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Gallagher Sharp Newsflash: Defamation

Today, March 13, 2008, the Supreme Court of Ohio held, in a 4-3 opinion, that a city safety director's inclusion of an allegation of immoral activity by the police chief in a report of an official investigation that was released to the public, despite a "high degree of awareness of (the allegation's) probable falsity," was sufficient to overcome summary judgment by raising a material question of fact as to whether the safety director and the city acted with "actual malice" and therefore could be found liable by a jury for defamation.

The case of *Jackson v. Columbus*, Slip Opinion No. 2008-Ohio-1041 involved a civil lawsuit filed by Chief of Police James Jackson against the city of Columbus and its former safety director, Thomas W. Rice. After an extensive investigation of alleged improper conduct by Jackson and other members of the city's police department which was conducted at the behest of the mayor of Columbus, Rice issued an official "Report to the Mayor" in the summer of 1997 summarizing the details and findings of the investigation. Although the 184-page report and 969 pages of exhibits gave "the appearance of thoroughness," it contained an unproven allegation that Jackson had impregnated a juvenile prostitute and was paying her child support. The allegation had been provided during the course of an interview of a convicted criminal who was known to be a "liar" and a "scam artist" who was found to be "deceptive" by a polygraph examination that was administered as part of the interview. Prior to issuing the report, Jackson was not asked about the allegation; if Rice had inquired, Jackson would have told Rice that he had a vasectomy which rendered him incapable of impregnating anyone.

Even though the report characterized the accusations about the juvenile prostitute as "unproven" and "suspect," Jackson sued Rice and the city of Columbus, claiming that he had been defamed by false and unsubstantiated allegations contained in the report that were from sources known to be unreliable. The trial court granted and the court of appeals affirmed summary judgment for the defendants on the grounds that the report was covered by a public-interest privilege, and that the evidence did not overcome the privilege by showing that Rice had acted with "actual malice." Reversing summary judgment, the Supreme Court noted that Rice's "role as investigator did not grant him license to publish unsubstantiated rumors if he 'in fact entertained serious doubts as to [their] truth.'" Writing for the four justice majority, Justice Paul Pfeifer wrote, "we conclude that Rice may have acted with actual malice because at a minimum, he had a 'high degree of awareness of the [published statement's] probable falsity.'"

The full opinion can be accessed at:

<http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-Ohio-1041.pdf>

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