

IN THE SUPREME COURT OF OHIO

Robert E. Murray, et al., : Case No. 15-0127

Appellants, :

v. : On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District

The Chagrin Valley Publishing Co., et al. : Court of Appeals

Appellees. : Case No. CA-14-101394

APPELLEES PATRIOTS FOR CHANGE MEMORANDUM OPPOSING SUPREME COURT JURISDICTION

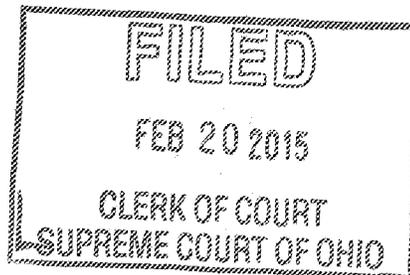
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**EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST**

The law from this Court on Defamation and Invasion of Privacy is not only clear, but it was correctly applied by the Trial Court and Court of Appeals, below, in this case. That law is part of well-settled jurisprudence that has consistently protected First Amendment rights under the U.S. and Ohio Constitutions: the same rights exercised by Defendant-Appellees, including Patriots for Change [“Patriots”], at the December 17, 2012 Protest, that were the subject of the underlying claims. As a result, Plaintiffs-Appellants, Robert E. Murray, Murray Energy Corporation, American Energy Corporation, and The Ohio Valley Coal Company [collectively “Appellants”], fail to present any propositions of law that are of public or great general interest.

On or about December 17, 2013, some 15 members of Patriots for Change also participated in a peaceful, municipally sanctioned and permitted protest in front of Murray Energy Corporation. Such protest was part of a long tradition of political debate in America, freely pursued under the First Amendment of the U.S. and Ohio Constitutions. Furthermore, such conduct has received longstanding protection from this Court and the United States Supreme Court. This protection extends to lawsuits strategically aimed at limiting public participation, such as the defamation and invasion of privacy claims leveled by Appellants in this case. *See, e.g., St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed. 262 (1968) (“reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” (emphasis added)).

The First Amendment provides that “Congress shall make no law* * *abridging the freedom of speech, or the press* * *.” This “constitutional safeguard...was fashioned to assure

unfettered interchange of ideas for bringing about of political and social changes desired by the people.” *New York Times Co. v. Sullivan* (1964), 376 U.S. 476 (quoting *Roth v. United States* (1957), 354 U.S. 476. These Constitutional privileges extend to laws that seek to impose civil liability for speech that falls within the protections of the First Amendment. *Id.* At 277. The only recognized exception to this protection as respects a Public Figure like Robert E. Murray and his companies (a fact conceded by Appellants), is demonstration of actual malice. The U.S. Supreme Court has defined malice as publication of a factual assertion “with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times* at 280.

This high standard for demonstrating actual malice is firmly established by this Court and does not present a question of public or great general interest. As this Court stated in *Scott v. News-Herald* (1986), 25 Ohio St.3d 243:

“Since reckless disregard is not measured by lack of reasonable belief or of ordinary care, even evidence of negligence in failing to investigate facts is insufficient to establish actual malice. Rather, since ‘erroneous 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,” * * * ‘ (*New York Times*, supra, at pages 271-72), ‘[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of the publication.’”

Id. At 248 (quoting *Dupler* (1980), 64 Ohio St.2d at 119, quoting *St. Amant v. Thompson* (1968), 390 U.S. 727. There is no evidence that Patriots entertained “serious doubts” about the statements made at the Protest, or at any other time. As a result, Appellants failed to meet the appropriate legal standards for their defamation and false-light invasion of privacy claims, in the proceedings below.

More significantly for the questions presented here, Appellants’ failure(s) to meet the actual malice standard for any statements made by Patriots or the other Defendants/Appellees, do not present issues of public or great general interest. Clear law was applied to straight forward

facts, and the law of Ohio as well as the U.S. Supreme Court is well-settled in this area. The 8th District Court of Appeals in its December 11, 2014 *Journal Entry and Opinion* thus noted:

“{¶36} Patriots for Change twice emailed its members a digital newsletter and included similar statements in its online calendar advising where the protest against Murray Energy was scheduled to take place. These all included similar language. Two statements are addressed in appellants’ brief. They argue that statements claiming Murray is known for violating environmental regulations and that he fired employees to make a political statement are actionable statements.

{¶37} As addressed above, whether Murray fired employees in order to make a political statement is an opinion and not a proper subject for a claim of defamation. The other statement is also addressed above. Appellants claim Patriots for Change did no investigation of whether appellants were known for violating safety and environmental regulations but wholly relied on statements made by a few members. Patriots for Change counters that it possessed significant information based on widely publicized media accounts supporting its statements. A significant history of safety and environmental violations appears in the record. As found above, no malice is present in this record.”

December 11, 2014 Journal and Entry, 8th Dist. CA No. 101394.

Similarly, Appellants make no showing that their claims of invasion of privacy by placing Murray and his companies in a false light, possessed merit or otherwise present questions of public or great general interest. This Court has indeed recognized the tort of false-light invasion of privacy in *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451. That tort requires evidence of untruthful statements commenting on private matters that placed Appellants in false light that would be highly offense to a reasonable person. Appellants failed to meet that standard, as the matters addressed in statements by Patriots and/or Defendants/Appellees Chagrin Valley Times, et al., “were substantially true or protected opinion, and there is no showing they were made with reckless disregard as to the falsity of the statements or that they painted appellants in a false light rather than a light merely contrary to Murray’s public narrative.”

December 11, 2014 Journal and Entry, 8th Dist. CA No. 101394, ¶39.

Appellants confuse the issue of whether the law in this area needs to be further addressed by this Honorable Court, and their evidentiary burden on the record in these proceedings. Simply because Appellants failed to demonstrate that Patriots committed the tort of false-light invasion of privacy, does not imply that the law of this tort needs further clarification or refinement. The law is well-settled and Appellants failed to meet the essential elements of this claim.

In fact, the only question of general or great public interest that could possibly arise in this case, is one for consideration by the Ohio General Assembly to enact laws to protect against lawsuits aimed at chilling the free speech of protestors like the Patriots. As eloquently stated by the 8th District Court of Appeals in its December 11, 2014 *Journal Entry and Opinion*:

“{¶40} The articles and statements appellants attached to their complaint are protected First Amendment speech or statements published without actual malice. This case illustrates the need for Ohio to join the majority of states in this country that have enacted statutes that provide for quick relief from suits aimed at chilling protected speech. These suits, referred to as strategic lawsuits against public participation (“SLAPP”), can be devastating to individual defendants or small news organizations and act to chill criticism and debate. The fact that the Chagrin Valley Times website has been scrubbed of all mention of Murray or this protest is an example of the chilling effects this has. Many states provide that plaintiffs pay the attorneys fees of successful defendants and for abbreviated disposition of cases. In this era of decentralized journalism where the internet has empowered individuals with broad reach, society must balance competing privacy interests with freedom of speech. Given Ohio’s particularly strong desire to protect individual speech, as embodied in its Constitution, Ohio should adopt an anti-SLAPP statute to discourage punitive litigation designed to chill constitutionally protected speech.”

Id. While Patriots recognizes such legislation is obviously the prerogative of Ohio’s General Assembly, the statements above do reflect the valued place free speech has in our American society. Correspondingly, it is necessary to limit overreaching by large corporations and wealthy individuals who disagree with political views of common citizen groups like Patriots for Change,

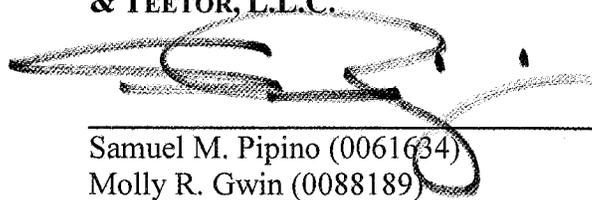
by imposing clear and appropriate standards for defamation and false-light invasion of privacy claims.

CONCLUSION

Those standards have been fully and properly articulated in decisions by the U.S. Supreme Court and this Honorable Court. Accordingly, no questions of great general or public interest have been presented by Appellants, and the request for jurisdiction should be DENIED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent, via regular U.S. Mail, postage prepaid, this 20th day of February 2015 to the following:

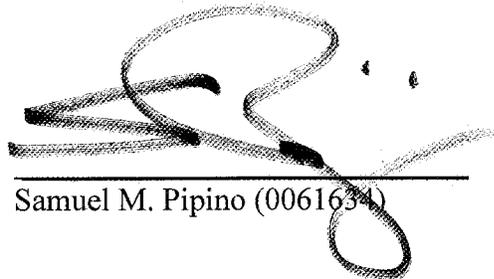
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