**Supreme Court of Texas**

**January 31, 2014**

***Finance Commission of Texas, et al. v. Valerie Norwood, et. al.,***

No. 10-0121

Case Summary written by Matt McKee, Staff Member.

Hecht, C.J., delivered the opinion of the Court.

            In this supplemental opinion, the Supreme Court of Texas considered several questions the Texas Bankers Association (TBA), along with a number of amici curiae briefs raised before the Court of Appeals in Third District of Texas.  The Court first noted that “interest,” as applied to home mortgage loans, serves to protect, not to compensate, the lender—noting their narrower definition limits only the amount of fees a lender can charge up front, not the overall amount a lender can charge.  Addressing the TBA’s first question, the court found that interest paid at closing is still considered interest.

            Moving to the second and final question the TBA raised, the court found that § 50(a)(6)(N) of the Texas Constitution precludes borrowers from closing loans under power of attorney through an attorney-in-fact when the parties execute the agreement at a location other than “the office of the lender, an attorney at law, or a title company.”  Noting this interpretation could result in confusing outcomes, the Court reasoned the provision’s purpose is to protect borrowers from coercion by providing a sense of formality that would not be present in signing such a document “around [the borrower’s] kitchen table.”  Conversely, a borrower is more likely to have second thoughts before closing a home mortgage loan in his “lender’s, lawyer’s, or title company’s office,” which is the provision’s purpose.  Addressing TBA’s argument that such a requirement ultimately places a burden upon the borrower, the Court concluded such a determination should be left within the Legislature’s—not the Court’s—purview.

***Neely v. Wilson***

No. 11-0228 (Corrected Opinion. Original filed June 28, 2013.)

Case summary written by Caleb Segrest, Staff Member.

Justice Guzman delivered the opinion of the Court, in which Justice Johnson, Justice Willett, Justice Boyd, and Justice Devine joined. Chief Justice Jefferson filed a dissenting opinion, in which Justice Green and Justice Lehrmann joined. Justice Hecht did not participate in the decision.

Dr. Neely, the plaintiff in the case, is a neurosurgeon who practiced in Austin, Texas. Between 1999 and 2002, he was the defendant in two malpractice suits. In 2003, the Texas Medical Board (Board) investigated Dr. Neely, and Dr. Neely entered into an Agreed Order (Order), which found that Dr. Neely had self-prescribed medications between 1999 and 2002 and had a prior history of hand tremors. The Board also found that Dr. Neely was subject to disciplinary action due to his “inability to practice medicine with reasonable skill and safety to patients, due to mental or physical condition” and his self-prescription of medications. The Order suspended his license, but stayed the suspension, enabling him to continue practicing medicine.

In January of 2004, KEYE-TV (KEYE) of Austin ran a report about Neely. The report referenced the malpractice suits and the Order by the Board. Soon after, Neely’s practice collapsed as a result of the broadcast, and Neely sued KEYE and other media defendants for defamation. The trial court granted summary judgment in favor of the media defendants, and the court of appeals held that under *McIlvain v. Jacobs*, 794 S.W.2d 14 (Tex. 1990), none of the statements on the broadcast was actionable as a matter of law because KEYE accurately reported third-party allegations—allegations by the Board. The court of appeals affirmed the trial court’s grant of summary judgment in favor of the media defendants.

Issue: The primary issue in the case is whether Dr. Neely raised a fact issue regarding the truth of the underlying statements of the broadcast to overcome summary judgment in favor of the media defendants.

The Court held that Dr. Neely did present sufficient evidence questioning the truth of the information in the broadcast to overcome summary judgment. The right to recover for defamation is balanced against the constitutional rights to free speech and free press. Texas uses a negligence standard when a private figure seeks defamation damages against a media defendant. A defamation plaintiff must prove that the media defendant(s): (1) published a statement; (2) that defamed the plaintiff; (3) while either acting with actual malice (if the plaintiff was a public official or public figure) or negligence (if the plaintiff was a private individual) regarding the truth of the statement. The substantial truth of statements is always a defense to defamation claims. If a broadcast taken as a whole is more damaging to the plaintiff’s reputation than a truthful broadcast would have been, the broadcast is not substantially true and is actionable. This evaluation involves looking to the “gist” of the broadcast. A broadcast that errs in small details but correctly conveys the “gist” of a story is substantially true. A broadcast’s gist or meaning is determined by how a person of ordinary intelligence would view it.

KEYE contended the trial court properly granted summary judgment because: (1) KEYE accurately reported third-party allegations, which satisfies the test for substantial truth; (2) the broadcast is privileged under the fair comment and official proceeding privileges; (3) Neely is a limited purpose public figure and there was no evidence of actual malice; (4) there was no evidence of negligence; and (5) Neely’s professional association could not maintain a defamation action. The Court addressed each argument in turn.

Regarding the first argument, the Court stated that the *McIlvain* decision, cited by KEYE as support, did not establish a third-party allegation rule. Regarding the second argument, the Court found that there were fact issues about whether the judicial/official proceedings privilege would protect parts of the broadcast. Regarding the third argument, the Court found that Dr. Neely was not a limited purpose public figure. Regarding the fourth argument, the Court found that a fact issue existed with respect to the potential negligence of the media defendants. Regarding the fifth argument, the Court stated that corporations could maintain suits for defamation.

Dr. Neely’s primary argument against summary judgment was that an issue of fact existed regarding the truth or falsity of the broadcast. Dr. Neely claimed that a person of ordinary intelligence could conclude that the gist of the broadcast was that Dr. Neely was disciplined for operating on patients while using dangerous drugs or controlled substances. The Court agreed. The Board did not discipline Dr. Neely for “taking or using” dangerous drugs, but found that the medications were “legitimately and appropriately prescribed.” Dr. Neely simply “began to refill the medication himself in lieu of scheduled visits.” Based on Dr. Neely’s evidence in response to the media defendants’ motion for summary judgment, the Court held that “there is a fact issue regarding the truth or falsity of the gist that Neely was disciplined for operating on patients while taking or using dangerous drugs or controlled substances.” The Court ultimately REVERSED the decision of the court of appeals and REMANDED the case to trial.

Justice Lehrmann, dissenting to the denial of the motion for rehearing: Justice Lehrmann’s dissent, delivered January 31, 2014 with the corrected opinion, was delivered after the original opinion delivered on June 28, 2013. Justice Lehrmann would read *McIlvain* to support the proposition that when the gist of a media defendant’s report is that allegations were made and those allegations are being investigated, proof that the allegations were in fact made and are in fact being investigated is sufficient to establish substantial truth. This view would recognize a third-party allegation rule, which the majority rejected.