

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

NICHOLAS G. BYRON,)
)
Plaintiff,) 15-L-1133
vs.)
)
LESTER BRICKMAN, HEATHER ISRINGHAUSEN)
GVILLO and MADISON COUNTY RECORD INC.,)
Defendants.)

FILED
FEB 23 2018
CLERK OF CIRCUIT COURT #66
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

ORDER

THIS CAUSE, called on December 20, 2017, for hearing on Defendants' Motions to Dismiss. The Plaintiff appears by Attorney Bill T. Walker, Defendant Lester Brickman appears by Attorney John Gilbert. Defendant, Heather Isringhausen Gvillo and Madison County Record Inc by Attorney Kurt Reitz. The Court having reviewed the pleadings, caselaw and having heard the arguments of the parties; and the Court being otherwise fully advised in the premises finds as follows:

FACTS:

1. Lester Brickman is a law professor at Benjamin N. Cardozo School of Law located in New York, New York.
2. Professor Brinkman has written extensively on asbestos litigation which he does from New York where he works and resides.
3. In March of 2014 reporter Heather Isringhausen Gvillo contacted Professor Brinkman by telephone and requested a comment on the asbestos litigation in Madison County, Illinois.
4. Heather Isringhausen Gvillo also worked as reporter for the *Legal Newline* internet site which is owned by Defendant Madison County Record Inc.
5. In September of 2014, the *Madison County Record*, published an article entitled "Asbestos Litigation explodes under Byron's Watch".
6. In the article Professor Brickman is speaking about Nicholas J. Byron and is quoted as stating "he was corrupt as the day is long."
7. Professor Brickman asserts that Illinois has no jurisdiction over him.

I. Lack of Jurisdiction pursuant to 735 ILCS 5/2-301:

The Defendant Professor Lester Brickman alleges that he lacks the minimum contacts with Illinois to comport with due process.

A. Court Lacks General Personal Jurisdiction:

Defendant cites *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846 which;

(2) defendant's contacts are "continuous and systematic". *Goodyear*, 131 S. Ct. 2853-54 further provides that with respect to an individual defendant, general jurisdiction is based on the defendant's domicile. In this case, it is clear Professor Brickman's domicile is the State of New York and there are no facts to the contrary. This Court finds jurisdiction cannot be based on general person jurisdiction.

B. Court Lacks Specific General Personal Jurisdiction:

A court may exert specific jurisdiction over a nonresident if "the defendant has purposefully directed his activities at the forum, and the litigation results for alleged injuries that arise out of or relate to those activities. *Cardenas Mktg. Network*, 2012 IL App. 1st 111645. The Defendant Professor Brickman argues that the mere fact that plaintiff claims to have suffered injury in Illinois is insufficient to establish minimum contacts by a non-resident. *Hanson v Ahmed*, 382 Ill.App.3d 941 (2008). Defendant Professor Brickman further argues that under *McBreen v. Beech Aircraft Corp.*, 543 F.2d 26, (7th Circuit 1976), in which the Court found noteworthy that the nonresident defendant (1) did not solicit or initiate the telephone call; (2) did not know when the article was being published; and (3) did not participate or assist in the preparation of the article. Defendant Professor Brickman asserts that his merely answering a telephone call from a reporter in Illinois and commenting about the asbestos litigation in Madison County, Illinois is not sufficient as set for in *McBreen and Hanson*, he did not initiate the telephone call, did not assist in the preparing or editing the article and was not aware the article had been published by the Madison County Record until after this lawsuit was filed.

The Plaintiff contends both *Hanson and McBreen*, are distinguishable from the facts in this case. First *Hanson*, involved a motor vehicle accident where the motorist alleged he was defamed based on statements a Missouri resident made to an Allstate adjuster concerning the automobile accident during two phone calls. While in *McBreen*, a lawyer in Wichita, Kansas received one phone call from an Illinois reporter and was alleged to have made a defamatory statement. This Court concurs with Plaintiff. Had this statement been an isolated event as set forth in *Hansen and McBreen*, the Court would have sided with Defendant Brickman, however as demonstrated by the Plaintiff, Professor Brickman has a significant history of making statements to the Madison County Record Inc. or its subsidiary Legal Newslines. Rather this Court follows the ruling by the United States Supreme Court in *Calder v. Jones*, 465 U.S.783 (1984). In *Calder*, the Supreme Court noted that the allegedly libelous story concerned the California activities of a California resident, and as such California was both focal point of the story and the harm suffered. Which the United States Supreme Court found that jurisdiction was property based on the "effects" of their Florida conduct in California. In this case, Professor Brickman's statement was clearly directed at Illinois, Madison County, and at Nicholas Byron. Because Nicholas Byron's career had been centered in Illinois the Defendant knew or should have known that any injury suffered by the Plaintiff would be in Illinois. As such this court finds that Illinois has specific general personal jurisdiction over the Defendant, Professor Brickman.

C. ILLINOIS DUE PROCESS:

Defendant Professor Brickman, next alleges that per the Illinois Constitution a court may exercise jurisdiction "only when it is fair, just and reasonable to require a nonresident defendant to defend an action in Illinois. Although Professor Brickman repeatedly asserts this was merely

based on a single telephone call initiated by a reporter, this court disagrees. As outlined by the Plaintiff, Professor Brickman has made a career as an outspoken critic of asbestos litigation which includes a long history beginning in 2004 to 2014 of making statements regarding the handling of asbestos cases in Illinois and more specifically Madison County which for many years was assigned to the Plaintiff. As such this court finds it would be fair and just and reasonable to require defendant to defend in Illinois.

D. UNREASONABLE TO REQUIRE PROFESSOR BRICKMAN TO LITIGATE IN ILLINOIS:

Defendant Professor Brickman next argues that even if the Court were to conclude he had sufficient “minimum contacts” with Illinois the Plaintiff must establish that it would be reasonable to require him to litigate in Illinois. Under *Russell v. SNFA*, 2013 IL 113909 the court shall consider the following factors: “(1) the burden imposed on the defendant by requiring it to litigate in a foreign forum; (2) the forum state’s interest in resolving the dispute; (3) the plaintiff’s interest in obtaining relief; and (4) the interests of the other affected forums in the efficient judicial resolution of the dispute and advancement of substantive social policies.” On the issue of burden-imposed litigating in foreign forum, court notes the advancement of technology has limited this issue. Defendant no longer need to travel to his attorney’s office to prepare rather it can be done face to face via several internet-based communication services and as such only burden would be Defendant travel to Illinois if a trial was ultimately required. As the Defendant as noted in his Memorandum has a history of traveling including testifying before Senate Judiciary Committee and three subcommittees of the House Judiciary Committee regarding asbestos litigation such travel would not be unreasonably burdensome. This court further finds that New York has little interest in resolving whether defamatory statements were made by a law expert in New York against a resident in Illinois, while the Plaintiff has interest in obtaining relief. As such this court does not find it unreasonable to require the Defendant, Professor Brickman, to litigate in Illinois. Motion to dismiss is denied.

II. DEFENDANTS, HEATHER ISRIGNHAUSEN GVILLO AND MADISON COUNTY RECORD INC., MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-615.

A. Quote is protected by the First Amendment

Defendants, Heather Isringhausen Gvillo and Madison County Record Inc. argue that the statements are protected by the First Amendment and that the United States Supreme Court has determined that liability does not exist if (1) statements that cannot be “provable as false”; and (2) statements that “cannot reasonably be interpreted as stating facts.” *Milkovich v. Lorain Journal Co.*, 497 U.S 1 (1990). While in Illinois, “the test for determining whether a statement is protected from defamation claims under the first amendment is whether it can reasonably be interpreted as stating fact.” *Imperial Apparel, Ltd. V. Cosmo’s Designer Direct*, 227 Ill.2d 381, 398 (2008). That this test prohibits liability for “loose, figurative language.” *Id.* at 397. The Illinois Supreme Court further provided in *Imperial Apparel*, provided the following factors to guide determination whether a statement is constitutionally protected:

“(1) whether the statement has a precise and readily understood meaning, (2) whether the statement is verifiable, and (3) whether the statement’s literary or social context signals that it has factual content. The statement is evaluated from the perspective of an ordinary reader, but whether or not a statement is a factual assertion that could give

rise to a defamation claim is a question of law for the court." *Id.* at 398.

Under test set forth by the Illinois Supreme Court in *Imperial Apparel*, the court is also to determine "whether the statement's literary or social context signals that it has factual content...." 227 Ill.2d at 398. Defendant Professor Brickman was quoted stating the Plaintiff was "corrupt as the day is long." The Defendants argue that this phrase is a figurative expression and signals that quote contains opinion rather than fact. While the Plaintiff attempts to focus on the single word "corrupt". Under the first factor, this court does agree with the Plaintiff that the word "corrupt" is clearly negative in its connotation, but "corrupt" is subject to multiple meanings and interpretations. In *Coughlan v. Beck*, 2013 IL App (1st) 120891, the Court found that "what constitutes corruption or the actions of a bully will vary widely from one person to another" and although it was harsh to refer to someone as corrupt it was not actionable because "no reasonable person would believe [the statement] presented facts." However, it is the phrase "corrupt as the day is long" that is at issue and not merely the word "corrupt". A historical view of statement shows variations of the phrase "...as the day is long" back to Shakespeare, but this Court is unable to find any specific definition for the phrase "corrupt as the day is long." or any precise meaning.

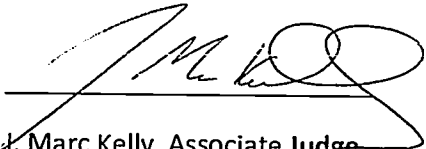
With regards to the second factor, this Court agrees with the Plaintiff that his actions are verifiable in his role as circuit judge. The actions of a circuit judge can be reviewed and verified in numerous ways. Court transcripts, docket entries, decisions and judgments all set forth a judge's reasoning for taking certain actions or making a specific decision and can be reviewed. Participants have the option to have these actions or decisions reviewed at the Appellate or Supreme Court. No evidence is presented which would give any credibility or factual basis to support the statement made by Professor Brickman. As such court concludes the statement could be verifiable.

The final factor this Court considered was whether the statement's literary or social context signals that it has factual content. Taking the phrase as a whole, this Court agrees with the Defendant that it constitutes loose and figurative speech. This Court cannot conclude that such a statement would signal to any reasonable reader that it has factual content. While the Plaintiff finds this statement offensive and this Court sympathizes with the Plaintiff it must follow the law. It is the decision of this Court, that the phrase "corrupt as the day is long" does not have a readily understood meaning and the statements literary or social context does not signals that it has factual content rather it is merely the opinion of Professor Brickman. This Court further considers that as it is a founding principal of this country's democracy that citizens may question or express their opinions for or against this country's elected officials. Although this statement, was made several years after the Plaintiff retired from years of public service, the content is clearly directed at a time frame in which the Plaintiff was serving as a Judge and as such, the mere fact the statement occurred after the Plaintiff ended his public service does not in this Court's opinion change the protections that it receives. As such this Court, grants the Defendants' Heather Irsinghausen Gvillo and Madison County Record Inc.'s motion to dismiss as statement is protected by the First Amendment.

This Court does not address the other arguments raised by the Defendants, Heather Irsinghausen Gvillo and Madison County Record Inc. pertaining to innocent construction rule, neutral reportage privilege, knowledge or reckless disregard of falsity and false light

claim as it has found statement was protected by the First Amendment. While this Court has previously, denied Defendant, Professor Brickman's, motion to dismiss on grounds of jurisdiction. This Court's ruling on Defendants, Heather Isringhausen Gvillo and Madison County Record Inc., motion to dismiss, finding that statement is protected by the First Amendment would clearly apply to Defendant Professor Brickman even though that issue has not yet been raised by said Defendant. Therefore, in the interests of judicial economy, the Court grants dismissal for Professor Brickman on grounds of statement being protected by the First Amendment as previously set forth in this order. Clerk to forward order to all parties.

ENTERED: February 18, 2018



J. Marc Kelly, Associate Judge