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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2014-CP-21-2504

Jacqueline Buie,

Appellant,

v.

Walmart Stores East, LP, Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR BY FINDING THAT NO GENUINE ISSUES OF MATERIAL FACT EXIST IN GRANTING THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

On September 9, 2014, Appellant, Jacqueline Buie brought this action alleging defamation and assault against Walmart Stores East, LP. from an incident occurring at a Walmart Store. In October of 2014, Respondent, Walmart Stores, East, LP. filed an Answer to Appellant's Complaint. Subsequently, Appellant filed an Amended Summons and Complaint on November 3, 2014 and Respondent filed an Answer to the Amended Complaint on November 13, 2014. Moreover, Respondent filed for a Motion for Summary Judgement on August 27, 2015. The motion was heard by The Honorable Judge Thomas A. Russo on September 28, 2015. After hearing both sides, the Honorable Judge Russo granted Respondent's Motion for Summary Judgment as to the assault claim. As to the claim of defamation, Judge Russo took the matter under advisement. On November 16, 2015, the Court issued a Form 4 Order granting the Defendant's Motion for Summary Judgment as to all of the Appellant's claims. Furthermore, Appellant filed a Motion to Alter, Amend or Reconsider Judgment on December 8, 2015. An Order denying the Motion was filed on April 14, 2016 denying the Appellant's Motion. On May 3, 2016, the Appellant filed the Notice of Appeal.

FACTS OF THE CASE

This case involves the Appellant who was employed by Walmart as a part time overnight stocker in 2012. On November 2, 2012, the Appellant arrived for work and clocked in. Upon clocking in the Appellant was informed by the manager in charge of the store that night, Ms. Kathy Roller, that they were short staffed for the night as several people had called out. Appellant was told to work quickly because other areas of the store would need help because of the people who had called out. The Appellant then started her shift by going to her assigned area for the night and began stocking diapers. During this time another employee who was headed to clock out and go home stopped and talked to the Appellant. While the Appellant was still working and chatting with the other employee simultaneously, Ms. Roller walked by and yelled for them to get back to work. The Appellant and the other employee looked at each other as the Appellant continued to stock. Shortly thereafter, another associate manager, Amber Barnhill, came to where the Appellant was and told her that Ms. Roller wanted to see the Appellant in the office. On the way to the office the Appellant made the declaration that with all of this starting and stopping she would not get any work done and she may as well go home. The Appellant went to the office and while there Mrs. Roller informed her she needed to get back to work because she was not working. During this exchange there was a misunderstanding between the Appellant and Mrs. Roller. Because of this the Appellant leaves the office and requested to speak to the store manager who was off that evening. The Appellant then called a Human Resources telephone number for Walmart's corporate office that was listed on the break room wall. The Appellant left a message informing Human Resources that two managers

were assaulting her and talking to her in a derogatory manner even though she was doing her job.

Moreover, after the phone call the Appellant went back to work, stocking her department. Ms. Roller informed the Appellant that she wanted her to return to the office however, the Appellant continued to work. Ms. Roller indicated to the Appellant that she should clock out and go home if that's what she wanted to do. The Appellant continued to work stocking her area as she never directly indicated she wanted to clock out. A little while later, Ms. Roller returned with two police officers to the Appellant's designated work area. The police officers informed the Appellant that Ms. Roller called them because she wanted the Appellant to clock out and leave and she would not. The Appellant informed the officers that she did not do anything wrong and never indicated that she wanted to clock out only that the stopping and starting with regards to her work was not allowing her to complete her task. The officers finally convinced the Appellant to leave with them even though she believed she had done nothing wrong. The Appellant was escorted out of the store by the police officers in front of other staff and customers.

ARGUMENT

I. SUMMARY JUDGEMENT WAS NOT APPROPRIATE AS GENUINE ISSUES AS TO MATERIAL FACTS EXISTED WITH RESPECT TO THE CLAIM OF DEFAMATION.

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Wilson v. Moseley, 327 S.C. 144, 488 S.E.2d 862 (1997). In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must

be viewed in the light most favorable to the non-moving party. *Id.* Moreover, in reaching such a judgment the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, are used. *Rule 56 (c) SCRCP.*

In this case there was a dispute between the Appellant a manger, Amber Barnhill and another manager, Ms. Roller about what was said about clocking out for work. The Appellant contends that she never told the manager she wanted to clock out and go home. (See Page 15 Lines 23-25, Page 16 Lines 1-4 of the Transcript from Hearing). However, the Respondent contends that the Appellant said she wanted to clock out. (See Page 6 Lines 17-20 of the Transcript from Hearing). As a result, the manager, Ms. Roller called the police who came to escort the Appellant out in front of other customers and employees creating the impression that the Appellant stole something or was under arrest.

Moreover, because of this the Appellant filed a claim alleging defamation. "The tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message about the plaintiff." Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). More specifically the Appellant alleged slander *per se* which is spoken defamation. (See Page 15 Lines 7-11 of the Transcript from Hearing). Slander is actionable per se when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a

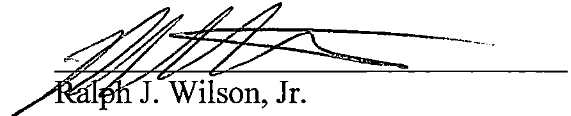
crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." Goodwin v. Kennedy, 347 S.C. 30, *36*, 552 S.E.2d 319, 322-23 (Ct.App.2001*)*. Here, the Respondent Walmart defamed the Appellant by calling the police and having the Appellant escorted out of the store with the impression or insinuation that she committed some crime. In this case that would rise to the level of a crime of moral turpitude. Moreover, South Carolina Courts have held that "[a] mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain." Murray v. Holnam, Inc., 344 S.C. at 139, 542 S.E.2d at 748 (Ct.App.2001).

Lastly, it is well founded that a defendant in a defamation action may assert the affirmative defense of conditional or qualified privilege. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). More specifically, South Carolina Courts have held "Whether an occasion gives rise to a qualified or conditional privilege is generally a question of law for the court. Murray v. Holnam, Inc., 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001)." However, this is not the case when that privilege is abused. "Although abuse of the conditional privilege is generally an issue for the jury to decide, in the absence of a controversy as to the facts, it is for the court to determine". Woodward v. S.C. Farm Bureau Ins. Co., 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981). Because of the disputed issues of whether the Appellant said she was or was not going to clock out and the Respondent calling the police which gave the impression or insinuation that the Appellant stole something Summary Judgement should have been denied as genuine issues of material facts existed.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and reinstate the case in the lower court to be tried on its merits.

Respectfully submitted,



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