

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

ISGRIGG, ROBERT L,)	
LOVE II, LEWIS M,)	
)	
Plaintiffs,)	
vs.)	
)	
COSMOS BROADCASTING CORP D/B/A)	
WAVE,)	
MOON, MICHELLE,)	
JONES, DERRICK * DISMISSED)	CAUSE NO. NA00-0024-C-D/S
9/14/00,)	
BECK, KATHY SLAUGHTER,)	
)	
Defendants.)	

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employee for the Clark County Surveyor's Office from July 1992 through December 1998. Id. ¶ 12.

Defendant Michelle Moon (Moon) was an investigative reporter for Defendant WAVE television during the time period relevant to this cause, id. ¶ 63, and Defendant Kathy Slaughter Beck (Beck) directed the WAVE news department. Compl. ¶ 9. Defendant Cosmos Broadcasting Corporation is a South Carolina corporation and the parent entity of WAVE. Pl.s' Resp. to Def.s' Asserted Stmt. of Undisputed Facts Material to Def.s' Mot. for Summ. J. ¶ 113. During the first half of 1998, while Isgrigg served as the Clark County surveyor, Defendants produced on WAVE a series of investigative pieces that focused on the Clark County Surveyor's Office and targeted Isgrigg and Love. Id. ¶ 116. The Defendants reported that Isgrigg hired and paid Love as a county employee but used Love to perform work for Isgrigg & Associates. Def.s' Ex. 1. They also reported that Isgrigg deposited in his private business account a check made out to the County Surveyor's Office. Def.s' Ex. 1. Defendants later published some of the same material on WAVE's World Wide Web pages. Id.

On February 7, 2000, Isgrigg and Love filed a complaint in this Court alleging that the contents of the telecasts and the World Wide Web pages falsely accused Plaintiffs of criminal and business misconduct. Plaintiffs' claims include defamation, negligent supervision, false light invasion of privacy and intentional infliction of emotional distress. On October 5, 2001, Defendants filed a motion for summary judgment, the motion to which we now turn.

Discussion

Summary judgment is appropriate when there are no genuine issues of material fact, leaving the moving party entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). While facts are viewed in the light most favorable to the nonmoving party, there is an affirmative burden of production on the

nonmoving party to defeat a proper summary judgment motion. Baucher v. Eastern Ind. Prod. Credit Ass'n, 906 F.2d 332, 334 (7th Cir. 1990) (following Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)). Before the Court denies summary judgment, it must be determined whether there is sufficient evidence for a jury to find a verdict in favor of the nonmoving party. Id. (following Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986)).

A public official, such as Isgrigg, who brings suit against a critic of his official conduct has the burden of proving that the critic acted with actual malice. New York Times Co. v. Sullivan, 376 U.S. 254, 283, 11 L. Ed. 2d 686, 708 (1964). Furthermore, in Gertz v. Welch, 418 U.S. 323, 41 L. Ed. 2d 789 (1974), the United States Supreme Court held that

so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual.

Id. at 347, 41 L. Ed. 2d at 809. Thus, we look to Indiana law to determine the standard of proof applicable to a private figure lodging a defamation claim.

In Journal-Gazette Co., Inc. v. Bandido's, Inc., 712 N.E.2d 446, 452 (Ind. 1999), the Indiana Supreme Court stated as follows:

Today, we expressly adopt the Aafco approach establishing an actual malice standard in matters of public or general concern for private individual plaintiffs. For nearly twenty-three years the law in Indiana has been that both private individuals and public figures must prove actual malice in order to recover in a defamation suit. As we have commented on numerous occasions, we place a high value on adherence to precedent as a primary instrument in providing the people of our state a predictable body of law. Because we find no pressing reason to change the law, we affirm Aafco to be the law in Indiana.

Our decision to uphold Aafco is also based on our strong commitment to protecting the freedom of speech and expression

provided in the First Amendment to the United States Constitution. Such commitment, we believe, should persist irrespective of the status of an alleged defamed plaintiff.

Journal-Gazette Co., 712 N.E.2d at 452.

In the present case, Love challenges statements regarding matters of general or public concern. Pl.'s Resp. to Def.s' Asserted Stmt. of Undisputed Facts Material to Def.s' Mot. for Summ. J. ¶ 117. In particular, the allegations the Defendants leveled against Love pertain to whether Love (im)properly was receiving taxpayers' dollars for hours he had (not) worked. Consequently, we need not determine whether Love properly should be classified as a public or private figure. Regardless of such classification, his burden would remain the same. He, like Isgrigg, must establish actual malice in order to prevail.

To prove actual malice, Plaintiffs must establish that the defamatory falsehoods were made "with knowledge that [they were] false or with reckless disregard of whether [they were] false or not." New York Times, 376 U.S. at 279-80, 11 L. Ed. 2 at 706. The test for reckless disregard

is not whether a reasonably prudent person would have published or would have investigated before publishing; rather, the evidence must show that the defendant in fact entertained serious doubts as to the truth of the statement but published in spite of his doubts.

Jean v. Dugan, 20 F.3d 255, 263 (7th Cir. 1994) (citing St. Amant v. Thompson, 390 U.S. 727, 731, 20 L. Ed. 2d 262, 267 (1968)). In St. Amant, the Supreme Court provided examples where recklessness might arise.

Professions of [defendant's] good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the

publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.

St. Amant, 390 U.S. at 732, 20 L. Ed. 2d at 267-68 (1968).

In the present case, Isgrigg and Love claim the record adequately demonstrates that Defendants acted with actual malice in their publication of Moon's investigative series – a series that accused Isgrigg of stealing county funds and accused Isgrigg and Love of ghost employment.² Defendants contend that Plaintiffs have failed to satisfy the burden associated with actual malice, and that such failure is fatal to Plaintiffs' lawsuit. We begin our analysis with an examination of Defendants' summary

²Under Indiana law, ghost employment is described as follows:

(a) A public servant who knowingly or intentionally:

(1) hires an employee for the governmental entity that he serves; and

(2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity;

commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under his supervision any duties not related to the operation of the governmental entity that he serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that he has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony.

...

Ind. Code § 35-44-2-4.

judgment motion as it pertains to Love.

Plaintiffs assert that Defendants had in their possession all the information they needed to learn that Love was not taking unearned money from the county. According to Plaintiffs, Defendants had information revealing that Love's former job description as first deputy no longer was valid – that is, that Love's job was not solely an office job but rather was one frequently requiring him to perform duties out of the office. Plaintiffs believe that this fact should have made clear to Defendants that his absence from time to time in the surveyor's office did not signify that he was working for Isgrigg & Associates. Plaintiffs further argue that Defendants had copies of Love's time sheets, which illustrated that Love's county work hours varied and that he often completed work for the county on weekends. According to Plaintiffs, Defendants' possession of this information establishes that Defendants either knew their reports pertaining to ghost employment were false or entertained serious doubts about the falsity of the reports.

An examination of the record reveals a missing link in Plaintiffs' evidence. First, we find nothing demonstrating that Moon knew Love's job as first deputy in the Clark County Surveyor's Office was performed largely in the field. The job descriptions Isgrigg tendered in 1993 to the Board of Commissioners of Clark County included a description of the first deputy position. Def.s' Ex. 6. Therein, the first deputy's duties – including drawing plats, answering the telephone, making copies, updating plat maps and preparing payroll – certainly appeared to require Love's presence in the surveyor's office. Id. Plaintiffs point to their copy of the same document because their copy has the following September 10, 1996 handwritten notation on it: "Bob Isgrigg told me the job d[e]scriptions

were not valid anymore (in front of David Lewis.) Positions changed June of 94.” Pl.s’ Ex. 1.³

Plaintiffs fail to explain why we should assume that the official description in Moon’s possession contained the handwritten note found on the copy Plaintiffs have tendered. Furthermore, even if Moon’s copy did have such note, the note neither reports that the duties of the first deputy in particular had changed nor explains the way in which those duties had changed.

Plaintiffs point to another job description, arguing that Defendants also had it in their possession. This job description is entitled “Job Description-Clark County Surveyor’s Office,” and does not inform its reader that it applies to the first deputy. Pl.s’ Ex. 2. In the context of this exhibit, Plaintiffs focus on the description wherein it requires the Clark County Surveyor’s Office to “[s]et corners in the County.” Plaintiffs appear to contend that this one line found amidst many other tasks was sufficient to impart to the reader that Love was in the field during much of his work day. Such contention is meritless; a reasonable person would not necessarily arrive at such conclusion. Additionally, a reasonable person could fail to understand that “[s]et[ting] corners in the County” requires the worker to be in the field. We reject Plaintiffs’ allegations that Defendants were reckless in failing to recognize that Love’s job with the county was performed away from the office.

Plaintiffs also allege that Moon had Love’s time sheets and that those time sheets prove that Love gave the county the requisite number of hours per week. Pl.s’ Ex. 9. Love explains that his time sheets clearly note that there were variances not only in the hours he worked during the day but also in the

³We believe the copy is from the files of Daniel E. Moore, attorney for the Clark County Board of Commissioners, but we cannot be certain. The source of such document is unnecessary for today’s decision.

days he worked each week. For example, he often worked during hours before or after the typical 8:30 to 4:30 workday. And he often performed county work on Saturdays or Sundays. Plaintiffs argue that Moon only needed to refer to Love's time sheets, make the simple calculations of his hours and determine that Love spent the appropriate amount of time each week doing county work.

Although it is true that Love's time sheets report that the county did not pay him for any unearned hours, Love's burden in demonstrating actual malice cannot be satisfied so easily. In order to survive Defendants' motion for summary judgment, Love must present evidence from which a "reasonable jury might find that actual malice ha[s] been shown with convincing clarity." Jean v. Dugan, 20 F.3d 255, 263 (7th Cir. 1994)

(citation omitted). A consideration of these time sheets in tandem with other evidence leads to the inescapable conclusion that a reasonable jury could not find actual malice on the part of Defendant(s).

We explain: if Moon had these time sheets in her possession and if she had read them and done the calculation, actual malice still would not exist. Moon's investigation of Plaintiffs gave her sufficient reason to question the hours logged on the time sheets. Her investigation included interviews with Krista Helbig (Helbig), a former employee of the Clark County Surveyor's Office, who told Moon that Plaintiffs were committing ghost employment. Id. ¶ 5. Moon also interviewed Keith Holz (Holz), another former employee of the County Surveyor's Office. Id. ¶ 12. According to Holz, while he was first deputy under Isgrigg in 1991, "at the demand of Bob Isgrigg I spent the majority of my day doing the work of Bob Isgrigg & Associates, Bob Isgrigg's private surveying firm." Def.s' Ex. 28, Holz' Aff. ¶ 6.

Plaintiffs contend that Helbig and Holz were "disgruntled ex-employees," Pl.s' Response to Def.s'

Asserted Stmt. of Undisputed Facts Material to Def.s' Mot. for Summ. J. ¶ 76, and appear to believe that this alleged fact renders Moon's reliance on their reports improper. But Helbig and Holz' status as former employees – even disgruntled former employees – does not render Moon reckless for using their statements in her investigative series. In Jean v. Dugan, the court considered the defendant's reliance on an informant:

While there may have been “reasons to doubt the veracity of the informant or the accuracy of his reports,” (citation omitted), the charges against Jean were neither anonymous nor unverified.

Jean, 20 F.3d at 264. The court affirmed the district court's grant of summary judgment for defendant.

In the present case, Helbig and Holz openly spoke with Moon. While Holz did not wish to be identified in the report, Moon clearly knew his identity. Def.s' Ex. 28, Holz' Aff. ¶ 7. Helbig spoke to Moon on camera, telling her that Love's presence in the office was sporadic at best. Def.s' Ex. 1. Furthermore, Moon's investigation did not consist solely of her interviews with Helbig and Holz. Through Moon's investigation, she learned that the Indiana State Board of Accounts had audited the Clark County Surveyor's Office in 1994. Def.s' Ex. 14; Def.s' Ex. 1. The audit revealed that

[d]uring 1994 the County Surveyor did not maintain detailed time records of hours worked by the Deputy Surveyor.

Mr. Lewis M.

Love III, Deputy Surveyor, stated that he currently works for the County as well as for Isgrigg Surveying Company, a private business. Mr. Love indicated that his duties are performed for both positions on a daily basis and that a separation of hours worked for each job was not possible. The County Surveyor confirmed that duties were performed for both the County and his private business by the Deputy Surveyor and that time records are not maintained for time worked on County business.

Def.s' Ex. 14. As a result of the audit, Isgrigg was advised that Love must maintain detailed time records. Id. The State Board of Accounts warned Plaintiffs that “[f]ailure to keep an accurate record of hours worked as a County employee may result in the employee being asked to refund this pay to the County.” Id. Additionally, as a part of Moon’s investigative efforts, she attempted to interview Love and Isgrigg on camera; neither consented to an on-camera interview.

A review of the record demonstrates that Plaintiffs are unable to satisfy their burden of proving that Defendants either knew of the falsity of their allegations against Love or acted with reckless disregard of their falsity. Moon had the report of Helbig that Love did not work regularly for the county; she had the testimony from Holz that in 1991 Isgrigg had paid him a county salary but used him for his private business; and she had a state auditor’s report stating that Love’s time records in 1994 were insufficient in that he had failed to separate private work hours from public work hours. The only piece of evidence Moon had potentially suggesting her allegations about Love were erroneous was Love’s self-reported time sheets, weak evidence in light of the events unfolding at the time. Finally, Love denied Moon’s request for on-camera comments. While Moon may have better served the public by agreeing to an off-camera interview with Isgrigg and/or Love, an interview Isgrigg reportedly requested, we cannot frame Moon’s overall conduct as reckless.

Love further complains that in producing her news segments about his alleged ghost employment, Moon inaccurately reported several details. Specifically, Love maintains that Moon (1) incorrectly reported that she filmed him at a Big Foot when he was supposed to be at the County Surveyor’s Office (according to Love, the footage was filmed before the work day began); and (2) incorrectly reported that Love was being paid by the county on January 23, 1998, when he was at Isgrigg’s

probation hearing⁴ (according to Love, he actually had taken a vacation day).

We assume for purposes of this entry that Love's contentions are correct. Nevertheless, such assumption does not carry the day for Love. Love's task is not to prove that Moon's reports were inaccurate. As we earlier found, Love's burden is to demonstrate that the Defendants either knew the reports were false or entertained serious doubts about the truth of their reports. The record falls short of showing that Defendants had serious doubts about the content of their reports. To the contrary, we have found they had reason to believe that Love may not have been working the requisite number of hours for the county. Moon reported this belief to her viewers. As visuals for her report, Moon filmed Love in locations other than the County Surveyor's Office. Even if Moon did capture Love on film during one of his vacation days and improperly reported to her viewers that Love was being paid regular hours by the county, at most this shows that Love erred. It does not show that she recklessly disregarded the truth. Nothing Love has submitted persuades us that Defendants actually doubted the thrust of their reports. Footage shot of Love before 8:30 a.m. and used as a visual to depict Defendants' belief that Love was not giving the county the hours for which he was paid does not establish actual malice.

Next, we consider Love's argument that Defendants incorrectly reported that he took WAVE to court to try and halt publication of the story. According to Love, he did not take Defendants to court; rather, he secured an emergency protective order against Moon. Although the record does illustrate

⁴The Indiana State Board of Registration for Land Surveyors (Board) had placed Isgrigg on probation effective May 1, 1996 for failure to follow Indiana's "minimum standards for the competent practice of land surveying." Def.s' Ex. 9. As a result of the January 23, 1998 hearing, the Board withdrew Isgrigg's probation. Def.s' Ex. 10.

that, as Love contends, he secured a emergency protection order against Moon only, this does not render Defendants' challenged statement false. Moon was an employee of WAVE, and she followed Love in the course of her duties in order to investigate his county employment. When Love secured the emergency protective order against Moon, his act reasonably could be construed as Defendants reported it – an effort by Love to put a damper on the Defendants' series. For this reason, we reject Love's attempt to classify Defendants' report as false.

In sum, Love is unable to meet his burden of establishing actual malice with clear and convincing evidence. Thus, we grant Defendants' summary judgment motion to the extent it seeks judgment on Love's defamation claim. We turn now to consider Defendants' motion as it pertains to Plaintiff Isgrigg.

Isgrigg asserts that Defendants defamed him when they reported that (1) he deposited in his private business account a \$930 check intended for the county; (2) he committed ghost employment related to Love; (3) he took WAVE to court to halt publication of the investigative series; and (4) he refused to be interviewed by Moon. For the reasons we discussed supra, Isgrigg cannot succeed in the arguments related to his second and third assertions; Plaintiffs have submitted no evidence of actual malice in these areas. We proceed to consider Isgrigg's allegation that Defendants defamed him when they erroneously reported that he had deposited into his private business account a \$930 check meant for the county.

Preliminarily, we note that Plaintiffs' brief contains many allegations for which they provide no citation to the record. Because Plaintiffs' brief contains no citations, we have examined Plaintiffs' Separate Statement of Additional Material Facts for support of their argument. Therein, Plaintiffs cite

to a May 15, 1993 letter from Philip O. Sheridan (Sheridan), a representative of a company named TransAmerica, to the Clark County surveyor asking Isgrigg for a complete set of Clark County maps. Pl.s' Ex. 15. He enclosed in his letter a check for \$930 to cover the cost of his request. Id. According to Isgrigg, the Clark County Surveyor's Office "did not have the manpower or budget to complete the task." Isgrigg Aff. ¶ 4. Isgrigg also avers that in such situations, he or a member of his staff would explain the county's inability to fill the request and then would "tr[y] to refer the work to a private company." Id. Isgrigg asserts that because the County Surveyor's Office could not fill TransAmerica's request, representatives from Bob Isgrigg & Associates did so, using his private company's time and supplies. In fact, Isgrigg avers that his business actually lost money on the job. Isgrigg Aff. ¶ 6.

Isgrigg claims that Defendants had evidence in their possession demonstrating that the Clark County Surveyor's Office could not accommodate large copy requests and, thus, that they had evidence he did not wrongly take TransAmerica's check. According to Plaintiffs, Moon received a copy of a May 18, 1992 letter Isgrigg had written to Etak Navigation (Etak) explaining to Etak that the County Surveyor's Office was unable to fulfill its map request. Isgrigg Aff. ¶ 5; Pl.s' Ex. 13; Pl.s' Separate Stmt. of Add'l Material Facts ¶¶ 141-43. Isgrigg explained to Etak that the job would deplete his county office funds and that Etak's payment for the maps would not be directed to the County Surveyor's Office but rather would be placed in the Clark County general fund. Isgrigg Aff. ¶ 3; Pl.s' Ex. 13. Isgrigg stated in the letter that he was returning Etak's check with his letter. Pl.s' Ex. 13. Plaintiffs further state that WAVE had in its file a copy of Isgrigg's June 19, 1996 letter to Pinnacle Data Company (Pinnacle), wherein Isgrigg similarly returned Pinnacle's check and informed Pinnacle he did not have available staff to fill

the company's order. Id.; Pl.s' Ex. 14.

These letters appear to be Plaintiffs' only support for their argument that Moon "knew" that the Clark County Surveyor's Office could not handle TransAmerica's copy request and, therefore, wrongly reported that Isgrigg had misappropriated the TransAmerica check. We find, however, that Moon's possession of these documents alone is insufficient to demonstrate actual malice. First, Plaintiffs have not proffered evidence suggesting that Moon had read Isgrigg's letters. Additionally, even if Moon had read them, the letters refer to two other copying situations; they do not address TransAmerica's request. Moon could have examined the letters to Etak and Pinnacle and still believed that something was amiss in the context of the check from TransAmerica.

Indeed, Moon investigated the circumstances surrounding the TransAmerica check. She read a letter from county employee Melissa Love Fischer, written on official county stationery, asking TransAmerica to add Isgrigg as a payee on the check from TransAmerica originally made out to the Clark County Surveyor. Def.s' Ex. 25, Moon Aff. ¶ 15. Moon thereafter contacted Sheridan of TransAmerica

who informed her that the company had arranged with Clark County to have copies of plat maps made, and that the \$930 check made out to Bob Isgrigg, Clark County Surveyor by TransAmerica was intended to be deposited into county funds.

[Moon] learned from Phillip Sheridan that TransAmerica's cancelled check had been endorsed by Bob Isgrigg & Associates.

[Moon] learned from Phillip Sheridan that the actual check written by TransAmerica had been subpoenaed by the Federal Bureau of Investigation[].

Def.'s Ex. 25, Moon Aff. ¶¶ 16-18. Moon memorialized her conversation with Sheridan, and her

notes support her affidavit testimony. See Def.s' Ex. 22.

Plaintiffs "controvert" Defendants' statement that the TransAmerica "check was made out to 'Clark County Surveyor, Bob Isgrigg' but was deposited into the account of Bob Isgrigg & Associates." Pl.s' Resp. to Def.s' Asserted Stmt. of Undisputed Facts Material to Def.s' Mot. for Summ. J. ¶ 58.

According to Plaintiffs, Defendants' statement is misleading. Plaintiffs first explain that Isgrigg's private employees performed the work for TransAmerica. Plaintiffs then note that the check TransAmerica had sent for payment of the copy request "was made out to 'Clark County Surveyor.'" Id.

Consequently, Plaintiffs aver,

Isgrigg had Melissa Love-Fisher, his deputy, return the check to Transamerica with instructions for Transamerica to add Bob Isgrigg's name to the check and then to return it. After Transamerica added Bob Isgrigg's name as a payee, the check was deposited to Bob Isgrigg's account.

Id.

We assume the truth of Plaintiffs' statements for purposes of this entry. Nonetheless, such statements do not satisfy Plaintiffs' burden of proving actual malice. Although Plaintiffs have explained the sequence of events as they actually occurred, Plaintiffs have done nothing to demonstrate that Defendants were aware or should have been aware that Isgrigg's deposit of the TransAmerica check into his private business account was proper. Indeed, Moon's contemporaneous notes from her conversation with Sheridan indicate that Sheridan did not believe he had received a subsequent letter from the Clark County Surveyor's Office asking TransAmerica to add Isgrigg's name to the check. Def.s' Ex. 22. Without evidence clearly establishing that Defendants knew or should have known what truly had transpired with the TransAmerica check, Plaintiffs cannot prevail in their defamation claim.

Lastly, Isgrigg attempts to establish actual malice by asserting that the Defendants incorrectly broadcasted that Isgrigg refused Moon's request for an interview when, in reality, he only refused Moon's request for an on-camera interview. Isgrigg states that he agreed to participate in an interview as long as it was not videotaped. Isgrigg seems to press such assertion in his attempt to prove that Defendants fabricated the material they published and, thereby, were malicious. Pl.s' Resp. Br. at 21. But we already have determined that Plaintiffs have failed to prove that actual malice fostered Defendants' statements pertaining to ghost employment and theft. Isgrigg's allegation here does not alter that decision.

Plaintiffs' brief leaves us uncertain whether Isgrigg is arguing that Defendants' statement regarding his refusal to be interviewed is defamatory in and of itself. Although Plaintiffs classify such statement as "defamatory" at one point in their brief, Pl.s' Resp. Br. at 3, they provide no argument in support of such bare conclusion. Moreover, in the Complaint, Isgrigg's defamation claims target Defendants' allegations related to "criminal conduct and occupational and trade misconduct." Nevertheless, we address this issue in the event that Isgrigg would attempt to rely solely on this particular statement in pursuit of his defamation claim.

It is true that Moon reported Isgrigg refused to be interviewed. Def.s' Ex. 1. She did not clarify that he refused to participate only in an on-camera interview. Id. However, the record demonstrates that in February 1998 Isgrigg did refuse to grant Defendants any type of interview. Def.s' Ex. 30. Furthermore, Isgrigg remained silent when Moon approached him on-camera for comment. Def.s' Ex. 1. Lastly, as Defendants point out, television is a visual medium. Because Isgrigg's proposed interview with Defendants was hinged on his terms, it was not the interview Defendants sought. For these

reasons, we reject Isgrigg's attempt to classify as false Moon's statement that he refused to be interviewed.

In sum, we find that Plaintiffs have not satisfied their burden of demonstrating actual malice, and we, thus, grant Defendants' motion for summary judgment to the extent it seeks judgment on Plaintiffs' defamation claims. Next, we turn briefly to address Plaintiffs' claims of false light invasion of privacy, intentional infliction of emotional distress and negligent supervision.

Citing Hustler Magazine v. Falwell, 485 U.S. 46, 56, 99 L. Ed. 2d 41, 52 (1988) and Branham v. Celadon Trucking Servs., Inc., 744 N.E.2d 514 (Ind. Ct. App. 2001), Defendants argue that an absence of actual malice precludes Plaintiffs' claims of false light invasion of privacy and intentional infliction of emotional distress. See Hustler Magazine, 485 U.S. at 56, 99 L. Ed. 2d at 52 (holding that "public . . . officials may not recover for the tort of intentional infliction of emotional distress . . . without showing . . . that the publication . . . was made with 'actual malice.'"); Branham, 744 N.E.2d at 524 (citation omitted) (holding that this tort requires plaintiff to demonstrate that defendant "'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.'"). Plaintiffs agree that the applicable standard is actual malice, but argue that they have satisfied this standard. Such argument, however, necessarily crumbles under today's decision. Additionally, the Court found in its Entry of May 7, 2001, that Plaintiffs' negligent supervision claims against WAVE was only viable to the extent Plaintiffs later established actual malice against other of the Defendants. Plaintiffs failure to do so undermines their claims of negligent supervision, false light invasion of privacy and intentional infliction of emotional distress.

In conclusion, we find that Plaintiffs have failed to establish that the Defendants' acted with actual

malice. Such finding dooms Plaintiffs' Complaint, and we, therefore, grant Defendants' motion for summary judgment in all respects.

Dated this ____ day of February 2002.

Sarah Evans Barker, Judge
United States District Court
Southern District of Indiana

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