

SUPREME COURT OF INDIANA

Holcomb v. Walter's Dimmick Petroleum, Inc.

858 N.E.2d 103 (Ind. 2006) · No. No. 76S04-0604-CV-138 · Decided December 13, 2006

SUMMARY

The Indiana Supreme Court held that a gas station clerk's report to police about a suspected gasoline theft was protected by a qualified privilege. The privilege was not overcome because the plaintiff offered no evidence that the clerk acted with ill will, excessively published the statement, or lacked belief or grounds for believing it was true. The court affirmed summary judgment for the clerk and her employer, while summarily affirming the Court of Appeals on a separate evidentiary issue.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Sullivan, Justice; Shepard, Chief Justice; Boehm, Justice; Dickson, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	December 13, 2006
DOCKET	No. 76S04-0604-CV-138
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants petitioned for transfer after the Indiana Court of Appeals reversed a trial court order granting defendants summary judgment in a tort action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The applicability of a qualified privilege is a question of law in the absence of a factual dispute, while summary judgment is improper if genuine issues of material fact exist.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Indiana.
PARTIES	Jason W. Holcomb v. Walter's Dimmick Petroleum, Inc., Glynell Kuhn

TOPICS

- defamation
- false arrest
- false imprisonment
- abuse of process
- summary judgment

PRACTICE AREAS

Torts Civil procedure

QUESTIONS PRESENTED

1. Whether Kuhn's report to law enforcement was protected by a qualified privilege.
2. Whether Holcomb presented sufficient evidence that Kuhn abused the qualified privilege by making the report without belief or grounds for belief in its truth.
3. Whether summary judgment was proper on Holcomb's claims for false arrest, false imprisonment, defamation, and abuse of process.
4. Whether the trial court abused its discretion by striking Holcomb's designation of a surveillance videotape for failure to tender it and lay a foundation.

HOLDINGS

1. A communication to law enforcement reporting suspected criminal activity is protected by a qualified privilege when made in good faith on a subject in which the communicator has an interest or duty and directed to a person with a corresponding interest or duty.
2. A person does not abuse the qualified privilege merely by reporting the person's version of facts to police and asking for assistance while leaving the appropriate response to the officer, where the report does not prevent the intelligent exercise of police discretion.
3. Summary judgment was properly entered for Kuhn and Dimmick because Holcomb presented no evidence creating a genuine issue of material fact concerning abuse of the qualified privilege.
4. The Court summarily affirmed the Court of Appeals' conclusion that the trial court did not abuse its discretion in striking Holcomb's designation of the surveillance videotape because he failed to tender it and lay a foundation.

KEY QUOTATIONS

"A qualified privilege protects "communications made in good faith on any subject matter in which the party making the communication has an interest or in reference to which he has a duty, either public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty." (105)

"Liability will not be imposed when the defendant does nothing more than detail his version of the facts to a policeman and ask for his assistance, leaving it to the officer to determine what is the appropriate response, at least where his representation of the facts does not prevent the intelligent exercise of the officer's discretion." (107)

"A person who does no more than this does not abuse the privilege." (108)

FACTUAL BACKGROUND

On December 3, 2002, Glynell Kuhn, a gas station employee, reported to police that a customer driving a green Jeep with license plate 680670L had left without paying for gasoline. Jason Holcomb owned a green Jeep with

that license plate, was arrested and charged, and was later identified by Kuhn from a driver's-license photograph. The criminal charges were dismissed, after which Holcomb sued Kuhn and her employer; the court concluded that Kuhn had only reported the facts to police and left the response to law enforcement.

PROCEDURAL HISTORY

Kuhn reported to police that a customer had driven away from Dimmick's gas station without paying for gasoline, and Holcomb was arrested and charged after Kuhn identified him. The charges were dismissed, and Holcomb sued Kuhn and Dimmick for false arrest, false imprisonment, defamation, and abuse of process. The trial court granted defendants summary judgment based on a qualified privilege for reports to law enforcement. A divided Court of Appeals reversed, but the Indiana Supreme Court granted transfer, affirmed the summary judgment, and summarily affirmed the Court of Appeals' ruling concerning the excluded surveillance videotape.

DISPOSITION

affirmed

CASES CITED

- *Bals v. Verduzco*, 600 N.E.2d 1353, 1356 (Ind. 1992)
- *Conn v. Paul Harris Stores Inc.*, 439 N.E.2d 195, 198-200 (Ind. Ct. App. 1982), trans. denied
- *Elliott v. Roach*, 409 N.E.2d 661, 673 (Ind. Ct. App. 1980)
- *Veneman v. Jones*, 118 Ind. 41, 20 N.E. 644, 645-46 (1889)
- *McCord v. Tielsch*, 14 Wash. App. 564, 544 P.2d 56, 58 (1975)
- *Snider v. Wimberly*, 357 Mo. 491, 209 S.W.2d 239 (1948)
- *Davis v. Weil Clothing Co.*, 367 S.W.2d 19 (Mo. App. 1963)
- *Jensen v. Barnett*, 178 Neb. 429, 134 N.W.2d 53 (1965)
- *Pearson v. Galvin*, 253 Or. 331, 454 P.2d 638 (1969)
- *Vimont v. S.S. Kresge Co.*, 291 S.W. 159, 160 (Mo. App. 1927)
- *Smith v. Drew*, 175 Wash. 11, 26 P.2d 1040 (1933)
- *Turner v. Mellon*, 41 Cal. 2d 45, 257 P.2d 15, 17-18 (1953)
- *Health & Hosp. Corp. of Marion Co. v. Gaither*, 272 Ind. 251, 397 N.E.2d 589, 595 (1979)
- *Row v. Holt*, 834 N.E.2d 1074 (Ind. Ct. App. 2005)
- *Holcomb v. Walter's Dimmick Petroleum Inc.*, No. 76A04-0410-CV-572, slip op., 838 N.E.2d 562 (Ind. Ct. App. 2005) (table)
- *Holcomb v. Walter's Dimmick Petroleum*, 855 N.E.2d 1005 (Ind. 2006) (table)

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