

GEORGIA COURT OF APPEALS

NO. 23-CV-1234-X

JOHN BIGG,
Plaintiff-Appellant,

v.

AIDEN SHAW,
Defendant-Appellee.

BRIEF FOR APPELLANT

L9263

Professor Byrd

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STATEMENT OF JURISDICTION

The Georgia Court of Appeals has jurisdiction to hear this appeal of a final judgment of the Covington County Superior Court under O.C.G.A. § 15-3-3.1. (2023). Jurisdiction is proper in the Court of Appeals because the Supreme Court of Georgia does not have exclusive appellate jurisdiction over this case. Ga. Const. art. VI, § 5, para. III.

STANDARD OF REVIEW

Georgia appellate courts find that a plaintiff's public figure status in a defamation action is a question of law, which requires de novo review. Mathis v. Cannon, 276 Ga. 16, 22 (2002); see Selman v. Faver, 210 Ga. 616, 620 (1954).

STATEMENT OF THE ISSUE

WHETHER THE LOWER COURT ERRED IN RULING THAT A REAL ESTATE DEVELOPER IS A LIMITED-PURPOSE PUBLIC FIGURE UNDER GEORGIA'S DEFAMATION STATUTE WHEN A RESIDENT CONTINUOUSLY ACCUSES THE DEVELOPER OF BRIBERY AND ALCOHOLISM ON A NEIGHBORHOOD WEBSITE, COMMUNITY MEMBERS ONLY HAVE FOUR OR FIVE INFORMAL CHATS ABOUT INFILL CONSTRUCTION IN TWO YEARS WITH NO CONVERSATIONS OCCURRING DURING OFFICIAL HOMEOWNER'S ASSOCIATION BOARD MEETINGS, THE RESIDENTS CELEBRATE INCREASED PROPERTY VALUES, THE DEVELOPER HAS NO ACTIVE PLANS OF BUILDING IN THAT NEIGHBORHOOD, AND THE DEVELOPER PURPOSELY AVOIDS SPEAKING PUBLICLY ABOUT INFILL CONSTRUCTION.

PRELIMINARY STATEMENT

John Bigg filed a defamation suit against Aiden Shaw under O.C.G.A. § 51-5-4(a)(3) (2023). After expedited discovery, the parties tried the case in a bench trial on January 2, 2024. Mem. Op. and Order R. 72. Shaw claimed that Bigg was a limited-

purpose public figure (LPPF). Judge Margos Siega of the Covington County Superior Court entered judgement in favor of Mr. Shaw on February 9, 2024, finding Mr. Bigg to be a LPPF who cannot demonstrate actual malice. R. at 75. Mr. Bigg asks the Court of Appeals to reverse the trial court's denial of his defamation claim because evidence is insufficient to establish Mr. Bigg as a LPPF.

STATEMENT OF THE CASE

Appellant is a prominent real estate developer and president of a company specializing in infill construction in Terminus, GA. R. 15; R. 20. Appellant is a member of the Development Group, which is comprised of several local real estate agents and developers, and declined a leadership position in the group. R. 18. Notably, Appellant's company has not done any construction in the Pinehurst neighborhood. R. 17.

On March 3, 2023, Appellee posted a message lamenting his displeasure of the new infill constructions in the Pinehurst Neighborhood Homeowner Forum, because it led to property damage. R. 49, R. 26. The property damage resulting from the construction of the house next to him was not caused by Appellant. R. 34. Appellee did not follow through on his mobilization efforts from the post and did not organize any meetings regarding infill development. R. 33. Another Pinehurst

resident provides a more positive view: while construction affected parking, it also increased property values. R. 37-38.

Further, on March 10, Appellee wrote a post accusing Appellant of bribing zoning officials and recently obtaining a DUI, despite Appellant being eight years sober. R. 19. No members of the community commented on Appellee's posts until the president of the neighborhood Homeowner's Association suggested that Appellee bring his concerns to a Board meeting. R. 49.

From January 2021 to March 2023, the president has had roughly five informal, individual conversations with Pinehurst residents about infill construction. R. 41; R. 42. Despite urging residents to bring their concerns to the Board, no one has ever followed her advice. R. 42. Appellee did not bring his concerns to the board, either. R. 35.

SUMMARY OF ARGUMENT

Appellant should have the lower court's decision reversed because the facts show that he is a private person. Georgia law adopted an analysis to distinguish private persons from public figures because courts recognize the nebulous nature of public figures. Because neither prong of the analysis has been met, Appellant should be deemed a private person.

First, infill construction was not the topic of public debate in Pinehurst. Pinehurst residents could voice their upset at their Homeowners' Association meetings, to the Homeowners'

Association Board, and on the Pinehurst Homeowners' website; yet, aside from Appellee's March 2023 comments, there is no record of infill construction being officially discussed in those public arenas. Additionally, Pinehurst residents do not suffer a substantial ramification, since higher property taxes have not significantly impacted the community.

Second, Appellant was not involved in any controversy surrounding infill construction in Pinehurst. Appellant did not insert himself into the discussion of infill construction in Pinehurst, since he avoided speaking publicly on the topic of infill construction. Further, Appellant had no plans to build in Pinehurst. The lack of controversy nor involvement support a finding that Appellant is a LPPF.

ARGUMENT

THIS COURT SHOULD FIND THAT APPELLANT IS NOT A LIMITED-PURPOSE PUBLIC FIGURE UNDER O.C.G.A. § 51-5-4 (a) (3) BECAUSE INFILL CONSTRUCTION WAS NOT A PUBLIC CONTROVERSY IN PINEHURST, AND BIGG WAS NOT INVOLVED IN THE LOCAL ISSUE.

Georgia law outlines four elements to state a defamation claim: falsity, publication, fault, and special harm. Am. Civil Liberties Union, Inc. v. Zeh, 312 Ga. 647, 650 (2021). Appellee admits that he negligently posted false and unprivileged comments against Appellant. R. 13. As such, the parties agree that the sole element in dispute is fault. Id.

Courts establish whether an individual is a private person or public figure to determine the standard of proof required for the fault element. Riddle v. Golden Isle Broad., 275 Ga. App. 701, 704-05 (2005). Private persons must prove ordinary negligence for fault, whereas public figures must prove actual malice. Id. An individual who is a public figure in only limited circumstances is a limited-purpose public figure (LPPF) and must prove actual malice. Id. Georgia law recognizes the line between a public figure and private individual is indistinct, so courts developed a three-part analysis: isolate the public controversy, examine the plaintiff's involvement in the controversy, and determine whether the alleged defamation was germane to the plaintiff's participation in the controversy.¹ Sewell v. Eubanks, 181 Ga. App. 545, 545 (1987); Gettner v. Fitzgerald, 297 Ga. App. 258, 263 (2009). Applying this analysis will show that infill construction in Pinehurst is not a public controversy, and Appellant was not involved in Pinehurst's infill construction issue. Accordingly, this Court should reverse the trial court's finding because the evidence establishes that Appellant is not a LPPF.

I. The Pinehurst community did not discuss the issue of infill construction in a public forum, and the public would not suffer substantial ramifications from the outcome of an issue.

¹ A genuine dispute exists only for the elements of controversy and the plaintiff's involvement.

A fundamental step in determining whether an individual is an LPPF is identifying whether there is a public controversy. Riddle, 275 Ga. App. at 705. Courts must look only to those controversies that existed in the public arena before the alleged defamation occurred and elicited legitimate public concern. Rosser v. Clyatt, 348 Ga. App. 40, 49 (2018); Ladner v. New World Commc'ns of Atlanta, Inc., 343 Ga. App. 449, 453 (2017). If the issue was debated publicly and if its resolution would have substantial ramifications for nonparticipants, the issue is of legitimate public concern. Lader 343 Ga. App. at 453. Thus, to find a public controversy, evidence must show that the issue was debated publicly before the alleged defamation occurred and that the controversy's resolution would affect people who do not directly participate in the controversy.

A. The Pinehurst community did not discuss infill construction in any official public forum, and very few residents voiced their opinions in informal settings.

It is not the global nature of the public's interest that defines a dispute as a public controversy, but rather whether the issue generates discussion, debate, and dissent in the relevant community. Mathis, 276 Ga. at 24. In Mathis, a county's waste management authority contracted with the president of a waste collection company and developed a project to process and recycle solid waste and create jobs for county residents. Id. at

17. As the project progressed, the county encountered logistic and financial difficulties, which resulted in the commission raising property taxes to combat the unprofitable project. Id. at 19. In response, several county residents formed a citizens' group and attended commission meetings, and made negative statements about the authority's operations and finances. Id. at 18. The court held that there was a public controversy surrounding the recycling facility and landfill in the county. Mathis 276 Ga. at 23. Further, the controversy concerned the county's financially unsuccessful operation of its solid waste recovery facility, resulting in a strain on the county's resources and its taxpayers. Id.

The Pinehurst community did not publicly discuss or debate the issue of infill construction despite having multiple opportunities to voice their concerns in a public forum. Because Appellee's comments were posted in the Pinehurst community forum, specified infill construction in Pinehurst, and called on Pinehurst neighbors to act, the relevant community to the discussion must be confined to the Pinehurst neighborhood. The only posts on the Pinehurst community website concerning infill construction are from Appellee beginning March 3, 2023, where he attempted to mobilize his neighbors to meet about infill construction complaints. R. 49. Appellee did not hold any meetings regarding infill construction. Furthermore, the only

response to Appellee's later posts comes from the Pinehurst Homeowners' Association president, who suggested that Appellee bring his concerns about infill construction to an official Board meeting. R. 49. Appellee did not bring his concerns to the Board. R. 41. From January 2021 to March 2023, the president has had roughly five informal, individual conversations with Pinehurst residents where residents voiced their complaints about infill construction. R. 41; R. 42. This neighborhood inaction is unlike the community in Mathis, who responded to rising property taxes by forming a citizens' group and making their frustrations known at public commission meetings. Markedly, Appellee had the opportunity to present the topic in an official public forum but instead rejected the offer. Thus, infill construction was not the topic of debate in Pinehurst.

B. The outcome of the infill construction issue would not negatively affect Pinehurst residents in an appreciable way, because residents are not concerned with rising property taxes.

If the issue was debated publicly and had substantial ramifications for nonparticipants, it is a public controversy. Atlanta J.-Constitution v. Jewell, 251 Ga. App. 808, 817 (2001). The ramifications must affect the general public or some segment of it in an appreciable way. Id. (finding public controversy where a community questioned its safety amidst an investigation after the bombing of its local park). There must be a

significant number of nonparticipants affected by the controversy's resolution. Riddle 275 Ga. App. at 706 (finding no public controversy where resolution of the girlfriend's disappearance would only affect her friends, family, and local law enforcement involved in the case).

The Pinehurst community would not experience substantial ramifications if the issue of infill construction is resolved. Pinehurst neighbors' complaints consisted of bad temporary parking conditions, a torn fence, and a dried lawn caused by infill construction; whereas the community in Jewell dealt with the more pressing concern of their immediate safety after their local park was bombed. Appellee lamented rising property taxes in his March 3, 2023, post, yet admitted his ability to pay his property taxes this year and all previous years that infill construction has occurred in Pinehurst. R. 30. Unlike Jewell, where residents were concerned long-term safety based on a past event, Appellee provided no evidence to show his legitimate fear of being unable to pay future property taxes. Infill construction did not preclude Appellee from paying his property taxes thus far. Alternatively, another resident of Pinehurst expressed a positive view of infill construction despite property taxes, because his property value has steadily increased. R. 37. Like Riddle, where the issue's resolution would only affect a small group, any negative consequences or

ramifications that come from infill construction would be insubstantial. Because the Pinehurst did not publicly discuss the issue of infill construction and because there would be no ramifications for nonparticipants, there is no public controversy.

II. Appellant did not voluntarily inject himself nor was he drawn into the issue of infill construction in Pinehurst.

Courts must examine the nature and extent of an individual's participation in the controversy giving rise to the defamation to determine whether an individual is a LPPF. Byers v. Se. Newspaper Corp. Inc., 161 Ga. App. 717, 719 (1982). A plaintiff's involvement must be more than merely tangential. Ladner, 343 Ga. App. at 455. A plaintiff's involvement is not tangential when he aims to influence the outcome of a public controversy or where he could have an impact on its resolution because of his position in the controversy. Jewell, 251 Ga. App. at 817. Thus, an individual is involved in a public controversy when he attempts to sway the controversy's outcome or when he occupies a notable position in the controversy.

A. Appellant did not publicly discuss infill construction in Pinehurst, so he did not voluntarily inject himself into a local discussion.

If the plaintiff "thrust himself into the vortex of this public issue," he is a LPPF because he voluntarily injected himself into the controversy. Hemenway v. Blanchard, 163 Ga.

App. 668, 670 (1982). To determine whether an individual injected himself into a controversy, courts first ask whether the plaintiff made his presence and opinions on the controversy known. *Id.* (finding involvement where husband appeared on multiple news broadcasts and answered questions in furtherance of his wife's political campaign); see also Jewell, 251 Ga. App. at 819. Where an individual makes no public comments to the media and was not an actor in the events giving rise to the public controversy, he is not an LPPF. Sewell v. Trib Publications, Inc., 276 Ga. App. 250, 255 (2005) (finding no involvement when university professor kept discussion military activities contained within his classroom).

Appellant did not publish his views on infill construction in Pinehurst, so he did not voluntarily enter the controversy. Appellant once fielded questions about home additions from Pinehurst residents. Notably, Appellant did not discuss infill construction during the forum. Unlike the husband in Hemenway, who participated in interviews for his wife's campaign, Appellant, did not conduct any interviews at all. His lack of public comment is like the professor in Sewell. As in Sewell, Appellant confined discussion about infill construction to his potential clients, fellow real estate developers, and various contractors he employed. Because his comments were private, Appellant did not involve himself in the controversy.

B. Appellant does not have any ongoing development projects in Pinehurst, so he was not drawn into discussions about the neighborhood's infill construction.

Individuals can become involved in public controversies without their consent or commentary in a public forum. Jewell, 251 Ga. App. 808 at 819. Occasionally, courts can decide that an individual is drawn into a public controversy by virtue of his position in the controversy rather than by his actions. Byers, 161 Ga. App. at 721 (finding involvement where the college dean's title drew him into the discussion about the college's restructuring). An individual who is a central figure in a public controversy invites comment and is involved in a controversy unless he rejects a role in the debate. Jewell, 251 Ga. App. at 820.

Appellant is not a central figure in Pinehurst's construction projects, so his position as a real estate developer does not draw him into Pinehurst's infill construction issue. Appellant is the president of a company with the highest volume of infill construction in Terminus, GA, but the controversy involves residents in Pinehurst rather than the entire city of Terminus. Appellant does not have any homes built in Pinehurst. In fact, building in Pinehurst is not part of his current business plan. R. 21. In Byers, a college dean's position would be terminated in the college's restructuring

plan, so his position drew him into the controversy. Like the college dean in Byers, Appellant holds a leadership position as president of his company; however, this is where the similarities end. Appellant is not the central figure in Pinehurst because Appellant did not build any homes in Pinehurst, publicly speak on infill construction, or hold a leadership position in his real estate networking organization. Furthermore, Appellant was asked to run for a Board position but rejected the offer, so he does not hold any leadership role in the organization R. 18. In sum, infill construction is not a public controversy in Pinehurst, and Appellant is not involved in any issue surround infill construction in Pinehurst.

CONCLUSION

Based upon the aforementioned facts and legal authority, Appellant requests a reversal the lower court's finding that Appellant is a LPPF because infill construction in Pinehurst is not a public controversy, and Appellant is not involved in any discussions surrounding infill construction in Pinehurst.

Respectfully submitted this 18 day of March, 2024.

DOLCHE & GABANA, LLP

/s/ L9263
Student L9263

1300 Fendi Lane
Terminus, GA 33333
(207) 555-7918

Attorneys for Plaintiff/Appellant
John Bigg

CERTIFICATE OF SERVICE

I, L9263, do hereby certify that I have this date served a true and correct copy of the Appellant's Brief upon counsel for the Appellee by placing a true and correct copy of the Appellant's Brief in the United States mail, with sufficient postage affixed, and addressed as follows:

Katrina Goldblatt, Esq.
The Goldblatt Firm
102 Monticello Street
Covington, GA 30014

Dated this 18 day of March, 2024.

DOLCHE & GABANA, LLP

/s/ L9263
Student L9263

1300 Fendi Lane
Terminus, GA 33333
(207) 555-7918

Attorneys for Plaintiff/Appellant
John Bigg

CERTIFICATE OF COMPLIANCE

This document certifies that this brief was completed using Word software, Courier New font, in 12-point type. The brief complies with the length requirements of this Court. This document further certifies that the author of this brief has complied with all applicable honor code requirements, including the requirement that the author may not consult briefs or memoranda prepared on behalf of parties or amici to this case.

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