

Florida Judge Dismisses “Fun Center” Defamation Lawsuit

By Cheryl A. Feeley

A Tallahassee, Florida trial court dismissed with prejudice a defamation suit filed by a children’s play center against a television news station and two of its reporters. *C&D Macconnell’s, Inc., d/b/a Ollie Wallie’s Fun Center v. Gray Television Group, Inc., D/B/A WCTV 6*, No. 11-CA-2848 (Fla. Cir. Sept. 4, 2012) (Cooper, J.). The suit arose from several stories reporting on an alleged sexual assault at the plaintiff’s amusement center.

Plaintiff’s original suit alleged that four defendants – including WCTV, a station manager, and two reporters – made defamatory statements during the course of WCTV’s reporting on an incident at plaintiff’s business, the Ollie Wallie’s Fun Center (“Ollie Wallie’s”). On June 16, 2011, a patron reported to the Tallahassee Police Department (“TPD”) that an employee of Ollie Wallie’s had inappropriately touched her two-year-old daughter. WCTV began reporting that day on the TPD investigation, a matter of obvious concern to Tallahassee parents and other television viewers. The employee was cleared of the allegation. Plaintiff also included a count for tortious interference with advantageous business relationship.

In moving to dismiss the original Complaint, defendants argued that plaintiff had not complied with the state’s pre-suit notice statute, Section 770.01, Florida Statutes (2011), which provides that “before any civil action is brought” a plaintiff alleging defamation against a media defendant shall serve written notice on the defendant, “specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory.” Defendants also pointed out that plaintiff had not met the minimum pleading requirements for a defamation cause of action and that a tortious interference claim is not viable when the claim arises from the publication of allegedly defamatory statements.

At the hearing on the motion to dismiss, plaintiff conceded that it had not pled pre-suit notice. Counsel

represented to the court that it had complied with the statute but merely failed to include the allegation. The court issued an order dismissing the case, but permitted the plaintiff to amend to include an allegation regarding the pre-suit notice, as well to particularize the allegedly defamatory statements.

Plaintiff then filed a First Amended Complaint, which included only one count of defamation and removed the station manager as a defendant. The First Amended Complaint also attached three letters from counsel for plaintiff to a manager at WCTV – in an effort to plead compliance with the notice statute. One letter demanded that “WCTV immediately publically [*sic*] retract all prior reports and cease from any further broadcast of Ollie Wallie’s Fun Center with regard to the alleged events which is [*sic*] reported to have occurred on June 16, 2011.”

Again, defendants moved to dismiss the suit and argued that the pre-suit notice had not been met. Defendants also argued that the allegedly defamatory statements were not defamatory as a matter of law. Specifically, defendants highlighted a series of cases standing for proposition that an alleged statement that a crime occurred at a business is not defamatory as a matter of law, including *Cooper v. Miami Herald Publishing Co.*, 31 So. 2d 382 (Fla. 1947); *Hatjioannou v. Tribune Co.*, 8 Med. L. Rptr. 2637 (Fla. Cir. Ct. 13th Jud. Cir. 1982) *aff’d* 440 So. 2d 360 (Fla. 2d DCA 1983); *Chatham v. Gulf Publishing Company, Inc.*, 502 So. 2d 647 (Miss. 1987); and *Northland Wheels Roller Skating Center, Inc. v. Detroit Free Press, Inc.*, 539 N.W.2d 774 (Mich. Ct. App. 1995).

Defendants also argued that an alleged statement that the business failed to cooperate or comment also was not defamatory as a matter of law, citing *Thomas v. Patton*, 2005 WL 3048033 (Fla. Cir. Ct., Oct. 21, 2005), *aff’d*, 939 So. 2d 139 (Fla. 1st DCA 2006); *Ramey v. Kingsport Publishing Corp.*, 905 F. Supp. 355 (W.D. Va. 1995), *Chapin v. Greve*,

(Continued on page 12)

The court strictly applied Florida’s notice statute and rejected plaintiff’s argument that the court should waive the prerequisite of compliance because it could not secure a copy of the broadcast from the station.

(Continued from page 11)

787 F. Supp. 557 (E.D. Va. 1992), *aff'd*, *Chapin v. Knight-Ridder*, 993 F.2d 1087 (4th Cir. 1087); *Brewer v. Capital Cities/ABC, Inc.*, 986 S.W.2d 636, 643 (Tex. App. 1998); and *Boyle v. Cape Code Times*, 2012 WL 28661, at * 2 (Mass. App. Ct., Jan. 6, 2012).

Despite plaintiff's arguments that the coverage portrayed management as derelict and uncooperative in the investigation and the business as unsafe, Judge John C. Cooper (Circuit Court of the Second Judicial Circuit) issued an order dismissing the suit with prejudice. The court strictly applied Florida's notice statute and rejected plaintiff's argument that the court should waive the prerequisite of compliance because it could not secure a copy of the broadcast from the station. The court noted that "the Notice

Statute is an important component in protecting the public's interest in the free dissemination of news."

Further, the court agreed with defendants that an alleged statement that a crime occurred at a business is not defamatory as a matter of law and that an alleged statement that the business failed to cooperate or comment also is not defamatory as a matter of law.

William R. Waters, Jr., Waters & Associates P.A., Tallahassee, FL, represented C & D MacConnell's, Inc. d/b/a Ollie Wallie's Fun Center.

Elizabeth L. Bevington, Cheryl A. Feeley and Charles D. Tobin, Holland & Knight LLP, Tallahassee, FL and Washington, D.C., represented Gray Television Group, Inc. d/b/a WCTV 6, aka WCTV "Eyewitness News," Jerry Askin, and Candace Sweat.



A comprehensive selection of media law news for media law lawyers

MLRC MediaLawDaily

Published daily by e-mail, the MLRC MediaLawDaily links to breaking news stories from the U.S. and the rest of the world on media law and business issues, and to decisions, briefs and legislative initiatives.

DCS Basic Members need to upgrade to Enhanced Membership to receive the MediaLawDaily.

Visit www.media-law.org for more information.