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ORIGINAL

NO. 67552-4-1

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION 1

HUGH K. SISLEY and MARTHA E. SISLEY,  
both individually and on behalf of their marital community,

Appellants,

v.

SEATTLE SCHOOL DISTRICT NO. 1,  
a public corporation,

Respondent.

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APPELLANT'S REPLY BRIEF

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## ARGUMENT

This Court should reverse the trial court's order granting summary judgment in this case for defamation because, based on the record which must be considered in a light most favorable to Appellants Mr. and Mrs. Sisley, the evidence demonstrated that (1) Respondent Seattle School District No. 1 ("the School District") published an article in its student/school newspaper which claimed that Hugh Sisley "had been accused of racist renting policies", (2) the allegation was false, and (3) Hugh Sisley, and his wife, were injured, in part, because the allegation was defamatory *per se*.

The School District's Brief is guilty of the same misguided and *ad hominum* attacks which it leveled in the trial court—most of which are aimed at a person who is not a party to this action and, more importantly, not named in the defamatory accusation.<sup>1</sup>

The School District has devoted substantial effort in its Brief to the background of Keith Gilbert (as it did in the trial court). This effort,

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<sup>1</sup> The School District's Brief also contained a number of factual distortions (*e.g.*, the assertion that the student reporter "no longer can recall *precisely* how" she came to believe, erroneously, that Mr. Sisley had been accused of racist renting policies (Brief of Respondent, at 12 (emphasis added) is, at best, a charitable characterization of her memory. In fact, the student reporter could not identify a single, specific source for her libelous allegation (*e.g.*, CP 235 (Deposition testimony of Emily Shugerman)). A detailed correction of the School District's factual contentions should not be necessary, given that the evidence and the inferences from the evidence should have been drawn in favor of Mr. and Mrs. Sisley in the trial court and should be on appeal.

without more, is unavailing, however, for at least two reasons. *First*, the “evidence” upon which the School District relies, newspaper articles, does not assert that Mr. Sisley had ever been accused of or had ever engaged in “racist renting policies.”<sup>2</sup> *Second*, the newspaper articles do not allege that Mr. Gilbert, despite all of his prior misdeeds, had been accused of or engaged in “racist renting policies.”

Despite its rhetoric, no one from the School District, which operates the student newspaper (*The Roosevelt News*) as part of its academic curriculum, was able to identify any source which provided the basis for its statement that Hugh Sisley had been “accused of racist renting policies.” The faculty advisor, the student who authored the article, any student who was involved in all of the reviews and edits of the school newspaper—no one could identify the source of the defamatory allegation.

On the basis of this evidentiary record (or, lack of it), and within the procedural context of a summary judgment motion, the School District’s allegation was, and is, false.

Moreover, as demonstrated in Appellants’ Brief, the School District is legally responsible for its own negligent conduct and for the negligent conduct of its student reporter.

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<sup>2</sup> It is worth noting that Hugh and Martha Sisley have never been accused of any type of racist conduct.

The facts in this case—many of which were disputed and all of which must be viewed favorably in favor of Mr. and Mrs. Sisley—demonstrate that the School District has a duty to act reasonably when its school newspaper, which is part of its academic curriculum as well as a school sponsored and supported extracurricular activity, is published to its readers and the wider community. Inaccurate publication of an allegation that a person has engaged in racist conduct is not reasonable. In the context of summary judgment, the trial court erred when it held otherwise. Given the disputed factual record, and the procedural context of the trial court’s ruling (summary judgment), this Court must reverse and remand for trial.

The School District’s Brief has failed to raise any argument not already addressed in Appellants’ Brief—and the specific facts, legal authorities, and analysis need not be fully repeated here.

Rather, it authoritatively be said that the evidentiary record and the legal authorities relevant to the matter presently before this Court demonstrate that:

(1) this Court reviews the trial court’s order *de novo* (*Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 270, 208 P.3d 1092 (2009));

(2) the disputed facts, and the reasonable inferences from those facts, must be viewed in favor of Mr. and Mrs. Sisley (*Arnold v. Saberhagen Holdings, Inc.*, 157 Wn. App. 649, 661-62, 240 P.3d 162, 169 (2010) *review denied*, 171 Wn.2d 1012, 249 P.3d 1029 (2011));

(3) the allegation that Mr. Sisley had been accused of racist renting policies was false and defamatory (*see e.g.*, RCW 49.60.222 (unlawful to engage in renting policies which discriminate on the basis of race, creed, color, or national origin); *see also* Seattle Municipal Code 14.08.040);

(4) the School District's allegation of criminal or illegal conduct was libelous *per se* (*Caruso v. Local Union No. 690 of Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 100 Wn.2d 343, 670 P.2d 240 (1983), *appeal after remand*, 107 Wn.2d 524, 730 P.2d 1299 (1987), *cert. den.*, 484 U.S. 815, 108 S. Ct. 67, 98 L.Ed.2d 31 (1987));

(5) the School District has a legal responsibility to regulate the content of its student newspaper (*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562, 98 L.Ed.2d 592 (1988));

(6) the School District can be liable for statements directed at members of the public by its students (*State v. Hoshijo*, 102 Hawai'i

307, 76 P.3d 550 (2003) (school liable for racial slur uttered by a student manager));

(7) the School District's allegation, at least in the context of summary judgment, is not immune as "opinion" (*Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990)); and

(8) Mr. Sisley's status as a "public figure", "limited public figure", or private citizen could not be decided on summary judgment, given the disputed and conflicting evidentiary record before the trial court.

Although not named individually in the School District's defamatory article, it was reasonably foreseeable that Martha Sisley would be injured by its tortious conduct, and the trial court should not have dismissed her claim.

Finally, the trial court should have granted Mr. and Mrs. Sisley's Motion in *Limine*, as the 11 newspaper articles were inadmissible evidence. *Dunlap v. Wayne*, 105 Wn.2d 529, 535, 716 P.2d 842 (1986) (citing *Charbonneau v. Wilbur Ellis Co.*, 9 Wn. App. 474, 512 P.2d 1126 (1973)).

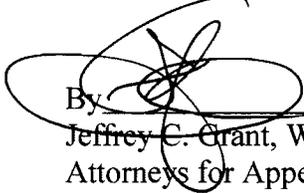
It is not appropriate for the trial court to substitute its interpretation, or even weight, of the evidence when, as in this case, there are disputes of material fact. CR 56 should not be used as a tool to deprive parties of their constitutional right to a trial by jury.

**CONCLUSION**

It is respectfully requested that this Court (1) reverse the trial court's order granting the School District's Motion for Summary Judgment, (2) order that Mr. and Mrs. Sisley's Motion in *Limine* be granted, and (3) remand this action back to the King County Superior Court with instructions to schedule the jury trial as promptly as possible.

DATED this 28<sup>th</sup> day of December, 2011.

SKELLENGER BENDER, P.S.

By: 

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Attorneys for Appellants Hugh and Martha  
Sisley

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Jule Sprenger declares, under penalty of perjury under the laws of the State of Washington, that the following is true.

1. I am employed by Skellenger Bender, P.S., counsel of record for Appellants Hugh and Martha Sisley in this action; a resident of the State of Washington; over the age of 18 years; and not a party to this action.

2. On December 28, 2011, I arranged for the filing of the Reply Brief of Appellants and this Proof of Service with the Clerk of the Court of Appeals, Division One, and served Jeffrey Freimund, counsel for Respondent Seattle School District No. 1, by electronically sending a copy of the Reply Brief of Appellants and this Proof of Service to:

Jeffrey Freimund: JeffF@fjtlaw.com

Jule Sprenger



Date and Place of Execution 12/28/11 at Seattle, WA