

IN THE DISTRICT COURT FOR ROGERS COUNTY
STATE OF OKLAHOMA
MAY 23 2016

CARL PARSON,)
)
 Plaintiff,)
)
 vs.)
)
 DON FARLEY,)
)
 Defendant.)

KIM HENRY, COURT CLERK
AS

Case CJ-2016-198

APPLICATION TO FILE UNDER SEAL
CERTAIN DOCUMENTS

Plaintiff, Carl Parson, respectfully seeks pursuant to 51 O.S. §24A.30 to file a Petition and/or records related thereto under seal in this District Court and in support states as follows:

1. Plaintiff has prepared a Petition to file in Rogers County District Court wherein he alleges Defendant, Don Farley, sent a letter ("Letter") to the Inola Chamber of Commerce wherein Defendant made libelous and defamatory statements.
2. To date the letter has not been re-published by anyone to best of Plaintiff's knowledge.
3. By filing this Petition along with the defamatory Letter Plaintiff respectfully requests that this Court seal the Letter that would prevent re-publication of matter that would irreparably harm, injure or cause further damage to the Plaintiff, his occupation, and his business.
4. The Letter on its face clearly mentions the name of Plaintiff and was intended to refer to the Plaintiff with words that taken in their natural meanings would be understood by those to whom the words were directed, the sole intent to maliciously injure, disparage, and defame the Plaintiff and/or place the Plaintiff in false light and invade his privacy rights. The

publication and words contained therein were words in their natural meaning that tends to deprive the Plaintiff of public confidence and/or injures him in his occupation as a local businessman and member of the Inola Chamber of Commerce.

5. This request to seal the Letter would temporarily prevent any further shame, humility, and injury to Plaintiff's name and reputation both as a businessman and a citizen until such time as this Court can rule on the merits of these allegations.

6. Plaintiff further requests that this Court enter an Order directing the Rogers County Court Clerk to file the Petition but to file the Letter (noted as Exhibit 1 to the Petition) under seal and that any Responsive Pleadings such as an Answer to the Petition wherein the Defendant would attempt to attach or actually attaches the Letter or makes reference to words published in the Letter until such further order of this Court.

7. Plaintiff maintains he would be irreparably harmed by additional publication of the Letter and its contents but for the entry of this Order directing the Rogers County Court Clerk to file this record under seal.

8. Plaintiff maintains there is included in the Letter information of a compelling privacy interest which outweighs the public interest in the record.

9. Plaintiff in his Petition alleges invasion of his right to privacy and placing him in a false light.

10. The statements and words in the Letter are by themselves words that are per se libel.

11. This Court may pursuant to 51 O.S. §24A.30 seal a record or a portion of a record if a compelling privacy interest exists which outweighs the public's interest in the record.

12. The Oklahoma Supreme Court, in *Wimmer v. Oklahoma Pub. Co.*, 1931 OK 512 explained that the term *per se* means by itself; simply as such; in its own nature; and in connection with libel, the term is applied to words which are actionable because they of themselves, without anything more, are opprobrious and that the publication on its face shows that the derogatory statements, taken as a whole refer to the plaintiff. In order to be libelous the words by themselves must tend to lower him in the opinion of men whose standard of opinion the court can properly recognize or tend to induce them to entertain an ill opinion of him. *Id.* at

¶0

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order directing the Rogers County Court Clerk to file under seal portion of the record, namely the Letter and any responsive Answer or pleading that attempts to record the Letter or portions and statements within the content of the Letter. Plaintiff maintains that the Letter implicates a compelling privacy interest. Further publication of the Letter or of the statements made in the Letter would cause irreparable harm but for the entry of an order directing the court clerk to seal the records or a portion of the records and to prevent further recordation of the Letter or its contents by anyone until further order of this Court.

Respectfully submitted,



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WIMMER v. OKLAHOMA PUB. CO. et al.

1931 OK 512

1 P.2d 671

151 Okla. 123

Case Number: 20100

Decided: 09/08/1931

Supreme Court of Oklahoma

Cite as: 1931 OK 512, 151 Okla. 123, 1 P.2d 671

WIMMER

v.

OKLAHOMA PUB. CO. et al.

Syllabus

¶10 1. Libel and Slander--Determination of Whether Publication Is Libelous Per Se.

There is no fixed rule by which the court can determine whether or not a statement is libelous per se, and the statement alleged to be defamatory must be examined before it can be determined whether or not it is libelous per se.

2. Same--Plaintiff Charged With Nothing He Might not Have Legally and Properly Done.

The true rule is that where the publication alleged to be defamatory charges the plaintiff with nothing that he might not have legally and properly done, the same cannot be held to be libelous per se.

3. Same--"Per Se" Defined.

The term "per se" means by itself; simply as such; in its own nature without reference to its relations; and, in connection with slander and libel, the term is applied to words which are actionable because they, of themselves, without anything more, are opprobrious. In other words, a publication is actionable per se when the language used therein is susceptible of but one meaning, and that an opprobrious one, and the publication on its face shows that the derogatory statements, taken as a whole, refer to the plaintiff.

4. Same--Construction of Alleged Defamatory Words.

Words used in an article alleged to be defamatory are to be construed by the most natural and obvious meaning, and in the sense that would be understood by those to whom they were addressed.

5. Same--Article to Be Construed Alone.

In determining whether an article is libelous per se, the article alone must be construed, stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The article must be defamatory on its face "within the four corners thereof."

6. Same--Classes of Words Charged to Be Libelous--Words Susceptible of Defamatory as Well as Innocent Meaning.

Words charged to be libelous fall into one of three classes: First, those that cannot possibly bear a defamatory meaning; second, those that are reasonably susceptible of a defamatory meaning, as well as an innocent one; third, those that are clearly defamatory on their face. The second class are those words that are reasonably susceptible of a defamatory meaning, as well as an innocent one, and may be made defamatory by reason of their ambiguity, or by pleading certain extrinsic facts connecting said facts with

the publication and by pleading that the article was meant and understood by the general public to have such a meaning and that the general public so construed the publication.

7. Same--Publication not Necessarily Libelous Because Unpleasant.

The fact that a publication may be unpleasant and annoy or irk the subject thereof, and may subject him to jest or banter, so as to affect his feelings, is not, standing alone, sufficient to make it libelous. In order to be libelous, it must tend to lower him in the opinion of men whose standard of opinion the court can properly recognize or tend to induce them to entertain an ill opinion of him.

8. Same--When Necessary to Allege Special Damages.

It is not every written charge against an individual that will sustain a suit for damages, and, where the article itself is not libelous per se, there must be an allegation of special damages, before a recovery can be had.

9. Same--Newspaper Story Held not Libelous Per Se.

Publication examined, and held not to be libelous per se.

10. Same--Petition Held Insufficient.

Record examined, and held, that the petition did not state facts sufficient to constitute a cause of action.

Appeal from Superior Court, Pottawatomie County, Leander G. Pitman, Judge.

Action by Neal Wimmer against the Oklahoma Publishing Company et al. Judgment for defendants, and plaintiff appeals. Affirmed.

F. H. Reily and A. J. Carlton, for plaintiff in error.

Rainey, Flynn, Green & Anderson and Abernathy, Howell & Whitesell, for defendants in error.

ANDREWS, J.

¶1 The plaintiff in error commenced this action in the superior court of Pottawatomie county to recover from the defendants in error general damages for an alleged injury said to have been sustained by him through the publication of articles in the Oklahoma City Times and the Daily Oklahoman, two newspapers published and distributed by the defendants in error. The parties hereinafter will be referred to as plaintiff and defendants.

¶2 The defendants filed their demurrer to the plaintiff's petition on the ground that it failed to state facts sufficient to constitute a cause of action against the defendants or either of them. The court sustained that demurrer and entered its judgment accordingly. From that judgment the plaintiff appealed to this court.

¶3 The petition alleged that the defendants "did maliciously compose and publish in the said 'The Daily Oklahoman' of and concerning the plaintiff herein the false and defamatory matter following, to wit:

"SHAWNEE MAYOR IS "RUN" FROM MEETING.

"Invited Speaker Jeered Until He Leaves Building.

"Shawnee, Oct. 1,--(Special) -- Mayor Neil Wimmer was "hooted" out of a meeting at which he was asked to speak Monday night.

"Mayor Wimmer was invited to follow Rev. C. Dallas Meade, representative of the citizens who seek to install the managerial form of government, but when the mayor arose to speak, he was jeered until he became angry and sat down.

"When the citizens continued to cast slurring remarks and ask alleged insulting questions, Mayor Wimmer left the building.

"The meeting was held as one of a series to stir up interest for a court hearing which will begin October 8."

--and in the "Oklahoma City Times," "the false and defamatory matter following, to-wit:

"SHAWNEE MAYOR IS "RUN" FROM MEETING.

"Shawnee, Oct. 2--(Special) -- Mayor Neil Wimmer was "hooted" out of a meeting at which he was asked to speak Monday night.

"Mayor Wimmer was invited to follow Rev. C. Dallas Meade, representative of the citizens who seek to install the managerial form of government, but when the mayor arose to speak, he was jeered until he became angry and sat down.

"When the citizens continued to cast slurring remarks and ask alleged insulting questions, Mayor Wimmer left the building.

"The meeting was held as one of a series to stir up interest for a court hearing which will begin October 8"

--and "that each of the publications above alleged and set forth was false, malicious, and unprivileged, and that by means of said publications the plaintiff was, is, and has been injured in his reputation, business, and standing in the sum of thirty-five thousand (\$ 35,000) dollars." The prayer of the petition was as follows:

"Wherefore, premises considered, plaintiff prays that he have judgment against the defendants and each of them in the sum of thirty-five thousand & no/100 (\$ 35,000) dollars, and all costs of this action."

¶4 It will be noted that there was no allegation of special damage in the petition, and that there was no innuendo, colloquium, or explanatory circumstances stated in the petition.

¶5 The question for this court to determine is: Were the published articles libelous per se? If they were not, the action of the trial court in sustaining the defendants' demurrer to the plaintiff's petition was proper. *Matthews v. Oklahoma Publishing Co.*, 103 Okla. 40, 219 P. 947; *M., K. & T. Ry. Co. v. Watkins*, 77 Okla. 270, 188 P. 99; *Hargrove v. Oklahoma Press Publishing Co.*, 130 Okla. 76, 265 P. 635; *Fite v. Oklahoma Publishing Co.*, 146 Okla. 150, 293 P. 1073.

¶6 In *Hargrove v. Oklahoma Press Publishing Co.*, supra, this court held:

"Where a demurrer is interposed by the defendant to the petition of plaintiff, the demurrer only admits the truth of the facts pleaded, but does not admit the truth of the inference of

the pleader based on the facts pleaded, unless the facts themselves are sufficient to authorize such inference"

--and said:

"As to whether the article herein is libelous per se, we must consider in our determination only the thought, idea, impression, or opinion conveyed to the reader of the same. If the article, when so considered, engenders in the mind of the reader a conclusion, impression, or opinion of the plaintiff that is defamatory, and as such tends to expose plaintiff to public hatred, contempt, obloquy, it is libelous per se. *Bratcher v. Gernert*, 77 Okla. 12, 185 P. 1081; *Phoenix Printing Co. v. Robertson*, 80 Okla. 191, 195 P. 487; *Wiley v. Oklahoma Press Publishing Co.*, 106 Okla. 52, 233 P. 224; *Stevens v. Snow* (Cal.) 214 P. 968; *Choctaw Coal & Mining Co. v. Lillich* (Ala.) 86 So. 383; *Jones v. Greeley* (Fla.) 6 So. 448.

"The publication cannot be measured by its effect when subjected to the critical analysis of a legal mind; it must be measured by its natural and probable effect upon the mind of the average lay reader."

¶7 In *Wiley v. Oklahoma Press Publishing Co.*, 106 Okla. 52, 233 P. 224, this court held:

"Injury to reputation and not to the feelings of the individual is the subject of redress. The language in the alleged libelous article must be such as to tend to lower plaintiff in the estimation of men whose standard of opinion the court can recognize."

¶8 In *Phoenix Printing Co. v. Robertson*, 80 Okla. 191, 195 P. 487, this court held:

"The fact that a publication may be unpleasant and annoy or irk the subject thereof, and may subject him to jest or banter, so as to affect his feelings, is not, standing alone, sufficient to make it libelous. In order to be libelous it must tend to lower him in the opinion of men whose standard of opinion the court can properly recognize or tend to induce them to entertain an ill opinion of him."

See, also, *Fite v. Oklahoma Publishing Co.*, *supra*.

¶9 We do not consider it necessary to discuss at length the applicable rules as, in our opinion, they were stated by this court in *Fite v. Oklahoma Publishing Co.*, *supra*. In that case this court held:

"There is no fixed rule by which the court can determine whether or not a statement is libelous per se, and the statement alleged to be defamatory must be examined before it can be determined whether or not it is libelous per se.

"The true rule is that where the publication alleged to be defamatory charges the plaintiff with nothing that he might not have legally and properly done, the same cannot be held to be libelous per se. * * *

"Words used in an article alleged to be defamatory are to be construed by the most natural and obvious meaning, and in the sense that would be understood by those to whom they were addressed.

"In determining whether the article is libelous per se, the article alone must be construed, stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The article must be defamatory on its face 'within the four corners thereof, * * *

"Words charged to be libelous fall into one of three classes: First, those that cannot possibly bear a defamatory meaning; second, those that are reasonably susceptible of a defamatory meaning, as well as an innocent one; third, those that are clearly defamatory on their face. The second class are those words that are reasonably susceptible of a defamatory meaning, as well as an innocent one, and may be made defamatory by reason of their ambiguity, or by pleading certain extrinsic facts connecting said facts with the publication and by pleading that the article was meant and understood by the general public to have such a meaning and that the general public so construed the publication.

"It is not every written charge against an individual that will sustain a suit for damages, and, where the article itself is not libelous per se, there must be an allegation of special damages, before a recovery can be had."

¶10 When the petition in this case is measured by those rules, it is found to be entirely insufficient to state a cause of action against the defendants or either of them.

¶11 For that reason, the judgment of the trial court is affirmed.

¶12 LESTER, C. J., and RILEY, HEFNER, CULLISON, SWINDALL, McNEILL, and KORNEGAY, JJ., concur. CLARK, V. C. J., absent.

Citationizer® Summary of Documents Citing This Document

Cite Name	Level	
Oklahoma Supreme Court Cases		
Cite	Name	Level
<u>1935 OK 356, 44 P.2d 881, 171 Okla. 306.</u>	<u>HOLWAY v. WORLD PUBL. CO.</u>	Discussed
<u>1955 OK 185, 285 P.2d 399.</u>	<u>NICHOLAS v. OKLAHOMA CITY MAILER'S UNION NO. 30</u>	Cited
<u>1956 OK 25, 292 P.2d 1034.</u>	<u>EDWARDS v. CRANE</u>	Cited
<u>1935 OK 877, 50 P.2d 350, 174 Okla. 359.</u>	<u>TULSA TRIBUNE CO. v. KIGHT</u>	Discussed
<u>1958 OK 117, 325 P.2d 945.</u>	<u>THOMPSON v. NEWSPAPER PRINTING CORPORATION</u>	Cited
<u>1932 OK 843, 17 P.2d 470, 161 Okla. 196.</u>	<u>TULSA TRIBUNE CO. v. DIXON.</u>	Discussed
<u>1962 OK 183, 377 P.2d 42.</u>	<u>FAWCETT PUBLICATIONS, INC. v. MORRIS</u>	Discussed
<u>1978 OK 24, 576 P.2d 1152.</u>	<u>WINTERS v. MORGAN</u>	Cited
<u>1978 OK 25, 576 P.2d 1155.</u>	<u>GROVE v. MORGAN</u>	Cited

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Cite Name**Level****Oklahoma Supreme Court Cases**

Cite

Name

Level

1919 OK 357, 185 P. 1081, 77 Okla. 12, BRATCHER v. GERNERT

Discussed

1920 OK 38, 188 P. 99, 77 Okla. 270, MISSOURI K. & T. R. CO. v. WATKINS

Discussed

1921 OK 30, 195 P. 487, 80 Okla. 191, PHOENIX PRINTING CO. v. ROBERTSON.

Discussed at Length

1923 OK 696, 219 P. 947, 103 Okla. 40, MATTHEWS v. OKLAHOMA PUBL. CO.

Discussed

1930 OK 554, 293 P. 1073, 146 Okla. 150, FITE v. OKLAHOMA PUBL. CO.

Discussed

1924 OK 350, 233 P. 224, 106 Okla. 52, WILEY v. OKLAHOMA PRESS PUBLISHING CO.

Discussed at Length

1928 OK 158, 265 P. 635, 130 Okla. 76, HARGROVE v. OKLAHOMA PRESS PUB. CO.

Discussed