HOVIS v. PRYOR, ET AL, NO. 2, C.P. Franklin County Branch, No. 93 August Term, 1976

Defamation - Motion for Judgment on Pleadings - Public Official - Privileged Communications

1. A chief of police is a department head with sufficient policy making functions to warrant his classification as a high public official.

2. A police chief's statements to a Civil Service Commission considering hiring a former employee are within the scope and closely related to his official duties and are therefore privileged.

3. A motion for judgment on the pleadings will be granted where the alleged defamatory statements are privileged.

David C. Cleaver, Esq., Attorney for Plaintiff, Richard L. Hovis

David A. Wion, Esq., Attorney for Steelton Civil Service Commission

Daniel W. Long, Esq., Attorney for Defendant, Donald R. Pryor, Borough of Waynesboro

OPINION AND ORDER

EPPINGER, P.J., January 19, 1979:

Richard L. Hovis (Hovis) formerly was a member of the Waynesboro (Waynesboro) Police Department. He sought a position as patrol officer with the Borough of Steelton (Steelton) whose Civil Service Commission (Commission) asked for background information from Waynesboro. The information was provided by the then Chief of Police Donald R. Pryor (Pryor). Hovis was not placed on the Commission's eligible list.

This defamation action was filed by Hovis against Pryor and Waynesboro, who filed answers with new matter, in the latter raising the defense of privilege. They then filed Motions for Judgment on the Pleadings, arguing that the facts set forth in Hovis' complaint show that the statements made by Pryor were privileged.

A motion for judgment on the pleadings is in the nature of a final demurrer before trial and must be decided on the pleadings themselves, *Bogojavlensky v. Logan*, 181 Pa. Super 312, 124 A. 2d 412 (1956), and should be entered only in clear cases, where there are no issues of fact, and where a trial would be a fruitless exercise. Goodrich-Amram 2d Sect. 1034(a):1.

In his complaint Hovis alleges he was applying to be a member of the Police Department of the Borough of Steelton; that the Commission solicited Waynesboro for background information; that Pryor wrote a letter to the Commission reporting on Hovis' character and fitness for employment; that the Commission received this information during its preliminary investigation and Hovis was not hired. The Court must accept as true all well pleaded facts of the complaint, but conclusions of law should not be considered or accepted as admitted. Goodrich-Amram 2d Sect. 1034(b):1, *citing Aughenbaugh v. North American Refractories Co.*, 426 Pa. 211, 231 A. 2d 173 (1967).

We find that the statements made by Pryor were privileged and will grant the motion for judgment on the pleadings.

> "*Absolute privilege*, as its name implies, is unlimited, and exempts a high public official from all civil suits for damages arising out of false defamatory statements and even from statements or actions motivated by malice, *provided the statements are made or the actions are taken in the course of the official's duties or powers and within the scope of his authority, or as it sometimes expressed* (sic), *within his jurisdiction.*"

Matson v. Margiotti, 371 Pa. 188, 193, 194, 88 A. 2d 892, 895, (1952) (emphasis in original). We believe that Pryor was a high public official and that the statements made to the Commission were made in the course of his duties and within the scope of his authority.

In *Montgomery v. Philadelphia*, 392 Pa. 178, 140 A. 2d 100 (1958), the court decided that the Deputy Commissioner of Public Property and the City Architect were high public officials. The Court seemed to use the following test:

> "the determination of whether a particular public officer is protected by absolute privilege should depend upon the nature of his duties, the importance of his office, and particularly whether or not he has policy-making functions."

392 Pa. at 186, 14 A. 2d at 105.

More recently the following have been held to be high public officials: a township supervisor, *Jonnet v. Bodick*, 431 Pa. 59, 244 A. 2d 751 (1968); a District Attorney, *McCormick v. Specter*, 220 Pa. Super 19, 275 A. 2d 688 (1971); directors and superintendents of individual state hospitals, *McCoy v. Liquor Control Board*, 9 Pa. Cmwlth. 107, 305 A. 2d 746

a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claims or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

You should take this notice to your lawyer at once. If you do not know of a lawyer, contact

Legal Reference Service of
Franklin-Fulton Counties
Court House
Chambersburg, PA 17201
Tel. No.:
Chambersburg 264-4125, Ext. 13

This Action concerns the land herein described: All the following described real estate lying and being situate in the Village of Fannettsburg, Metal Township, Franklin County, Pennsylvania, bounded and limited as follows: Bounded on the north by public road L. R 28093, and having a frontage thereon of 53½ feet more or less; bounded on the west by lands of Lower Path Valley Presbyterian Church and extending along same 165¾ feet more or less; bounded on the south by lands formerly of John H. Walker, now lands of Maurice A. Yocum and other lands of the plaintiffs herein and extending along the same 53½ feet more or less; and bounded on the east by lands formerly of J. H. Walker, now Leslie Park and extending along the same 166 feet more or less.

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(2-23, 3-2, 3-9)

(1973); the State Police Commissioner and a State Police Captain in charge of a local troop, *Schroeck v. Pennsylvania State Police*, 26 Pa. Cmwlth. 41, 362 A. 2d 486 (1976); and a school district superintendent, *Steffen v. Mainello*, 26 Cumb. 319 (1976).

Reviewing the above cases, we conclude that a chief of police has powers and responsibilities similar to, if not greater than, those of a state police captain in charge of a local troop. In *Schroeck* the Commonwealth Court stated:

> ". . . a state police Captain in command of all activities and personnel of a local troop holds an office of sufficient importance and with policy-making functions that warrant this position to be one of a 'high public official'."

26 Pa. Cmwlth. at 47, 362 A. 2d at 490. In *Steffen* the Cumberland County Court said that whether one is a high public official does not depend on a quantitative evaluation only. The relative impact the official's decision will have on the people under his jurisdiction must also be considered.

In *Ammlung v. Platt*, 224 Pa. Super 47, 302 A. 2d 491 (1973), we are told policemen are not high public officials. But the chief has command responsibilities; he is a department head whose position in the community is clearly an important, sensitive one with sufficient policy-making functions to warrant his classification as a high public official.

When Pryor responded to the request from the Commission, he was acting in the course of his official duties or powers and within the scope of his authority or jurisdiction. *Montgomery v. Philadelphia, supra.* The test to be applied in deciding whether a defendant's statements were within the scope of his official duties is whether the statements at issue are in fact closely related to the performance of those duties. *McCormick v. Specter, supra.*

Pryor was asked by another borough's Civil Service Commission to aid in the performance of Commission's public duties. The public interest demanded that Pryor respond; reciprocal aid of this type is to be encouraged. Pryor should not be required to refuse to furnish information to another borough who is considering hiring a former employee.

Any doubt that Pryor's statements were closely related to the performance of his official duties is resolved by Hovis' complaint. In paragraph 12 he avers:

"[a]t all times and places herein alleged, Donald R. Pryor was employed by the Borough of Waynesboro, was its servant, was under its direction and control, and at all times was acting within the scope of his authority."

As we said, in this case we are required to render judgment on the pleadings for Pryor and Waynesboro, and we will.

ORDER OF COURT

NOW, January 19, 1979, the Motion for Summary Judgment is granted. Costs shall be paid by the Plaintiff.

SHANNON v. SHEARER, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 88

Practice - Equity - Real Property - Preliminary Objections - Pa. R.C.P. 1019(f) - Pa. R.C.P. 1028(a)

1. A demurrer which merely states that a complaint fails to "state a claim upon which relief can be granted" is prohibited by Pa. R.C.P. 1028(a) and will be dismissed.

2. The mere averment that a legally significant event occured "some twenty or more years ago" lacks specificity under Pa. R.C.P. 1019(f).

3. A preliminary objection in the nature of a motion for more specific pleading will be granted where it is alleged that a retaining wall has been demolished but fails to state when it was destroyed.

Kenneth E. Hankins, Jr., Esq., Attorney for Plaintiff

Thomas J. Finucane, Esq., Attorney for Defendants

OPINION AND ORDER

KELLER, J., January 17, 1979:

This action in equity was commenced by the filing of a complaint on March 9, 1976, and the service of the same upon the defendants on March 15, 1976. The plaintiff seeks to have the defendants enjoined from using and interfering with the plaintiff's use of a certain well allegedly located in part on plaintiff's land and part on defendants' land, and also to enjoin the defendants from impeding the defendants' use of a certain driveway or portion of the driveway, to restore a drain and retaining wall and do whatever else is necessary to prevent

certain alleged flooding conditions. The complaint alleges the plaintiff's rights in and to the exclusive use of the well and the said driveway occurred by adverse possession. The defendants filed preliminary objections in the nature of a demurrer and motion for a more specific pleading on August 10, 1978. The matter came on for argument on November 2, 1978, and is now ripe for disposition.

The defendants' demurrers allege nothing more than that the two counts of the plaintiff's complaint fail "to state a claim upon which relief can be granted." In response, the plaintiff correctly contends that the demurrers must be dismissed because they are general demurrers prohibited by Pa. R.C.P. 1028(a) which states that "preliminary objections shall state specifically the grounds relied upon." Goodrich-Amram 2d 238 Section 1020(a) and cases cited thereunder. The demurrers will be dismissed.

While we will not dispose of defendants' demurrers on the merits, we do observe that defendants' contention that the action should have been brought in ejectment or as an action to quiet title is without merit.

Paragraph 8 of the complaint alleges:

"The said well was drilled some twenty-six (26) or more years ago, while the aforesaid Wingerts were the owners of the plaintiff's real estate."

The defendants contend that this paragraph is insufficiently specific because it fails to state when the well was drilled and for whom the well was drilled.

Pa. R.C.P. 1019 provides inter alia:

"(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form"

"(f) Averments of time... shall be specifically stated."

To the extent the plaintiff is able to allege with more specificity the date that the well was drilled, she should do so. We also feel the rights of the parties may be affected by the issue whether the well was dug for the plaintiff or her predecessors, or the defendants or their predecessors or for the joint use of the then owners of the plaintiff's and defendants' land. The defendants' preliminary objection No. 3 will be granted.