APPELLANT PRO SE

Brent A. Taylor
Michigan City, Indiana

ATTORNEYS FOR APPELLEE

Margaret M. Christensen
Jessica Laurin Meek
Indianapolis, Indiana

Thomas M. Kimbrough
Michael H. Michmerhuizen
Cathleen M. Shrader
Fort Wayne, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Brent A. Taylor,
Appellant-Plaintiff,

v.

Tom Antisdel, et. al.
Appellees-Defendants.

March 18, 2022

Court of Appeals Case No. 21A-CT-1934

Appeal from the Allen Superior Court

The Honorable Jennifer Lynne DeGroote, Judge

Trial Court Cause No. 02D03-2106-CT-316

Altice, Judge.

Case Summary

[1] Brent A. Taylor appeals the dismissal of his complaint against various media entities, their management, and employees, including Tom Antisdel, Federated Media, Caleb Hatch, Julie Inskeep, Journal Gazette, Ted Linn, Nexstar Media Group, Sherry Skufca, Jim Touvell, WANE TV Group, and WOWO Radio (collectively, Appellees), for defamation. Taylor argues that the trial court abused its discretion in determining that the complaint against Appellees was frivolous and subject to dismissal.

[2] We affirm.

Facts and Procedural History

[3] On May 8, 2019, the State filed an information charging Taylor with the following criminal offenses that he allegedly committed on January 24, 2019:

> INFORMATION FOR CHILD MOLESTING
> I.C. 35-42-4-3
>
> On or about the 24th day of January, 2019, in the County of Allen and in the State of lndiana, said defendant, Brent A. Taylor, being at least twenty-one (21) years of age, did knowingly or intentionally perform or submit to other sexual conduct (as defined in I.C. 35-31.5-2-221.5) with A. R., a child who was then under fourteen (14) years of age. . . .
>
> INFORMATION FOR CRIMINAL CONFINEMENT

I.C. 35-42-3-3

> On or about the 24th day of January, 2019, in the County of Allen and in the State of Indiana, said defendant, Brent A. Taylor, did knowingly or intentionally confine another person to wit: A. R., without the consent of said A. R., with said act committed by using a vehicle. . . .

INFORMATION FOR KIDNAPPING
I.C. 35-42-3-2

> On or about the 24th day of January, 2019, in the County of Allen and in the State of Indiana, said defendant, Brent A. Taylor, did knowingly or intentionally remove another person, to wit: A. R. by fraud; enticement, force, or threat of force from one place to another with said act committed by using a vehicle. . . .

Appellant's Appendix Vol. II at 50-55. The affidavit for probable cause included the following statements:

> That Taylor, then thirty-three years old, pulled up behind the thirteen-year-old victim in his vehicle and asked whether she needed a ride and wanted to make some money, to which the victim responded no;
>
> That Taylor forced the thirteen-year-old victim into his vehicle while she was walking to her friend's house;
>
> That Taylor 'grabbed [the victim] by the arm and pulled her into the car';
>
> That Taylor prevented [the victim] from leaving the car;

> That Taylor went to an ATM and withdrew $100, and video footage of the transaction showed Taylor and the victim, who appeared frightened and wanted to get out of the car, but Taylor kept turning and looking at her; and
>
> That Taylor made the victim perform oral sex on him before dropping her off in an area near her friend's house.

Id. at 45.

[4] During Taylor's jury trial, A.R. testified that she willingly got into Taylor's car, and that Taylor did not pull her into the vehicle. Thus, the State abandoned its theory that Taylor had kidnapped A.R. by physical force.

[5] Following the presentation of evidence, the jury convicted Taylor of child molesting, criminal confinement, and kidnapping. The trial court entered judgment against Taylor on the child molesting and kidnapping counts and vacated the confinement conviction in accordance with double jeopardy principles.

[6] On May 4, 2021, Taylor was sentenced to forty years of incarceration on the child molesting count and to six years for kidnapping. The trial court ordered the sentences to run consecutively for a total of forty-six years.

[7] Appellees reported about Taylor's convictions. WOWO's print story stated that Taylor was sentenced to forty-six years in prison in a child molesting and kidnapping case. More particularly, WOWO's report stated that

> according to prosecutors, he kidnapped and sexually assaulted a teenager back in January 2019. Taylor pulled up next to a 13-

> year-old girl and asked if she needed a ride or wanted to make some money. After the girl told him no, authorities say Taylor grabbed her and took her to an ATM and then drove her to a church and sexually assaulted her.

Id. 47. Another report also set out the allegations in the probable cause affidavit. The WOWO news report that aired on the radio stated:

> Brent Taylor will spend 46 years in prison for child molesting and kidnapping. Court papers say Taylor offered the girl a ride as she walked near a friend's house in January 2019. When the girl said no, Taylor grabbed her by the arm and put her in his car. After forcing her to perform a sex act, Taylor dropped the girl off where he found her. Taylor was found guilty at a trial in March.

Id. at 44.

[8] On June 9, 2021, Taylor filed a pro se complaint against Appellees, claiming that they falsely reported that the kidnapping conviction was based on his act of forcing A.R. into his vehicle by grabbing her arm and making her perform a sexual act. Taylor claimed that Appellees:

> published defamatory, libel [sic], and slanderous statements via their respective media outlets. The per se and/or per quod statements were regarding untrue statement of facts regarding a criminal matter made by the above defendants [sic] were made with defamatory imputation, malice, was published, and caused damages. The statements were also made in bad faith and with complete disregard for the truth.

Id. at 119. As a result of the alleged false reporting, Taylor claimed that Appellees' actions caused him to suffer:

> legal expenses, emotional distress, damage to [his] reputation, loss of esteem, loss of loved ones, have been threatened, [and] have had negative comments [and] sentiments made towards [him, and that he has] also been attacked while incarcerated.

Id. at 120.

[9] WOWO denied the material allegations of the complaint and subsequently filed a motion for summary judgment. WOWO claimed that it was entitled to judgment as a matter of law because all of its reporting was: a) substantially true; b) related to a public criminal jury trial regarding a matter of public concern; and c) based on news events and public documents.

[10] Nexstar moved to dismiss Taylor's complaint in lieu of filing an answer, asserting that Taylor failed to plead his defamation claims with the requisite particularity as required by Indiana law. The trial court subsequently set WOWO's motion for summary judgment and Nexstar's motion to dismiss for hearing on September 9, 2021.

[11] In the meantime, Journal Gazette appeared in the action on July 29, 2021, and moved the trial court to stay the proceedings and conduct a prisoner litigation screening required by the Frivolous Claim Law, Indiana Code § 34-58-1-1, *et*

seq.[1] Journal Gazette also requested the trial court to enter an order dismissing Taylor's complaint as frivolous as a matter of law. *Id*. at 8, 76-81.

[12] On August 3, 2021, the trial court stayed the proceedings, pending a ruling on the required screening. Notwithstanding the stay, Taylor filed a "Designation of Evidence in Support of Opposition of Summary Judgment & Dismissal" along with exhibits on August 5, 2021. *Appellant's Appendix Vol. II* at 9. Three days later, Taylor sought an extension of time in which to file his responses to the motion for summary judgment and the motion to dismiss. *Id*. at 10.

[13] On August 9, 2021, several documents that Taylor apparently mailed to the county clerk's office were posted on the trial court's docket, including an "Amended Complaint" and a "Brief in Support of Motion to Amend Complaint." *Id.* Taylor's documents were deemed filed on July 30, 2021.

[14] In his Amended Complaint, Taylor referenced his original complaint and further alleged that Appellees:

> published several defamatory/libel publications regarding Brent Taylor during the Month of May, 2021. The Defendant WOWO, Caleb Hatch were aware of the defamatory statements, Nexstar media and its agents through legal counsel express confusion of what statements were deemed to be defamatory in

[1] As will be discussed in more detail below, these statutes were enacted to prevent incarcerated offenders from pursuing abusive and/or frivolous litigation in our courts.

> the Plaintiff's complaint. The following list provides a clarification of what statements were found to be defamatory:
>
> i) Plaintiff, Brent Taylor was convicted for child molesting for forcibly compelling alleged victim to perform a sexual act.
>
> ii) That Plaintiff Brent A. Taylor was convicted of kidnapping for pulling the alleged victim in his car.
>
> 3. Plaintiff still contends that the above Defendants acted with malice and/or reckless disregard for the truth. . . .

Id. at 115-16.

[15] On August 10, 2021, Taylor filed a "Motion for the Court to Grant Plaintiff Leave to Continue with Complaint" and supporting brief. *Id.* at 86-95. Taylor asserted that Journal Gazette made "several bold and false assertions" as to why dismissal of his complaint was warranted under the Frivolous Claim Law and claimed that counsel misinterpreted and misapplied the statutory meaning of "frivolous." *Id.* at 88. In short, Taylor maintained that his claims were meritorious and that dismissal was not warranted. *Id.* at 90-94.

[16] On August 18, 2021, the trial court issued an order dismissing Taylor's complaint pursuant to the Frivolous Claim Law. In its order, the trial court set forth the following allegations of Taylor's complaint:

> Plaintiff alleged in his Complaint that the various Defendants published "defamatory, libel, and slanderous statements via their respective media outlets." He asserted that the statements "were regarding untrue statement of facts regarding a Criminal matter made by the above Defendants were made with defamatory imputation, malice, was published, and caused damages."

> Finally, the Plaintiff alleged that the statements "were also made in bad faith with complete disregard for the truth."

Id. at 97-98.

[17] In dismissing Taylor's complaint, the trial court noted in its order that "[n]owhere . . . does the Plaintiff assert any specific statements being made or published by any of the Defendants . . . ." *Id.* at 98. Because the allegedly defamatory statement must be set out in the complaint, the trial court concluded that Taylor's complaint lacked any arguable basis in law or fact. *Id.*

[18] The trial court further observed that reporting about Taylor's conviction and sentencing for child molesting and kidnapping does not constitute defamation because such reporting would be "truthful and about matters of public interest." *Id.* at 98-99. The trial court determined that the alleged defamatory statements related only to Taylor's convictions and the sentences imposed for those convictions. *Id.* at 99. Because the trial court found that Taylor's "claims contained in the complaint are frivolous," the trial court dismissed the matter with prejudice. *Id.* Taylor now appeals.

Discussion and Decision

[19] The dismissal of an offender's complaint pursuant to the Frivolous Claim Law is reviewed *de novo*. *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied.* "[A] litigant who proceeds pro se is held to the same established rules of procedure that trained counsel is bound to follow[]." *Id*. On

appeal, the trial court's judgment may be affirmed on any basis in the record. *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013).

[20] In determining whether the dismissal of Taylor's complaint was proper, we note that in 2004, our General Assembly enacted the Frivolous Claim Law to prevent "abusive and prolific offender litigation in Indiana." *Smith v. Indiana Dep't of Correction,* 883 N.E.2d 802, 804 (Ind. 2008). The Frivolous Claim Law applies to "offenders," which is defined in Ind. Code § 34-6-2-89(b) as "a person who is committed to the department of correction or incarcerated in a jail." *Id.* at 805. Its enactment was in "direct response to the prolific offender litigation" and the "heavy burden that those suits have placed on our judicial system." *Smith v. Wal-Mart Stores East, L.P.*, 853 N.E.2d 478, 481 (Ind. Ct. App. 2006), *trans. denied*. The rationale for requiring prompt judicial screening "is so that the defendant does not have to expend time and money on a meritless or frivolous case." *Id*.

[21] The Frivolous Claim Law provides that "[u]pon receipt of a complaint filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter." I.C. § 34-58-1-1. Following this review, the case "may not proceed if the court determines that the claim: (1) is frivolous; (2) is not a claim upon which relief may be granted; or (3) seeks monetary relief from a defendant who is immune from liability for such relief." I.C. § 34-58-1-2. Under the statute, a claim is frivolous if, among other things, it "lacks an arguable basis either in: (A) law; or (B) fact." I.C. § 34-58-l-2(b).

[22] We note that screening under the Frivolous Claim Law requires the Court to consider the well-pleaded facts and to determine if the complaint "contains allegations concerning all of the material elements necessary to sustain a recovery under some viable legal theory." *Smith v. McKee*, 850 N.E.2d 471, 474 (Ind. Ct. App. 2006). The trial court, however, is also permitted to look at matters outside the pleadings. As this court explained in *Smith v. Huckins*:

> In some respects, a dismissal made pursuant to Indiana Code § 34-58-1-2 looks like an Indiana Trial Rule 12(B) motion to dismiss. This is because the court looks at the facts in the complaint and decides as a matter of law whether the case should go forward. Furthermore, the language of one of the subsections in Indiana Code § 34-58-1-2 mirrors the language of Trial Rule 12(B)(6), namely: that failure to state a claim upon which relief may be granted is cause for dismissal.
>
> But in other respects, a dismissal made pursuant to Indiana Code § 34-58-1-2 is not like a Trial Rule 12(B) motion to dismiss. For example, a trial court undertakes a review of the offender's complaint or petition before the defendant even has an opportunity to become involved in the case and to file a responsive pleading or any other dispositive motion. In addition, unlike a Trial Rule 12(B)(6) dismissal, a dismissal made pursuant to Indiana Code § 34-58-1-2 is with prejudice. In other words, once a trial court determines that a claim may not proceed, the offender cannot amend his complaint. To allow amendment after dismissal would be counterproductive to the legislative intent of cutting off meritless or frivolous lawsuits.
>
> *In other respects, a dismissal made pursuant to Indiana Code § 34-58-1-2 looks like a motion for summary judgment. First, such a dismissal means that the case is resolved, and the complaint cannot be amended.*

> *Second, the trial court can consider matters outside of the complaint or petition. . . .*

850 N.E.2d 480, 483 (Ind. Ct. App. 2006) (emphasis added).

[23] Taylor asserts that the trial court's dismissal of his complaint was improper because the required specificity of his complaint was met and that Appellees' reports about his convictions and sentences were not truthful.

[24] Appellees correctly point out that the complaint in defamation actions must specifically identify both the alleged defamatory statements and speaker of those statements, specifically attributing each statement to each separately named defendant. *Ali v. Alliance Home Health Care, LLC*, 53 N.E.3d 420, 428 (Ind. Ct. App. 2016). Such a heightened notice pleading standard permits the court to "determine if the statement is legally defamatory" and to allow the defendant to "prepare appropriate defenses." *Trail v. Boys & Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 136-37 (Ind. 2006).

[25] Taylor alleged in his complaint that the following reported statements that Appellees made were untrue and defamatory:

1. Plaintiff was convicted for child molesting for forcibly compelling alleged victim to perform a sexual act; and

2. Plaintiff was convicted of kidnapping for pulling the alleged victim in his car.

Appellant's Appendix. Vol. II at 115-16. In our view, Taylor adequately identified the alleged defamatory statements and sufficiently apprised each Appellee of those statements. Thus, we do not affirm the dismissal on this basis.

[26] On the other hand, Appellees' reports pertained to Taylor's child molesting and kidnapping convictions, which are matters of public concern. Hence, to recover in a defamation matter when a matter of public concern is involved, Taylor was required to allege facts that demonstrate actual malice on the part of Appellees. *AAFCO Heating & Air Conditioning Co. v. Nw. Publ'n, Inc.*, 321 N.E.2d 580, 583 (Ind. Ct. App. 1974). Further, the "dissemination of news by the communications media has traditionally been safeguarded by two qualified or conditional privileges which may be pleaded as affirmative defenses in a libel action: 1. the privilege of fair comment . . . and 2. the privilege attached to the reporting of public proceedings." *Id.* at 583.

[27] In this case, the trial court noted that the subject of Appellees' reports, i.e., the information regarding the prosecution and conviction of an individual for child molesting and kidnapping, related to a matter of public interest and concern. And "determining whether a controversy is of public or general concern is a question of law for the court." *Brewington v. State*, 7 N.E.3d 946, 962 (Ind. 2014).

[28] The source of the information that Appellees reported were wholly based on "court documents," "prosecutors," or "court papers." *See Appellant's Appendix Vol. II* at 42 ("According to prosecutors . . . ."); *id.* at 43 ("According to court

documents . . . . Documents say . . . ."); *id.* at 44 ("Court papers say . . . ."). Those documents also included the probable cause affidavit where a police officer swore that *he had good cause to believe that Taylor forced A.R. into his car, "grabbed her by the arm and pulled her into the car," and "made the victim perform oral sex on him." See id*. at 41, 45-55 (emphasis added). These statements were of record in Taylor's criminal proceedings and are the source of what he alleges are defamatory. In short, the statements that Taylor alleged were defamatory are a matter of public concern.

[29] As noted above, Taylor is also required to demonstrate that Appellees' reports were made with actual malice. *See, e.g., AAFCO,* 321 N.E.2d at 586 (holding that a private individual who brings a libel action involving an event of general or public interest must prove that the defamatory falsehood was published with knowledge of its falsity or with reckless disregard of whether it was false). To demonstrate reckless disregard, "there must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication or proof that the false publication was made with a high degree of awareness of their probable falsity." *Journal-Gazette Co., Inc. v. Bandido's*, *Inc.,* 712 N.E.2d 446, 456 (Ind. 1999). A plaintiff must demonstrate actual malice by clear and convincing evidence, and whether there is sufficient evidence to demonstrate actual malice is a question of law for the court. *Id.*

[30] Here, the record is devoid of any facts to overcome the qualified privilege applicable to reporting on public proceedings, and Taylor has not alleged any facts tending to show that Appellees published their reports with actual malice.

In fact, the record shows that Appellees did not report anything other than the information contained in court documents and police records. Hence, there was no reason for Appellees who reported on the matter to doubt the truth of what was contained in an affidavit filed with the court in Taylor's criminal proceedings. Thus, even if a false statement was published, Taylor cannot establish sufficient proof to permit the conclusion that Appellees entertained "serious doubts" as to the truth of their publications or that there was a "high degree of awareness that the statements were probably false." *See AAFCO,* 321 N.E.2d at 591. For all these reasons, we conclude that the trial court properly dismissed Taylor's complaint.

[31] Judgment affirmed.

Bailey, J. and Mathias, J., concur.