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New Jersey State Court Imposes Sanctions Against Counsel for Pursuing Frivolous Defamation Claims

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A pair of recent decisions from a New Jersey trial court highlights the state's strong legal protections for freedom of speech and the press. In [Deeney v. The Seawave Corporation](#), No. CPM-L-414-21 (N.J. Super. Sept. 1, 2022), the trial court not only dismissed defamation claims against the publisher of *The Cape May County Herald* on fair report privilege and actual malice pleading grounds, but also imposed sanctions against the plaintiffs' lawyer for bringing frivolous claims.

Background

The lawsuit arose from an article published by the *Herald* in January 2021 about a proposal by the Mayor of Avalon to reorganize the beach town's Department of Public Works. The article reported that the reorganization was a response to allegations that a Public Works employee named William Deeney had engaged in anti-Semitic conduct in his role as a supervisor. The accuser, Public Works employee Nathan Morey, had filed a discrimination lawsuit against the Borough of Avalon, and the article outlined Morey's allegations and the Borough's response.

In October 2021, Deeney and his wife filed a lawsuit in New Jersey Superior Court on behalf of themselves and their minor daughter against the *Herald* and two of its journalists, as well as Morey. The Deeneys asserted claims for defamation, false light invasion of privacy, and negligent infliction of emotional distress against the *Herald* defendants. Among other things, they alleged that the article's mention of accusations of anti-Semitism against Deeney had defamed his wife and daughter, even though there was no reference to either of them in the article.

Shortly after the summons was served, counsel for the *Herald* defendants sent a safe harbor letter to the plaintiffs' counsel providing notice of their intent to pursue sanctions if the frivolous claims were not withdrawn. The letter stated that the article was clearly protected by New Jersey's fair report privilege – indeed, plaintiffs themselves alleged that the article simply “repeats allegations made in a legal action.” The letter also explained that plaintiffs could not establish actual malice, as New Jersey law requires even private-figure plaintiffs to do for publications relating to matters of public concern. After the plaintiffs refused to withdraw their claims, the *Herald* defendants filed a motion to dismiss and a separate motion for sanctions against plaintiffs' counsel.

Motion to Dismiss

On September 1, 2022, the Honorable James H. Pickering, Jr. granted the *Herald* defendants' motion to dismiss on multiple grounds. First, he agreed that the article was protected by New Jersey's fair report privilege as a matter of law, rejecting the plaintiffs' argument that the *Herald* had forfeited the

privilege by failing to discuss another legal proceeding in which Morey had unsuccessfully sought a protective order against Deeney.

Second, Judge Pickering held that the plaintiffs were required to establish actual malice under New Jersey law because “[t]he reorganization of a public department in response to allegations of discrimination by a public employee, and a lawsuit filed by that employee, are clearly matters of public concern.” He further held that the plaintiffs’ conclusory allegations of negligence were insufficient to meet that standard.

Third, Judge Pickering held that the negligent infliction of emotional distress claim should be dismissed for the additional reason that the *Herald* defendants “had no duty to separately investigate the allegations or print the article that Deeney wanted them to print.”

Finally, Judge Pickering held that Deeney’s wife and daughter had no cause of action against the *Herald* defendants because neither of them was mentioned anywhere in the article.

Motion for Sanctions

In a [separate decision issued on September 13, 2022](#), Judge Pickering also granted the *Herald* defendants’ motion for attorneys’ fees and costs under New Jersey Court Rule 1:4-8. The rule, similar to Federal Rule of Civil Procedure 11, provides that an attorney who signs a pleading certifies that the claims “therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law.” If the attorney fails to withdraw a pleading after receiving sufficient notice of a violation of the rule, the court may award sanctions.

Judge Pickering concluded that sanctions were warranted because the decision to dismiss the claims against the *Herald* defendants “was not a close call,” and plaintiffs’ counsel had disregarded warnings that the claims were “clearly frivolous.”

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Conclusion

Together, these decisions illustrate some features of New Jersey law that are especially favorable to media defendants. In particular, New Jersey’s extension of the actual malice standard to *all* statements relating to a matter of public concern – not just statements about public officials or public figures – gives media organizations additional breathing room for their reporting. New Jersey courts have also shown more willingness than state courts in some other jurisdictions to dismiss defamation claims on actual malice grounds at the pleading stage. Lastly, New Jersey’s appellate courts have expressly condoned the use of sanctions under Rule 1:4-8, among other measures, to deter the pursuit of frivolous claims based on allegedly defamatory statements.

Elizabeth Seidlin-Bernstein of Ballard Spahr LLP represented The Herald defendants. Defendant Nathan Morey was represented by Richard M. King of KingBarnes. The plaintiffs are represented by Timothy McIlwain of the McIlwain Law Firm.

