

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

C. NAPOLEON BARNWELL,

Plaintiff

vs.

ANKUR PANKAJ TRIVEDI,

Defendant

CIVIL ACTION FILE NO.: 21-A-08521-1

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

The above-styled civil action came before this Court on Defendant's Motion to Dismiss on February 2, 2022. After considering the pleadings, the entire record available to this Court, and arguments of counsel, this Court **GRANTS** Defendant's Motion. In support of this holding, this Court enters the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

The Defendant and the Plaintiff are attorneys of record in an unrelated lawsuit filed in the case of Johnnie Moore vs. Charles Collins, State Court of DeKalb County, CAFN: 20A80118 before the Honorable Judge Michael Jacobs. Mr. Barnwell represents the Plaintiff in that matter and Mr. Trivedi and his law firm represent the Defendant in that matter. In an unrelated case, Mr. Trivedi deposed a Plaintiff and an employee of Mr. Barnwell by the name of Renee E. Taylor defended it, appearing as attorney of record on behalf of that Plaintiff. Based upon the behavior of Ms. Taylor, Mr. Trivedi became suspicious of whether Ms. Taylor were actually an attorney licensed to practice law in this state. As such, the Defendant conducted an investigation into this matter and determined that she was not. The Defendant then secured at least five other deposition transcripts in other matters that Ms. Taylor conducted, including the deposition secured in the

Moore case. Those transcripts were then forwarded to the State Bar of Georgia with a complaint alleging that Mr. Barnwell violated the Georgia Rules of Professional Conduct by allowing Ms. Taylor to practice law in this state without a license. The Bar then opened an investigation, appointed a special master to consider the charges, and the investigation currently remains open and pending.

The Defendant then filed a motion in the Moore matter and asked the trial court to sanction the Plaintiff for having directed his employee to practice law without a license and for holding herself out as an attorney. The trial court transcript was provided to this Court, and it indicates a finding by that court that the Plaintiff violated the Georgia Rules of Professional Conduct by directing Ms. Taylor to practice law without a license. The trial court judge stated on the record that he would be submitting his own Bar complaint for the infraction he had just been informed of.

The Plaintiff concedes that Ms. Taylor did in fact practice law in this state and that she did appear as counsel at various depositions. He contends, however, that Ms. Taylor was in fact authorized to practice law in this state in the context in which she did. The Plaintiff has not submitted any evidence to this Court, however, that she was in fact so authorized. This Court therefore finds there is insufficient evidence before it to enter a finding that the Defendant's allegations were false or malicious.

The Plaintiff has filed the instant action alleging libel and slander arising out of these facts. Specifically, his Complaint alleges three counts of defamation: (1) libel as the result of setting out the facts in the Bar Complaint, (2) libel as the result of setting out the facts in the motion for sanctions in the Moore matter, and (3) slander as the result of informing "other lawyers" verbally of the facts of this matter. The only "other lawyers" that were identified by the Plaintiff that were

made aware of these allegations were members of the Defendant's law firm who either had worked directly on the Moore case or who were representing the Defendant in this action. This Court was not provided any evidence that Defendant discussed these matters with the general public. This Court also finds that the content of these proceedings and all the allegations that have been made are matters of public record as same have been filed with the clerks of Dekalb County and Gwinnett County and the hearings in these matters have been held in open court.

Mr. Barnwell initially attempted service of this suit upon Mr. Trivedi by hiring an independent process server to complete service. That process server entered an affidavit indicating proper service upon the Defendant, but the Defendant contested same, providing this Court proof that service was not properly perfected upon him, but instead the suit papers were strewn about his front porch while he was away from home. Additionally, this Court determined that the independent process server hired by Plaintiff was not authorized to serve suit papers in this county and it therefore entered onto this Court's docket that service was improper. The Plaintiff did eventually obtain proper service by having the suit served by the Gwinnett Sheriff's Office.

The Defendant answered the Complaint and timely moved for dismissal, alleging that this suit is barred due to various privileges and the Georgia Anti-SLAPP statute. The Plaintiff responded to the Defendant's motion, maintaining his right to bring this suit against Defendant for all three grounds alleged in his Complaint enumerated above. During oral argument, however, Plaintiff abandoned his claims for libel under Counts 1 and 2, conceding those claims were not sustainable and were protected speech under applicable Georgia law. This Court therefore finds that Counts 1 and 2 are abandoned.

II. CONCLUSIONS OF LAW

Under O.C.G.A. § 51-5-8:

“All charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the relief sought, whether legally sufficient to obtain it or not, are privileged. However false and malicious such charges, allegations, and averments may be, they shall not be deemed libelous.”

Based upon the clear dictates of this absolute privilege, any statements made to the State Bar or made in the course of the regular pleadings in a court of this state are protected speech as a matter of law. Accordingly, it is the holding of this Court that all claims within Plaintiff’s Complaint under Counts 1 and 2 as enumerated above are dismissed. It is also the finding of this Court that Plaintiff maintained Counts 1 and 2 in his brief and did not withdraw them until after defense counsel presented his oral argument for dismissal.

The Georgia anti-SLAPP statute found at O.C.G.A. § 9-11-11.1 provides the legislative intent of this statute at subsection (a) and directs this Court to construe the statute broadly in order to protect the rights of citizens of this state to participate in matters of private and public significance. This statute is specifically designed to protect the free speech rights of the citizens of this state and not chill that right through abuse of the judicial process.

This Court holds that the Defendant’s filing of the Bar complaint and his request for sanctions were made in furtherance of a matter of public and private significance. The allegations submitted implicate violations of the rules governing members of the State Bar Georgia and of the criminal laws of this state. Ga. Rules of Professional Conduct, Rule 5.5(a) (“A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.”); O.C.G.A. § 15-19-51 (unauthorized practice of law forbidden). This Court also holds that the filing of the Bar grievance by Defendant was specifically authorized and encouraged by the State Bar of Georgia. Georgia Rules of Professional Conduct, Rule 8.3(a). This Court further holds that the anti-SLAPP statute specifically protects

parties from suits arising out of Bar complaints. Jefferson v. Stripling, 316 Ga. App. 197, 200 (2012) , (“[I]t is clear that issues before the State Bar involving conduct of attorneys are ‘official proceedings authorized by law’ and, therefore covered by the Anti-SLAPP statute.”).

As to the single remaining claim of slander that Plaintiff maintains, this Court is to consider the viability of the pleadings and the affidavits upon which the liability is based and then determine if the Plaintiff has established there is a probability he will prevail on his claim. O.C.G.A. §§ 9-11-11.1(b)(1) and (2), and RCO Legal, P.S., Inc. v Johnson, 347 Ga. App. 661 (2018). This Court finds that the only evidence before it of any potentially defamatory statements is contained in the State Bar Complaint and the statements made in connection with the Moore case, but this Court has already held that those statements are not actionable.

This Court finds there is no evidence in the record to indicate that the Defendant discussed this matter with the public at large or that anything Defendant might have said was not already a matter of public record. This Court further finds that any comments Defendant made to “other attorneys” was limited to comments made to members of his own firm either in his firm’s defense of the Moore matter or to his own attorney in this matter, neither of which would be actionable in a defamation case. This Court therefore holds, as a matter of law, that the Plaintiff has not established that there is a probability he will prevail on this claim.

This Court also finds that there was no evidence submitted that the Defendant’s allegations were in bad faith or were malicious. Accordingly, this Court holds that the Defendant’s statements are further protected against civil liability under O.C.G.A. §§ 51-5-7(1), (2) and (4).

This Court further holds that this suit was filed by Plaintiff in retaliation for the Bar complaint filed against him and for the motions for sanctions filed against him. This holding is based upon fact that service was attempted in an improper and harassing manner, that

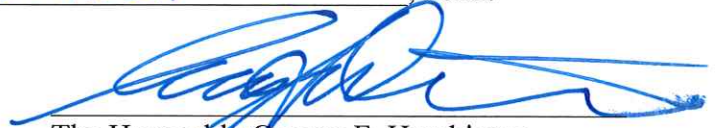
unsustainable claims were made in this suit that were abandoned only when challenged, and that no evidence of any type was submitted to this Court to support the generalized claim that Plaintiff was disparaged to “other lawyers.”

Accordingly, the Plaintiff’s suit is DISMISSED WITH PREJUDICE IN ITS ENTIRETY.

The issue of attorney’s fees will be addressed at a later date.

The Plaintiff’s Motion for Summary Judgment shall not be addressed based on the Court ruling herein.

SO ORDERED THIS 17 DAY OF MARCH, 2022.



The Honorable George F. Hutchinson
Chief Judge
Superior Court of Gwinnett County

Copies to:

All counsel of record and pro se parties