



D2065720

NOTICE OF SIGNING JUDGMENT

**TO: JENNIE P. PELLEGRIN
P.O. DRAWER 52828
1001 WEST PINHOOK RD., S. 200
LAFAYETTE, LA 70505-2828**

November 13, 2020

CALVIN W. BRAXTON SR.

Tenth Judicial District Court

VS

Parish of Natchitoches

**LOUISIANA STATE TROOPERS
ASSOCIATION, ET AL**

State of Louisiana

DOCKET NUMBER: C-90284 A

In accordance with Article 1913, C.C.P., you are hereby notified that a Judgment in the above entitled and numbered cause was signed on **NOVEMBER 9, 2020**, as per copy of the said Judgment attached.

I hereby certify that a certified copy of the above and foregoing judgment has been forwarded to all counsel of record and unrepresented parties, by placing a copy of the same in the United States Mail, properly addressed, with postage prepaid on the **NOVEMBER 13, 2020**.

DAVID STAMEY
Clerk of Court

BY: _____

Hatevina Johnson
Deputy Clerk of Court
Natchitoches Parish

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CIVIL SUIT NUMBER C-90284 A

CALVIN W. BRAXTON, SR.

TENTH JUDICIAL DISTRICT COURT

V.

PARISH OF NATCHITOCHE

LOUISIANA STATE TROOPERS
ASSOCIATION ET AL.

STATE OF LOUISIANA

JUDGMENT ON MOTION FOR PARTIAL SUMMARY JUDGMENT

On October 5, 2020, this matter came for hearing on a motion for partial summary judgment filed by defendant, Jay Oliphant, and addressing the defendant's direct defamation liability for the content of a written Incident Report dated June 2, 2016, prepared by him, and filed with the Louisiana Department of Public Safety and Corrections, Office of State Police. Upon completion of the hearing, the court took the issue under advisement. After considering the evidence in the record of these proceedings, after considering the argument of counsel, and for the written reasons filed with this judgment the court concludes that the defendant, Jay Oliphant, is entitled to the relief prayed for. Therefore:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of the defendant, Jay Oliphant, and against the plaintiff, Calvin W. Braxton, Sr., granting the partial motion for summary judgment and dismissing the said Jay Oliphant from that part of the litigation, reserving unto the plaintiff, Calvin W. Braxton, Sr., all other pending claims for damages against the defendant, Jay Oliphant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all costs of the motion for partial summary judgment are taxed against the plaintiff, Calvin W. Braxton, Sr.

THUS DONE AND SIGNED IN CHAMBERS in Jena, Louisiana, on this 9th day of November, 2020, for filing in Natchitoches, Natchitoches Parish, Louisiana.

Jimmie C. Peters

JIMMIE C. PETERS
District Judge, *Ad Hoc*

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ATTEST A TRUE COPY
This the 13th day of Nov., 2020
DAVID STAMEY, CLERK, 10th JDC., LA
By: *David Stamey* Dy. Clerk

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Dy. Clerk

CIVIL SUIT NUMBER C-90284 A

CALVIN W. BRAXTON, SR.

TENTH JUDICIAL DISTRICT COURT

V.

PARISH OF NATCHITOCHEs

LOUISIANA STATE TROOPERS
ASSOCIATION ET AL.

STATE OF LOUISIANA

REASONS FOR JUDGMENT
ON MOTION FOR PARTIAL SUMMARY JUDGMENT

On October 5, 2020, this suit for defamation damages filed by Calvin W. Braxton, Sr. against a number of defendants came for hearing on a motion for partial summary judgment filed by Colonel Jay Oliphant, a Louisiana State Trooper and one of the defendants named in the original petition. After hearing the arguments of counsel, the court left the record open for the filing of additional depositions by Mr. Braxton. The record is now complete, and these written reasons represent the court's compliance with the provisions of La.Code Civ.P. art. 966(C). In considering the record of these proceedings and specifically all of the record pertaining to the motion for partial judgment, the court finds that it need only consider the prescription claim to grant Colonel Oliphant the relief requested.

LAW APPLICABLE TO SUMMARY JUDGMENT
AS IT PERTAINS TO THIS MATTER

Louisiana Code of Civil Procedure Article 966 provides the authorization for, and procedure applicable to, a motion for summary judgment. That Article reads in pertinent part as follows:

- A. (1) A party may move for a summary judgment for all or party of the relief for which he has prayed. A plaintiff's motion may be filed at any time after the answer has been filed. A defendant's motion may be filed at any time.
- (2) The summary judgment procedure is *designed to secure the just, speedy, and inexpensive determination of every action*, except those disallowed by Article 969. *The procedure is favored and shall be construed to accomplish these ends.*
- (3) After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to a material fact and that the mover is entitled to judgment as a matter of law.
- (4) The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. The court may permit

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documents to be filed in any electronically stored format authorized by court rules or approved by the clerk of the court.

...

D. (1) *The burden of proof rests with the mover.* Nevertheless, *if the mover will not bear the burden of proof at trial* on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion *does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense.* The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

(2). The court may consider only those documents filed in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made. Any objection to a document shall be raised in a timely filed opposition or reply memorandum. The court shall specifically state on the record or in writing which documents, if any, it held to be inadmissible or declined to consider.

E. A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.

F. A summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time.

...

(Emphasis added).

FACTUAL ANALYSIS

The documents filed in support and in opposition to the motion for partial summary judgment include specific pleadings memoranda from both litigants, affidavits, excerpts from numerous depositions, responses to discovery, and suggested stipulations and/or admissions. Although much of the content provided the court by both parties relate more to issues not now before the court, the court has considered all offerings including those objected to by counsel for Colonel Oliphant.

Undisputed Facts

This litigation involves two separate factual scenarios which give rise to Mr. Braxton's claims for defamation damages. The first factual scenario is set out in his May 10, 2018 initial petition naming as defendants Colonel Oliphant and the Louisiana State Troopers Association (hereinafter "LSTA"), a nonprofit entity organized to represent the interests of its members. These claims arise from an Incident Report bearing the date of June 2, 2016 (hereinafter referred to as "the Incident Report), prepared by Colonel Oliphant, and filed through proper channels with his

employer, the State of Louisiana, Department of Public Safety and Corrections, Office of State Police (hereinafter “the State Police”).

The second factual scenario is set out in Mr. Braxton’s February 20, 2020 supplemental and amending petition which names Colonel Oliphant and the State Police as defendants. These claims arise from a second Incident Report dated March 2, 2018, prepared by Colonel Oliphant, filed through proper channels with the State Police and used by the State Police in a subsequent investigation involving Mr. Braxton. The consequences of this second Incident Report are not before the court in this motion for partial summary judgment.

Mr. Braxton is a lifelong resident of Natchitoches Parish, a successful business man, and has been active in civic and political affairs at the local and state level during his career. The issue now before the court involves Mr. Braxton’s two-year service as a member of the governing board of a public body, the Louisiana State Police Commission (hereinafter “the Commission”). In 2015 Governor Bobby Jindal appointed Mr. Braxton to the Commission and Mr. Braxton took the required oath of office on July 7, 2015. He served as a member of the Commission until July 21, 2017, when he submitted his resignation letter to Governor John Bel Edwards.

During his time on the Commission, Mr. Braxton took issue with a number of the activities of LSTA which he considered improper and/or illegal. These open disputes resulted in LSTA requesting that Governor Edwards hold a public hearing pursuant to La.Const. art. 10, § 43(D) for the purpose of determining whether Mr. Braxton should be removed from his position on the Commission. LSTA made its request in writing on July 11, 2016, and when the Governor’s office did not respond, LSTA followed up its request with a second letter dated June 19, 2017. The Governor did not schedule a public hearing. Instead, he met personally with Mr. Braxton, and the result of the meeting was Mr. Braxton’s July 21, 2017 letter of resignation.

This litigation came about because LSTA did not use the standing disagreements with Mr. Braxton as grounds for his removal as a member of the Commission. Instead, LSTA used the content of the Incident Report prepared by Colonel Oliphant. Specifically, LSTA asserted that Mr. Braxton had overstepped his authority in attempting to punish a Louisiana State Trooper for arresting his daughter for traffic violations. The two-page July 11, 2016 letter to Governor

Edwards lists twenty (20) grounds for Mr. Braxton's removal, all relating directly or indirectly to the content of the Incident Report.

The traffic stop at issue was routine. On the evening of Friday, December 4, 2015, Louisiana State Trooper Jayson Linebaugh stopped a vehicle for speeding and improper lane changes. His on-the-scene investigation established that the driver had been drinking alcoholic beverages and appeared intoxicated; and based on his initial conclusions, Trooper Linebaugh transported the driver to the Natchitoches Parish Detention Center where she performed the Intoxilyzer 9000 breath test. After reviewing the results of the breath Trooper Linebaugh issued four citations to the driver: (1) speeding 68 miles per hour in a 55 mile per hour zone, a violation of La.R.S. 32:61; (2) improper lane change, a violation of La.R.S. 32:79; (3) a parish ordinance open container violation; and (4) operating a vehicle while intoxicated, a violation of La.R.S. 14:98. The driver of the vehicle was at some point identified as Mr. Braxton's daughter, a competent major.

Trooper Linebaugh performed his duties properly and in a professional manner that evening; and Mr. Braxton's daughter subsequently took responsibility for the charges against her without protest or complaint. At the time of the December 4, 2015 traffic stop, Colonel Oliphant (then Captain Oliphant) was Trooper Linebaugh's superior officer.

While the truthfulness of the content of the June 2, 2016 Incident Report is disputed, the report itself paints a vivid picture of Colonel Oliphant assertions of improper and abusive activity by Mr. Braxton with regard to his reaction to his daughter's arrest and the subsequent charges against her. It contains, among other things, assertions that:

Colonel Oliphant telephoned Mr. Braxton the day after his daughter's arrest strictly as a courtesy because of his position on the Commission and was informed by Mr. Braxton that he was already aware of the incident; but that his concern was whether Trooper Linebaugh "knew who he was." Mr. Braxton expressed the belief that Trooper Linebaugh should have given his daughter "professional courtesy" and should not have arrested her; and that Trooper Linebaugh might have been "targeting" his family. The conversation was ended with Mr. Braxton asking Colonel Oliphant to inquire whether Trooper Linebaugh knew him. On Wednesday of the next week, Colonel Oliphant did just that, and was informed by the officer that he did not know Mr. Braxton.

After his conversation with Mr. Braxton, Colonel Oliphant conferred with Trooper Linebaugh who denied knowing Mr. Braxton, but acknowledged that even if he had known the connection between Mr. Braxton and the driver of the vehicle involved, that knowledge would not have affected him performing his duty. This conversation occurred on December 9, 2015, and Colonel Oliphant subsequently informed Mr. Braxton of Trooper

Linebaugh's answer to his (Mr. Braxton's) inquiry. When informed of Trooper Linebaugh's response, Mr. Braxton accused the officer of not telling the truth, and further stated that "he had known Troopers to get fired for lying." Mr. Braxton asserted that, because of his failure to give his daughter appropriate courtesy, "he might not help Trooper Linebaugh if he gets in a bind on the job" and has to appear before the Commission; that he was not through with the situation, and that he was going to call the Superintendent of the State Police and inform him of his displeasure. Mr. Braxton did call the Superintendent who relayed that telephone conversation to Colonel Oliphant.

The next communication between Mr. Braxton and Colonel Oliphant occurred on December 12, 2015, when Mr. Braxton called to ask what was going to be done to Trooper Linebaugh for his actions. Being dissatisfied with Colonel Oliphant's response, Mr. Braxton suggested that Trooper Linebaugh needed to be temporarily assigned to the New Orleans area for sixty to ninety days "to get his mind straight," because the officer "was out of control." This last statement was a reference to Trooper Linebaugh arresting the local Sheriff's son on a traffic violation. Mr. Braxton told Colonel Oliphant that he had spoken to some members of the Commission who advised him that members "were not to be touched."

Two days later Mr. Braxton and Colonel Oliphant had another conversation wherein Mr. Braxton stated that he had again telephoned the Superintendent concerning Trooper Linebaugh's transfer and the Superintendent referred him back to Colonel Oliphant. Mr. Braxton suggested in the conversation that he was not going to stop until "he gets what he wants[,] and that the issue seemed to be how much "stroke" he had in his position as a member of the Commission.

Before filing his Incident Report, Colonel Oliphant communicated with David T. Young, LSTA's Executive Director, to discuss the situation and to seek support from LSTA if needed in the future. While offering encouragement to Colonel Oliphant, Mr. Young suggested that he report the matter through channels to the State Police and, because it would be a public record, LSTA would have access to the complaint if needed in the future.

Colonel Oliphant did not immediately accept Mr. Young's advice. Instead, he contacted his supervisor, Colonel Kevin W. Reeves, and discussed Mr. Young's suggestion that he report the matter through channels. Colonel Reeves was already aware of the situation, having been updated from time to time by Colonel Oliphant. The result of the conversation was that Colonel Reeves told Colonel Oliphant that the documentation of the matter should be made within the State Police system and not through an external organization such as LSTA.

Disputed Facts

Summarizing this category is simple—while acknowledging some communication between he and Colonel Oliphant, Mr. Braxton takes issue with all of the allegations of his misconduct which appear in the Incident Report. In Paragraph 13 of his original petition, Mr. Braxton asserts that Colonel Oliphant accused him of "committing the crimes of public

intimidation, threatening an officer, and interfering with an investigation. (Emphasis added). In the next three paragraphs, he attempts to connect the Incident Report with subsequent actions of LSTA in trying to have him removed as a member of the Commission.

DISPOSITION

The tort of defamation involves the invasion of a person's interest in his reputation and good name. *Trentecosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552.

In order to maintain an action in defamation, the plaintiff must prove the following elements: (1) defamatory words; (2) publication; (3) falsity; (4) malice, actual or implied; and (5) resulting injury. A statement that imputes the commission of a crime to another is defamatory per se and as a result, falsity and malice are presumed, but not eliminated as requirements. Defendant then bears the burden of rebutting the presumption.

Simon v. Variety Wholesalers, Inc., 00-0452 (La.App. 1 Cir. 5/11/01), 788 So.2d 544, 548-49 (citations omitted), *writ denied*, 01-2371 (La. 11/16/01), 802 So.2d 617.

If the one claiming to have been defamed is a public official, he or she has the additional burden of proving that "the statement was made with actual 'malice' – that is, with the knowledge that it was false or with reckless disregard of whether it was false or not." *Kennedy v. Sheriff of East Baton Rouge*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 675, citing *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

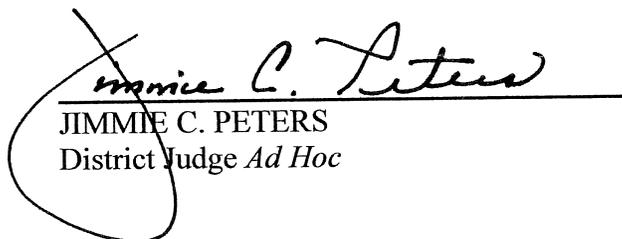
The tort of defamation is "subject to a prescription period of one year which commences to run from the day the injury is sustained. Generally, in the context of defamation, prescription begins to run from the date of the publication of the alleged defamatory remarks." *Alexander v. v. Times Picayune, L.L.C.*, 2016-1134 (La.App. 4 Cir. 5/31/17), 221 So.3d 198, 203.

In this matter, the Incident Report bears a date of June 2, 2016, but was actually published on June 7, 2016, when it was forwarded to Troop E Headquarters of the State Police in Alexandria, Louisiana. Mr. Braxton fax-filed his suit on May 10, 2018, or almost two years after publication of the Incident Report. Thus, considering only the Incident Report claim, prescription has run on the claim against Colonel Oliphant. However, Mr. Braxton argues that the July 11, 2016 and June 19, 2017 letters constituted republication of the defamatory assertions in the Incident Report and, therefore, prescription did not began to run on June 19, 2017. In fact, he goes further to suggest that Colonel Oliphant prepared the Incident Report "at the request of *and in conjunction with* defendant LSTA" for the purpose of using it against him. (Emphasis added).

Generally, a defendant in a defamation action is only liable for republication of defamatory material if the reproduction is a natural and probable consequence of his original publication. See *Finley v. Florida Parish Juvenile Detention Center*, No. 12-726, 2013 WL (E.D.La. Aug. 30, 3013; *Garrett v. Kneass*, 482 So.2d 876 (La.App. 2 Cir. 1986). At the same time, no citation of authority is necessary to conclude that if the original author of the defamatory material actively participates in the republication of the material, he or she is not without liability for its republication.

However, a review of all of the documents submitted both for and against the motion for partial summary judgment do not raise a genuine issue of material fact with regard to Colonel Oliphant's activities with regard to the republication. The use of the Incident Report by LSTA was not a natural and probable consequence of the original publication. Furthermore, nothing in any of the deposition excerpts filed herein suggest that Colonel Oliphant participated in the drafting of the July 11, 2016 or June 19, 2017 letter; that he asked anyone to attach his Incident Report to the July 11, 2016 letter; or that he gave LSTA permission to do so. In fact, there is no evidence to suggest that he had any knowledge of LSTA's intent to use the information to remove Mr. Braxton from his position on the Commission. Absent a genuine issue of material fact relative to the fact that prescription began to run on June 7, 2016, as a matter of law Mr. Braxton's claim against Colonel Oliphant for defamation arising from the content of the June 2, 2016 Incident Report has prescribed. Colonel Oliphant is entitled to the relief prayed for in his motion for partial summary judgment.

THUS DONE AND SIGNED IN CHAMBERS in Jena, Louisiana, on this 9th day of November, 2020, for filing in Natchitoches, Natchitoches Parish, Louisiana.


JIMMIE C. PETERS
District Judge *Ad Hoc*