

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

STRAFFORD COUNTY

JANUARY TERM 2004

NO. 03-C-207

JEFFREY MARSHALL v. CHAD EVANS

DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES, the Defendant, Chad Evans, pro se, requesting that this Honorable Court grant this Motion For Partial Summary Judgment and dismiss certain claims with prejudice. The Defendant states as follows in support of his Motion:

PROCEDURAL HISTORY

1. On August 14, 2003 the Plaintiff, Jeffrey Marshall, by and through his attorney, Stephen C. Brown, filed a writ with this Court raising several claims asserting that the Defendant, Chad Evans, defamed him by accusing him of the murder of Kassidy Bortner, "in public and to the print and electronic media, both in the State of New Hampshire and elsewhere."
2. The Defendant was served with a copy of the aforementioned writ along with Plaintiff's Petition To Attach With Notice.
3. After reviewing the writ, the Defendant, who is indigent, filed a General Appearance with this Court.
4. On October 13, 2003 the Defendant filed both an Objection To The Petition To Attach and an Answer to the Plaintiff's claims effectively admitting that certain statements were made implicating

the Plaintiff in the murder of Cassidy Bortner but denying that such statements were made either by him, or in the way characterized by the Plaintiff under the circumstances described in his writ. See Defendant's Objection To Plaintiff's Petition To Attach, p. 3, ¶¶ 12-14; Defendant's Answer, pp. 1-2, ¶¶ 1,3,5.

5. On October 26, 2003 the Defendant filed a Motion To Amend Answer and submitted a timely filed Brief Statement asserting the affirmative defense of absolute immunity and arguing that it was defense counsel and not the Defendant that made the actual accusations against the Plaintiff in the course of judicial proceedings. See Defendant's Motion To Amend Answer, p. 2, ¶ 4 A.; Defendant's Brief Statement, pp. 1-2, ¶¶ 1,2,6.

6. After a hearing on December 2, 2003 this Court granted Plaintiff's Petition To Attach.

7. On December 30, 2003 Plaintiff filed a Motion For Leave To Amend Writ adding unnamed "others" to his list of those whom he claims to have been slandered and extending the period of time for which he claims to have been defamed.

8. The Defendant now moves for partial summary judgment seeking to dismiss, with prejudice, the portions of Plaintiff's writ claiming that the Defendant made accusations to the "public" and to the "Print and electronic media" accusing the Plaintiff of the murder of Cassidy Bortner.

9. The Defendant denies making any accusations against

the Plaintiff accusing him of the murder of Cassidy Bortner, to the public and to the print and electronic media, and maintains that all statements accusing the Plaintiff of murder were made by his attorneys in the course of judicial proceedings and in the context of presenting a valid defense during his criminal trial. The Defendant further submits that he is unaware of any statements being made by his attorneys, either unilaterally or on his behalf, under the circumstances complained of in the Plaintiff's writ. The Defendant attests to these facts in the attached Affidavit.

APPLICABLE STATUTE

10. RSA 491:8-a regarding summary judgment provides in part that:

"A party against whom a claim is asserted...may at any time, move for summary judgment in his favor as to all or any part thereof."

11. "any party seeking summary judgment shall accompany his motion with an affidavit based on personal knowledge of admissible facts as to which it appears affirmatively that affiants will be competent to testify."

12. "[These] facts...shall be taken to be admitted...unless within thirty days contradictory affidavits based on personal knowledge are filed or the opposing party files an affidavit showing specifically and clearly reasonable grounds for believing that contradictory evidence can be presented at trial but cannot be furnished by affidavits."

13. "Summary judgment shall be rendered forthwith if the pleadings...show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

14. "If affidavits are not filed by the party opposing summary judgment within thirty days, judgment shall be entered on the next judgment day in accordance with the facts...."

15. "[T]he adverse party may not rest upon mere allegations or denials in his pleadings but...must set forth specific facts showing that there is a genuine issue for trial."

LEGAL ARGUMENT

16. "The opposing party's response must do more than give notice of objection to the motion or defense or dispute the facts set forth in the moving party's affidavit. It must set forth 'specific facts showing the existence of a genuine issue for trial.' Mere denials or vague and general allegations of proof are not enough." Wiebusch, 5 New Hampshire Practice: Civil Practice and Procedure §31.08 pp. 36-37 (collecting cases) (emphasis added).

17. "It is well settled in New Hampshire that certain communications are absolutely privileged and therefore immune from civil suit. Statements made in the course of judicial proceedings constitute one class of communications that is privileged from liability in civil actions if the statements are pertinent or relevant to the proceedings." Provencher v.

Buzzell-Plourde Associates, 142 N.H. 848,853 (1998)(internal citations omitted).

18. Advancing that the Plaintiff, Jeffrey Marshall, was the person actually responsible for the murder of Cassidy Bortner, "in the course of judicial proceedings," and in the context of presenting a defense; was certainly "pertinent" to the proceedings.

19. "New Hampshire law provides very broad protection to statements made in the course of judicial proceedings. A statement falls outside the privilege only if it is so palpably irrelevant to the subject matter of the controversy that no reasonable man can doubt its irrelevancy or impropriety, and all doubts are to be resolved in favor of pertinency and application of the privilege." Hugel v. Milberg, Weiss, Bershad, Hynes, & Lerach, 175 F.3d 14,16 (1st Cir. 1999)(quoting McGranahan v. Dahar, 119 N.H. 758,766 (1979)(emphasis added)).

20. The Defendant has denied accusing the Plaintiff of murder either to the public or to the print and electronic media and has asserted the affirmative defense of absolute immunity. In conclusion, the Defendant further submits that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

AFFIDAVIT

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

CHAD EVANS, pro se, being duly sworn, says as follows:

1. I made no accusations against the Plaintiff accusing him of the murder of Cassidy Bortner, "in public and to the print and electronic media".

2. All statements accusing the Plaintiff of murder were appropriately made by my attorneys in the course of judicial proceedings and in the context of presenting a valid defense during my criminal trial.

3. I am unaware of any statements being made by my attorneys, either unilaterally or on my behalf, under the circumstances complained of in the Plaintiff's writ.

4. I make this Affidavit in support of my Motion For Summary Judgment.

FURTHER THE AFFIANT SAYETH NOT.


Chad Evans

Sworn to before me:

 12/31/03
Notary Date

KEITH SAUNDERS, Notary Public
My Commission Expires November 7, 2006