

SUPREME COURT OF ALABAMA

Wiggins v. Mallard

905 So. 2d 776 (Ala. 2004) · No. 1030937 · Decided October 22, 2004

SUMMARY

The Supreme Court of Alabama reviewed summary judgments in a defamation action arising from a newspaper report incorrectly identifying Raymond Wiggins as having been arrested on drug charges. The court held that the qualified privilege for fair and accurate reports of official proceedings could not be resolved as a matter of law because the alleged source and reporter gave conflicting accounts of their conversation. It also held that testimony indicating that a defendant intentionally lied may constitute substantial evidence of common-law malice sufficient to overcome a qualified-privilege defense, and it reversed and remanded.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Nabers, Chief Justice; Houston, Justice; Lyons, Justice; Johnstone, Justice
JURISDICTION	Alabama
DECIDED	October 22, 2004
DOCKET	1030937
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from an order denying their motion to vacate, alter, or amend summary judgments entered for the defendants in a defamation action.
STANDARD OF REVIEW	Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Once the movant makes the required showing, the nonmovant must present substantial evidence creating a genuine issue of material fact. The appellate court reviews the evidence before the trial court and views it in the light most favorable to the nonmovant.
PRECEDENTIAL VALUE	Published opinion; precedential

PARTIES

John Raymond Wiggins, John Raymond Wiggins II v. Wilson Mallard, Town of East Brewton, Brewton Newspapers, Inc., d/b/a The Brewton Standard, John Wallace

TOPICS

defamation

summary judgment

standard of review

civil procedure

appellate procedure

PRACTICE AREAS

defamation

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the newspaper and its managing editor were entitled to summary judgment on the ground that the publication was protected by Alabama's qualified privilege for fair and accurate reports of arrests and official investigations.
2. Whether the plaintiffs presented substantial evidence creating a genuine issue of material fact as to common-law malice sufficient to overcome the qualified privilege asserted by the police chief and the municipality.
3. Whether testimony indicating that one of two defendants intentionally lied about the plaintiff's identity and arrest constitutes substantial evidence of common-law malice.

HOLDINGS

1. The newspaper and its managing editor were not entitled to summary judgment on qualified-privilege grounds because application of the privilege depended on whether the publication was an accurate or substantially accurate report, and that issue turned on conflicting testimony about the underlying conversation.
2. The plaintiffs presented substantial evidence creating a genuine issue of material fact as to common-law malice because the unequivocal testimony of the two defendants was mutually inconsistent and indicated that one of them intentionally lied about the plaintiff's arrest.
3. The trial court erred in entering summary judgment for the newspaper, its managing editor, the police chief, and the Town of East Brewton.

KEY QUOTATIONS

"Thus, the application of the privilege turns on whether the alleged defamatory statement was an accurate, or 'substantially accurate,' 482 So.2d at 1213, publication of the report of the arrest." (at 783)

"We do hold, however, consistent with statements in our cases, in dicta and otherwise, that a private-party-defamation plaintiff may overcome a qualified-immunity defense with testimony indicating that the defendant intentionally lied about the plaintiff." (at 788)

“Both testimonies cannot be true. The unequivocal testimony of each defendant is substantial evidence of the untruthfulness of the other's testimony. It is within the exclusive province of the jury to determine which version is true.” (at 789)

FACTUAL BACKGROUND

A police chief told a newspaper managing editor that three people had been arrested for drug-related offenses, but the parties disputed whether he identified one arrestee as Raymond Wiggins or Clinton Keith Wiggins. The newspaper then published that Raymond Wiggins of Bradley Road had been arrested, although no person named Raymond Wiggins had been arrested. The managing editor and police chief gave conflicting testimony about the source of the incorrect identification, creating a credibility dispute concerning whether one of them intentionally lied.

PROCEDURAL HISTORY

The Wigginses filed a two-count defamation complaint in April 2001 against a police chief, the Town of East Brewton, a newspaper, and its managing editor. The defendants moved for summary judgment, asserting qualified privilege; the trial court granted the motions, ruling that the plaintiffs had failed to present substantial evidence of actual or common-law malice. The plaintiffs' post-judgment motion was denied by operation of law, and they appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings consistent with the opinion.

CASES CITED

- Wilson v. Birmingham Post Co., 482 So. 2d 1209 (Ala. 1986)
- Ex parte Blue Cross & Blue Shield of Alabama, 773 So. 2d 475, 478 (Ala. 2000)
- Childersburg Bancorporation, Inc. v. Alabama Department of Environmental Management, 893 So. 2d 1142, 1145 (Ala. 2004)
- George v. Raine, 895 So. 2d 258, 261 (Ala. 2005)
- Atkins Ford Sales, Inc. v. Royster, 560 So. 2d 197, 200 (Ala. 1990)
- Mead Corp. v. Hicks, 448 So. 2d 308, 313 (Ala. 1983)
- Milkovich v. Lorain Journal Co., 497 U.S. 1, 14-17 (1990)
- Floyd v. Broughton, 664 So. 2d 897, 900 (Ala. 1995)
- Mayben v. Travelers Indemnity Co., 273 Ala. 643, 645, 144 So. 2d 52, 54 (1962)
- Dixon v. Davis, 823 So. 2d 1275, 1281 (Ala. Civ. App. 2001)
- Warren v. Birmingham Board of Education, 739 So. 2d 1125 (Ala. Civ. App. 1999)

- New York Times Co. v. Sullivan, 376 U.S. 254 (1964)
- Phillips v. Bradshaw, 167 Ala. 199, 210, 52 So. 662, 666 (1910)
- Kenney v. Gurley, 208 Ala. 623, 626, 95 So. 34, 37 (1923)
- Johnson Publishing Co. v. Davis, 271 Ala. 474, 487, 124 So. 2d 441, 450 (1960)
- Prudential Insurance Co. of America v. Watts, 451 So. 2d 310, 313 (Ala. Civ. App. 1984)
- Delta Health Group, Inc. v. Stafford, 887 So. 2d 887 (Ala. 2004)
- Nelson v. Lapeyrouse Grain Corp., 534 So. 2d 1085, 1095 (Ala. 1988)
- Webster v. Byrd, 494 So. 2d 31, 36 (Ala. 1986)
- Fulton v. Advertiser Co., 388 So. 2d 533, 538 (Ala. 1980)
- Brackin v. Trimmier Law Firm, 897 So. 2d 207 (Ala. 2004)
- Mobile Press Register, Inc. v. Faulkner, 372 So. 2d 1282, 1284 (Ala. 1979)
- Duffy v. Leading Edge Products, Inc., 44 F.3d 308, 313 (5th Cir. 1995)
- Elder v. Gaffney Ledger, 341 S.C. 108, 114, 533 S.E.2d 899, 902 (2000)
- Smith v. Huntsville Times Co., 888 So. 2d 492, 499 (Ala. 2004)
- Konikoff v. Prudential Insurance Co. of America, 234 F.3d 92, 99 (2d Cir. 2000)
- Clemente v. Espinosa, 749 F. Supp. 672, 682 (E.D. Pa. 1990)
- Norton v. Glenn, 797 A.2d 294, 299 (Pa. Super. 2002)
- Gomes v. Fried, 136 Cal. App. 3d 924, 934, 186 Cal. Rptr. 605, 611 (1982)
- Paul v. Hearst Corp., 261 F. Supp. 2d 303, 306 (M.D. Pa. 2002)
- Marshall v. Planz, 13 F. Supp. 2d 1246, 1253 n. 16 (M.D. Ala. 1998)

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