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COMMONWEALTH OF MASSACHUSETTS

NORFOLK , ss.

SUPERIOR COURT
CIVIL ACTION
No. 2082CV0629

G.W.[1]

vs.

GANNETT CO., INC., GATEHOUSE MEDIA, INC., D/B/A WICKEDLOCAL.COM

DECISION AND ORDER ON THE DEFENDANT'S MASS. R. CIV. P. 12(B)6 MOTION TO DISMISS

The Defendant, a media entity, asks the court to dismiss the Plaintiff's complaint because it contends that G.W. has stated no plausible legal claim when he/she asks the Defendant to remove the cyber traces of two truthfully reported articles originally published in 2013. Plaintiff contends that two separate police blotter entries in 2013 published in the Defendant's publications identify him as having been arrested and criminally charged by two local police departments on two unrelated misdemeanors. The Plaintiff states that he/she was never prosecuted on those charges. Those matters were expunged or sealed on Plaintiff's criminal record. However, the police blotter reports linger, at least in the cyber world. Plaintiff does not dispute the accuracy of those reports at the time that they were reported.

Plaintiff now demands that the Defendant remove the narrative portion of the police blotter in its reports. This is because, he argues, a simple Google search by a prospective employer can uncover this history, and it is a history that is statutorily prohibited from being

[1] G.W. filed this suit using their initials to protect their identity and privacy in this lawsuit which has at its core Plaintiff's desire to be forgotten and remain anonymous. Despite that impulse the Plaintiff has included links to the alleged offending articles and other information from which the Plaintiff's identity could be ascertained which simply underscores the futility of trying to erase historical data once it is electronically stored, especially when the cyber links to the information are such stubborn and enduring things.

divulged to that same employer if they requested a Criminal Activity Report (CARI) before making Plaintiff an employment offer. In other words, as long as a search engine can find the links to the reports, then an internet search can do an end run around the legislative protections intended for G.W., especially as it relates to his/her sealed and expunged criminal records. Plaintiff wants the court to order the Defendant to remove the narrative and links on the webpages with these police blotter reports.

The R. 12(b)6 standard is not intended to be a high hurdle impeding a lawsuit at the outset, rather it is a reminder that the Plaintiff's clear plain statement of an entitlement to relief, taken as true, must, in fact, state a recognized claim for relief. But it is at that first gate where Plaintiff's claim stumbles. A review of the allegations in the complaint reveal that Plaintiff is asking the court to order the press/media to remove from its webpages and links a truthful 2013 report derived from public police blotters. The report was accurate, though, to be sure the 2013 reports may, in hindsight, convey an incomplete, and what may now be a moot, story. The court is not unsympathetic to Plaintiff's wish to reset the narrative about past events nor is the court unconcerned about the potential collateral damage the old reports could have on Plaintiff's employment, housing or credit prospects. However, the Plaintiff's claim for relief must give way to the First Amendment of the United States Constitution. Full stop.

Not surprisingly the Plaintiff cannot site any case or law to support Plaintiff's rather overbroad, overreaching remedy. In contrast the Defendant cites an unassailable series of precedents to demonstrate the legal basis for its motion to dismiss. For example, Defendant notes that its police blotter reports are protected by the fair credit reporting privilege which protects published reports of arrest by police. *Yohe v. Nugent*, 321 F.3d 35, 43 (1st Cir. 2003); *Jones v. Taibbi*, 400 Mass. 786, 795 (1987). The Commonwealth's statute governing expunged records

does not govern what the press may or may not choose to publish. *See* M.G.L. 258D §7. This is not a case of defamation. The report from the police blotter was factually accurate when reported. Subsequent events may have made them less relevant, but nonetheless they were truthful. As the law cited by the Defendant reveals, the Supreme Court has afforded the press a wide, unfettered berth, when it publishes truthful information. (See Defendant's Memorandum pg. 3).

Not only is the law contrary to Plaintiff's position but as a matter of public policy, Plaintiff's position is on shakier grounds. What could add more fuel to the calls of "fake news" or serve to undermine fact driven debates if erasing, modifying or white washing historical and factual events and statements was required when current events or sensibilities made the past truth, inconvenient or uncomfortable? It was the late Senator from New York, Daniel Patrick Moynihan who said "[e]veryone is entitled to his own opinion but not to his own facts." Now as ever, public discourse must be fueled by common verifiable facts. The press, as the fourth estate, is relied upon to report facts, hopefully not to create or recreate them to make them more palatable for public consumption.

For the foregoing reasons the Defendant's Motion to Dismiss is **ALLOWED.**

ORDER

The Defendant's Motion to Dismiss is **ALLOWED.**

ROSEMARY CONNOLLY
Justice of the Superior Court

DATE: DECEMBER 29, 2020