DEFAMATION AND PRIVACY

The following cases cover the period of March 31 to September 1, 2009.

MICHAEL MORRISON

DEFAMATION

Neither of the covered cases had been released for publication at the time of inclusion.

Internet Publications

In *Kaufman v. Islamic Society of Arlington*, No. 2-09-023-CV, 2009 WL 1815641 (Tex.App.-Fort Worth June 25, 2009, pet. filed), the court of appeals considered whether the author of an internet article was a "media defendant" able to bring an interlocutory appeal from a trial court's order denying a summary judgment. While, as a general rule, an order denying a motion for summary judgment is interlocutory and not appealable Tex. Civ. Prac. & Rem.Code Ann. § 51.014(a)(6), provides that a party may appeal such an order when it

> denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73.

The issue before the court was whether the appellant's publication on the website, the Front Page Magazine, qualifies him as "member of the electronic or print media," as § 51.014(a)(6) requires. While concluding that Kaufman was entitled to an interlocutory appeal of the summary judgment order, the court of appeals stopped short of extending § 51.014(a)(6) to all publications that appear on the internet and identified the circumstances which, in this case, justified its conclusion, as follows:

> The evidence contained in the appellate record and submitted through additional affidavits filed in this court establishes the following:
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> • Kaufman is a full time investigative journalist who has been writing for national publications since 1995 and who focuses primarily on terrorism issues by gathering information from "government publications, public government documents, and Muslim websites";
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> • Kaufman writes regularly for Front Page Magazine, which is a "national publication which focuses mainly on the issues of politics and terrorism and has a monthly readership of approximately 500,000." Kaufman has published more than one hundred articles on Front Page Magazine;
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> • Kaufman does not control whether Front Page Magazine publishes news stories that he submits to it, and he does not control whether Front Page Magazine edits such pieces if selected for publication. Front Page Magazine is published by the David Horowitz Freedom Center;
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> • Horowitz is the editor-in-chief of Front Page Magazine. Horowitz is a nationally recognized author and political commentator who has written several books, has spoken to over three hundred colleges, and has appeared on several television programs. Horowitz publishes Kaufman's news and commentary because, according to Horowitz, Kaufman is "among the few journalists investigating ties between domestic individuals ... and [terrorist] organizations";
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> • Kaufman is the co-founder and chairman of the board of directors for Americans Against Hate, which is a Florida nonprofit organization that has other executive officers; and
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> • Kaufman has given "numerous speeches at various conferences and educational institutions," and he has "appeared on most of the major television networks, including Fox News, CNN, MSNBC, and CNBC."

The court of appeals concluded that the record established both that Kaufman is a "member of the electronic or print media" and that Front Page Magazine is a qualifying electronic or print medium. Consequently, it rejected appellees' assertion that the publication's internet status alone disqualifies Kaufman from filing an interlocutory appeal, writing:

> Because we conclude that Kaufman's extrinsic notoriety (through his appearances on television), his substantial readership, the inherent public concern in the terrorism issues he reports and opines on, and his journalistic experience would all favor his qualification as a media defendant under section 51.014(a)(6) if he had reported his article . . . through traditional media, we hold that he likewise qualifies as a media defendant although the article was published on the internet. Thus, we hold that under section 51.014(a)(6), we have jurisdiction over his interlocutory appeal, and we deny appellees' motion to dismiss the appeal.

On the merits, the court of appeals held that appellees were not defamed by the publication because a reasonable reader who was acquainted with appellees would not view Kaufman's statements as "concerning" them.

Absolute Privilege

In *Perdue, Brackett, Flores, Utt & Burns v. Linebarger, Goggan, Blair, Sampson & Meeks, L.L.P.*, No. 2-08-041-CV, 2009 WL 1270848 (Tex.App.-Fort Worth May 7, 2009, no pet.), a memorandum from the Linebarger law firm made allegedly defamatory statements concerning a joint venture involving the Perdue firm during a city council process to select a tax collection entity with which to contract for the collection of delinquent taxes.

Internal City reports indicated that the City staff was pleased with the Joint Venture's past performance and had recommended extending the relationship. However, following a memo to the council from Linebarger claiming, among other things, that the Joint Venture had cost the city over $700,000 in uncollected tax revenue the City council rejected the staff recommendation and voted to limit continuation of the contract to a month by month basis until an audit of the contract could be completed and, ultimately, following the audit awarded the contract to Linebarger.

The Joint Venture sued for defamation, tortious interference, business disparagement, and conspiracy. The trial court granted summary judgment on the basis that the alleged defamatory statements were absolutely privileged under the doctrine of quasi-judicial immunity.

The court of appeals held that in order for communications to public officials to be absolutely privileged under the doctrine of quasi-judicial immunity two requirements must be met.

First, the governmental entity must have quasi-judicial power; e.g., the power and authority to investigate and decide the issue and secondly, the communication in question must bear some relationship to the quasi-judicial proceeding. Both involve questions of law in which all doubts are resolved in favor of the communication's relation to the proceeding.

In the instant case, the City council possessed quasi-judicial power, as it had the authority to hear and decide the matters coming before it and the allegedly defamatory communications bore some relationship to the pending or proposed quasi-judicial proceeding as all of the allegedly defamatory statements related to the quality of the services provided by the Joint Venture.

The court of appeals, therefore, held that the trial court did not err by granting a traditional summary judgment.