

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0713-11T3

ROBERT ROSENBLATT, Plaintiff-Respondent,

v.

PAUL CAMELLA, Defendant-Appellant.

July 20, 2012

Submitted June 5, 2012 - Decided

Before Judges Reisner and Simonelli.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-1752-11.

Lipsky Portales, P.A., attorneys for appellant (Sean M. Lipsky and Elena Portales, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

By leave granted, defendant Paul Camella appeals from a September 2, 2011 order, denying his summary judgment motion seeking dismissal of a defamation complaint filed by plaintiff Robert Rosenblatt. For the reasons that follow, we reverse the order on appeal, and remand this matter to the trial court for further proceedings.

These are the undisputed facts. As of October 4, 2010, Camella and Rosenblatt were both members of the Woodcliff Lake Borough Council. Rosenblatt was running for re-election. Camella obtained a copy of a July 6, 2010 e-mail to Rosenblatt from a local political activist named Kevin O'Brien. A fair reading of O'Brien's e-mail would lead a reader to the reasonable conclusion that O'Brien was offering Rosenblatt campaign advice. The text of the e-mail, which was labeled "RE: idea," began: "Your election . . . you[r] call." The full text is as follows:

From: Kevin O'Brien [email address]

Date: July 6, 2010 6:05:51 AM EDT

To: Bob Rosenblatt [email address]

Subject: RE: idea

Your election . . . you[r] call. Your approach as conveyed in my view, is way too wordy! Cut to the chase .

Print out each on [separate] pieces of paper. Hand them to someone and get their input as to which is clearer and more easily understood.

Will you keep the readers['] interest for the entire piece?

Bader wrote Woodcliff Lake is . . . "my Borough" . . . do we really want a power control freak on the Town Council?

Bader wrote he had no knowledge of the yearly audit that caught Joanne Howley!

Bader critical of Jo Higgins, his opponent in the November election, wrote on X/X/X "she refers to a pool registration issue which I [too], have no knowledge of." Howley pool registration had been the target of an investigation and council discussion since Jan[.] 2010!

At the October 4 Council meeting, Camella read a written statement that he had prepared, and he distributed copies of the statement and the e-mail to his fellow Council members. He also distributed copies of both documents to the local newspapers. The written statement read as follows:

Mr. O'Brien has been carrying on a relentless letter writing campaign against the Republican majority on the council for the past year. Mr. O'Brien has also filed a number of lawsuits against the Boro of Woodcliff [Lake] and has threaten[ed] to file more. The Boro has spent over \$15,000 defending itself against these lawsuits in 2010 alone. He claims he is non partisan and he claims to be the self appointed Public Advocate. He has stated in public meetings and in writing when questioned that he is not working on behalf of Bob Rosenblatt['s] reelection campaign.

I believe these assert[ions] are false and that indeed Mr. O'Brien and Mr. Rosenblatt are orchestrating and coordinating attacks on the council majority to portray them in a negative matter. A political strategy of this nature by the Rosenblatt campaign is both irresponsible and unethical. Mr. Rosenblatt certainly has the right to run a campaign stating his position and accomplishments but it is not acceptable to mislead the public with deceitful statements by a supposed independent person.

I have attached a copy of an email between Rosenblatt and O'Brien which clearly shows discussion of campaign language and strategy by the Rosenblatt campaign. This includes language that O'Brien used in this email [] and then was used in a letter to the Editor last week attacking Councilman Bader.

I believe these actions by Mr. Rosenblatt are clearly unacceptable and I call on him to [withdraw] from this year's election. I will also be asking that the NJ State Ethics Commission review this matter.

[Emphasis added.]

On October 10, 2010, Rosenblatt sent Camella a letter objecting to the fact that Camella had distributed the written statement at the October 4 meeting, when Rosenblatt was not present to respond. He contended that Camella's allegations were untrue and were politically motivated, and he demanded that Camella retract them. Camella did not retract the allegations.

In an October 14, 2010 letter to the Division of Local Government Services, Camella outlined Rosenblatt's conduct and asked whether it was "an ethics violation to mislead the public" as his letter described. On November 10, 2010, the Chair of the Local Finance Board wrote to Camella, indicating that "Councilman Rosenblatt's alleged coordination with a private citizen regarding his campaign does not fall under the Board's jurisdiction in its enforcement of the Local Government Ethics Law." Rosenblatt lost in the November election.

On February 25, 2011, Rosenblatt filed a Law Division complaint against Camella, alleging that Camella's written statement was defamatory, and that the timing of its release was calculated to harm him, because Rosenblatt was absent from the October 4 meeting and could not defend himself. Camella filed an answer and a counterclaim seeking sanctions for the filing of a frivolous lawsuit, and shortly thereafter, he filed a summary judgment motion. At the oral argument of the motion, both parties conceded that they were "political figures."

In denying the summary judgment motion, the Law Division judge reasoned that "it is the timing of when the defendant made this statement" that was critical to plaintiff's cause of action. She opined that [Camella] knew and plotted to make it at a time when plaintiff was away . . . to a public audience, at a council meeting where plaintiff was a councilman, and in his absence announced that . . . Camella would be inquiring of the New Jersey Ethics Commission [about] Rosenblatt's ethics. The timing is more pivotal than what was actually said. And clearly it is true that he did ask. . . . And thereafter, of course, Camella . . . got an answer from the New Jersey Ethics Commission that . . . as far as they were concerned there was no ethics violation.

It was all way too late, after then Rosenblatt lost the election by less than 70 votes. So the plaintiff given the light most favorable and all reasonable inferences to its opposition has defeated the motion by this factual contention that this one limited statement is the targeted defamatory statement that plaintiff objects to; and that in fact the timing of when and how the statement was made was what amounts to actual malice that caused the damage to the plaintiff.

Our review of a summary judgment decision is de novo, applying the same legal standard as the trial court. Coyne v. N.J. Dep't of Transp., 182 N.J. 481, 491 (2005); Twp. of Cinnaminson v. Bertino, 405 N.J. Super. 521, 531 (App. Div.), certif. denied, 199 N.J. 516 (2009). If there is no genuine issue of material fact, we "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008). We owe no deference to the trial judge's conclusions on legal issues. Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009). On this record, we conclude that the trial judge's decision is inconsistent with established First Amendment principles that protect political speech.

The First Amendment embodies our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S. Ct. 710, 721, 11 L. Ed.2d 686, 701 (1964). Political candidates

must be prepared to respond to criticisms they deem unjustified and strategies that they consider unfair:

A statement made in the heat of an election contest supplies the paradigm for that commitment to free debate. "When a candidate enters the political arena, he or she 'must expect that the debate will sometimes be rough and personal.'" Readers know that statements by one side in a political contest are often exaggerated, emotional, and even misleading.

[Lynch v. N.J. Educ. Ass'n, [161 N.J. 152](#), 166 (1999) (citations omitted).]

A political or other public figure must satisfy a very high standard in order to maintain a suit for defamation:

As a general rule, a statement is defamatory if it is false, communicated to a third person, and tends to lower the subject's reputation in the estimation of the community or to deter third persons from associating with him. For the past thirty-five years, false statements about public officials have not been actionable unless published with actual malice. The same holds true for public figures. To satisfy the actual-malice standard, a plaintiff must show by clear and convincing evidence that the publisher either knew that the statement was false or published with reckless disregard for the truth. To prove publication with reckless disregard for the truth, a plaintiff must show that the publisher made the statement with a "high degree of awareness of [its] probable falsity," or with "serious doubts" as to the truth of the publication. To be actionable, "the recklessness in publishing material of obviously doubtful veracity must approach the level of publishing a 'knowing, calculated falsehood.'" Negligent publishing does not satisfy the actual-malice test.

[Id. at 164-65 (citations omitted).]

Moreover, in order to safeguard the right to free and open discussion of political issues, "[e]xpressions of 'pure' opinion on matters of public concern may no longer be the basis of an action for defamation." Kotlikoff v. Cmty. News, [89 N.J. 62](#), 69 (1982).

Political discourse depends on the expression of opinion. In an election for public office, that discourse often entails a subjective appraisal of the qualifications of a candidate. Emotion, partisanship, or self-interest, although they may impair the appraisal's value, do not justify its suppression.

[Lynch, supra, [161 N.J.](#) at 168.]

A protected "pure" opinion

is found when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then states a view as to the plaintiff's conduct, qualifications or character. "Pure" expression of opinion occurs also when the maker of the comment does not spell out the alleged facts on which the opinion is based but both parties to the communication know the facts or assume their existence and the statement of opinion is obviously based on those assumed facts as justification for the opinion.

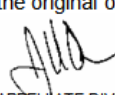
[Kotlikoff, *supra*, 89 N.J. at 68-69.]

Whether a statement constitutes a protected "expression of opinion" is a matter of law for the court to decide. *Id.* at 67. On this record, we have no hesitation in concluding that Camella's written statement was a protected expression of political opinion. He clearly laid out the factual evidence -- consisting of O'Brien's history of criticizing and suing the Council, and the e-mail from O'Brien to Rosenblatt -- and stated his beliefs and opinions based on that evidence. That included his opinion that Rosenblatt's conduct was "unethical." See *Cassidy v. Merin*, 244 N.J. Super. 466, 479 (App. Div. 1990). Readers were free to draw their own conclusions based on the information contained in the statement and the e-mail. See *Kotlikoff, supra*, 89 N.J. at 72-73.

The fact that Rosenblatt happened to be on vacation on October 4 when Camella issued the statement did not strip the statement of its First Amendment protection, and was irrelevant to the issue of whether the statement was made with actual malice. "Actual malice has 'nothing to do with hostility or ill will; rather it concerns [a] publisher's state of knowledge of the falsity of what he published, not at all upon his motivation in publishing it.'" *DeAngelis v. Hill*, 180 N.J. 1, 17 (2004) (citation omitted). The [First Amendment](#) does not require a political figure to limit his criticism of an opponent to occasions when the opponent is present. However, we note that Rosenblatt was clearly back from vacation by October 10, when he wrote his letter to Camella. If Rosenblatt believed Camella's criticism was unfair or based on inaccurate factual statements, he was free to issue his own press release setting the record straight.

"The summary judgment standard is encouraged in libel and defamation actions because '[t]he threat of prolonged and expensive litigation has a real potential for chilling . . . criticism and comment upon public figures and public affairs.'" *DeAngelis, supra*, 180 N.J. at 12 (quoting *Kotlikoff, supra*, 89 N.J. at 67). On this record, the complaint was ripe for summary judgment, and it should have been granted. Accordingly, we remand this case to the trial court with direction to enter an order dismissing Rosenblatt's complaint with prejudice, and for further proceedings on Camella's counterclaim, should he wish to pursue it.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

Reversed and remanded.