

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 29, 2007

ANTHONY ROBERTSON v. *THE LEAF CHRONICLE*

**Appeal from the Circuit Court for Montgomery County
No. MCCCCV0006174 Ross H. Hicks, Judge**

No. M2007-01025-COA-R3-CV - Filed December 20, 2007

The plaintiff appeals the summary dismissal of his defamation action against the defendant. The cause of action arose out of a newspaper article appearing in the defendant's newspaper, which pertained to the criminal prosecution of the plaintiff on charges for aggravated rape and assault. Contending the Complaint failed to state a cause of action, the defendant newspaper filed a motion for summary judgment. The trial court found there was no material issue of disputed fact and that the plaintiff failed to plead the minimum requirements to state any cause of action. The court also found that he sustained no damages. Finding no error we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and ANDY D. BENNETT, J., joined.

Anthony Robertson, Tiptonville, Tennessee, Pro Se.

J. Matthew Miller, Clarksville, Tennessee, for the appellee, *The Leaf Chronicle*.

MEMORANDUM OPINION¹

Plaintiff, Anthony Robertson, was arrested and charged with aggravated rape and assault arising out of an alleged attack in July of 2004. He was tried for these crimes in May of 2006. At the conclusion of the trial, the Plaintiff was convicted of assault.

Defendant, *The Leaf Chronicle*, ran a newspaper article on May 18, 2006, that covered the criminal proceedings against Plaintiff. The content of the article came from the trial and from public

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

records concerning Plaintiff's criminal record. Those sources revealed that Plaintiff was a convicted felon prior to the May 2006 newspaper article, as evidenced from the fact of his registry as a sex offender in Tennessee and Illinois. They also revealed that Plaintiff, at the time of the article, was also charged with felony murder in the slaying of a woman who was the manager of a motel in Clarksville, Tennessee.

Plaintiff's claim that he sustained damages is based upon the contention that in publishing the newspaper article, Defendant tried to lessen his chances of receiving a fair trial for murder, which took place after his rape trial. Plaintiff, however, was acquitted of the murder charges. Defendant contends the article contained no material false statements, and the information therein was true. Defendant also contends that Plaintiff's criminal history, including his prior sex offenses, were checked for accuracy prior to the article being published. Further, Defendant contends information appearing in the newspaper article is a correct and truthful accounting of what was said in the prosecution trial. Defendant further notes that Plaintiff was convicted in his assault trial.

Defendant asserts that Plaintiff had no facts and no evidence of any malice on the part of the Defendant, nor its agents or employees, and that the Plaintiff failed to plead any facts supporting his claim that he was defamed.

ANALYSIS

On November 16, 2006, Defendant was heard on its Motion for Summary Judgment. Thereafter, on December 5, 2006, the Circuit Court entered an Order of Summary Judgment Dismissal. Plaintiff did not file any response until after the court had entered its order granting the motion, and the late filed response did not materially refute the contention or fact that summary judgment was warranted. Moreover, Plaintiff had not moved for a continuance in the three weeks leading up to the hearing. As a consequence, the trial court entered an Order reaffirming the summary dismissal of Plaintiff's claims.

The trial court held that the Plaintiff's complaint did not state the minimum requirements of a cause of action for defamation, that the May 18, 2006 article contained no false or libelous disseminations about the Plaintiff, and that the trial court found that because such statements contained within the May 18, 2006 article were true, the Defendant was entitled to the affirmative defense of "truth," which required dismissal. The trial court held that the article in issue was by legal definition reasonably accurate and without malice, and it held the statements were not libelous nor actionable, and the affirmative defense of "truth" required dismissal of Plaintiff's action. Furthermore, the trial court found the Plaintiff had failed to allege that he had sustained any damage.

The issues were resolved on summary judgment. The standards for reviewing summary judgments on appeal are well settled. A summary judgment should be granted only when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion that the party seeking the summary judgment is entitled to a judgment as a matter of law. See *Webber v. State Farm Mut. Auto Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001); *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66 (Tenn. 2001); *Goodloe v. State*, 36 S.W.3d 62, 65 (Tenn.

2001). Once the moving party demonstrates that it has satisfied the burden shifting requirements of Tenn. R. Civ. P. 56, the non-moving party, in this case Plaintiff, must demonstrate how these requirements have not been satisfied. Conclusory statements and generalizations will not suffice. *Cawood v. Davis*, 680 S.W.2d 795, 796-97 (Tenn. Ct. App. 1984).

As the non-moving party, Plaintiff had the burden to establish that there were sufficient factual disputes to warrant a trial: (1) by identifying evidence ignored by Defendant that creates a factual dispute; (2) by rehabilitating evidence challenged by Defendant; or (3) by producing additional evidence that creates a material factual dispute. See *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998); *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993). If Plaintiff needed more time to prepare a response, he could have submitted an affidavit in accordance with Tenn. R. Civ. P. 56.07 requesting additional time for discovery. *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). Plaintiff, however, did none of the above.

A plaintiff's inability to prove an essential element of a cause of action renders all other facts immaterial. *Alexander v. Memphis Individual Practice Ass'n*, 870 S.W.2d 278, 280 (Tenn. 1993); *Strauss v. Wyatt, Tarrant, Combs, Gilbert & Milom*, 911 S.W.2d 727, 729 (Tenn. Ct. App. 1995). In the instant case, Defendant met the requirements of Tenn. R. Civ. P. 56. As a result, the burden shifted to Plaintiff, but Plaintiff failed to carry his burden, that being to create a dispute of material fact as to an essential element of the cause of action. We therefore affirm the trial court in all respects.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellant, Anthony Robertson, for which execution may issue.

FRANK G. CLEMENT, JR., JUDGE