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Gross v. New York Times Co.

Decision Date: 22 March 2001

Citation: 724 N.Y.S.2d 16 , 281 AD2d 299 

Parties: (A.D. 1 Dept. 2001) Elliot M. Gross, Plaintiff-Appellant-Respondent, v. New York Times Company, et al., Defendants-Respondents, Theodore Ehrenreich, Defendant-Respondent-Appellant, John Grauerholz, et al., Defendants.
3594-3594A : FIRST JUDICIAL DEPARTMENT

Court: New York Supreme Court — Appellate Division

Case Analysis

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Legal issue Did the plaintiff, a public figure, fail to demonstrate actual malice in the defamation claims against a media company and a non-media entity?

Headnote

DEFAMATION LAW. PUBLIC FIGURE AND ACTUAL MALICE. The case addresses whether a public figure plaintiff sufficiently demonstrated that allegedly defamatory statements were published with actual malice, a requirement for defamation claims involving public figures.

DEFAMATION LAW. BURDEN OF PROOF. The court evaluated whether the plaintiff met the demanding burden of proof, providing clear and convincing evidence that the defendants either knew the statements were false or acted with reckless disregard for their truth.

DEFAMATION LAW. SUMMARY JUDGMENT. The judgment discusses the granting of summary judgment in favor of the defendants due to the plaintiff's inability to present sufficient evidence of actual malice.

DEFAMATION LAW. APPLICATION OF ACTUAL MALICE STANDARD. The decision includes the application of the actual malice standard to a non-media defendant, ruling that the plaintiff failed to establish that the statements were made with knowledge of falsity or reckless disregard for truth.

Key Phrases Public figure. Actual malice. Summary judgment. Defamation claims. Triable issue.

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**Elliot M. Gross, Plaintiff-Appellant-Respondent, v. New York Times Company,
et al., Defendants-Respondents, Theodore Ehrenreich, Defendant-
Respondent-Appellant, John Grauerholz, et al., Defendants.**

3594-3594A

**SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION:
FIRST JUDICIAL DEPARTMENT**

March 22, 2001

Leon Segan - for plaintiff-appellant-respondent,

Dean Ringel - for defendants-respondents,

John W. McConnell - for defendant-respondent-appellant. *17

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Sullivan, P.J., Rosenberger, Nardelli, Tom, Mazzairelli, JJ.

Order, Supreme Court, New York County (Elliott Wilk, J.), entered December 8, 1999, which granted the motion of defendants The New York Times Company, Philip Shenon, Sam Roberts, A.M. Rosenthal, and Peter Millones (the "Times defendants") for summary judgment but denied the motion of defendant Estate of Theodore Ehrenreich for summary judgment, unanimously modified, on the law, to grant the motion of the Ehrenreich Estate for summary judgment dismissing the complaint as against it, and otherwise affirmed, without costs. The Clerk is directed to enter judgment in favor of defendant-respondent-appellant dismissing the complaint. Judgment, same court and Justice, entered December 9, 1999, which pursuant to the court's prior grant of summary judgment, dismissed the complaint as against the Times defendants, unanimously affirmed, without costs.

Summary judgment was properly granted dismissing the complaint as against the Times defendants in light of the failure of plaintiff, a public figure, to raise a triable issue as to whether the complained of statements were published with actual malice, plaintiff did not meet his "burden of presenting evidence that could demonstrate, with convincing clarity, that [the Times defendants] either knew that the statements were false or published them with a high degree of awareness that they were probably false" (see, *Goldblatt v Seaman*, 225 A.D.2d 585, 586). The evidence relied upon by plaintiff in opposing the Times defendants' summary judgment motion, much of which is purportedly probative of the Times's failure to investigate certain sources and of the circumstance that some of the

Times's sources may have borne plaintiff ill-will, is not probative of actual malice since it does not warrant the inference that the Times defendants entertained serious doubts about the truth of the complained of statements (see, *Sweeney v Prisoners' Legal Servs. of New York*, 84 N.Y.2d 786, 793; *Church of Scientology Intl. v Time Warner*, 903 F.Supp. 637, affd 2d Cir., F.3d 168; see, also, *Ortiz v Valdescastilla*, 102 A.D.2d 513). Accordingly, with respect to the Times defendants, plaintiff has not sustained his "daunting" burden (see, *McFarlane v Esquire Magazine*, 74 F.3d 1296, 1308, cert denied 519 U.S. 809) of demonstrating that a jury could find actual malice with "convincing clarity" (see, *Freeman v Johnston*, 84 N.Y.2d 52, 56, cert denied 513 U.S. 1016).

Applying the actual malice standard with respect to plaintiff's defamation claims as against the non-media defendant, the Ehrenreich Estate (see, *Hammerhead Enters. v Brezenoff*, 551 F.Supp. 1360, 1369, affd 707 F.2d 33, cert denied 464 U.S. 892; *McGill v Parker*, 179 A.D.2d 98, 108), we find sufficient evidence that the complained of statements by the Estate's decedent were made without actual malice to warrant scrutiny of the sufficiency of plaintiff's opposition to the Estate's summary judgment motion. Such scrutiny discloses that plaintiff has failed to raise a triable issue of fact as to whether defendant Estate's decedent knew the factual statements he was making by implication were false, entertained serious doubts as to their truth, or had a high degree of awareness of their probable falsity

(see, *Sweeney v Prisoners' Legal Servs.*, 84 N.Y.2d, supra, at 793, 622 *18 N.Y.2d 896, 647 18 N.E.2d 101). Since plaintiff offered no evidence on these issues, defendant Estate is entitled to summary judgment dismissing the complaint as against it.

We have considered plaintiff's remaining arguments and find them unavailing.