

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
FOR HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION**

**BRIAN BLAIR**

**Plaintiff,**

vs.

**KEVIN BECKNER,**

**Defendant.**

Case no.: 09-006155

Division: H

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**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**THIS MATTER** is before the Court on Defendant Kevin Beckner's Motion for Summary Judgment. The Court heard the matter on March 24, 2010, and has considered the Motions, all pertinent parts of the record, and other written submissions of the parties. Plaintiff, former Commissioner Brian Blair, filed an action for defamation based on several statements made by his opponent, Kevin Beckner, during a political race for County Commissioner. Beckner moved for summary judgment on the basis that the statements at issue were not made with actual malice, and as such, there was no genuine issue of material fact.

Blair contends that Beckner made the following statements with "express malice", and with knowledge that they were false, or that Beckner recklessly disregarded the truth or falsity of these statements. Beckner provides sources as support for each of his statements to show they were based on reliable information:

- Commissioner Blair "[s]upports flying the Confederate flag in our county" (Beckner heard Blair talking about his support).

- “My opponent, Brian Blair, even used our tax dollars to pay to clean up a lake behind his house instead of building more parks and greenspaces.” (St. Petersburg Times articles).
- Commissioner Blair cut “funding to shelters that help women and children....” (County Commission meeting transcript, St Petersburg Times articles).
- Commissioner Blair was a sponsor of Robert E. Lee Day.” (County Commission meeting transcript, St. Petersburg Times articles, Blair admits to signing in his response to interrogatory).
- Commissioner Blair “voted to spend \$1 million of our tax money on his personal lake.” (St. Petersburg Times articles).
- Brian Blair “voted to spend \$1 million of our tax money to clean up the lake behind his house.” (St. Petersburg Times articles).
- Commissioner Blair “gave himself a pay raise.” (Tampa Tribune article, County Commission meeting minutes).

### **Legal Standard**

A motion for summary judgment may only be granted if the pleadings, depositions, answers to interrogatories and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.<sup>1</sup> A public-figure plaintiff such as Blair must present record evidence sufficient to satisfy the court that a genuine issue of material fact exists which would allow a jury to find by clear and convincing evidence the existence of actual malice on the part of the defendant.<sup>2</sup>

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<sup>1</sup> Fla. R. Civ. P. 1.510 (c).

<sup>2</sup> *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841, 846-47 (Fla. 4th DCA 2002).

## Analysis

As a sitting County Commissioner, Brian Blair was a public official at the time Kevin Beckner made the allegedly defamatory statements. Accordingly, the actual malice test from *New York Times Co.* is the prevailing standard.<sup>3</sup> Under the test, the Plaintiff must prove:

- 1) That the allegedly defamatory statements made are false,
- 2) That the statements were published to a third party,
- 3) That there was actual malice which is proven by evidence of either that:
  - (a) The defendant published these statements knowing them to be false at the time they were made, or
  - (b) The defendant recklessly disregarded the truth or falsity of these statements at the time they were made.<sup>4</sup>

In addition, Blair must prove actual malice with clear and convincing evidence.<sup>5</sup>

Blair alleges that Kevin Beckner made several false and defamatory statements which suggested that Blair was self dealing, took action to harm women and children, and supported racism. Blair provided evidence of advertisements mailed to voters by the Beckner campaign, containing the allegedly false statements. Beckner does not dispute the existence of this evidence or that the challenged statements were made. Rather, Beckner contends that the evidence does not rise to the level of actual malice and that he relied on several documented sources, which protects him from a finding of actual malice.<sup>6</sup>

Blair's asserts that Beckner's interpretation of various sources amount to falsifications. Beckner attests that his statements and campaign ads were derived from newspaper articles from the St. Petersburg Times and Tampa Tribune, County Commission meeting minutes and transcripts, and a proclamation supporting Robert E. Lee Day. Beckner asserts that he made

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<sup>3</sup> *Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 296 (Fla. 2d DCA 2001).

<sup>4</sup> *Id.* at 294.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 296.

rational interpretations of the numerous articles covering Blair and that such interpretations are protected by the First Amendment.

The parsing of words during political debate is subject to the rational interpretations of the speaker, and does not require the speaker to make fine distinctions.<sup>7</sup> A deliberate omission, or one-sided or unfair interpretation does not constitute actual malice.<sup>8</sup> When a speaker relies upon a reliable source, he is insulated from a finding of actual malice as a matter of law.<sup>9</sup> Blair has not shown with clear and convincing evidence that Beckner's statements support a finding of actual malice. He has not presented any evidence that Beckner recklessly disregarded the truth or falsity of the statements at the time they were made, or that Beckner published the statements knowing them to be false.<sup>10</sup>

Beckner made the statements against his political rival during a campaign to advance himself in the eyes of the public. The freedom of exchange of ideas on divisive political issues is the cornerstone of our democracy, and constitutes speech that is guaranteed by the First Amendment.<sup>11</sup> The courts have protected fair comment in political debate. The Supreme Court has recognized that "debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."<sup>12</sup> Before a person's right to free debate is abrogated, a high standard must be satisfied. The Court in *New York Times Co.* considered an earlier case to distinguish political debate saying:

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<sup>7</sup> *Time, Inc., v. Pape*, 401 U.S. 290 (1971).

<sup>8</sup> *Id.*

<sup>9</sup> *Dockery*, 799 So. 2d at 296.

<sup>10</sup> *Id.* at 294.

<sup>11</sup> *Id.* at 293.

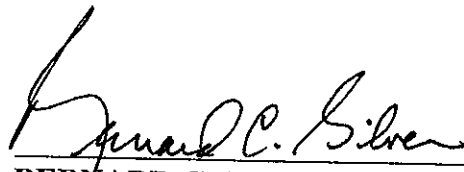
<sup>12</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

In the realm of . . . political belief, sharp differences arise. To persuade others to his own point of view, the pleader, at times, resorts to exaggeration, to vilification of men who . . . are, prominent in church or state, and even to false statement. In spite of . . . excesses and abuses, these liberties are essential . . . in a democracy.<sup>13</sup>

Neither negligence nor failure to investigate, nor ill will, bias, spite, nor prejudice, standing alone, are sufficient to establish either a knowledge of the falsity of, or a reckless disregard of, the truth or falsity of the materials used.<sup>14</sup> A review of the depositions, answers to interrogatories, affidavits and admissions from newspaper articles, and the County Commission meeting transcript shows that there is no genuine issue as to any material fact. Beckner did not act recklessly by relying on statements from media sources. No evidence has been presented to show that Beckner made the statements at issue with knowledge of their falsity or recklessly disregarded their truth. As such, Beckner is entitled to summary judgment as a matter of law.<sup>15</sup>

It is therefore **ORDERED** that Summary Judgment is **GRANTED** in favor of Defendant Beckner.

**DONE AND ORDERED** in Chambers in Tampa, Hillsborough County, Florida, this 21<sup>st</sup> day of July, 2010.

  
**BERNARD C. SILVER**  
**CIRCUIT COURT JUDGE**

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<sup>13</sup> *Id.* at 271.

<sup>14</sup> *Goldwater v. Ginzburg*, 414 F.2d 324, 342 (2d Cir. N.Y. 1969).

<sup>15</sup> Fla. R. Civ. P. 1.510 (c).

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