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ORIGINAL

UNITED STATES SUPREME COURT

FILED

APR 06 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

N.H. Supreme Court

Docket No. 2017- 0682

LORRAINE MACDONALD AND PETER MACDONALD

V.

LISA JACOBS

PETITION FOR WRIT OF CERTIORARI

Lisa Jacobs

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A. QUESTIONS PRESENTED

Whether enhanced compensatory damages in connection with an action for negligence per se requires proof of “actual malice” consistent with St. Amant v. Thompson, 390 U.S. 727 (1968) and consistent with Munson v. Raudonis, 118 N.H. 474 (1978), or whether the common law malice standard, “ill will, hatred, hostility, or evil motive” applies?

B. LIST OF PARTIES

Lisa Jacobs, 36 Clinton Street, Concord NH 03301

Peter and Lorraine MacDonald, 16 Rowley^{Hill} Road, Sterling MA 01564

C. CITATIONS OF OFFICIAL/UNOFFICIAL REPORT

MacDonald v. Jacobs, January 15, 2019, Docket No. 2017-0682, ____ N.H. ____, 2019 WL 275127

D. JURISDICTION

This is an appeal of a January 15, 2019 New Hampshire Supreme Court decision which conflicts with other state cases regarding the First Amendment’s applicability to presumptive and punitive damage claims in defamation cases in the absence of evidence of “actual malice” and this Court has authority to review pursuant to 28 U.S.C. § 1257.

E. CONSTITUTION PROVISIONS, STATUTES, ORDINANCES, RULES OR REGULATIONS INVOLVED IN THE CASE

U.S. Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

F. STATEMENT OF FACTS/STATEMENT OF THE CASE

Between 2012 and 2016, Lisa Jacobs would spend time at a cottage built by her parents in the Rockwood Pond area of Fitzwilliam. In 2012, Peter and Lorraine MacDonald purchased a house across the street from the cottage owned by the Jacobs Family Trust. They both used the house at times, but also rented it out. In 2013, the MacDonalds had a confrontation with Lisa Jacobs as a result of their tenants' complaints about harassment from Jacobs over their dog and noise. The MacDonalds informed Jacobs to contact them directly with any tenant complaints.

Subsequently, Jacobs made numerous complaints about the MacDonalds and/or their tenants to the Fitzwilliam Police between 2013 and 2015 concerning unpermitted fires, noise, alcohol and drug use, and other nuisances. On or about July 15, 2015, Jacobs sent a 24-page email to the Federal Bureau of Investigation, which included the following passages:

My understanding is that issues between neighbors blossom to the point until someday one neighbor gets a gun and shoots the other neighbor. My understanding is that it is very important for me to complain to the police in order for their [sic] to be a history for a jury to evaluate in the future in the case of my death.

...

I have been having fears of homicidal ideation of having to be put in the position of killing the McDonalds [sic] and or their drunken tenants. I have thought about getting a federal contractor with an assault weapon to try to protect me to help me calm down when I am at 251 Sunset Rd. as I am feeling terrorized.

The email to the FBI was disseminated to the Fitzwilliam Police Department and ultimately to the MacDonalds. On April 25, 2016, the MacDonalds filed an *ex-parte* complaint seeking an equitable restraining order against Jacobs. The order was granted on an *ex-parte* basis, and affirmed after a hearing in May, 2016. On August 2, 2016, the MacDonalds filed a motion requesting leave to amend

the complaint to include a count of defamation and to schedule the matter for jury trial, a motion which was granted by the Court in September 2016. The Plaintiffs ultimately amended the complaint to add a claim of defamation.

On February 3, 2017, the Plaintiffs filed a Superior Court Rule 22 Disclosure stating with respect to Rule 22 (a)(3), damages, “to be determined by jury arising from Jacobs’ *per se* unprivileged defamatory statements.” No computation of damages was provided, nor was any documentation “bearing on the nature and extent of injuries suffered” provided, other than Jacobs’ correspondence with various police agencies, government officials, and other persons. The Defendant sought to dismiss the count of defamation on the basis that the Plaintiffs could not establish general damages. The Motion was denied.

During the period from July 2015 through March of 2017, Jacobs sent a number of prolix letters copied to various law enforcement and local officials, the Governor of New Hampshire, the New Hampshire Attorney General, officials with the New Hampshire Forrester Service, and the U.S. Attorney General’s Office. The letters complained that the MacDonalds were “sociopathological” and that Lorraine MacDonald was a “loud, drunk alcoholic” and accused them of various crimes.

At the trial, at the conclusion of the Plaintiffs’ opening statement, the Defendant made an oral Motion to Dismiss with a supporting legal memorandum on the basis that the opening statement did not allege facts sufficient to establish “actual malice”, the appropriate standard in this matter, and that the Plaintiffs could not rely on presumptive or punitive damages. The Motion was denied. At the conclusion of the Plaintiff’s case, the Defendant made a Motion to Dismiss, orally and through a written Motion on the same grounds. The Motion was denied. The case was appealed, and the argument that the Plaintiff’s must establish “actual malice” in order to obtain presumptive or punitive damages was rejected by the New Hampshire Supreme Court.

G. ARGUMENT

A. Whether enhanced compensatory damages in connection with an action for negligence per se requires proof of “actual malice” consistent with *St. Amant v. Thompson*, 390 U.S. 727 (1968) and consistent with *Munson v. Raudonis*, 118 N.H. 474 (1978), or whether the common law malice standard, “ill will, hatred, hostility, or evil motive” applies?

The “actual malice” standard derives from the case of *New York Times*, 376 U.S. at 279-280 (1964), which held:

The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not. An oft-cited statement of a like rule, which has been adopted by a number of state courts. . .

The standard for “actual malice” requires actual knowledge or reckless disregard for the truth. It is a subjective standard. The “Actual Malice” requirement is the same as that articulated in *St. Amant*, 390 U.S. at 731, 88 S. Ct. at 1325 (1968), where the United States Supreme Court held:

These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

In *MacDonald v. Jacobs*, the New Hampshire Supreme Court held that enhanced compensatory damages (as well as presumptive damages) could be obtained in cases meeting the standard for common law malice, “ill will, hatred, hostility, or evil motive”, not “actual malice”. This decision is inconsistent with *Geertz*, “[s]tates may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth.”

Gertz v. Robert Welch, 418 U.S. 323, 349 (1974); and contradicts State law cases such as Newberry v. Allied Stores, Inc., 773 P.2d 1231, 1237 (N.M. 1989)(punitive damages in libel only recoverable if publication made with actual malice).

This case presents to make the standard for enhanced compensatory and presumptive damages in defamation require a demonstration by clear and convincing evidence of "actual malice" consistent with federal law, and to make New Hampshire jurisprudence consistent with the protections of the First Amendment. The trial court also erred in its jury instructions and its verdict form in utilizing the common law malice standard instead of the actual malice standard.

Respectfully submitted,

Lisa Jacobs

Dated: April 4, 2019

By: Lisa Jacobs
~~21 March 2019~~
~~21 March 2019~~
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