if they expressly or implicitly accuse another of criminal conduct or which by their very nature tend to injure one's personal or professional reputation, even without considering extrinsic facts or surrounding circumstances, and when a plaintiff proves publication of words that are defamatory per

³*Mbarika v. Bd. of Sup'rs of La. State Univ.*, 992 So.2d 551 (La. App. 1st Cir. 2008).

⁴*Cyprien v. Bd. of Sup'rs ex rel. U. ov La.*, 2008-1067 (La. 1/21/09), 5 So.3d 862.

⁵*Costello v. Hardy*, 2003-1146 (La. 1/21/04), 864 So.2d 129, 140.

⁶*Id.*

⁷*Id.*

⁸*Id.*

se, the elements of falsity and malice (or fault) are presumed, but may be rebutted by the defendant.⁹ Injury may also be presumed.¹⁰

In cases involving statements made about a public figure, where constitutional limitations are implicated, a plaintiff must prove actual malice, either knowledge that the statement was false or with reckless disregard for the truth.¹¹ The court finds that the defendants did not prove that plaintiff was a public figure, and therefore plaintiff need not prove actual malice.

The court finds that the following language in the joint exhibits referenced herein, because it accuses the plaintiff, Glass, of criminal conduct, is defamatory per se. In the November 1, 2005, letter from Tynes to Shamsie, defendants stated,

Anyone who purchases an animal in an interstate transaction for the purpose of showing and selling the animal for substantial sums and consciously lies about the possession date, and those who consciously conspire to do it, with him, may violate federal fraud laws, as well as state theft by fraud laws. (JT Exhibit 5.)

In the November 4, 2005, letter from Tynes to Shamsie, the defendants stated,

Finally, as I have mentioned, because the result of falsifying a possession date is potentially the obtaining of a substantial economic benefit, and an interstate transaction is involved, there may be more here than a simple ethical issue. I point this out to demonstrate how important this is. (JT Exhibit 7.)

The defendants continued to assert that plaintiff violated criminal laws in the January 4, 2006, letter from Tynes to Madison, wherein they alleged that

6. A parent (or grandparent) who knows the rule is violated and who lies about the ownership date and then participates in entering the animal, winning premiums, and receiving some \$6,000 in auction sale proceeds, has not only broken the State Fair rules but has violated the criminal law.
7. R.S.14:67A defines theft as "the misappropriation or taking of anything of value which belongs to another, either without the

⁹*Id.*

¹⁰*Id.*

¹¹*Id. at 141.*

consent of the other to the misappropriation or taking, or by means of FRAUDULENT CONDUCT, PRACTICES, OR REPRESENTATIONS." [sic] Federal money laundering statutes may have been broken. (JT Exhibit 10.)

On January 24, 2006, in correspondence to the attorney for the State Fair, the defendants further declared,

Because you and the Board have essentially ignored my client and I so far, I have now determined, with more investigation and with reasonable probability, that one steer shown by Dennis Glass' grandchild, that won Grand Champion Market Steer, arrived directly to the Fair from Newcastle, Oklahoma, where it was being fitted by professionals. This is a HUGE RULES VIOLATION [sic] and the worst kind of cheating, not to mention fraud. (JT Exhibit 11.)

The court finds that other language in these letters by their very nature tend to injure one's personal or professional reputation even without considering extrinsic facts or surrounding circumstances and are therefore also defamatory per se. The court specifically notes the following statements by defendants, Tynes and Galley.

If possession of one is illegal, then it raises questions about the other Glass steer which is Grand Champion. (JT Exhibit 5, page 2.)

Along the way, he has been told by those claiming definitely to know, that the Grand Champion black steer shown in Shreveport by the Dennis Glass grandson was shown by someone else in the California State Fair in August/September, 2005, which makes legal possession in Louisiana impossible. (JT Exhibit 8.)

10. My communications have asserted two rules violations which are the two most important qualifying rules for entries.

A. We have asserted one animal in question (Champion of Class 1) was seen by my client in Brownwood, Texas, on or about June 11, 2005, when he was shown the animal to consider its purchase. The owner of the steer in June 11, 2005, told me personally he later sold that same steer to Dennis Glass that was shown to my client. However, when he realized the issue of ownership and possession date might implicate Dennis Glass, his good customer, he then asserted it was a \$5,000 cash sale in May, 2005, and claimed he had absolutely no documentation.

B. We have asserted the tagging rule was violated. As pointed out above, Mr. Shamsie proved that to be the case. (JT Exhibit 10.)

776

7

OCT 19 2011

SCANNED

Because you and the Board have essentially ignored my client and I so far, I have now determined, with more investigation and with reasonable probability, that one steer shown by Dennis Glass' grandchild, that won Grand Champion Market Steer, arrived directly to the Fair from Newcastle, Oklahoma, where it was being fitted by professionals. This is a HUGE RULES VIOLATION and the worst kind of cheating, not to mention fraud. (JT. Exhibit 11.)

At a minimum, the language quoted above, if not defamatory per se as determined by the court, has been proven to the satisfaction of this court to be false as follows.

The court does not find that the defendants, Galley and Tynes, established that plaintiff Glass consciously lied about the possession date of the animal in question nor did they prove that he did not have the actual requisite possession. The court does not find that these defendants established the arrival time and origination point of the Grand Champion Market Steer, and does not find that the defendants established that the Grand Champion Black Steer was previously shown in the California State Fair, which would have affected the alleged deficiency of time of possession. The court finds that Galley and Tynes did not make these statements with any reasonable belief that they were true. The letters as written acknowledge within themselves that they are based on rank hearsay and that various individuals providing the information later gave different versions. The court does find that by the defendants' (both Tynes and Galley) own testimony the allegations were made because Galley felt slighted by what he felt was an unfair application of the rules to himself and because he and Tynes did not receive an adequate response from their complaint. The court finds that these communications are not privileged communications and thus not a valid defense to this defamation action as they were not made in good faith. The court's conclusion that the element of falsity has been established by plaintiff is based on a review of the testimony of a number of witnesses who testified in direct contradiction to many of the allegations of the defendants Tynes and Galley. This includes the testimony of Mr. Shamsie, which contradicted on many points contentions raised by Galley and Tynes. For example, in the November 22, 2005 letter from Tynes to Shamsie, Tynes alleges that Galley "heard rumors" in Louisville,

777
8

OCT 19 2011

SCANNED

Kentucky, regarding these allegations about Glass. Shamsie testified that he called these persons in Kentucky and they had heard no such thing. Shamsie's testimony also contradicted assertions by Tynes and Galley as to the level of his inquiry regarding these allegations, with whom he spoke and when. Further, the testimony of the county agents, the dearth of information in the post-trial depositions supportive of defendants' assertions, and particularly the demeanor and credibility of the parties Glass, Tynes and Galley all support the court's conclusion that the element of falsity in defendant's statements about plaintiff Glass have been established. The court finds that Tynes and Galley were driven by motivations beyond the search for truth, mainly a desire to strike back for what they perceived to be an injustice to the young Galley for his animal's disqualification. This along with the internal inconsistencies of their allegations and the contradiction by testimony of their allegations creates serious doubt as to their credibility. The court found Glass to be more credible on all counts in this regard as was the testimony of Mohammed Shamsie and Bobby King. Defendants' so-called "fact" witnesses, on the other hand, were presented literally in an attempt to "verify rumors." Tom Winston, III's testimony was based on hearsay, and on cross-examination he admitted that he himself had been disqualified from competition for a violation. N.J. Hebert testified regarding rumors and what he heard other people say. The court therefore concludes that plaintiff Glass has made a prima facie showing of the essential elements of defamation, and that the defendants have not shown the offending statements to be true or protected by privilege. The court further finds that these statements were published, since any communication to a third party, absent a privilege, absolute or qualified, is considered a publication.

The next element of the tort of defamation is damages. The injury resulting from a defamatory statement may include nonpecuniary or general damages such as injury to reputation, personal humiliation, embarrassment, and mental anguish, even when no special damage such as loss of income is claimed, but regardless of the type of injury

asserted, a plaintiff must present competent evidence of the injuries suffered and that the defamatory statements were a substantial factor in causing the harm.¹² In assessing these damages, the court may consider the severity of the charges, the motives of the defamer, the position of influence enjoyed by the defamer, and the extent and weight of the circulation of the defamation.¹³

Clearly, serious charges were levied against the plaintiff including fraud, theft, vague allegations of violation of federal criminal laws, in addition to cheating and being unethical, and the motives of the defendants were discussed previously. The court does not find that the defendants enjoyed any particular position of influence such that their allegations carried more weight. The circulation of the defamatory statements, although clearly not as far-reaching as defamatory statements published in widely-circulated periodicals, was sufficient to cause the plaintiff damage, when considering the severity of the charges and the motives of the defendants. The letter of January 4, 2006, (JT Exhibit 10) from Tynes to Madison, attorney for the State Fair was also sent to:

Governor Kathleen Blanco
Mr. Bob Odom
Dr. Bill Richardson
Dr. Paul Coreil
Dr. Terry Dumas
Mr. Alan English, Executive Editor, The Times
Senator James David Cain
Senator Kenneth M. "Mike" Smith, Chairman
Senator Gerald J. Theunissen, Vice-Chairman
Senator Robert J. Barham
Senator Walter J. Boasso
Senator D.A. "Butch" Gautreaux
Senator Joe McPherson
Senator Ben Nevers
Representative Mickey Frith
Representative Mickey J. Guillory
Representative Lelon Kenney
Representative Eric LaFleur
Representative Dan W. "Blade" Morrish
Representative Jack D. Smith
Representative Karen Gaudet St. Germain
Representative Michael G. Strain

¹²*Id.*

¹³*Cox v. Cashio*, 96 So.2d 872, 876 (La. App. 1 Cir. 1957).

Representative Joe R. Salter
Representative Yvonne Dorsey
Mr. James Batty, Jr., Chairman 4-H
Mr. Jerry Whatley

Likewise, the letter dated January 24, 2006, (JT Exhibit 11) from Tynes to Madison was copied to the following people:

Governor Kathleen Blanco
Mr. Bob Odom
Dr. Bill Richardson
Dr. Paul Coreil
Dr. Terry Dumas
Mr. Alan English, Executive Editor, The Times
Senator James David Cain
Senator Kenneth M. "Mike" Smith, Chairman
Senator Gerald J. Theunissen, Vice-Chairman
Senator Robert J. Barham
Senator Walter J. Boasso
Senator D.A. "Butch" Gautreaux
Senator Joe McPherson
Senator Ben Nevers
Representative Francis C. Thompson
Representative Herman Ray Hill
Representative Beverly G. Bruce
Representative Donald J. Cazayoux, Jr.
Representative Hollis Downs
Representative James R. Fannin
Representative Mickey Frith
Representative Mickey J. Guillory
Representative Lelon Kenney
Representative Eric LaFleur
Representative Dan W. "Blade" Morrish
Representative Jack D. Smith
Representative Karen Gaudet St. Germain
Representative Michael G. Strain
Representative Joe R. Salter
Representative Yvonne Dorsey
Mr. James Batty, Jr., Chairman 4-H
Mr. Jerry Whatley

The persons to whom the defamatory letters were addressed, Shamsie and Madison, continually determined and replied that there was no basis for the allegations, therefore, Glass cannot contend that his reputation was injured by publication of those letters to Shamsie or Madison, although the same cannot be said for the damage to plaintiff's reputation with the legislators and state officials to whom the letters were also sent. Plaintiff did establish, however, that he suffered embarrassment or humiliation through

OCT 19 2011

11780

SCA

the publications. Ray Core, a junior high school science and agriculture teacher testified he knew the steers were in possession of the Glass grandchildren, Jacob and Zachary, because he saw them. Cotton Jourdan, Bobby Darbonne, Peter Cannizaro, and Roy Carnegie, Jr., all of whom testified they have known the plaintiff for 25 or 30 years and all of whom were also involved in the State Fair and livestock exhibitions, testified as to Glass' deep involvement in the livestock exhibition culture and his reputation for fairness. Roy Carnegie also testified to the plaintiff's willingness to help any child in any parish, who all looked up to him as a leader. Carnegie also testified that since this incident at issue, plaintiff became very depressed and wanted to quit. Carnegie testified that he told Glass to "hang in there because the kids around the state need you."

Dennis Glass testified that he has participated in livestock shows since he was nine years old. That it is a family thing that helps to keep the family together but that this whole episode made him so upset that he wanted to give it up but that he stayed in it for his grandchildren. He testified that he did not feel welcome at shows anymore, that he now felt shunned. Glass likened the shows to a family dispute where everyone takes sides, and some of the participants side with Galley and some with Glass. Glass also stated that he felt degraded by these allegations and that he had never been accused of anything before.

"Defamatory communication" is one that tends to harm the reputation of another so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. *Bujol v. Ward*, 00-1393 (La. App. 5th Cir. 1/30/01), 778 So.2d 1175. Defamation occurs through either libel or slander. Libel is defamation which is "expressed by print, writing, pictures, or signs". Slander is communicated by "oral expressions or transitory gestures." BLACK'S LAW DICTIONARY 1388 (6th ed.1990). A cause of action for libel is intended to redress injuries flowing from harm to one's reputation and, to be actionable, defamatory words must be "of and concerning" the plaintiff and must indirectly or directly cause a personal reflection on the plaintiff. *Gugliuzza v. K.C.M.C., Inc.*, 92-0796 (La. 10/19/92), 606 So.2d 790.¹⁴

¹⁴*Costello, supra.*

It is clear to this court that defendants had every intention of embarrassing, defaming and humiliating the plaintiff in their letters referenced in JT Exhibits 5, 7, 8, 10 and 11. Based on the court's finding that the language in JT Exhibits 5, 7, 10 and 11 are defamatory per se, injury is presumed. This presumption has not been rebutted.

Damages resulting from defamation can include injury to reputation, personal humiliation, embarrassment, and mental anguish and suffering. *Rennier v. State, Through Department of Public Safety*, 428 So.2d 1261 (La. App. 3 Cir. 1983). These are separate elements of damage. *Rennier*. Defamation damages must be proved by competent evidence, but there is no need to establish the actual pecuniary value of the injury suffered. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); *Trahan v. Ritterman*, 368 So.2d 181 (La. App. 1st Cir. 1979).¹⁵

The record supports a finding that Glass suffered personal humiliation and embarrassment as well as mental anguish and suffering and anxiety and hurt feelings. There is convincing, un-refuted testimony regarding these elements of damages. Glass testified that at a show subsequent to the series of letters that Galley walked by him and said, "They let you back in here?"

The court finds that a reasonable sum to compensate the plaintiff for the general damages suffered as a result of the defendants' defamatory statements is \$70,000.

THE CLAIM FOR INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS

In order to recover for intentional or reckless infliction of emotional distress, Glass must show that (1) the conduct complained of was extreme and outrageous, (2) the emotional distress which the plaintiff suffered was severe, and (3) the defendants desired to inflict severe emotional distress or knew that it was certain or substantially certain to result from their conduct.¹⁶ Extreme and outrageous conduct is that conduct which is beyond all possible bounds of decency and utterly intolerable in a civilized community. Anyone who intentionally or recklessly causes severe emotional distress to another is

¹⁵*Cluse v. H & E Equipment Services, Inc.*, 34 So.3d 959 (2010) 2009-574 (La. App. 3 Cir. 3/31/10).

¹⁶*Nicholas v. Allstate Insurance Co.*, 765 So.2d 1017 (La. 2000).

responsible for that emotional distress as well as any bodily harm that may have resulted from the conduct. The evidence does not support a finding that the plaintiff suffered from severe emotional distress which would support a cause of action for this claim.

Accordingly, the court finds this claim without merit.

RECONVENTIONAL DEMAND AGAINST GLASS BY GALLEY

Given the foregoing, the court also concludes that the defendant's reconventional demand against the plaintiff, both individually and on behalf of his minor son, are without merit.

THIRD PARTY DEMAND AGAINST THE STATE FAIR BY GALLEY

The court finds from the testimony of Mohammed Shamsie, the State Fair of Louisiana Livestock Manager at the time of the alleged wrongdoing, that the State Fair in fact ran down every rumor, innuendo and suggestion by Tynes and Galley that Glass had acted inappropriately. The court dismisses the third party demand against the State Fair with prejudice at Galley's cost. In its post-trial memorandum, the State Fair asked this court to impose sanctions against Galley for violation of Code of Civil Procedure article 863(B), contending that it did nothing wrong and has been wrongly forced to hire counsel and defend itself against the frivolous claims brought against it by Galley. While the court agrees that the State Fair did nothing wrong, sanctions for filing frivolous proceedings may only be imposed after a hearing at which any party or his attorney may present any evidence or argument relevant to the issue of imposition of the sanction. Galley has not been afforded such an opportunity, and accordingly, the court does not award sanctions at this time.

14
OCT 19 2011 783
SCANNEL

These reasons for judgment do not constitute a written judgment. Counsel for the plaintiff is hereby ordered to submit a written judgment in accordance with these written reasons within 15 days of notice of these reasons.

Covington, Louisiana, this 12th day of October, 2011.



PETER J. GARCIA
Judge, Division "D"

OCT 19 2011
SCANNED

15
784