

Maryland High Court Adopts Less Demanding Standard to Prove Malice in Purely Private Defamation Cases

By Cindy Gierhart

The Maryland Court of Appeals held for the first time that the standard of proof for overcoming a common law conditional privilege in purely private defamation cases is preponderance of the evidence. [Seley-Radtke v. Hosmane](#), No. 19 (Md. Nov. 22, 2016).

In Maryland, a common law conditional privilege includes, as in this case, speech between members of an identifiable community who share a common interest. Speech made in this setting can be a defense to defamation, and the plaintiff can overcome it only by proving the speaker acted with malice. The court considered whether the plaintiff had to prove malice by a preponderance of the evidence – as 10 other states have found – or by clear and convincing evidence – as 8 other states have found.

Background

The parties in this case were colleagues in the Department of Chemistry at the University of Maryland. The plaintiff, Ramachandra Hosmane, was a professor accused of sexually assaulting a student. After an administrative investigation, he chose to retire without making public the results of the investigation. He later sued the university in relation to his resignation.

Hosmane submitted a public records request from the university and received communications that his coworker, Defendant Katherine Seley-Radtke, had sent to the chemistry department chair and general counsel for the university. Seley-Radtke stated in those communications that Hosmane was “unbalanced” and “given the shootings in Alabama, I worry for my safety and for that of anyone around me.” Seley-Radtke allegedly stated that Hosmane had stolen documents and sold them for money.

Hosmane sued Seley-Radtke for defamation, and a jury found in favor of Seley-Radtke. The Maryland Court of Special Appeals found error in the trial court’s jury instructions and remanded for a new trial. The Maryland Court of Appeals then granted cert on May 20, 2016.

Court of Appeals Decision

Because the coworkers are both private individuals and the speech was on a private matter not of general or public concern, this was a purely private defamation case. Typically, to prove

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defamation under these circumstances, the plaintiff need only show negligence on the part of the speaker.

However, Maryland recognizes a defense to purely private defamation when members of an identifiable group who share a common interest are speaking amongst themselves. The purpose of the “common interest conditional privilege” is to encourage the free exchange of information and to promote consultations among members without fear of suit.

To overcome this privilege, the plaintiff must show that the speaker acted with malice, which, under Maryland law, follows the *New York Times v. Sullivan* standard, requiring a showing of the speaker’s “knowledge of falsity or reckless disregard for the truth.”

In First Amendment jurisprudence, when speech targets a public figure, the plaintiff must prove actual malice by clear and convincing evidence. *Seley-Radtke* argued the same standard of proof should be adopted for showing malice to overcome the common interest privilege in Maryland.

The Court, however, felt that while the clear-and convincing standard was appropriate for the weightier constitutional requirements under the First Amendment, a less-demanding preponderance-of-the-evidence standard was more appropriate to overcome a common law privilege. In so deciding, the Court said it sought a balance between the private individual’s rights against the speaker’s.

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