

Pending appellate review, this reporter analyzes Trummel vs. Mitchell and Mitchell vs. Trummel, Washington Superior Court, 01-2-04698-5 SEA to help contributors to the legal fund understand what transpired. This article provides neither a legal opinion nor an interpretation of law.

Five months have passed since Stephen (aka Stefan) A. Mitchell locked this reporter out of his apartment (19 Apr 01). He had reported to federal authorities and published reports that Mitchell mismanaged a senior citizen residence, abused residents, and misappropriated federal funds. Judge James A. Doerty gave Mitchell an antiharassment order effectively to silence investigative reporting. He misapplied law by granting a restraining order designed for domestic disputes for prior restraint purposes.

That action deprived this reporter of his constitutional right to free speech. It also prevented him from reporting politically sensitive issues or giving information to federal, state, or local agencies in good faith. The legislature previously enacted statutes to protect people from this type of prior restraint yet Doerty ignored those statutes and constitutional law when making his decision.

Usually, a reporter in a defamation action (or an antiharassment action that introduces defamation into evidence) does not bear the burden of proof. Especially, if he claims immunity on grounds that he made a communication about a public figure in good faith. Responsibility rests with the allegedly defamed party to show clear and convincing evidence that the reporter did not act in good faith. That party must show that the reporter knew of the falsity of his statements or acted in reckless disregard of truth.¹

Moreover, a party seeking to defeat a reporter's claim of privilege must do more than show a cause of action. Relying upon pleadings does not constitute a proper test.² Furthermore, the party must establish jury issues on the essential elements of the case not the subject of contested discovery.³

Washington State Law provides special rights of action and immunities. The legislature promulgated that law to protect people who report wrongdoing to government agencies from retaliation. It portends giving some immunity from threats of civil action that could act as a deterrent in the disclosure of wrongdoing - a variant of prior restraint.

Here, Doerty denied rights and immunities that protect the free flow of information to government by issuing an antiharassment order. Moreover, he denied: the right to timely notice; the right to prepare a defense; the right to confront accusers; the right to cross-examine witnesses; the right to attorney representation; and, the right to an impartial and unbiased hearing.

An appeal of that order will allow the reporter to recover costs and reasonable attorney fees against Stephen (aka Stefan) A. Mitchell and his employers. They brought a frivolous and capricious antiharassment suit based upon allegedly suborned perjury. Mitchell manages Council House, Seattle, a nonprofit, tax-exempt, government financially-assisted residence for senior citizens

located in Seattle, Washington. He brought a retaliatory action against a journalist to silence him after a government investigation resulted from his reporting. He sued to cover up his own wrongdoing and retaliated by constructively evicting him from his home and office.

Strategic Lawsuits Against Public Participation in government (SLAPP)

In fact, this lawsuit has nothing to do with harassment. Instead, it clearly defines as a strategic lawsuit against public participation in government (SLAPP). Washington State passed the first modern anti-SLAPP law⁴ in 1989. Like other states that now have similar statutes, the legislature passed it to counter an increase in frivolous lawsuits designed to silence people who openly express their views to government agencies. Those suits enforce silence by causing collateral economic damage. In this case, the Council House directors have financed strategies to force a reporter to devote substantial time and money to defend litigation instead of reporting their alleged crimes.

SLAPP law states in part that: the legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who report information to federal, state, or local agencies. The costs of defending those suits impose a severe burden upon individuals by corporate entities. Purposely, it protects individuals for reporting issues that concern any government agency and gives the individual immunity from civil liability.

To contest a SLAPP lawsuit the respondent must meet a primary and three secondary criteria: involvement with communications made to influence a governmental action or outcome; and, secondarily: a civil complaint or counterclaim; a filing against a nongovernment individual or organization; and, a substantive issue of some public interest or social significance. Here, the reporter meets all those criteria.⁵

The Council House directors employ two law firms: Beresford, Booth, Demaray & Tingstad (BBDT - Richard R. Beresford), Seattle, and Short Cressman & Burgess (SCB - Maureen M. Mitchell), Seattle. They also have lawyers on their board. Stephen A. Mitchell announced publicly that BBDT originally suggested using antiharassment and SLAPP strategies to evade eviction statutes because he did not have grounds for eviction. Mitchell (SCB) has carried out those strategies. Moreover, Mitchell's employers, a board of fifteen directors, continue to use misappropriated public assets to allow Mitchell to evade legal procedures (*see Lambert vs. Harris 801-11*).

In SLAPP lawsuits, the malice standard determines whether the reporter acted in good faith. Mitchell has failed to show any malice or any clear or convincing evidence that the reporter knowingly published false statements with reckless disregard of truth. Consequently his reports qualify as privileged under common law. Case law determines that statements similar to those made by the reporter enjoy qualified privilege.⁶ The reporter claimed privilege for his statements as good faith communication on matters that concern a government agency.

For lack of evidence, Mitchell devised and implemented a plan to suborn perjury in support of his contentions. He claimed intentional interference with his business function but presented no facts. The problems at Council House relate more to supremacist policies, managerial incompetence, and dereliction, combined with board indifference and lack of HUD oversight, than to reports about those problems.

Defamation

Mitchell has used the case to claim defamation despite his status as a public figure⁷. A professional stage actor, he uses his stage name interchangeably with his real name. His claim to defamation relates more to SLAPP not harassment or defamation.

In a common law defamation action, communications to a public officer authorized to act on them have qualified privilege.⁸ That qualified privilege protects the reporter from liability for an otherwise defamatory statement unless he abused the privilege.⁹ The burden of establishing qualified privilege abuse rests with the person claiming defamation. That person must show by clear and convincing evidence that the reporter recklessly disregarded the truth in his statements.¹⁰

Mitchell (SCB) did not show that the reporter lost his qualified privilege. Neither did she show how the reporter had not fulfilled his duty to make a fair and impartial investigation based upon reasonable grounds nor did she disprove the veracity of the published statements. Neither did she conduct a fair and impartial investigation nor have reasonable grounds for not believing the truth of the published statements.¹¹ Neither did she show by clear and convincing evidence that the reporter acted with actual malice. Moreover, she presented no evidence to show how the reporter had not acted in good faith using a negligence standard. Despite Mitchell's (SCB) dereliction, the court applied that standard instead of principles that relate to abusing qualified privilege.¹²

Moreover, Mitchell (SCB) did not present actual published statements to the reporter for him to verify as part of a discovery process. No such discovery took place. Instead she relied upon "evidence" that the judge obtained from web pages which he introduced for her after finding them using a computer that he had on the bench.

Even statements of fact may assume the character of opinion and remain unactionable when made in public debate. This also applies in other circumstances where an audience may anticipate efforts to persuade it of a particular point of view.¹³ This stands to reason because if everyone has to prove the truth of everything they say they would have to practice self-censorship to avoid lawsuits.

Moreover, to allege defamation there must exist substantial damage to a person's reputation. A reasonable person would not believe that statements in an obscure newsletter or on a web site would damage Mitchell's reputation let alone cause the substantial danger that he alleges. Mitchell, a notorious publicity seeker, never contacted the reporter about any facts contained in

the articles prior to filing a suit. Moreover, he and his attorneys received prepublication notices for refutation of content before publication. They chose to ignore them.

Mitchell (SCB) has not shown evidence of damage or identified the allegedly tortious statements that would trump the reporters constitutional rights. To the contrary, her client received a promotion and increase in salary. He publicly proclaimed that “the directors love me.”

To claim defamation, Mitchell (SCB) must make a short and plain statement that must show at a minimum the commission of a legal wrong and foreseeable damages resulting from it.¹⁴ The complaint must contain direct allegations on every material point necessary to sustain a recovery on any legal theory.¹⁵ She must prove that specific passages libeled her client. She did not do that or specifically claim defamation or libel. Instead, she relied upon Doerty’s blatant judicial misconduct and used material taken out of context from a web site to support her case.

Attorney Misconduct

A complaint becomes subject to Superior Court Civil Rules (CR 11) sanctions if a finding does not meet three conditions: complaint well-grounded in fact; complaint warranted by existing law; and, reasonable inquiry into the factual and legal basis of the action. Inquiry in this case does not meet the objective standard that defines reasonable inquiry.

Therefore, Maureen Mitchell (SCB) could become subject to Rule 11 sanctions for filing a frivolous lawsuit intended to harass and intimidate a reporter. In fact, she sued in retaliation for an antiharassment suit brought against her client. To help her in this pursuit, Doerty presumed to give legal advice to her by suggesting in open court that she should file a cross-petition.

The suit has no basis in law or fact. Mitchell (SCB) failed to allege any facts supporting a legal theory. She failed to investigate the complaint before filing suit. This blatant attempt to use legal process as a coercive weapon should not go unpunished. By this, she has counseled her client to use the courts to violate the reporter’s federal and state constitutional rights to petition government for redress of grievances: rights directly linked to the effectiveness and survival of a representative form of government.

Doerty prohibited debate on the social and economic interests inherent in the case. He ignored the benefit of collective thinking and in the process punished the reporter for indulging in a democratic free exchange of ideas: precisely the type of debate that federal and state constitutions protect. That protection relates more to illustration and harmonizing differences.

The different opinions stated in this lawsuit belong in the political arena not in a courthouse. Doerty has chosen to condone Mitchell’s insidious campaign of fear, coercion, and intimidation against senior citizens through judicial bias and denial of due process of law. He should have dismissed Mitchell’s case. Instead, he found against the reporter with prejudice after giving legal

advice from the bench. He has since repeatedly thwarted access to transcripts. He even issued a contempt motion related to a request for those transcripts.

Mitchell has allegedly suborned perjury by obtaining declarations from a parade of gullible senior citizens not equipped to counter coercive persuasion. He has used litigation and his employers "deep pockets" to try to intimidate an investigative reporter into silence despite his constitutional right to petition government. Moreover, his lawyers have conspired with him to evade the law and breached their ethical responsibility to their profession and their client.

1. Gilman v. MacDonald, 74 Wash.App. 733, 875 P.2d 697.
2. Clampett v. Thurston Cy., 98 Wn.2d 638, 658 P.2d 641 (1983).
3. Bruno & Stillman, Inc. v. Globe Newspaper Co., supra at 597.
4. RCW 4.24.500-520. *Civil Procedure Chapter. Special Rights of Action and Special Immunities*, generally.
5. Loeffelholz v. C.L.E.A.N. (Superior Court, Thurston County, October 1, 1999)
6. Gilman v. MacDonald, 74 Wash.App. 733, 875 P.2d 697.
7. Rosanova v. Playboy Enterprises, Inc., D.C.Ga., 411 F.Supp. 440, 444, Mills v. Kingsport Times-News, D.C.W.Va., 475 F.Supp. 1005, 1009, Hustler Magazine v. Falwell, 485 U.S. 46, 108 S.Ct. 876, 99 L.Ed.2d 41, Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789, and Dietemann v. Time, Inc., D.C.Cal., 284 F.Supp. 925, 930.
8. Getchell v. Auto Bar Sys. Northwest, Inc., 73 Wash.2d 831, 836, 440 P.2d 843 (1968).
9. Bender v. Seattle, 99 Wn.2d 582, 600, 664 P.2d 492 (1983).
10. Lillig v. Becton-Dickinson, 105 Wn.2d 653, 658, 717 P.2d 1371 (1986); Bender, 99 Wn.2d at 601 [664 P.2d 492]. Story v. Shelter Bay Co., 52 Wash.App. 334, 341-42, 760 P.2d 368 (1988); see also Caruso v. Local 690, Int'l Bhd. of Teamsters, 107 Wash.2d 524, 530- 31, 730 P.2d 1299, cert. denied, 484 U.S. 815, 108 S.Ct. 67, 98 L.Ed.2d 31 (1987).
11. Hanson v. Snohomish, 65 Wash.App. 441, 828 P.2d 1133 (1992), rev'd, 121 Wash.2d 552, 852 P.2d 295 (1993),
12. Gilman v. MacDonald, 74 Wash.App. 733, 875 P.2d 697.
13. Camer v. Seattle Post Intelligencer, 45 Wn.App.29, 723 P.2d 1195 (1986).
14. Christiansen v. Swedish Hospital, 59 Wn.2d 545, 548, 368 P.2d 897 (1962).
15. Havsy v. Flynn, 88 Wn.App. 524, 518, 945 P.2d 221 (1997).

© Copyright 2001 by Paul Trummel

All Rights Reserved: 06 Aug 01/18:20 PST

Edition: #806-05-01-0914-1304

Feedback: webmaster@contracabal.org