

# Defamation and Privacy

The following cases cover the period of April 1, 2010 – September 30, 2010.

## Michael Morrison

### DEFAMATION

#### Official Immunity:

In, *Maxwell v. Willis*, 316 S.W.3d 680 (Tex.App—Eastland 2010, No Pet.), Maxwell told students at Texas Tech University that Willis had been expelled from the university for pointing a firearm at a classmate and was barred from the campus. Plaintiff filed suit against Texas Tech University and Maxwell alleging defamation among other causes of action. The defendants filed an interlocutory appeal after a motion for summary judgment was denied by the trial court.

Based on its review of the record, the court of appeals found that Maxwell was acting in good faith in performing a discretionary duty which was within the scope of his authority which Willis failed to contest. It held that the fact that Maxwell may have been subjectively motivated by improper concerns does not negate good faith absent evidence that no reasonable person could have acted as Maxwell did.

#### Insulting and Offensive is not Enough:

In, *Means v. ABCABCO, Inc.*, 315 S.W.3d 209, (Tex.App—Austin 2010, No Pet.), the plaintiff claimed to have been defamed by a statement made by a former driver of the plaintiff's taxi company at a public hearing on his application for a competing taxicab franchise.

“[A]t an April 5, 2007 Austin City Council meeting at which the award of a new taxicab franchise was under consideration, Doug Young, Kassa's attorney and agent, made the following comments:

I do want to point out ... that you are not going to see a lot of the drivers from Lone Star and here's why, you will hear from Solomon [Kassa], one of the officers of Lone Star. He has been the public face since 2003. The first time he talked at an Urban Transportation Committee in 2003, his contract with one of the three existing cab companies was summarily terminated within days of his appearance at that meeting.... The point was made to the drivers, if you are currently a driver for one of the existing companies . . . [i]t's not safe . . . to come and advocate for Lone Star today.

Austin Cab contends that Kassa's statement to the Austin City Council is slanderous because it accuses the Austin Cab of firing Kassa for trying to compete with it.

In affirming the trial court, the court of appeals wrote that, since termination of a contract is a, “legal and ethical option often available to parties to a contract,” it was not defamatory even if the plaintiff found it “insulting and offensive”.

#### Federal Communications Decency Act:

In *Milo v. Martin*, 311 S.W.3d 210 (Tex.App—Beaumont 2010, No Pet.), the court of appeals affirmed a summary judgment in favor of the defendants in reliance on the federal “Communications Decency Act of 1996, 47 U.S.C.A. § 230.” Here, defendants were owners of a website, “The Watchdog,” on which the material in question was posted anonymously by a third party in the “Guest Book” section. The defendants claimed that they were not “information content providers” under the act and therefore were not liable as publishers of the defamatory material. They relied on section 230(c)(1) of the act which provides as follows:

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any infor-

mation provided by another information content provider.

[“The term ‘information content provider’ means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” 47 U.S.C.A. § 230(f)(3).

The plaintiffs assert that the defendants became the publisher by vouching for the accuracy of the site’s content since the Watchdog billed itself as containing, “*The unfiltered truth about Conroe politics and your tax dollars*” and claimed that it, “contains facts believed to be totally accurate . . .”

Defendants countered that a third party, not they, developed and posted the alleged defamatory material and that there was no representation of a belief in the accuracy of the contents of the “Guest Book” but that, even had there been, a statement of belief falls short of an assertion of accuracy.

The court of appeals, “[d]espite [its] concerns about section 230’s breadth,” affirmed the trial court. It found that there was no evidence that the Watchdog was an “information content provider” under the act with respect to the posts complained of nor that the site contained any “representation about the truthfulness of the posts [in] the site’s ‘Guest Book.’”