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Washington State Supreme Court

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Supreme Court No. 90118-0

Court of Appeals No. 69316-6-I

SUPREME COURT OF THE STATE OF WASHINGTON

DRAKE H. SISLEY and ANTOINETTE L. SISLEY,
husband and wife,

Plaintiffs/Appellants,

v.

SEATTLE PUBLIC SCHOOLS,
a local government entity,

Defendant/Respondent.

**RESPONDENT SEATTLE SCHOOL DISTRICT NO. 1'S ANSWER
TO PETITION FOR REVIEW**

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TABLE OF CONTENTS

I. IDENTITY OF RESPONDENT..... 1

II. THE COURT OF APPEALS’ DECISION..... 1

III. COUNTER-STATEMENT OF ISSUES..... 1

IV. COUNTER-STATEMENT OF THE CASE..... 2

 A. The Property Manager for at least one of the Sisleys’
 Rental Properties Was a Convicted White
 Supremacist..... 2

 B. The Student’s Newspaper Article at Issue..... 7

 C. The School District’s Role in Production of
 “The Roosevelt News”..... 9

 D. The Trial Court’s Summary Judgment
 Ruling..... 10

V. ARGUMENT..... 12

 A. Standard of Review..... 12

 B. The Challenged Decision Is Consistent With Precedent,
 So Discretionary Review Is Unjustified Under
 RAP 13.4(b)(1) or (2)..... 13

 C. If Discretionary Review is Granted, Other Dispositive
 Issues Decided by the Trial Court, but not the Court of
 Appeals, Would Justify Affirming Summary Judgment..... 14

VI. CONCLUSION..... 15

TABLE OF AUTHORITIES

Cases

<i>Dawson v. City of Seattle</i> , 435 F.3d 1054 (9 th Cir. 2006)	5
<i>LaMon v. Butler</i> , 112 Wn.2d 193, 770 P.2d 1027 (1989)	13
<i>Mark v. Seattle Times</i> , 96 Wn.2d 473, 635 P.2d 1081 (1981)	13
<i>Mohr v. Grant</i> , 153 Wn.2d 812, 108 P.3d 768 (2005)	14
<i>Reid v. Pierce County</i> , 136 Wn.2d 195, 961 P.2d 333 (1998)	12
<i>Sisley v. Sea. Sch. Dist. No. 1</i> , 171 Wn. App. 227, 286 P.2d 974 (2012) <i>review. denied</i> , 176 Wn.2d 1015, 297 P.3d 706 (2013)	11
<i>United States v. Gilbert</i> , 884 F.2d 454 (9 th Cir. 1989) <i>cert. denied</i> , 493 U.S. 1082 (1990)	3
<i>United States Mission Corp. v. KIRO TV, Inc.</i> , 172 Wn. App. 767, 292 P.3d 137 (2013)	14

Rules

Rules of Appellate Procedure 13.4(b)(1) and (2).....	2, 13, 14
Rules of Appellate Procedure 13.7(b).....	14

I. IDENTITY OF RESPONDENT

Respondent Seattle School District No. 1 (“the District”; referred to in the case caption as “Seattle Public Schools”) was the defendant below in this defamation action claiming the District is liable for a public school student’s statement published in a high school newspaper.

II. THE COURT OF APPEALS’ DECISION

In a decision that was initially unpublished and filed on February 24, 2014, the Court of Appeals affirmed the trial court’s summary judgment ruling dismissing plaintiffs’ defamation lawsuit. The trial court granted summary judgment on six alternative grounds. *See* CP 232-34 (granting summary judgment on six grounds, but denying summary judgment on three other grounds). The Court of Appeals affirmed summary judgment based on plaintiffs’ failure to prove the gist of the student reporter’s challenged statement was false, but did not address the other bases for summary judgment ruled on by the trial court. *See* Appendix 1 to plaintiffs’ Petition for Review (Court of Appeals’ decision), at pp. 2 n. 2, 4-8.

Motions to publish the Court of Appeals decision were granted on March 19, 2014. No motion to reconsider was filed.

III. COUNTER-STATEMENT OF ISSUES

A. Should the petition for discretionary review be denied because

the Sisleys fail to show under RAP 13.4(b)(1) and (2) that the Court of Appeals decision conflicts with another decision of the Supreme Court or Court of Appeals?

B. Should the petition for discretionary review be denied because the other grounds for dismissal addressed by the trial court would justify affirming the trial court's summary judgment ruling, even if the Court of Appeals erroneously concluded plaintiffs failed to prove the essential element of falsity?

IV. COUNTER-STATEMENT OF THE CASE

A. The Property Manager for at least one of the Sisley's Rental Properties Was a Convicted White Supremacist

Since at least 1998, plaintiff Drake Sisley and his brother Hugh Sisley have been known as being among the worst "slumlords" in the Seattle area, and for using a convicted white supremacist, Keith Gilbert, to manage some of their rental properties. CP 48-55, 75-76, 82-87. A May 1998 article from the "Seattle Weekly" reported the Sisley brothers were among the worst "slumlords" in Seattle; employed Keith Gilbert, a member of the Aryan Nations convicted of multiple racist hate crimes to manage their properties; quoted a city official as saying Mr. Gilbert and the Sisley brothers "run roughshod over people constantly"; stated prosecutors charged Mr. Gilbert with "harassing or retaliating against a tenant"; and

listed other instances of Mr. Gilbert's abusiveness toward tenants residing on the Sisleys' properties. *Id.*; see also CP 61-63, 95-96 (April 1999 article from the "Seattle Weekly" reporting that Drake and Hugh Sisley "own 54 rental homes in the Roosevelt area"; "racked up 80 citations for violating land use codes" since 1990; "[s]ome of their homes, crumbling structures that surround Roosevelt High School on two sides, are overseen by Keith Gilbert, a former member of the Aryan Nations with a ... history of assault"; and "[f]or years the Sisleys and Gilbert have been cited for failing to maintain their properties, and accused of locking tenants out of their homes").

Mr. Gilbert was convicted in 1988 of interfering with people's housing rights through force or threat of force based on multiple incidents of racial harassment. As published in *United States v. Gilbert*, 884 F.2d 454, 455-56 (9th Cir. 1989), *cert. denied*, 493 U.S. 1082 (1990), Mr. Gilbert's conviction was affirmed based on the following facts:

Keith Gilbert was once a member of the Aryan Nations. He left that group to form his own white supremacist hate group. Evidence at Gilbert's trial showed that he was a racist and a bigot, that he believed White Aryans should not be in contact with any other race, that he believed children born to parents of differing races were not human, and that he embraced some Nazi doctrine. Gilbert told a college newspaper reporter that there were "seventeen niggers" [footnote omitted] in Kootenai County, the county in which he resided, and that by the time his group was through there wouldn't be any.

In December of 1980, Gilbert mailed a letter and several posters to Susan Smith. Smith was the founder and an employee of an adoption agency that, among other things, placed minority children with white families. The letter “condemned” Smith’s actions and warned her to “keep [her] human trash off [his] property.” The posters were similar. “The Death of the White Race” poster discusses miscegenation and urges “whiteman” to “fight for your own kind.” “The Black Plague/Death to Rapists” poster implies that black men are rapists and urges that they be hung. The “He May Be Your Equal, But He Sure Isn’t Mine” poster implies that crime is committed by blacks. The “Race Traitor” poster speaks of a “Second Revolution” and warns that “[w]hite persons consorting with blacks will be dealt with according to the Miscegenation Section of the Revolutionary Ethic ... [miscegenation] will be punished by Death, Automatic by Public Hanging. Negroes involved in Miscegenation will be shot as they are apprehended.” The final poster, “Official Runnin’ Nigger Target,” is a caricatured silhouette of a black man.

In July of 1982, Gilbert drove his car at Lamar Fort in an attempt to intimidate Fort. Fort was a black child that had been adopted by a white family. Fort avoided being struck by Gilbert’s car only by moving out of the way at the last moment.

Between the summer of 1982 and March of 1983, Gilbert verbally harassed Scott Willey, Fort’s white stepbrother. In March of 1983, Gilbert stated to Willey, “How are thee today? Thou shall not live long.” In August of 1983, Gilbert sicced his large St. Bernard, whom he called “Nigger Eater,” on Amanda Morrison. Morrison was a black child who lived with her adoptive white family across the street from Gilbert.

Mr. Gilbert’s harassment and violence towards others continued after he became associated with the Sisley brothers. *See, e.g., Dawson v.*

City of Seattle, 435 F.3d 1054, 1058, 1067 (9th Cir. 2006) (“DPH [Seattle-King County Department of Public Health] and the police were also concerned because these boardinghouses were owned by Hugh Sisley, whose associate, Keith Gilbert, previously had threatened DPH employees during their inspections of other Sisley properties. In light of Gilbert’s violent criminal history, the police and DPH considered the possibility that Gilbert might try to disrupt the inspection, or even assault a member of the inspection team.”).

The Sisley brothers’ linkage to Mr. Gilbert is reflected in several other newspaper articles in addition to the 1998 and 1999 “Seattle Weekly” articles. For example, a February 2005 article in “The Seattle Times” newspaper, entitled “Two play key role in white supremacist’s rise,” reported “[a] key to Gilbert’s influence in the [Roosevelt] neighborhood was his relationship with Hugh and Drake Sisley, two brothers who own dozens of properties in the area.” CP 55-60, 89-90. The article quoted the former president of the Roosevelt Neighborhood Association as saying the Sisley brothers gave Mr. Gilbert “a position of responsibility and allowed his thuggishness to essentially represent them.” CP 89. According to former Seattle City attorney Mark Sidran who also was quoted in the article, Hugh and Drake Sisley are “legendary” for their run-down properties, and Mr. Gilbert’s racially-based criminal background

“introduced a level of fear and intimidation into the relationships with tenants and with the neighbors.” *Id.* The article noted other people had commented on Mr. Gilbert’s “confrontational personality and his racist beliefs. Other descriptions are even worse.” CP 90. Drake Sisley was quoted as acknowledging that Mr. Gilbert is “ornery,” “obnoxious” and “an in-your-face kind of guy” and that “[w]hen he was taking care of my properties, he shoveled the problems aside, combined them and multiplied them.” CP 89. Mr. Sisley testified he was accurately quoted in this article, with the exception that he believes he said “property” not “properties.” CP 58, 60.

A March 2007 article in “The Seattle Times” newspaper reported on Mr. Gilbert’s prior convictions for possession of 1,400 pounds of stolen dynamite he intended to use to blow up a California stage where Martin Luther King, Jr. was scheduled to speak, and for shooting a motorist after insulting the motorist’s race. CP 60-61, 93-94. The article stated Mr. Gilbert was “a racist and a bigot” who “became the property manager for a number of rental homes owned by well-known Roosevelt-area landlords Hugh and Drake ‘Ducky’ Sisley. Neighbors and former tenants said Gilbert was a bully who was known for his strong-arm tactics during evictions and other actions related to the rental properties.” *Id.*

An October 2007 article in the “Seattle Weekly” reported “Drake

Sisley ... along with his brother, Hugh, rank as two of the most notorious landlords in the city. The brothers own an empire of shabby buildings in the University District ..., and ceded management of many of those to an even shadier figure, Keith Gilbert, a former Aryan Nation member convicted last year of illegally selling and possessing dozens of guns.” CP 65-66, 99-100.

Drake Sisley acknowledges that Keith Gilbert managed one of his properties located about a mile from Roosevelt High School. CP 43-45. He admits he gave Mr. Gilbert the power to select, manage and evict tenants residing on his rental property for at least a nine month period. *Id.* He admits that he has received over 40 notices of violations from the City of Seattle regarding his rental properties. CP 80-81. He admits that he owns at least four rental properties within a mile of Roosevelt High School. CP 42. He also admits that as a result of the above-summarized newspaper articles from 1998 to 2007, he had a bad reputation in the community as having hired a racist white supremacist who bullied and used strong-arm tactics to evict tenants in run-down properties he owned in the area around Roosevelt High School. CP 56-58, 60-62, 65-68.

B. The Student’s Newspaper Article at Issue

The March 2009 edition of “The Roosevelt News,” the school newspaper for Roosevelt High School, contained an article by a student

reporter, Emily Shugerman, entitled “Sisley Slums Cause Controversy.” CP 126, 129. The focus of the article was on rumors the Sisleys’ rental homes surrounding the school might be torn down and re-developed with a tall building, and the neighbors’ reaction to that possibility. *Id.*

The introductory paragraph of Ms. Shugerman’s article, which is the portion the Sisleys allege was defamatory in part, reads as follows:

A fixture on the landscape of Roosevelt, the “Sisley Slums” are the run-down houses located on the block west of 15th and 65th. Also endearingly referred to as the “crack shacks” or “ghetto houses”, these buildings are rental houses owned by the infamous landlords Drake and Hugh Sisley. The Sisleys own more than forty pieces of property in Northeast Seattle, and have a bad reputation amongst both locals and city officials. In fifteen years these brothers have acquired 48 housing and building maintenance code violations, and have also been accused of racist renting policies.

CP 129; *see also* CP 2 (Plaintiffs’ Complaint, ¶ V).

In researching her article, Ms. Shugerman went online to read various articles about the Sisley brothers and their rental properties, including articles in “The Seattle Times” and various blogs. CP 127. She also attended a meeting of the Roosevelt Neighborhood Association where the potential development was discussed, and interviewed two community members and a representative of the potential developer. *Id.* She no longer can recall precisely where she learned the Sisley brothers had been accused of racist renting policies, but believes she either read about the

accusation in one or more of the articles she read online, or heard it during the meeting she attended. *Id.*; *see also* CP 115-16.

C. The School District's Role in Production of "The Roosevelt News"

"The Roosevelt News" is a student-run newspaper. CP 106, 108. The reporters and editors are all students at Roosevelt High School. *Id.* Production of the newspaper occurs during an elective class called "Advanced Journalism," and after school hours. CP 107, 110-11.

There is one faculty advisor assigned to the newspaper, Christine Roux, who is available to answer the students' questions and assure deadlines are met, but has no role in editing or censoring the newspaper. CP 106-10, 112-14. Other than Ms. Roux, no school district employee plays any role in connection with the school newspaper. CP 107.

Once the student reporters and editors have created final drafts for their articles, they bundle the articles as PDF files and send them to an off-campus private business to print the newspaper. CP 111-12. About 1200 copies of the newspaper are printed for each issue. CP 114. These copies are distributed outside classrooms at the high school, and the remaining 100 to 150 copies are mailed to subscribers. CP 115.

The newspaper is "fully self-funded," meaning all revenue received from the newspaper, including advertisements, is used to pay the costs of

producing the newspaper and purchasing equipment. CP 112-13. The school district does not pay for or receive any money from the school newspaper. *Id.*

The faculty advisor does not recall reading Ms. Shugerman's article before it was published. CP 115. However, she discussed the article with Ms. Shugerman after she learned the Sisleys filed a tort claim against the school district concerning the article. CP 115-18. Ms. Shugerman told Ms. Roux she did a "Google" search of the Sisley brothers online, attended a neighborhood meeting, and interviewed a few people when researching her article. *Id.*

D. The Trial Court's Summary Judgment Ruling

After discovery was completed, the school district moved for summary judgment on nine alternative grounds. CP 10-33, 214-19. The Sisleys opposed the motion. CP 130-47. In part, they relied on conclusory denials without submitting admissible evidence to meet their burden of proof on essential elements of their defamation claim. For example, Drake Sisley denied he owned rental properties within a block or two of Roosevelt High School, but other than his denial, provided no admissible evidence that only his brother Hugh Sisley owns those properties. *See id.* Similarly, the Sisleys submitted no evidence to support their conclusory denials that Drake Sisley's properties have been

“endearingly referred to” as the “crack shacks,” “ghetto houses,” or “slums,” and that he has been “accused of racist renting policies.” *See id.*

The trial court granted summary judgment on six alternative grounds. First, the trial court ruled as a matter of law that public school districts owe a duty to protect students from foreseeable harm, but do not owe a duty to protect non-students, such as the Sisleys, from a student’s alleged defamation. CP 233. Second, as a matter of law, public school districts are not vicariously liable for a student’s allegedly defamatory speech. *Id.* Third, as a matter of law, the Sisleys are unable to prove that, consistent with the First Amendment, the school district should have censored the student reporter’s speech. *Id.* Fourth, the student’s report that Hugh and Drake Sisley were “infamous landlords” who had been “accused of racist renting policies” is a non-actionable opinion that is not defamatory as a matter of law. CP 233-34. Fifth, the Sisleys are unable to prove the school district was at fault for the student’s speech, and knew or should have known the student’s speech was false. CP 234. Finally, the Sisleys are unable to prove plaintiff Antoinette Sisley was a target of the alleged defamation. *Id.*

The trial court denied summary judgment on three grounds. First, the trial court ruled the Sisleys were not collaterally estopped under the virtual representation doctrine from re-litigating the seven issues decided

in Hugh Sisley's prior lawsuit (CP 121-23),¹ in which Drake Sisley appeared as a witness. CP 233. Second, the trial court ruled genuine issues of material fact precluded summary judgment on the issue of whether the student reporter's newspaper article was false. CP 234. Third, the trial court ruled genuine issues of material fact precluded summary judgment on the issue of whether the student reporter's article caused damage to Drake Sisley's reputation. *Id.*

The Sisleys timely appealed the trial court's summary judgment order. The Sisleys did not assign error to the trial court's rulings that (1) school districts are not vicariously liable for students' alleged defamations, and (2) Antoinette Sisley's defamation claim was properly dismissed because she was not a target of the alleged defamation. Brief of Appellant, pp. 1-2. However, they did assign error to the other grounds supporting dismissal. *Id.*

V. ARGUMENT

A. Standard of Review

If discretionary review were granted, the Supreme Court would engage in the same CR 56 inquiry as the trial court and Court of Appeals. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). Summary judgment should be affirmed if there is no genuine issue of

¹ See *Sisley v. Sea. Sch. Dist. No. 1*, 171 Wn. App. 227, 286 P.3d 974 (2012), review denied, 176 Wn.2d 1015, 297 P.3d 706 (2013).

material fact, viewing the facts in the light most favorable to the non-moving party, and the moving party is entitled to judgment as a matter of law. *Id.*

Summary judgment plays a “particularly important role” in defamation cases because “[s]erious problems regarding the exercise of free speech and free press guaranteed by the First Amendment are raised if unwarranted lawsuits are allowed to proceed to trial.” *Mark v. Seattle Times*, 96 Wn.2d 473, 485, 635 P.2d 1081 (1981). When a defamation defendant moves for summary judgment, the plaintiff has the burden of establishing specific, material facts that would allow a jury to find every element of defamation exists, including falsity, an unprivileged communication, fault and damages. *LaMon v. Butler*, 112 Wn.2d 193, 197, 770 P.2d 1027 (1989).

B. The Challenged Decision Is Consistent With Precedent, So Discretionary Review Is Unjustified Under RAP 13.4(b)(1) or (2)

The Sisleys’ petition for discretionary review is exclusively based on RAP 13.4(b)(1) and (2), which require them to show the Court of Appeals decision conflicts with another decision of the Supreme Court or the Court of Appeals. *See* Petition for Review, p. 19. The Sisleys fail to cite any conflicting precedent. Instead, they acknowledge the Court of Appeals’ decision is consistent with Supreme Court and

Court of Appeals precedents. *Id.*, at pp. 5-13.

The Sisleys argue that the Court of Appeals erred by deciding the question of whether “gist” or “sting” of a newspaper story is a threshold question for the court, not a jury. *See id.*, pp. 5-13. However, the Sisleys concede that both the Supreme Court and Court of Appeals have held this threshold question is properly resolved by the court on summary judgment, not a jury. *Id.* (citing or discussing, among other cases, *Mohr v. Grant*, 153 Wn.2d 812, 826, 108 P.3d 768 (2005), and *United States Mission Corp. v. KIRO TV, Inc.*, 172 Wn. App. 767, 773, 292 P.3d 137 (2013)). The Sisleys solely rely on the Court of Appeals’ decision in the *Mohr* case, which was reversed by the Supreme Court in *Mohr v. Grant*, 153 Wn.2d 812, 826, 108 P.3d 768 (2005), and the dissenting opinion in *Mohr*. *See* Petition for Review, pp. 8-10. Thus, the petition for discretionary review should be denied pursuant to RAP 13.4(b)(1) and (2) because the Sisleys are unable to show the Court of Appeals decision conflicts with binding precedents of the Supreme Court or Court of Appeals.

C. If Discretionary Review Is Granted, Other Dispositive Issues Decided by the Trial Court, but not the Court of Appeals, Would Justify Affirming Summary Judgment

RAP 13.7(b) provides that “[i]f the Supreme Court reverses a decision of the Court of Appeals that did not consider all of the issues

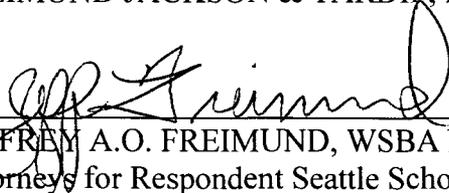
raised which might support that decision, the Supreme Court will either consider and decide those issues or remand the case to the Court of Appeals to decide those issues.” Accordingly, if the Sisleys’ petition for discretionary Supreme Court review is granted, and if the Supreme Court were to reverse the Court of Appeals’ ruling concerning the Sisleys’ inability to prove the student reporter’s article was false, the other six alternative bases for the trial court’s summary judgment ruling would justify affirming summary judgment.

VI. CONCLUSION

Based on the foregoing reasons, the Sisleys’ petition for discretionary Supreme Court review should be denied.

RESPECTFULLY SUBMITTED this 17th day of April, 2014.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the state of Washington, that on April 17, 2014, I served Respondent Seattle School District No. 1's Answer to Petition for Review on all parties to this action as follows:

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