

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0100

FATHER M. JEFFERY BAYHI

VERSUS

LOUISIANA TELEVISION BROADCASTING, LLC D/B/A WBRZ-TV

**Judgment rendered September 15, 2017.**

\* \* \* \* \*

Appealed from the  
19<sup>th</sup> Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 643981  
Honorable Wilson E. Fields, Judge

\* \* \* \* \*



DOUGLAS S. SMITH, JR.  
HENRY D.H. OLINDE, JR.  
BATON ROUGE, LA

SHARONDA R. WILLIAMS  
LORETTA G. MINCE  
ALYSSON L. MILLS  
NEW ORLEANS, LA

ATTORNEYS FOR  
PLAINTIFF-APPELLANT  
FATHER M. JEFFERY BAYHI

ATTORNEYS FOR  
DEFENDANT-APPELLEE  
LOUISIANA TELEVISION  
BROADCASTING, LLC D/B/A WBRZ-TV

\* \* \* \* \*

**BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.**

## **PETTIGREW, J.**

This devolutive appeal arises from the dismissal of a suit for defamation and invasion of privacy on a Special Motion to Strike pursuant to La. C.C.P. art. 971. For the reasons that follow, we affirm the trial court judgment and award additional attorney fees and costs to the defendant for the defense of this appeal.

### **FACTS AND PROCEDURAL HISTORY**

On July 6, 2009, plaintiffs, Robert and Lisa Mayeux, filed a petition for damages suffered by them and their daughter, Rebecca Mayeux,<sup>1</sup> as a result of alleged inappropriate and sexual acts perpetrated on Rebecca (“the **Mayeux** Case”). They named as defendants: the alleged perpetrator, then-deceased George J. Charlet, Jr., a well-known, long-time parishioner and active member of Our Lady of the Assumption Catholic Church; Charlet Funeral Home, Inc., of which Mr. Charlet was the alleged President; Rev. M. Jeffery Bayhi (“Fr. Bayhi”), for allegedly being a mandatory reporter who failed to report the abuse allegations; and the Roman Catholic Church of the Diocese of Baton Rouge (“Church”), alleging vicarious liability for the priest’s alleged misconduct in failing to report the sexual abuse, as well as for the negligent training and supervision of the priest.

The Mayeuxs alleged Fr. Bayhi had knowledge of and failed to report that Mr. Charlet had inappropriate sexual contact with Rebecca. In particular, the petition alleged Fr. Bayhi: (1) negligently advised Rebecca, then 14 years old, during the sacrament of confession on at least three separate occasions that she needed to personally handle the alleged sexually-abusive situation with Mr. Charlet; and (2) negligently failed to immediately report the abuse to law enforcement personnel and Rebecca’s parents pursuant to the mandatory reporter provisions of the Louisiana Children’s Code.<sup>2</sup> The Church filed a motion seeking to prevent the plaintiffs from presenting any evidence at

---

<sup>1</sup> At the time of filing of the original petition, Rebecca Mayeux was a minor. She has now reached the age of majority and was added as a plaintiff in that suit on her own behalf. **Mayeux v. Charlet**, 16-1463, p. 2, FN 3 (La. 10/28/16), 203 So.3d 1030, 1032.

<sup>2</sup> La. Ch.C. art. 609(A)(1).

trial of any confessions that may or may not have taken place between Rebecca and Fr. Bayhi. Issues related to the priest/penitent privilege were appealed to this court and the Louisiana Supreme Court, and on January 20, 2015, certiorari was denied by the United States Supreme Court. **Parents of Minor Child v. Charlet**, 13-0316 (La. App. 1 Cir. 10/21/13), 135 So.3d 724, **reversed and vacated**, 13-2879 (La. 4/4/14), 135 So.3d 1177, **cert. denied sub nom, Roman Catholic Church of Diocese of Baton Rouge v. Mayeux**, 135 S.Ct. 1154, 190 L.Ed.2d 923, (2015).

Louisiana Television Broadcasting, L.L.C. d/b/a WBRZ-TV ("WBRZ-TV") ran a series of in-depth news stories covering the **Mayeux** case, several of which focused on Fr. Bayhi and the allegations against him and the Church. On January 20, 2015, WBRZ-TV ran a story about the United States Supreme Court's ruling in the **Mayeux** case. During the television broadcast, a graphic filled the screen which stated:

#### **SEX ABUSE LAWSUIT**

- **WOMAN CLAIMS PRIEST ABUSED HER AT AGE 14**
- **PRIEST DIED WHILE AUTHORITIES WERE INVESTIGATING**
- **WOMAN SUED THE DIOCESE FOR NOT REPORTING ABUSE**
- **WOMAN'S ATTORNEY SAYS CHURCH'S DUTY TO REPORT CRIME**
- **CHURCH SAYS CONFESSIONS ARE PRIVATE**

The full-screen graphic, displayed for over thirty seconds during the newscast, contained two significant factual errors: (1) there were no allegations in the **Mayeux** case that the alleged abuser was a priest, or that the defendant priest, Fr. Bayhi, was the alleged abuser; and (2) the alleged abuser, George Charlet, Jr., died during the investigation, not the defendant priest. While the erroneous graphic was displayed on the screen for over thirty seconds, a voiceover reported the allegations of the **Mayeux** case correctly:

[T]he nation's highest court denied a request to hear a sex abuse lawsuit involving the Catholic Church. The Diocese of Baton Rouge tried to prevent a confession from being used, but the Justices said, "No, it can." It's a case where a woman, Rebecca Mayeux, says a member of the congregation of her church in Clinton abused her when she was 14. But that member, George Charlet, Jr., died while authorities were investigating the accusations. Mayeux sued the Diocese, claiming she told a priest, Father Jeffery Bayhi, about the abuse during confession but the priest did not report to authorities. Her lawyer claims the priest had a duty under

Louisiana's Children's Code to report the admission, but the church argued confessions are private and protected.

As the newscast continued, the graphic was removed, and as more details about the **Mayeux** case were given, various images were displayed on the screen, including a video clip showing Fr. Bayhi dressed in his priest's cassock. The newscast also included an interview with the Mayeuxs' attorney, who explained their allegation that if the priest had reported the abuse when he learned of it, some of the later abuse may not have occurred. Finally, at the end of the newscast, WBRZ-TV reporter Michael Marsh made a brief statement acknowledging the error in the graphic, stating:

We need to correct something you saw at the beginning of this newscast. A graphic that we showed you related to a story about a Supreme Court decision incorrectly identified a priest as being accused of abuse. That is not correct. The facts of what our reporter said though were correct. We'll have more on that story on WBRZ News 2 at 5.

On November 20, 2015, Fr. Bayhi filed a petition for damages against WBRZ-TV for defamation and invasion of privacy arising out of the January 20, 2015 newscast. WBRZ-TV filed a Special Motion to Strike under La. C.C.P. art. 971, asserting that Fr. Bayhi could not demonstrate a probability of success on his claims. After a hearing, the trial court granted WBRZ-TV's motion, adopting WBRZ-TV's Memorandum in Support of Special Motion to Strike as its Reasons for Judgment. Judgment was signed August 3, 2016, dismissing Fr. Bayhi's petition with prejudice and ordering that WBRZ-TV was entitled to attorney fees and costs under La. C.C.P. art. 971(B) in an amount to be determined after a hearing. Fr. Bayhi appealed this judgment. In a subsequent judgment signed on November 17, 2016, the trial court set the award of attorney fees and costs to WBRZ-TV at \$12,675.00 in attorney fees and \$765.39 in costs. This November 17, 2016 judgment is the subject of a separate appeal by Fr. Bayhi.<sup>3</sup>

On appeal, Fr. Bayhi contends the trial court erred in finding that: (1) Fr. Bayhi failed to show that WBRZ-TV's sexual abuse statement was "of and concerning" him; (2) Fr. Bayhi failed to show that WBRZ-TV's sexual abuse statement was false and defamatory; (3) Fr. Bayhi did not produce sufficient evidence of fault; (4) Fr. Bayhi did not

---

<sup>3</sup> **Bayhi v. Louisiana Television Broadcasting d/b/a WBRZ-TV**, 17-0101 (La. App. 1 Cir. \_\_\_\_\_).

produce evidence of damages; (5) Fr. Bayhi did not demonstrate a probability of success on his false light claim; and (6) WBRZ-TV is entitled to an award of attorney fees. WBRZ-TV answered the appeal, requesting attorney fees and costs for work performed in defense of the appeal.

## **DISCUSSION**

Louisiana Code of Civil Procedure Article 971 provides, in pertinent part:

A. (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

Article 971 was enacted by the legislature as a procedural device to be used in the early stages of litigation to screen out meritless claims brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. **Thinkstream, Inc. v. Rubin**, 06-1595, p. 9 (La. App. 1 Cir. 9/26/07), 971 So.2d 1092, 1100, **writ denied**, 07-2113 (La. 1/7/08), 973 So.2d 730. Pursuant to Article 971, a cause of action against a person arising from any act in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim. La. C.C.P. art. 971(A)(1). Accordingly, Article 971 establishes a burden-shifting mechanism, whereby once the mover has established that a cause of action against him arises from an act by him in furtherance of the exercise of his right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue, the burden shifts to the plaintiff to demonstrate a probability of success on his claim. See **Thinkstream**, 06-1595 at p. 9, 971 So.2d at 1100.

In the present case, neither party disputes that the cause of action against WBRZ-TV arose from an act by WBRZ-TV in furtherance of the right of petition or free speech, as WBRZ-TV made the allegedly defamatory statements as part of a televised newscast

about the United States Supreme Court's denial of certiorari in the **Mayeux** case. Clearly, this involves an act in furtherance of WBRZ-TV's right to free speech under the United States and Louisiana Constitutions in connection with a public issue. Once WBRZ-TV met its initial burden of proof, the burden shifted to Fr. Bayhi to establish a probability of success on his claims against WBRZ-TV.

In determining whether a plaintiff has established a probability of success on his claims, the court will consider the pleadings and supporting and opposing affidavits. La. C.C.P. art. 971(A)(2).<sup>4</sup> In support of its motion, WBRZ-TV filed the affidavit of its Chief Financial Officer, identifying the attached copy of the January 20, 2015 newscast. In opposition to the motion, Fr. Bayhi filed his own affidavit, as well as four affidavits of other individuals who viewed the January 20, 2015 newscast. Attached to Fr. Bayhi's affidavit were the original and supplementing and amending petitions in the **Mayeux** case and copies of several WBRZ-TV newscasts on the **Mayeux** case, including the January 20, 2015 newscast.

The granting of a special motion to strike presents a question of law. Appellate review of a question of law is simply a review of whether or not the trial court was legally correct. **Starr v. Boudreaux**, 07-0652, p. 3 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 388. On legal issues, the appellate court gives no special weight to the findings of the trial court, but exercises its constitutional duty to review questions of law and renders a judgment on the record. **Id.**, 07-0652 at pp. 3-4, 978 So.2d at 388.

#### *Defamation*

Fr. Bayhi's first claim was in defamation. The four essential elements to establish a defamation cause of action were set forth by the supreme court in **Costello v. Hardy**, 03-1146 (La. 1/21/04), 864 So. 2d 129. They are: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault (negligence

---

<sup>4</sup> Article 971 provides that all discovery proceedings in the action shall be stayed upon the filing of a special motion to strike under the Article. The stay of discovery will remain in effect until notice of entry of the order ruling on the motion; however, the court, on noticed motion and for good cause shown, may order that specified discovery be conducted. La. C.C.P. art. 971(D). Fr. Bayhi did not request any additional discovery pursuant to the provisions of this Article.

or greater) on the part of the publisher; and (4) resulting injury. The fault requirement is often set forth in the jurisprudence as actual or implied malice. Thus, in order to prevail on a defamation claim, a plaintiff must prove that the defendant, with actual or implied malice, published a false statement with defamatory words about plaintiff, which caused plaintiff damages. If even one of the required elements of the tort is lacking, the cause of action fails. **Costello**, 03-1146 at p. 12, 864 So. 2d 129, 139-40.

A court in a defamation case must consider the entirety of a statement in determining whether the statement is actionable, as well as the context in which it was made, and the effect it is reasonably intended to produce in the mind of the average listener. *See* **Sassone v. Elder**, 626 So.2d 345, 352 (La. 1993); **Kosmitis v. Bailey**, 28,585, p. 3 (La. App. 2 Cir. 12/20/96), 685 So.2d 1177, 1180. *See also* **Taylor v. Town of Arcadia**, 519 So.2d 303, 306 (La. App. 2 Cir.), **writ denied**, 522 So.2d 1097 (La. 1988).

WBRZ-TV's Special Motion to Strike alleged that Fr. Bayhi would be unable to establish a probability of success on his claims because he cannot prove that the statements on the graphic were "of and concerning" him, and because he cannot prove that the statements were false and defamatory when the entire published report is considered as a whole.

To be actionable, defamatory words must be "of and concerning" the plaintiff or, directly or indirectly, cast a personal reflection on the plaintiff. The defamatory words must refer to some ascertained or ascertainable person, and that person must be the plaintiff. If the words used really contain no reflection on any particular individual, no averment or innuendo can make them defamatory. An innuendo cannot make the person certain which was uncertain before. **Weatherall v. Dep't of Health & Human Res.**, 432 So.2d 988, 994 (La. App. 1 Cir.), **writ denied**, 437 So.2d 1150 (La. 1983).

Considering the entirety of the January 20, 2015 newscast, the context in which the graphic was used, and the effect it was reasonably intended to produce in the mind of the average viewer, it is clear that the references to a "priest" in the graphic would be viewed by the average viewer as meaning Fr. Bayhi. Although the graphic does not refer

to Fr. Bayhi by name, Fr. Bayhi argues that the reference to a "priest" on the graphic, combined with the voiceover identifying the defendant priest in the **Mayeux** case as "Father Jeffery Bayhi" and the video clip showing Fr. Bayhi in his priest's cassock, made the word "priest" in the graphic refer to him. The four affidavits filed by Fr. Bayhi from individuals who viewed the newscast, including his mother and three of his parishioners, all stated that they understood the graphic to imply that Fr. Bayhi was accused of molesting a young girl. Considering the evidence before the court on the Article 971 motion, we find that Fr. Bayhi carried his burden of demonstrating a probability of success on the "of and concerning" aspect of his defamation claim.

WBRZ-TV next alleged that Fr. Bayhi cannot prove that there was a "false and defamatory statement" because the newscast was substantially true. WBRZ-TV argues that despite the errors in the graphic, when the newscast is considered as a whole, it does not make a false and defamatory statement about Fr. Bayhi.

Falsity of the words used in the graphic is not disputed. However, we must view the erroneous graphic in the context of the newscast as a whole and consider the effect the newscast as a whole would have on an average viewer when determining whether it is false. See **Britton v. Hustmyre**, 09-0847, p. 8 (La. App. 1 Cir. 3/26/10), 2010 WL 1170222. In addition to the statement on the graphic that a priest was accused of abuse, the graphic also states that the priest died during the investigation. The reference to "Father Jeffery Bayhi" in the newscast is part of an accurate description of the allegations in the case, including an identification of the alleged perpetrator as George Charlet, Jr. Later in the newscast, the Mayeux's attorney described the allegations against the priest as a failure to report the abuse and prevent future abuse. Finally, a correction was issued at the end of the newscast stating that the statement on the graphic that a priest was accused of abuse was not correct. Fr. Bayhi offered the affidavits of his mother and three of his parishioners stating that the newscast gave them the impression that Fr. Bayhi was being accused of abuse. Each stated that they were focused solely on the graphic and did not hear or comprehend the voiceover, nor did they hear the correction issued at the end of the newscast. However, this court must consider the newscast as a whole in

determining falsity. Considering the errors in the graphic in the context of the newscast as a whole, including the voiceover, the interview with the Mayeuxs' attorney, and the correction issued at the end, an average viewer should be alerted to the errors in the graphic and understand that Fr. Bayhi was not accused of abuse. We cannot say that Fr. Bayhi has demonstrated a probability of success in proving falsity of the statement.

Because we have found that Fr. Bayhi did not establish a probability of success on an essential element of his defamation claim, the trial court's dismissal of his defamation claim under Article 971 was appropriate.

#### *False Light Invasion of Privacy*

Fr. Bayhi's second claim was for invasion of privacy. A false light invasion of privacy cause of action arises from publicity which unreasonably places the plaintiff in a false light before the public. The publicity need not be defamatory in nature, but must be objectionable to a reasonable person under the circumstances and must contain either falsity or fiction. Unlike a defamation action, it is not necessary that there be malicious intent on the part of the defendant. Instead, in order to determine reasonableness, courts are to balance the plaintiff's interest in protecting his privacy from serious invasions with the defendant's interest in pursuing his course of conduct. **Cook v. Warrior Energy Servs., Corp.**, No. CV 15-2195, 2017 WL 1356333 at \*6 (W.D. La. Apr. 11, 2017), citing **Perere v. Louisiana Television Broad. Corp.**, 97-2873, pp. 3-4 (La. App. 1 Cir. 11/6/98), 721 So.2d 1075, 1078.

In order for Fr. Bayhi to be placed in a false light by WBRZ-TV's erroneous statement in the graphic that a priest was accused of abuse, the graphic must be viewed in light of the newscast as a whole. Absent the context of the entire newscast, there is nothing to connect the references to a "priest" on the graphic to Fr. Bayhi. Further, as we have found in the defamation claim, the graphic viewed in the context of the newscast as a whole does not place Fr. Bayhi in a false light because the average viewer would be alerted to the mistake in the graphic. The reporting in the newscast, both while the graphic was displayed and afterwards, accurately described the allegations against the priest. From the evidence presented, we find that Fr. Bayhi has not demonstrated a

probability of success on his Invasion of Privacy claim and the trial court was legally correct in granting WBRZ-TV's Special Motion to Strike.

*Attorney Fees and Costs*

Fr. Bayhi's final assignment of error is that the court erred in awarding attorney fees to WBRZ-TV under La. C.C.P. art. 971(B). Fr. Bayhi's only argument on this assignment of error is that the trial court should not have granted the Special Motion to Strike, and therefore WBRZ-TV should not be entitled to attorney fees as the prevailing party. An award of reasonable attorney fees and costs to the prevailing party on a Special Motion to Strike is mandatory under the statute. **Quinlan v. Sugar-Gold**, 51,191, p. 17 (La. App. 2 Cir. 4/5/17), 219 So.3d 1173, 1186. Because we have found that the trial court was legally correct in granting the motion and dismissing Fr. Bayhi's claims, this assignment of error is without merit.

WBRZ-TV answered the appeal, requesting attorney fees and costs for the additional work done on this appeal. Attorney fees on appeal usually can be awarded only if the party seeking them is entitled to them by law, and has either appealed or answered the appeal. See La. C.C.P. art. 2133. In this case, because WBRZ-TV is entitled to and was awarded attorney fees for its counsel's work in the trial court as related to the Special Motion to Strike, pursuant to La. C.C.P. art. 971(B), and answered the appeal seeking additional attorney fees, we shall award additional attorney fees for the defense of this appeal in the amount of \$2,000.00. See **Williams v. Nexstar Broad., Inc.**, 11-887, pp. 10-11 (La. App. 5 Cir. 4/10/12), 96 So.3d 1195, 1202.

**DECREE**

The trial court's August 3, 2016 judgment granting WBRZ-TV's Special Motion to Strike and dismissing Fr. Bayhi's petition for damages with prejudice and awarding attorney fees and costs to WBRZ-TV is affirmed. Additionally, WBRZ-TV is awarded \$2,000.00 for attorney fees necessitated by the appeal. Father M. Jeffery Bayhi is to bear all costs of this appeal.

**AFFIRMED; ANSWER TO APPEAL GRANTED; ADDITIONAL AWARD OF ATTORNEY FEES RENDERED.**