

Oral argument

Partial motion for summary judgement.

TOM: I still primarily content with relying on my brief ...

"The overarching position is that Mr. McClellan made out our argument for us on every element."

... On the issue of libel, our contention is that Mr. McClellan made in public libelous statements ...

McClellan accused Mr. Wolfe of committing crimes for which he could go to jail. Mr. McClellan admits that he knew when he made the statements they were crimes for which (Mr. Wolfe) could go to jail and that he stands by those today.

Once he concedes he made statements ... we have conceded in our brief that he is a public figure, or a limited public figure — both in his capacity as chairman of the county commission and as chairman of the not-for-profit DASH ... what makes that unique is that once you establish that you are public figure, of course the burden falls on us to prove malice under New York Times versus Sullivan and every case decided since then. We established in the brief that we accept that burden and we have conceded that because the standard set out in New York Times versus Sullivan ... the first part of that standard, the bar is so high, it would be almost impossible to beat it. If you want to prove actual malice as a matter of law, you can only do it one of two ways: you could do it by proving that the declarant knew that the statement was false when he made it, that would be hard to prove unless the declarant admitted it, but is says, 'or, if you establish as a matter of law that the statements were made with reckless disregard for the truth or quality of the statement.' That is really what we're discussing here today. We've established in his own testimony that we believe as a matter of law that the statements were made with reckless disregard for the quality. First of all, I can briefly run through: he

admits of having accused — all these posts were made on an internet blog that he has set up called the Troup County Citizen or the LaGrange Daily News' blogsite. While he admitted in his deposition that that satisfied the in-print entity (Requirement) ...

On those sites, he accused him of stealing, running a Swiss bank account with public funds, being crooked, embezzling, 'our tax dollars are Ricky's retirement plan,' taking public money for private use, money laundering, theft of money not his and cleaning it up ... funneling Callaway (Foundation) grant money into his own pocket, ... and then he says at the end, 'I admit that I said all of that and I stand by it today.'

Then further, he admitted further that every single statement he made was a serious accusation of a crime for which Mr. Wolfe could go to jail.

Despite the fact that this case was filed in June of 2014, this is before discovery closed in January 2015, we took Mr. McClellan's deposition. Prior to that, he had filed a request for production of documents that he served on Mr. Wolfe. We did not reject (or) refuse to provide documents on a single item for which he requested documents, in fact, providing him with 1,700 pages of detailed facts and information on Mr. Wolfe. Not a single page of that has been put into evidence on this record, nor do I expect it to be. My point is, we've given him every opportunity, we've had a discovery period that ended in February, and here's what he said at the deposition. He admitted that at the time he made these statements, he had absolutely nothing on which to base this. What he said at the deposition was 'No, I don't all i have is suspicious,' when I asked him what the basis was, he said, 'I don't know ... I can't factually support the statements.' Then I asked, what did you expect? He said, 'I'm counting on a little luck in the discovery process.'

Of course, he did nothing else in the discovery process other than serve the request for production of documents, which we complied with.

\*He admitted he had no basis for making the statements other than his own suspicions.

He admits he made the statements with malice, and in all candor and full disclosure to the court, a page of two later he tried to take that back. He did admit they were made with malice and they were meant to be personal.

RON:

For one thing, he's making a big deal about the fact that you can't accuse a public official of a crime and stuff like that, but it happens every day. Anybody who watches the news, sees people, media entities talking about Barack Obama or Hillary Clinton knows that that's what happens when you're a public official.

JUDGE: Are you telling me that you believe that Georgia law is that you can accuse a public figure of criminal conduct with impunity?

RON: No, not with impunity. That's why one of the reasons I'm fighting this summary judgement is that I can prove to the court, I've got evidence. The one thing he talks about is that when he deposed me, it was toward the end of the discovery period. There were still another 30 days. He's admitted he's given me 1,700 pages of financial documents and another 300 pages of his various filings and stuff like that. I'm not an attorney, I'm not an accountant, it takes me a while to go through this stuff. I've got to look up everything. And so when I showed up at that deposition, I didn't give him any documents because he was asking for things that had nothing to do with his libel case.

JUDGE: Are you suggesting you have documents this morning that

are proof of the statements that you made?

RON: I didn't bring any proof because I was just here to fight the summary judgement. The one thing he has not established, even though he keeps saying it, is — he keeps flip-flopping, he makes an argument for libel per se, and then tries to flip it into actual malice, and it's not. I'm not even sure it meets the standard of libel per se. For one thing, he's a public figure, and then there's the addition that this is in the matter of public interest, which alters things too.

JUDGE: It means that he has to prove actual malice and his argument is that he's proving actual malice by showing that you published these things with reckless disregard for the truth.

RON: Yes, that's what he's claiming and I have not published them with reckless disregard.

JUDGE: That means that you have some evidence to support them?

RON: Yes

JUDGE: OK, what would that evidence be?

RON: Basically, all my evidence is sitting in his file. He's got access to all the evidence.

JUDGE: Well you have an obligation, at this stage of the proceeding in summary judgement, to produce that evidence to the court in an appropriate form. You're asking me to rely on evidence that I don't know about. How am I supposed to do that?

RON: That was my concern was he's the one that asked for a jury trial, although I would have too when he first filed this. He's trying to

turn a summary judgment hearing into a trial so he can avoid getting in front of a jury.

JUDGE: Well, Mr. McClellan, the purpose of a summary judgment is to determine if there are disputed facts. You're telling me that you have evidence that would create disputed facts —

RON: Yes —

JUDGE: How would i know that unless you show it to me?

RON: Well, I think I've got it pretty well covered in my ... I just want to touch on a few issues. Basically, I'm standing on my response.

JUDGE: Alright, go ahead.

RON: One thing I want to point out is that Judge Andrew Napolitano, a media entity, like he's accusing Troup County Citizen of, which isn't so much a blog, it's a Facebook page. I notice he tries to avoid the Facebook aspect of it. ...With regard to saying you can't accuse people of crimes, Judge Napolitano specifically says about Hillary Clinton, who hasn't been found guilty of anything yet or charged with anything yet ... this is a superior court judge, a media entity, talking about a public figure here talking as a matter of public interest, he says, "what I've seen here has persuaded me beyond a reasonable doubt and to a moral certainty that clinton provided a trail of assistance to terrorists and lied in the venue where the law required her to be truthful." There's nothing ambiguous about that. He accuses her of a serious crime.

JUDGE: Did she sue him?

RON: No.

JUDGE: There you go, that's the difference.

RON: The thing I'm pointing out is that this happens all the time.

....

JUDGE: Would it make a difference, Mr. McClellan, if you had accused him of child molestation?

RON: That might, I don't know.

JUDGE: Why would it?

RON: I wouldn't do that because I have no reason to think he is.

JUDGE: But you have reason to think he's a their?

RON: Yes

JUDGE: But you haven't produced that evidence to the court.

RON: Well, I wasn't aware that I would have to

JUDGE: The reason he's saying that is because you have no evidence to present to the court and at that point it becomes incumbent upon you to present evidence.

RON: I would think at a trial, what I'm saying is, without any of this, I could point out that he does not have evidence of actual malice. He cannot prove it. All he can prove is that I made statements that he doesn't like.

JUDGE: When you accuse somebody of a crime, and you have no evidence to support that, do you not feel like that's reckless?

RON: No, I don't, I feel

5 days to supplement the record for each side and rule thereafter.