

IN THE CIRCUIT COURT FOR CAMPBELL COUNTY, TENNESSEE
AT JACKSBORO

ROGER BYRGE,)

Plaintiff,)

v.)

STACEY CAMPFIELD, GLENN)
CASADA, and THE TENNESSEE)
REPUBLICAN PARTY)

Defendants.)

CIVIL ACTION
NO. 14326

FILED

DATE: 4-19 2010 TIME: 9:35 A.M.
CIRCUIT COURT — CAMPBELL COUNTY

BOBBY W. VANN CLERK

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DEP. CLERK (D.C.)

**MEMORANDUM OF FACTS AND LAW IN SUPPORT OF DEFENDANT STACEY
CAMPFIELD'S MOTION FOR SUMMARY JUDGMENT**

Defendant Stacey Campfield, by and through undersigned counsel, hereby submits the following memorandum of facts and law in support of his Motion for Summary Judgment (the "Motion") pursuant to Tennessee Rule of Civil Procedure 56. The Rule 56.03 statement of material facts not in dispute was filed simultaneously with the Motion. Since the Rule 56.03 statement sets out the facts in detail, they will only be summarized hereafter for the convenience of the Court.

I. SUMMARY OF FACTS

This case arises from the publication of a story concerning Plaintiff Roger Byrge who was a candidate for the 36th District of the Tennessee House of Representatives on a blog¹ known as camp4u, located at <http://lastcar.blogspot.com>. Camp4u (the "Blog") is a publicly accessible

¹ "A blog (a contraction of the term "web log") is a type of website, usually maintained by an individual with regular entries or commentary, descriptions of events, or other material such as graphics or video...." Layshock ex rel.

blog that Defendant Stacey Campfield ("Campfield") set up to share his personal concerns, ideas and opinions with the constituents of the 18th District of the Tennessee House of Representatives.

The Blog is accessible to anyone in the free world with a computer and an internet connection. Further, the Blog allows readers of the Blog to post comments in an interactive format.

During the general election of 2008, Plaintiff Roger Byrge ("Plaintiff") was the Democratic nominee while Chad Faulkner was the Republican nominee for the 36th District of the Tennessee House of Representatives. The 36th District includes Campbell and Union County and borders the 18th District of the Tennessee House of Representatives that Campfield represents.

On October 14, 2008, Campfield posted an entry on the Blog entitled "A tale of two races." The original post, in its entirety, is as follows:

It is a little odd When an east Tennessee paper adds a dig about a middle Tennessee state house race to a story about senate fund raising. I guess it is OK because the dig attacks a Republican running against an incumbent Democrat for an old DUI conviction.

Ok. Fair enough. You can say its news.

But don't you think it would be a little more interesting if it was the news about a close open seat race? A race that is not only close in the polls but is also close to Knoxville. Where the story isn't just alcohol related but is also drug related? How could it be better? How bout if the person convicted was running against a police officer? Where could we find such a race? Such an interesting dichotomy? How bout where Roger Byrge is running against police officer Chad Faulkner? Word is a similar mail piece has gone out exposing Byrges multiple drug arrests. Including arrests for possession and drug dealing. (I hear the mug shots are gold).

Of course in that race the Democrat, Byrges has a chance to win the formerly Republican held seat. I guess we will see that story about as much as we see the story.

of the sexual harassment hush money given to keep the Democrat in office who replaced Mark Foley.

No news there, nothing to see, Move along.

(See Exhibit A to Plaintiff's Amended Complaint as filed with this Court on May 11, 2009).

The Post was based entirely on a conversation that Campfield had with Glenn Casada ("Casada") some time shortly before the Post was published on October 14, 2008. Casada is a Representative in the Tennessee House of Representatives for the 63rd District. In addition to being a State Representative, Casada was also elected as Chairman of the House Republican Caucus in 2007 and was serving in that capacity on October 14, 2008 when he provided Campfield with the information about the Plaintiff that was included in the Post.

During their conversation, Casada told Campfield that he had information on Plaintiff. More specifically, Casada told Campfield that Plaintiff had a criminal record that included arrests for possession of drugs and drug dealing. Casada admits to telling Campfield that "we may have a record of a felony on Roger Byrge." (See Response to Interrogatory No. 2 from Defendant Glenn Casada's Answers to Plaintiff's First Interrogatories). Casada based this on research that had been provided to the Tennessee Republican Caucus by either Brent Easley ("Easley") or Scott Gilmer ("Gilmer")². (See Responses to Interrogatories No. 2 and 3 from Defendant Glenn Casada's Answers to Plaintiff's First Interrogatories). The Tennessee Republican Caucus frequently engages independent contractors like Easley and/or Gilmer to research political candidates and races across the state during election season. (See Responses to Interrogatories

² Gilmer is a state employee who works for the Tennessee Republican Caucus and was convicted on a misdemeanor criminal charge in March, 2009 for using former State Representative Nathan Vaughn's name to create fake political websites.

No. 2 and 3 from Defendant Glenn Casada's Answers to Plaintiff's First Interrogatories). As Chairman of the Tennessee House Republican Caucus, Casada was provided with a copy of research materials, including a Campbell County General Sessions Court "Case Docket History" on "Roger Derick Byrge" (the "Research Materials"). (Response to Interrogatory No. 5 from Defendant Glenn Casada's Answers to Plaintiff's First Interrogatories; see also Exhibit 1 to Defendant Glenn Casada's First Request for Admission to Plaintiff).

Campfield only reported what Casada told him during their conversation. Campfield relied on the information provided by Casada because Casada was the Chairman of the House Republican Caucus when the statements about the Plaintiff were made. Further, Campfield knew that the Tennessee Republican Caucus frequently researches political candidates and contested races across the state during election season. Campfield believed that the statements about Plaintiff were accurate and truthful at the time that they were published. Moreover, Campfield did not have knowledge of any falsity of the statements about Plaintiff at the time that they were published. Further, Campfield did not have any reason to doubt the truth of the statements about Plaintiff at the time that they were published.

When the accuracy of the information that Casada provided Campfield was questioned, Campfield immediately removed the October 14, 2008 Post from the Blog. Some time after the Post was removed from the Blog, Campfield learned that the arrest record actually belonged to Roger Derick Byrge and not Plaintiff Roger Byrge. Roger Derick Byrge has a lengthy criminal history having been convicted for possession of drugs and possession with intent to sell or deliver drugs. (See Exhibit 1 to Defendant Glenn Casada's First Request for Admission to Plaintiff). Roger Derick Byrge is the son of Plaintiff Roger Byrge and resided with Plaintiff Roger Byrge

when the arrests were made.

For the reasons that follow, Defendant Stacey Campfield is entitled to summary judgment as to all of Plaintiff's claims.

II. SUMMARY JUDGMENT STANDARD

Rule 56.04 of the Tennessee Rules of Civil Procedure provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” (Emphasis supplied). See also Brookins v. The Roundtable, Inc., 624 S.W.2d 547, 550 (Tenn. 1981). The purpose of Rule 56 is to “provide a quick, inexpensive means of concluding cases on issues as to which there is no dispute regarding material facts.” Ferguson v. Tomerlin, 656 S.W.2d 378, 382 (Tenn. Ct. App. 1983). In making its determination as to whether summary judgment is appropriate, the trial court is to view all of the evidence in light most favorable to the party opposing the motion. Price v. Mercury Supply Co., Inc., 682 S.W.2d 924, 929 (Tenn. Ct. App. 1984). If, however, the opposing party offers no competent and material evidence showing a genuine issue of material fact then summary judgment is appropriate. Id. at 929-30. The procedure is designed to secure an expedited and inexpensive determination of actions that are factually unsupported, rather than being viewed as a disfavorable procedural shortcut. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Byrd v. Hall, 847 S.W.2d 208 (Tenn. 1993).

Recently, the Supreme Court of Tennessee has provided further guidance regarding the initial showing that must be made by a party moving for summary judgment. See Hannan v.

Alltel Publ'g Co., 270 S.W.3d 1 (Tenn. 2008). In Hannan, the Court clarified that it is insufficient for the moving party to simply allege that the nonmoving party lacks evidence to prove an essential element of his or her claim. Id. at 8. Rather, the moving party must either "(1) affirmatively negate an essential element of the nonmoving party's claim; or (2) show that the nonmoving party cannot prove an essential element of the claim at trial." Id. at 9. The Court has indicated that a moving party may satisfy its initial burden by demonstrating that the nonmoving party lacks evidence supporting an element of the claim and by referencing evidence that refutes the element. Id.

The Court reiterated its holding in Hannan, in Martin v. Norfolk Southern Railway Co., 271 S.W.3d 76, 83 (Tenn. 2008). The Court again stated that while it is insufficient for the moving party to claim that the nonmoving party lacks evidence, the moving party may fulfill its burden by "poin[ting] to evidence that tends to disprove an essential factual claim made by the nonmoving party." Id. at 84. Applying this reasoning, the Court concluded that the defendant had filed a properly supported motion by "setting forth facts that tend to show that [the defendants] acted reasonably and that [the plaintiff] did not exercise reasonable care." Id.

Once the moving party has made the initial showing described in Hannan and Martin, the burden of production shifts to the non-moving party. Id. At that point, if the non-moving party fails to set forth specific facts that demonstrate the existence of a genuine issue of material fact, then the summary judgment motion should be granted. Id.

As discussed in more detail hereinafter, because of the guarantees in the First Amendment to the United States Constitution and Article I, § 19 of the Tennessee Constitution, public figures and/or public officials like Plaintiff "who desire to pursue defamation actions bear

a heavy burden of proof because of our society's commitment to the principle that 'debate on public issues should be uninhibited, robust and wide open.'” Tomlinson v. Kelley, 969 S.W.2d 402, 405 (Tenn. Ct. App. 1997) (citing New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)). “In order to recover damages, they must prove with convincing clarity that the defendant acted with actual malice.” Tomlinson, 969 S.W.2d at 405 (citing Press, Inc. v. Verran, 569 S.W.2d 435, 441 (Tenn. 1978); Moore v. Bailey, 628 S.W.2d 431, 433 (Tenn. Ct. App. 1981)).

Summary judgments are particularly “well-suited” to defamation cases because the question of whether Plaintiff is a public official or public figure is a question of law. Tomlinson, 969 S.W.2d at 405 (citing McDowell v. Moore, 863 S.W.2d 418, 420 (Tenn. Ct. App. 1992)). Similarly, the determination concerning whether a public figure or public official has come forward with “clear and convincing evidence that the defendant was acting with actual malice” is a question of law appropriate for summary judgment. Tomlinson, 969 S.W.2d at 405 (citing Trigg v. Lakeway Publishers, Inc., 720 S.W.2d 69, 74 (Tenn. Ct. App. 1986) (affirming trial court's grant of summary judgment for failure to show actual malice)). See also Ferguson v. Union City Daily Messenger, 845 S.W.2d 162, 167 (Tenn. 1992) (affirming trial court's grant of summary judgment for failure to show actual malice); Lewis v. Newschannel 5 Network, L.P., 238 S.W.3d 270, 302 (Tenn. Ct. App. 2007) (affirming the trial court's grant of summary judgment for failing to present clear and convincing evidence that the defendant acted with actual knowledge of the falsity or with reckless disregard as to the truth or falsity of the statements).

III. LAW AND ARGUMENT

This case is governed by the constitutional standards that had their beginning in the landmark Supreme Court case of New York Times Co. v. Sullivan, 376 U.S. 254 (1964). In New York Times Co., the United States Supreme Court found that the First Amendment's guarantee of freedom of speech and freedom of the press required certain limits on defamation actions by public officials. Id. at 279-80. The Court cited the "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." Id. at 270. The Court determined that simply protecting the "truth" as determined by a judge and jury is not sufficient protection for such important expression, stating "[e]rroneous statement is inevitable in free debate and ... must be protected if the freedoms of expression are to have the 'breathing space' that they 'need to survive.'" Id. at 279.

The Court held that these constitutional guarantees required that a public official cannot recover damages for a defamatory falsehood relating to his official conduct unless he proves the statement was made with actual malice. Id. The Court defined actual malice in this context in a very specific manner - the statement must have been made with knowledge that it was false or with reckless disregard of whether it was false or not. Id.

The Supreme Court further held that First Amendment guarantees required that the public official plaintiff must prove actual malice by a greater than a preponderance of the evidence. The burden of proof was described as "convincing clarity which the constitutional standard demands." Id. at 285-86. Subsequent cases have interpreted this standard of proof as requiring "clear and convincing" evidence. E.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Tomlinson, 969 S.W.2d at 405.

The New York Times Co. requirements apply not only to public officials but also “public figures.” E.g., Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). Thus, through the First and Fourteenth Amendments to the United States Constitution, the United States has “constitutionalized the law of libel and in material particulars, has preempted state statutory and decisional law in cases and controversies involving the communications media.” Press, Inc., 569 S.W.2d at 440.

The Tennessee Constitution also contains an important guarantee of freedoms of speech and press. Article I, § 19 provides in pertinent part:

That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

Relying upon these federal and state constitutional guarantees, the Tennessee Supreme Court adopted as the law of Tennessee the language of § 580A of the Restatement (Second) of Torts which provides as follows:

580A. *Defamation of Public Official or Public Figure.* One who publishes a false and defamatory communication concerning a public official or public figure in regard to his conduct, fitness or role in that capacity is subject to liability, if, but only if, he

- (a) knows that the statement is false and that it defames the other person, or
- (b) acts in reckless disregard of these matters.

Press, Inc., 569 S.W.2d at 442. In Press, Inc., the Tennessee Supreme Court stressed the importance of these constitutional guarantees by stating as follows:

In adopting these standards, we look to the “profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.” We are guided by our belief that the news media have not only a right but a duty to make searching inquiry into all phases of official conduct and to realistically evaluate

and assess the performance of duty by public officials.

Only under the most compelling circumstances should the courts place obstacles in the way of the news media, or muzzle or deter their investigative efforts and reporting, even though the end result may be distasteful, despicable and shorn of all sense of fairness. *The right of the news media to criticize official conduct is limited solely to their answerability for actual malice, which means that the publication was made with knowledge of its falsity or with reckless disregard for the truth.*

Any other standard would have a chilling effect upon one of the most cherished of all the freedoms specified in our bill of rights.

Id. at 442 (Emphasis added). As stated above, Tennessee case law is replete with examples of summary judgments being granted to defendants because the plaintiff-public official/public figure cannot meet the heavy burden of demonstrating actual malice. *E.g., Ferguson*, 845 S.W.2d at 167 (affirming trial court's grant of summary judgment for failure to show actual malice); Trigg, 720 S.W.2d at 74 (affirming trial court's grant of summary judgment for failure to show actual malice); Tomlinson, 969 S.W.2d at 405; Lewis, 238 S.W.3d at 302 (affirming the trial court's grant of summary judgment for failing to present clear and convincing evidence that the defendant acted with actual knowledge of the falsity or with reckless disregard as to the truth or falsity of the statements).

A. The Statements At Issue Involved An Important Public Controversy And A Matter Of Genuine Public Concern.

The Tennessee Supreme Court has stated that whether speech "addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." Phillips v. State Bd. of Regents, 863 S.W.2d 45, 51 (Tenn. 1993) (quoting Connick v. Myers, 461 U.S. 138, 147 (1983)). Further, matters of public concern have

“been characterized as those matters as to which ‘free and open debate is vital to informed decision-making electorate.’” Phillips, 863 S.W.2d at 51 (quoting Pickering v. Bd. of Educ., 391 U.S. 563, 572 (1968)). Moreover, the Tennessee Court of Appeals in Lewis v. Newschannel 5 Network, L.P. noted that “[s]peech that addresses ‘corruption, impropriety, or other malfeasance on the part of city officials, in terms of content, clearly concerns matters of public import.’” 238 S.W.3d at 298 (quoting Conaway v. Smith, 853 F.2d 789, 796 (10th Cir. 1988)).

Under the above referenced standards, it is simply indisputable that the statements published on the Blog involved an important public controversy and a matter of genuine public concern. The statements published on the Blog were limited to Plaintiff’s alleged arrest record. At the time that the statements were published on the Blog, Plaintiff was the democratic candidate for the 36th District of the Tennessee House of Representatives. The public is surely entitled to know whether a candidate for public office like the Plaintiff has been charged and/or arrested for criminal offenses. In fact, Lewis makes it quite clear that speech that addresses a public official’s fitness for political office is a matter of public concern. Accordingly, the Plaintiff’s criminal background would be a matter of genuine public concern.

B. Plaintiff Roger Byrge Is A Public Official Or At The Very Least A Public Figure For Purposes Of His Libel and False Light Claims.

In Press, Inc. v. Verran, the Tennessee Supreme Court addressed the question of the definition of a public official for purposes of applying constitutional requirements set forth in New York Times v. Sullivan and subsequent cases. The Tennessee Supreme Court in Press, Inc. defined the term “public official” as follows:

The occupant of any position in any branch of government who exercises any public function is subject to the New York Times rule as to all conduct in his official capacity or as to any conduct that might adversely affect his fitness for public office, if he has or 'appear(s) to the public to have, substantial responsibilities for or control over the conduct of governmental affairs.

Press, Inc., 569 S.W.2d at 441 (citing Rosenblatt v. Baer, 383 U.S. 75, 85 (1966)).

Moreover, the Tennessee Supreme Court went on to say that the term "public official" for these purposes is not limited to those in "high public position" but rather,

[a]ny position of employment that carries with it duties and responsibilities affecting the lives, liberty, money or property of a citizen or that may enhance or disrupt his enjoyment of life, his peace and tranquility, or that of his family is a public official within the meaning of the constitutional privilege.

Press, Inc., 569 S.W.2d at 441. In Press, Inc., the Tennessee Supreme Court affirmed the lower court's decision that the plaintiff, who was a "Junior Social Worker" working in a county office for the Tennessee Department of Human Services, was a "public official" for the purposes of her defamation action. Id. at 443.

More specifically, courts have universally held that various governmental employees and political candidates for elective public office are "public officials" for purposes of applying the actual malice standard in a defamation case. Monitor Patriot Co. v. Roy, 401 U.S. 265, 271-72 (1971) (determining that U.S. Senate candidate was a public official for purposes of actual malice standard); Ocala Star-Banner Co. v. Damron, 401 U.S. 295, 298 (1971) (determining that candidate for county tax assessor was public official for purposes of actual malice standard); Truetler v. Meredith Corp., 455 F.2d 255 (8th Cir. 1972) (determining that mayoral candidate was public official for purposes of actual malice standard). See, e.g., Ferguson v. Union City Daily Messenger, Inc., 845 S.W.2d 162 (Tenn. 1992) (ruling that county employee who had

substantial responsibility for and control over financial affairs of the county was a public official for purposes of defamation action against newspaper); Piper v. Mize, No-M2002-00626-COA-R3-CV, 2003 WL 21338696 (Tenn. Ct. App. June 10, 2003) (stating that both plaintiffs, one the wife of mayor of Clarksville who had been a guest writer for the local newspaper, and the second who was the incumbent Grants Writer for the City of Clarksville and former mayoral candidate were public figures within the parameters laid down by the Tennessee Supreme Court); Murray v. Lineberry, 69 S.W.3d 560 (Tenn. Ct. App. 2001) (finding that sheriff's deputy was a public official for purposes of defamation action against candidate for office of sheriff); Campbell v. Robinson, 955 S.W.2d 609 (Tenn. Ct. App. 1997) (determining that public school teacher was a public official in libel action); Moore v. Bailey, 628 S.W.2d 431 (Tenn. Ct. App. 1981) (finding that a county environmentalist for the State Department of Health was a public official).

As stated by the Tennessee Supreme Court in Press, Inc. v. Verran, the term "public figure" includes not only persons holding governmental positions but also those who "voluntarily inject themselves, or are drawn into public controversies, and become public figures for a limited range of issues." 569 S.W.2d at 441. Furthermore, the United States Supreme Court has solidified the view that if one, by his own volition, thrusts himself on the passing scene to the extent that he knowingly and consciously wants and needs publicity or public support for his endeavors or activities, he submits himself to public scrutiny, which may justly expose his affairs as they might relate to the activities or endeavors for which he is seeking public approval and deems him a "public figure" for matters relating to those endeavors and activities. See Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974); Ocala Star-Banner Co. v. Damron, 401 U.S. 295 at 300.

In light of the above factors, it is clear that Plaintiff was a public official at the time that the statements about the Plaintiff were published on the Blog. It is undisputed that the Plaintiff was the democratic candidate for the Democratic candidate for the 36th District of the Tennessee House of Representatives on October 14, 2008. It is equally indisputable that the political office which Plaintiff sought carried with it the duties and responsibilities that would affect the "lives, liberty, money or property" of the citizens of the 36th District of the Tennessee House of Representatives. As such, Plaintiff was a public official under even the strictest interpretations of the definition for public officials.

In addition to being a public official, Plaintiff was also a public figure. As stated above, the definition of a public figure includes not only people holding governmental positions but also those who voluntarily inject themselves into public controversies. In choosing to run as a candidate for political office, there is no question that Plaintiff voluntarily submitted himself to public scrutiny for the office that he was seeking. At the very least, Plaintiff's background and criminal conduct was certainly relevant to Plaintiff's fitness for political office. Monitor Patriot Co., 401 U.S. at 271-72. As a candidate for public office, Plaintiff enjoyed access to various means of communication that a private citizen would not have had. As a political candidate, Plaintiff was in a position to directly counteract any of the statements published on the Blog or any other blog for that matter. While Plaintiff may not have achieved the sort of pervasive fame or notoriety that made him a public figure for all purposes and in all contexts, he was certainly a public figure under every conceivable definition of "public figure" during the period of time that he was a candidate for the 36th District of the Tennessee House of Representatives.

As a public official and/or public figure, Plaintiff must come forward with “clear and convincing evidence” that Campfield was acting with actual malice when the statements about the Plaintiff were published on the Blog. Tomlinson, 969 S.W.2d at 405.

C. Plaintiff Roger Byrge Cannot Prove That Campfield Acted With Actual Malice In the Publication of the Statements At Issue.

As previously discussed, the First Amendment to the United States Constitution and Article I, § 19 of the Tennessee Constitution require that a public official or public figure must prove actual malice in a defamation lawsuit. Actual malice for these purposes does not mean “ill will, hatred, spite, or desire to injure,” but rather is limited to statements made with knowledge that they are false or with reckless disregard as to their truth or falsity. Tomlinson, 969 S.W.2d at 405-06. The “reckless disregard” element is not measured by whether a reasonably prudent man would have published or would have investigated before publishing, but rather, “there must be sufficient evidence that the defendant **in fact** entertained serious doubts as to the truth of his publication.” Trigg, 720 S.W.2d at 75 (citing St. Amant v. Thompson, 390 U.S. 727, 731 (1968)) (Emphasis added). Plaintiff must show that a false publication “was made with a high degree of awareness of probable falsity.” Id.

When the actual malice standard applies, the “burden is on the plaintiff to show with ‘convincing clarity’ the facts which make up the ‘actual malice.’ ” Trigg, 720 S.W.2d at 75. A public figure cannot resist a motion for summary judgment by arguing that there is an issue for the jury as to malice unless he makes some showing of facts from which actual malice may be inferred. Id. at 74.

In this case, Plaintiff cannot make such a showing by a preponderance of the evidence much less by clear and convincing evidence. The evidence very clearly demonstrates that the statements at issue were not published with any knowledge of falsity or any reckless disregard for the truth.

Campfield has submitted an affidavit in support of his Motion for Summary Judgment in which he makes it clear that he did not have knowledge that the statements were false. It is simply undisputed that Glenn Casada was the source of the statements about Plaintiff that were published on the Blog. Casada based these statements about the Plaintiff on research that had been provided to the Tennessee Republican Caucus by either Easley or Gilmer. Campfield knew that the Tennessee Republican Caucus frequently researches the criminal backgrounds of political candidates during election season. Campfield relied on the information that was communicated to him by Casada because Casada was the Chairman of the House Republican Caucus when the statements about the Plaintiff were made.

Campfield did not have "serious doubts" as to the truth of these statements. In fact, Campfield believed that the statements about Plaintiff's alleged criminal background were truthful and accurate at the time that they were published on the Blog. Further, Campfield did not have knowledge of any falsity of the statements about Plaintiff at the time that they were published on the Blog. More importantly, Campfield did not have any reason to doubt the truth of the information that Casada provided to Campfield at the time that the statements were published on the Blog. It is worth noting that the arrest record actually belonged to the Plaintiff's son, Roger Derick Byrge, who in addition to sharing the same and/or substantially similar name with the Plaintiff also resided with the Plaintiff at the time that the arrests were made.

Although the "actual malice" standard is a subjective one, the foregoing discussion

demonstrates that even on an objective basis (which is not the test or standard) Stacey Campfield had ample grounds to believe that the statements about the Plaintiff's alleged arrest record were true. More to the point, however, Campfield did not have knowledge of any falsity and did not have serious doubts as to the truth of the statements about Plaintiff that were published on the Blog. Plaintiff cannot show to the contrary and certainly cannot carry his burden of proof by clear and convincing evidence that Campfield had actual knowledge that the statements about the Plaintiff published on the Blog were false or in fact entertained serious doubts about their truth. Absent sufficient proof as to that element of his defamation claim, Campfield is entitled to summary judgment dismissing Plaintiff's libel claim.

D. Plaintiff Roger Byrge Cannot Establish the Essential Elements of A False Light Invasion of Privacy Claim.

Plaintiff also alleges that Campfield is liable for damages to the extent that he placed Plaintiff in a false light. The Tennessee Supreme Court recently concluded that Tennessee does recognize the distinct tort of false light invasion of privacy based upon Section 652 E of the Restatement (Second) of Torts (1977). West v. Media Gen. Convergence, Inc., 53 S.W.3d 640, 643 (Tenn. 2001). False light invasion of privacy is defined in Section 652 E of the Restatement (Second) of Torts (1977) as follows:

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Id. at 643. From this definition, it is clear that Plaintiff is required to prove that he was placed in a false light and that Campfield or the other Defendants had knowledge or acted in reckless disregard of the “falsity” of the publicized matter. Id.

Plaintiff’s false light claim must also fail because he cannot establish the actual malice requirement. The First Amendment to the United States Constitution requires that the plaintiff in a false light invasion of privacy lawsuit prove that the defendant acted with “actual malice” in matters of public concern. Time, Inc. v. Hill, 385 U.S. 374, 387-88 (1967). The Tennessee Supreme Court has also held that “actual malice is the appropriate standard for false light claims when the plaintiff is a public official or public figure or when the claim is asserted by a private individual about a matter of public concern.” West, 53 S.W.3d at 647. Thus, Plaintiff must show that Campfield had knowledge of or acted in a reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Id.

As Sections A and B above, amply demonstrate, Plaintiff is a public official and a public figure for these purposes and the Plaintiff’s background and criminal history is a matter of public concern. Accordingly, Plaintiff must prove the element of actual malice. As noted above, Plaintiff cannot carry his burden of proving by clear and convincing evidence that Campfield acted with actual malice. This requirement, which is imposed by the federal and state constitutional guarantees of free speech and press, mandate the dismissal of Plaintiff’s false light cause of action.

E. Plaintiff Roger Byrge Cannot Establish A Claim For Outrageous Conduct.

Plaintiff also alleges in the First Amended Complaint that Campfield is liable for the tort of outrageous conduct. Under Tennessee law, there are three elements necessary for a claim of outrageous conduct: "(1) the conduct complained of must be intentional or reckless; (2) the conduct must be so outrageous that it is not tolerated by civilized society; and (3) the conduct complained of must result in serious mental injury." Bain v. Wells, 936 S.W.2d 618, 622 n. 3 (Tenn. 1997). The legal principles involving the tort of outrageous conduct are set forth in Alexander v. Inman, 825 S.W.2d 102, 104-05 (Tenn. Ct. App. 1991):

The Tennessee Supreme Court first recognized the tort of outrageous conduct Medlin v. Allied Inv. Co., 217 Tenn. 469, 478-79, 398 S.W.2d 270, 274 (1966)....

Establishing a test or legal standard for determining whether particular unseemly conduct is so intolerable as to be tortious has proved to be difficult. Bryan v. Campbell, 720 S.W.2d 62, 64 (Tenn. Ct. App. 1986). However, the test often used by our courts is the one found in Restatement (Second) of Torts § 46 comment d (1964) which states in part:

The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

The undisputed material facts do not show outrageous conduct on the part of Campfield. First, based on the parameters of the aforementioned cases, and the principle that outrageous conduct is conduct which is so extreme as to go beyond the pale of

decency, the evidence does not rise to such a level. Second, there is no evidence that Campfield acted intentionally or recklessly in publishing the statements about Plaintiff on the Blog. The undisputed material facts very clearly prove that the source of the information was Casada. Further, that Campfield believed the information about Plaintiff was truthful and accurate at the time that it was published on the Blog. Plaintiff cannot establish two of the three elements of a cause of action for outrageous conduct and Campfield is therefore entitled to summary judgment on Plaintiff's outrageous conduct claim.

F. Plaintiff Roger Byrge Cannot Establish A Claim For Interference With Prospective Relationships.

Plaintiff Roger Byrge also alleges in the First Amended Complaint that Campfield intentionally interfered with Plaintiff's prospective economic relationships and opportunities. To recover under the tort of interference with prospective economic relationships and opportunities, Plaintiff must prove the following five elements:

- (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons;
- (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general;
- (3) the defendant's intent to cause the breach or termination of the business relationship;
- (4) the defendant's improper motive or improper means; and, finally
- (5) damages resulting from the tortious interference.

Trans-Med of America v. Allstate Ins. Co., 71 S.W.3d 699, 701 (Tenn. 2002). Examples of improper interference are provided in the Trans-Med of America opinion and are:

Those means that are illegal or independently tortuous, such as violations of statutes, regulations, or recognized common-law rules, violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of fiduciary relationship

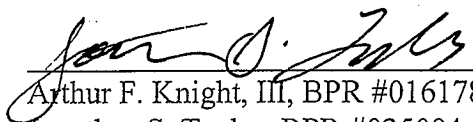
Id. at 702.

Plaintiff's claim should be dismissed against Campfield because the undisputed material facts clearly show that do not show that there was no intent by Campfield to cause the breach or termination of Plaintiff's prospective business relationships. Moreover, there is no improper motive or improper means on the part of Campfield. In fact, the affidavit of Stacey Campfield very clearly establishes that he did not have knowledge that the statements about the Plaintiff were false at the time that he published them on the Blog. Casada was the source of the statements about Plaintiff that were published on the Blog. Casada based these statements about the Plaintiff on research that had been provided to the Tennessee Republican Caucus by either Easley or Gilmer. Campfield relied on the information that was communicated to him because Casada was the Chairman of the House Republican Caucus when the statements about the Plaintiff were made. Campfield actually believed that the statements about Plaintiff's alleged criminal background were truthful and accurate at the time that they were published on the Blog. Quite simply, there is no evidence in the record that the Plaintiff can rely on to demonstrate improper motive or means on the part of Campfield. Accordingly, Campfield believes and respectfully submits that he is entitled to summary judgment on Plaintiff's claim for interference with interference with prospective relationships.

IV. CONCLUSION

For each and all of the foregoing reasons, it is respectfully submitted that Defendant Stacey Campfield is entitled to summary judgment. The pleadings, discovery responses to Defendant Glenn Casada and the Affidavit of Stacey Campfield make it clear that there is no material dispute of fact and that Stacey Campfield is entitled to summary judgment in his favor as a matter of law.

RESPECTFULLY SUBMITTED this 29th day of April, 2010.


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CERTIFICATE OF SERVICE

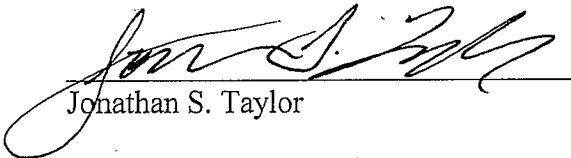
I hereby certify that I caused a copy of the foregoing document to be served upon the following parties via first-class mail, postage prepaid:

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this 19th day of April, 2010.


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