COURT OF APPEALS
DECISION
DATED AND RELEASED

November 14, 1995

No. 95-0841

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MARJORIE R. MAGUIRE,

Plaintiff-Appellant,

v.

JOURNAL/SENTINEL, INC.,
ROBERT KAHLOR, KEITH SPORE,
MARY BETH MURPHY, MARY JO MEISNER,
MICHAEL ZAHN and JOHN DOE,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Affirmed in part, reversed in part and cause remanded with directions.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Marjorie R. Maguire appeals from a judgment dismissing her libel action against the Journal/Sentinel, Inc. She claims that the trial court erred in granting summary judgment in favor of the Journal/Sentinel

with respect to five instances of defamation stemming from two newspaper articles. Because the trial court reached the right result with respect to four of the five instances of defamation, we affirm the judgment in part. Because the trial court erred with respect to one of the instances, however, we reverse the judgment in part and remand to the trial court for proceedings consistent with this opinion.

I. BACKGROUND

This case arises from a complaint filed by Marjorie, which alleged that the Journal/Sentinel published five defamatory comments in two separate articles. The two articles, published on October 27, 1992, in The Milwaukee Sentinel, and on December 17, 1992, in The Milwaukee Journal, were part of news coverage of the divorce between Marjorie and her ex-husband, Daniel Maguire. Daniel was a Theology professor at Marquette University.

Marjorie contends that she was libeled by two passages in the October 27 article: (1) that the use of the word "obscene" to describe her conduct was libelous; and (2) that a report that Marquette posted a guard outside of Daniel's classroom after Marjorie "assaulted" him at the University was libelous. She contends that she was libeled by three parts of the December 17 article: (1) she claims the use of the term "heckling" in the headline was libelous; (2) she claims that the article's report that "Circuit Judge Dominic S. Amato issued a similar order [to the injunction prohibiting her from disrupting Daniel's appearances, etc.] against her in April 1991" was libelous; and (3) she claims that the statement within the article that she made promises to the judge to refrain from certain contact with her ex-husband was libelous.

The newspaper filed a motion to dismiss, which was treated as a summary judgment motion. The trial court granted the motion, reasoning that four of the five instances were not of a defamatory nature, and the fifth, although capable of being defamatory, was true. Marjorie now appeals.

II. DISCUSSION

When reviewing a grant of summary judgment, we apply the standards set forth in § 802.08, STATS., just as the trial court applies those standards. ***Voss v. City of Middleton***, 162 Wis.2d 737, 748, 470 N.W.2d 625, 629 (1991). According to this standard of review, we must uphold a grant of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Section 802.08(2), STATS. Thus, this court will reverse the judgment of the circuit court only if a genuine issue of material fact exists; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." ***Anderson v. Liberty Lobby, Inc.***, 477 U.S. 242, 248 (1986).

The elements of a defamation claim include:

(1) a false and defamatory statement concerning another;

(2) an unprivileged publication to a third party;

(3) fault amounting at least to negligence on the part of the publisher; and

(4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication.

Van Straten v. Milwaukee Journal Newspaper-Publisher, 151 Wis.2d 905, 912, 447 N.W.2d 105, 108 (Ct. App. 1989), *cert. denied*, 496 U.S. 929 (1990).

A. "Obscene" report.

Marjorie first claims that she has stated a valid libel claim with respect to the newspaper's report describing her conduct as "obscene." The actual passage that she objects to reads: "Daniel Maguire, a prominent Marquette University theologian, got a Circuit Court injunction Monday to keep his ex-wife, Marjorie, from disrupting his speaking appearances with

'inappropriate and obscene behavior.'" Marjorie complains only about the use of the word "obscene." We reject this claim.

The court commissioner who issued the injunction specifically used the word "obscene" in the court order. It has long been the law in this state that reporters have an unconditional privilege to accurately report on judicial proceedings. ***Williams v. Journal Co.***, 211 Wis. 362, 368, 247 N.W. 435, 438 (1933). Because the newspaper reported Marjorie's conduct with a word actually used by the court, the newspaper cannot be negligent, as a matter of law. *See* § 895.05(1), STATS., (a newspaper has an absolute privilege against libel suits for publishing a "true and fair report" of any judicial proceeding). Accordingly, there is no disputed issue of material fact with respect to this alleged instance of libel. We affirm that portion of the judgment relating to this instance of alleged libel.

B. "Assault" report.

Marjorie next claims that the article reporting that she assaulted Daniel was false and defamatory. Relying on an affidavit from Daniel, which stated that Marjorie accosted him, the trial court determined that this statement was true, and therefore not actionable. The specific passage she complains of stated: "For a time, Marquette posted a guard at his classroom after she assaulted him at the University, he said in the interview." We agree that the trial court erred in deciding as a matter of law that this allegation was true.

This alleged instance of libel differs from the other four because the sentence at issue is not a report of a judicial proceeding. Accordingly, the newspaper is not protected by § 895.05(1), STATS.

In analyzing this claim, we must first address whether this report is capable of a defamatory meaning. We conclude that publishing a report that Marjorie assaulted her ex-husband is capable of a defamatory meaning so as to pass the summary judgment hurdle. *See* ***Frinzi v. Hanson***, 30 Wis.2d 271, 275, 140 N.W.2d 259, 261 (1966) (standard for defamation is language that harms the reputation of a person so as to lower the person in the estimation of the

community or to deter a third person from associating or dealing with the defamed person).

Having concluded that this alleged instance of libel is capable of a defamatory meaning, we next address whether the constitutional privilege for media defendants applies. *See* ***Denny v. Mertz***, 106 Wis.2d 636, 643-54, 318 N.W.2d 141, 144-50, *cert. denied*, 459 U.S. 883 (1982). Before considering this issue, however, it is necessary to determine whether Marjorie is a public figure. The trial court did not address this issue. Therefore, we remand for this legal determination. *See* ***Lewis v. Coursolle Broadcasting, Inc.***, 127 Wis.2d 105, 111, 377 N.W.2d 166, 168 (1985). After the determination has been made, the trial court is directed as follows: (1) if Marjorie is not a public figure, the case must be set for trial because she has raised a genuine issue of fact as to whether an assault actually occurred; or (2) if the trial court determines she is a public figure, it must examine the pleadings to see if Marjorie alleged that the newspaper acted with actual malice. If actual malice was not alleged, the case should be dismissed; if actual malice was alleged, the case should proceed to trial on this instance of alleged libel.

C. "Heckling" headline.

Marjorie next complains about the newspaper's use of the term "heckling" to describe her conduct. The story attached to this heckling headline stemmed from the hearing held in circuit court pursuant to Marjorie's appeal from the court commissioner's decision to issue an injunction. The circuit court affirmed the court commissioner's decision. The injunction prohibited Marjorie from harassing Daniel. Marjorie argues that heckling and harassing denote different conduct and use of the term heckling instead of harassing was libelous. We reject Marjorie's claim.

Although the court did not actually use the term "heckling" in the course of the proceeding, the newspaper's use of the term is not necessarily libelous. Under the § 895.05(1), STATS., privilege, it is not necessary for the media to report verbatim what occurred at the judicial proceeding. ***Edwards v. National Audubon Society, Inc.***, 556 F.2d 113, 120 (2d Cir.), *cert. denied*, 434 U.S. 1002 (1977). Instead, it is acceptable to condense or paraphrase the events as long as the summary accurately and fairly reflects what transpired. Writers and

reporters, by necessity, sometimes alter what people say. *Cf.* ***Masson v. New Yorker Magazine, Inc.***, 501 U.S. 496, 514 (1991). In this proceeding, Marjorie was enjoined from harassing Daniel. She was ordered to refrain from disrupting him at meetings and to refrain from "verbal communication[s]" with him at public meetings. Hence, the term "heckling" was a fair and accurate paraphrase. Accordingly, there is no disputed issue of material fact with respect to this alleged instance of libel. We affirm that portion of the judgment with respect to this alleged instance of libel.

D. "Similar order" report.

Marjorie also complains about the reference to a "similar order" in the article. Specifically the article stated: "At a hearing Wednesday, [the trial judge] warned [Marjorie] that she faced arrest if she violated the injunction, and that she might also be risking her law license. ... [A trial judge] issued a similar order against her in April 1991." Marjorie contends that the order issued in April 1991, which was a temporary restraining order, was not "similar" to the injunction. We reject Marjorie's claim.

Again, the newspaper's report was unconditionally privileged because the article was reporting on a judicial proceeding. The reference to a similar order in the past simply tied this report to events that happened at prior judicial proceedings. In reporting on judicial proceedings, literal accuracy is not required. *See* ***Edwards***, 556 F.2d at 120. The TRO issued in April 1991, was similar enough to the current injunction to make the use of this phrase a "true and fair" report pursuant to § 895.05(1), STATS.

Because the § 895.05(1), STATS., privilege applies to this alleged instance of libel, there are no disputed issues of material fact with respect to this cause of action. Accordingly, we affirm the judgment regarding this instance of alleged libel.

E. Promises to the trial judge.

Finally, Marjorie complains that the report that she made promises

to the judge was libelous. Specifically, the article stated: "Marjorie promised [the judge] that she would not shout at her ex-husband, would not phone his Marquette staff, would not go to his apartment or office and would not phone him except in limited circumstances." Marjorie claims this was libelous because she never made any promises to the judge. She explains that the stipulation between the parties that referenced the conduct in the article was later repudiated. We reject Marjorie's claims.

The record demonstrates that a stipulation was signed by Marjorie's attorney on her behalf. According to the stipulation, Marjorie agreed not to shout at her ex-husband, not phone his Marquette staff, not go to his apartment or office, and not phone him except in limited circumstances. The fact that Marjorie later repudiated the stipulation does not change the newspaper's privilege to report on the contents of the stipulation. *See* ***Williams***, 211 Wis. at 368-69, 247 N.W. at 438 (media entitled to statutory privilege for reporting on a grand jury report even though report was later stricken from the public record). Further, the use of the term "promise" instead of "stipulate" does not make the report libelous. Although "stipulate" is a precise legal term, it is not inaccurate to report in common everyday language the contents of that stipulation as "promises." We conclude that the § 895.05(1), STATS., privilege applies to this alleged instance of libel and affirm that portion of the judgment.[1]

By the Court.—Judgment affirmed in part, reversed in part and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[1] Marjorie also complains about the wording in the summary judgment order. Specifically, she argues that she was treated unfairly because the written order granting summary judgment stated that the trial court "read and considered" the newspaper's briefs, but only "considered" Marjorie's briefs. Despite the wording in the order, the record clearly demonstrates that the trial court read and considered *all* material submitted to it. Accordingly, we summarily reject Marjorie's claim that the parties were not treated equally.