

SUPREME COURT OF VIRGINIA

Bowie v. Murphy, 271 Va. 127

624 S.E.2d 74 (2006) · No. Record No. 050728 · Decided January 13, 2006

SUMMARY

The Supreme Court of Virginia held that civil courts have subject matter jurisdiction over Bowie's defamation claims because they could be resolved under neutral principles of law without addressing church doctrine or governance. The Court also held that Bowie sufficiently pleaded assault against Thornton, explaining that physical injury or physical contact is not required for an assault claim. The judgment sustaining the defendants' demurrers was reversed and the case was remanded, with a partial concurrence and dissent concerning claims against two church members.

CASE DETAILS

|                       |                                                                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Virginia                                                                                                                                                                                               |
| WRITING FOR THE COURT | Justice Koontz; Justice Agee; Justice Kinser; All other justices of the Supreme Court of Virginia                                                                                                                       |
| JURISDICTION          | Virginia                                                                                                                                                                                                                |
| DECIDED               | January 13, 2006                                                                                                                                                                                                        |
| DOCKET                | Record No. 050728                                                                                                                                                                                                       |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Appeal from a circuit court order sustaining demurrers to defamation and assault claims.                                                                                                                                |
| STANDARD OF REVIEW    | The court reviewed de novo whether the pleadings stated causes of action and whether the circuit court had subject matter jurisdiction. On demurrer, well-pleaded facts and reasonable inferences are accepted as true. |
| PRECEDENTIAL VALUE    | Published opinion; precedential decision of the Supreme Court of Virginia.                                                                                                                                              |
| PARTIES               | David M. Bowie v. James T. Murphy, Jr., Vivian Pace, David Pace, LaJuanna Russell, Audrey Thornton                                                                                                                      |

TOPICS

- defamation
- assault
- first amendment
- subject matter jurisdiction
- civil procedure

## PRACTICE AREAS

Torts

Constitutional law

Civil procedure

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the circuit court had subject matter jurisdiction over Bowie's defamation claims when the allegedly defamatory statements concerned an alleged assault and could be adjudicated without deciding questions of church doctrine or governance.
2. Whether Bowie sufficiently pleaded the Virginia tort of assault without alleging physical injury.
3. Whether Bowie's amended assault claims against Murphy were properly before the court when the circuit court's leave to amend applied only to the assault count against Thornton.

## HOLDINGS

1. The circuit court had subject matter jurisdiction over Bowie's defamation claims because they could be resolved by applying neutral principles of law without deciding issues of religious faith, doctrine, or church governance.
2. A plaintiff need not allege physical injury to state a cause of action for assault.
3. Bowie's assault claims against Murphy were not properly asserted because the circuit court granted leave to amend only the assault count against Thornton, and the added claims exceeded the scope of that leave.

## KEY QUOTATIONS

*"We hold that the circuit court has subject matter jurisdiction over Bowie's defamation claims because the claims can be decided without addressing issues of faith and doctrine." (\*79)*

*"To prove assault, a plaintiff must show that the defendant 'performed 'an act intended to cause either harmful or offensive contact with another person or apprehension of such contact, and that creates in the other person's mind a reasonable apprehension of an imminent battery.' There is no requirement that the victim of such acts be physically touched.'" (\*80)*

## FACTUAL BACKGROUND

Bowie, a deacon at Greater Little Zion Baptist Church, became involved in a dispute concerning the pastor's leadership and a congregational vote on whether to retain him. During the vote, Audrey Thornton allegedly attempted to strike Bowie with a camera, and Bowie briefly grasped her wrist before releasing her; Thornton then allegedly struck Bowie in the chest. Thornton and other church members subsequently accused Bowie of assaulting Thornton, and some defendants made those accusations at church meetings and in communications to third parties.

## PROCEDURAL HISTORY

Bowie filed a motion for judgment in the Circuit Court of Fairfax County asserting assault, defamation, intentional infliction of emotional distress, and statutory computer-crime claims. The circuit court sustained demurrers to the defamation claims on subject-matter-jurisdiction grounds under *Cha v. Korean Presbyterian*

Church and sustained a demurrer to the original assault claim for failure to allege physical injury, while granting leave to amend. After Bowie amended the assault claim, the circuit court sustained another demurrer and entered a final order. The Supreme Court of Virginia granted a limited appeal concerning the defamation and amended assault claims.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for further proceedings on Bowie's assault claim against Thornton and defamation claims against the defendants, consistent with the court's holding that the claims are within the circuit court's subject matter jurisdiction and that the amended assault allegations against Thornton state a cause of action.

## CASES CITED

- Sanchez v. Mediacorp Health Sys., 270 Va. 299, 618 S.E.2d 331 (2005)
- Thompson v. Skate America, Inc., 261 Va. 121, 540 S.E.2d 123 (2001)
- Cha v. Korean Presbyterian Church, 262 Va. 604, 553 S.E.2d 511 (2001)
- Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976)
- Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969)
- Reid v. Gholson, 229 Va. 179, 327 S.E.2d 107 (1985)
- Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979)
- Etherton v. Doe, 268 Va. 209, 597 S.E.2d 87 (2004)
- Koffman v. Garnett, 265 Va. 12, 574 S.E.2d 258 (2003)
- Carter v. Commonwealth, 269 Va. 44, 606 S.E.2d 839 (2005)
- Mechtensimer v. Wilson, 246 Va. 121, 431 S.E.2d 301 (1993)
- Bell v. Presbyterian Church, 126 F.3d 328 (4th Cir. 1997)
- Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985)
- Nash v. Jewell, 227 Va. 230, 315 S.E.2d 825 (1984)

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