

SUPREME COURT OF FLORIDA

W.A. White v. Leonard L. Fletcher

90 So. 2d 129 (Fla. 1956) · Decided October 24, 1956

SUMMARY

The Florida Supreme Court affirmed summary judgment for a Civil Service Board chairman in a libel action brought by a police officer over a public statement regarding the officer's fitness. The court held that the statement was privileged fair comment and that the plaintiff failed to prove express malice sufficient to overcome the privilege. The court also held that the plaintiff waived or untimely asserted the right to a jury trial.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	O'Connell; Drew, C.J.; Thomas, J.; Roberts, J.; O'Connell, J.
JURISDICTION	Florida
DECIDED	October 24, 1956
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final summary judgment for the defendant in a libel action. The plaintiff also challenged the denial of his demand for a jury trial.
STANDARD OF REVIEW	The court considered whether the trial court abused its discretion in denying the tardy jury demand; the opinion does not expressly state a separate standard of review for the summary judgment.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Florida; precedential.
PARTIES	W.A. White v. Leonard L. Fletcher

TOPICS

- defamation
- summary judgment
- civil procedure
- appellate procedure

PRACTICE AREAS

- torts
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Fletcher's statement about White was protected by privilege or fair comment and whether White produced evidence of express malice sufficient to defeat summary judgment.
2. Whether White's motion for summary judgment constituted a pleading or otherwise revived his right to demand a jury trial after the time for making the demand had expired.

HOLDINGS

1. The statement was privileged and, at most, could be viewed as an opinion or inference from facts assumed to be true. White failed to prove express malice sufficient to overcome the privilege, so summary judgment for Fletcher was proper.
2. White waived his right to a jury trial by failing to demand one as required by the rules. Filing a motion for summary judgment did not revive the expired right, and the motion also stated that no material factual issue existed and that the court could decide the case.

KEY QUOTATIONS

"The same case says further, however, that "the malice which vitiates a qualified privilege must be actual and not merely inferred from falsity etc." (131)

"A motion for summary judgment necessarily proceeds upon the theory that the legal issues are fully settled by the pleadings, and there exists no genuine dispute as to a material fact." (132)

"Not having asked for jury trial as required by the rules, the plaintiff waived such right. The filing of the motion for summary judgment did not revive his right to request jury trial." (132)

FACTUAL BACKGROUND

W.A. White was a City of Orlando police officer who became the subject of public attention after testifying in a prosecution involving a prostitute whose activities allegedly implicated him. Leonard L. Fletcher, chairman of the Civil Service Board, told a newspaper reporter that his investigation convinced him White was not fit to be a police officer. White sued Fletcher for libel, but the record did not show express malice and indicated that Fletcher had called for an investigation.

PROCEDURAL HISTORY

White sued Fletcher for libel based on Fletcher's newspaper statement that White was not fit to be a police officer. Fletcher answered that the statement was true, made with good motive, and privileged. The trial court entered final summary judgment for Fletcher based on the pleadings and a deposition, denied White's untimely jury demand, and the Supreme Court of Florida affirmed.

DISPOSITION

affirmed

CASES CITED

- Kennett v. Barber, 159 Fla. 81, 31 So. 2d 44, 46

- Cason v. Baskin, 159 Fla. 31, 30 So. 2d 635
- State ex rel. Clyatt v. Hocker, 39 Fla. 477, 22 So. 721
- Campbell v. Jacksonville Kennel Club, 66 So. 2d 495 (Fla.)
- Adams v. News-Journal Corporation, 84 So. 2d 549 (Fla.)
- Loeb v. Geronemus, 66 So. 2d 241, 244 (Fla.)
- Leonard v. Wilson, 150 Fla. 503, 8 So. 2d 12
- Montgomery v. Knox, 23 Fla. 595, 3 So. 211, 212
- Coogler v. Rhodes, 38 Fla. 240, 21 So. 109
- Dezen v. Slatcoff, 65 So. 2d 484 (Fla.)