IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 14, 2009 Session

BETTY BRASFIELD v. RAYMOND C. DYER, ET AL.

Appeal from the Circuit Court for Knox County
No. 1-518-03 Dale C. Workman, Judge

No. E2008-01774-COA-R3-CV - Filed January 12, 2010

Betty Brasfield ("Plaintiff") sued a former co-worker, Raymond Dyer, and a former boyfriend, Conley Dockery, claiming both defendants had defamed her and intentionally interfered with her employment contract with the Tennessee Board of Probation and Parole ("the Board"). The Trial Court dismissed the intentional interference with contract claims before trial. At the end of a lengthy trial on the defamation claims, the jury returned a verdict against Dyer for $250,000, and against Dockery for $100,000. Both Dyer and Dockery ("Defendants") filed a post-trial motion for judgment notwithstanding the verdict or, alternatively, for a new trial. The Trial Court granted Defendants' motion for judgment notwithstanding the verdict and entered judgment for Defendants. Plaintiff appeals raising numerous issues. We conclude that Plaintiff presented no material evidence that her reputation was damaged by Defendants' alleged defamatory statements and, even if her reputation was damaged, that it was Defendants who were responsible for that damage. Accordingly, we affirm the Trial Court's granting Defendants' motion for judgment notwithstanding the verdict. We further conclude that there was no breach of contract and, therefore, the Trial Court properly dismissed before trial Plaintiff's claim for intentional interference with contract.

Tenn. R. App. P. 3 Appeal as of Right; Judgment
of the Circuit Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

David S. Wigler, Knoxville, Tennessee, for the Appellant, Betty Brasfield.

A. James Andrews, Knoxville, Tennessee, for the Appellee, Raymond C. Dyer.

Mark S. Cizek, Clinton, Tennessee, for the Appellee, Conley R. Dockery.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Kimberly J. Dean, Deputy Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee.

OPINION

Background

What this case is about is succinctly summarized by Plaintiff in the opening paragraph of her complaint:

> This is an action for defamation . . . against a co-worker and former boyfriend who willfully and maliciously conspired to cause the termination of Plaintiff's employment.

Plaintiff later amended her complaint to allege common law and statutory claims for tortious interference with an employment contract.[1]

Plaintiff was employed as a probation officer at the Board's Knoxville office. Plaintiff sued Raymond Dyer, a former co-worker who has since retired from his job with the Board, and Conley Dockery, who works as an investigator for the Anderson County Public Defender's Office and who had dated Plaintiff for thirteen years. Dyer and Dockery are the only defendants.

According to the complaint, Dyer also was a probation officer. Plaintiff claimed Dyer violated established policies and improperly took control over some of Plaintiff's cases and threatened various parolees assigned to Plaintiff. Plaintiff alleged that Dyer made disparaging comments about Plaintiff to people at her work. According to Plaintiff, Dyer sent a memorandum to the Board's Chairman falsely stating that Plaintiff was guilty of "gross neglect and/or incompetence, if not malfeasance or official misconduct." Several investigations were conducted based on Dyer's allegations, and Plaintiff claims she

[1] While Plaintiff asserted other causes of action in her complaint, she acknowledges in her brief that this appeal involves only her claims for "defamation and for statutory and common law interference with her contract of employment as a probation officer with the Tennessee Board of Probation and Paroles."

ultimately was cleared of any wrongdoing. Plaintiff maintains that Dyer was disciplined for his behavior. Dyer was offered a transfer to Anderson County, but he refused, instead opting to retire.

As mentioned previously, Plaintiff and Dockery dated for thirteen years. According to the complaint, after they quit dating, Dockery called several of Plaintiff's friends and relatives stating he was "going to get [Plaintiff's] job and put her in the penitentiary." Plaintiff claims Dockery has repeatedly made false and disparaging comments about Plaintiff to the Board, including an allegation that Plaintiff became involved sexually with a parolee and accepted money from another parolee.

The defendants responded separately to the complaint, denying the pertinent allegations contained therein and denying any liability to Plaintiff. Dyer filed a counterclaim against Plaintiff asserting that Plaintiff falsely accused him of sexually harassing her and made these false allegations "in an effort to cover up unsatisfactory job performance on her part." Dyer sought damages for defamation, outrageous conduct and malicious civil prosecution. The Trial Court eventually dismissed the counterclaim without prejudice. The dismissal of the counterclaim is not at issue in this appeal.

Defendants filed a joint motion for summary judgment claiming: (1) they were entitled to qualified immunity because they are government officials who were performing discretionary functions; (2) as state employees, Defendants were entitled to statutory immunity pursuant to Tenn. Code Ann. § 9-8-307(h)[2]; (3) Defendants' communications were protected under a "public interest privilege"; (4) Defendants' communications were protected under a "conditional common interest privilege"; (5) Defendants' privileged communications could not support a claim for intentional interference with at-will employment; and (6) there was no "publication" that would support a defamation claim. Defendants also filed a motion to dismiss Plaintiff's claim for interference with an employment contract.

The Trial Court entered an order in September 2007 granting Defendants' motion to dismiss Plaintiff's claims for interference with an employment contract. Defendants' motion to dismiss Plaintiff's defamation claim was denied. The Trial Court later denied Defendants' motion for summary judgment seeking dismissal of this lawsuit on the basis of qualified immunity and privilege.

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[2] Tenn. Code Ann. § 9-8-307(h) (Supp. 2009) provides in relevant part that "State officers and employees are absolutely immune from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. . . ."

The trial began on March 3, 2008, with Plaintiff's only remaining claim being the defamation claim. The proof established that Plaintiff's primary duties at work involved interstate cases, which are cases that are transferred to Tennessee from other states. The events giving rise to this lawsuit began with what the parties referred to as the "Lowery matter." Steven Lowery was transferred from Texas in July or August of 2002. Lowery was a drug offender assigned to Plaintiff. In October 2002, Plaintiff's supervisor, Debbie Martin ("Martin"), was notified that the Knoxville Police Department ("KPD") wanted to interview Lowery about suspected illegal activity. About the same time, it was brought to Martin's attention that Lowery had traveled to Nevada and "that was a question of concern." This was a "concern" to Martin because Lowery had to obtain a travel permit from Plaintiff before he could travel out of Tennessee. Plaintiff told Martin that Lowery had called and informed her that he had gone to Nevada. However, Plaintiff had not issued Lowery a written travel permit. According to Martin, she told Plaintiff:

> Betty, you understand that we have to have them covered with travel permits. He's only been on for two months. Be certain that this does not take place again.

Although Martin did not formally discipline Plaintiff for this incident, she admitted that the matter was not "insignificant" and that Plaintiff was told not to let it happen again.

KPD interviewed Lowery, and both Plaintiff and Dyer were present for the interview. According to Dyer, Lowery was cooperative and another meeting with KPD was scheduled. However, Dyer observed Lowery and Plaintiff talking after the meeting. Although Dyer does not know what was said, Lowery's cooperation quickly ceased, and he did not show up for the meeting that he previously had agreed to attend. Dyer apparently believed that Plaintiff had said something to Lowery which made him no longer cooperative. Plaintiff denied making any such comments. Everything pretty much fell apart after this point.

Martin later learned that Dyer had sent a memo to the Board's Chairman. When asked what this memo was about, Martin stated that Dyer believed the Lowery case had not been taken seriously and that Plaintiff possibly was involved in some type of illegal coverup with Lowery. Based on these allegations, an investigation was conducted by Gary Tullock ("Tullock"), the Board's District Director. Tullock concluded that there was no evidence that Plaintiff interfered with the KPD investigation. However, Tullock went on to conclude that both Plaintiff and Dyer had violated various policies or procedures in the handling of the Lowery matter. Tullock also determined that "in his zeal to assist law enforcement," Dyer had lost his objectivity and should have no further involvement in the Lowery case or any other case assigned to Plaintiff.

Dyer's suspicions about Lowery's continued criminal activity ultimately proved true, although no evidence was presented that Plaintiff was aware of this activity. Lowery was arrested and eventually pled guilty to conspiracy to distribute and possession with intent to distribute 700 kilograms of marijuana, and conspiracy to commit money laundering. Lowery was sentenced to 84 months in federal prison.

A further investigation was conducted into the Lowery matter. This second investigation was conducted by Colis Newble, Jr. ("Newble"), a Parole Hearing Director in Nashville. Newble also concluded that while there was no evidence that Plaintiff interfered with the KPD investigation, there were matters that both she and Dyer did not handle appropriately.

Dyer apparently still was unsatisfied and continued to push for further investigation into Plaintiff's actions surrounding the Lowery matter. A third investigation was conducted. This investigation was not limited solely to the Lowery matter, and the results were not favorable to Plaintiff. In a seven page letter detailing various problems found with Plaintiff's work performance, Plaintiff was informed that, pending a hearing, her continued employment was in jeopardy. The letter was signed by the Board's Chairman, Charles M. Traughber. For reasons that will become clear later in this Opinion, we believe it best to quote this entire letter, which is as follows:

> This letter is to advise you of my intent to terminate your employment with the Board of Probation and Parole.
>
> An investigation was initiated by this agency into allegations of official misconduct displayed by you as a Probation/Parole Officer 2 with the Board of Probation/Parole. This investigation did substantiate that you had previous knowledge of and allowed offenders under your supervision to travel outside the State of Tennessee without a travel permit, you did not make regular offender home visits or drug tests in some cases, you used offenders to do work for you at your home, you allowed an offender to live with you at your residence, and you encouraged and invited offenders to attend political activities. Your actions constitute conduct unbecoming a state employee. Therefore, it is my intent to terminate your employment with the Board of Probation and Parole.
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> You alleged that Ray Dyer, who was then employed as a Probation/Parole Officer 2 in the Knoxville Office, was sexually

harassing you and making unwelcome advances. You refused to provide any details of this incident to the Board's investigator or otherwise cooperate with the sexual harassment investigation. Accordingly, the investigation failed to corroborate the allegations you made against Mr. Dyer.

The attached investigation reports demonstrate that you repeatedly violated Probation and Parole Policies and the law. The report includes, but is not limited to:

- You allowed Probationer Steven Ray Lowery . . . , under your supervision, and his Texas codefendant, Chris Fawver, . . . to travel to Las Vegas, Nevada for several days on or about October 4, 2002. Probationer Lowery stated that you had prior knowledge he would be traveling outside the State of Tennessee. You failed to follow-up and issue a written travel permit to Probationer Lowery.

- Texas ISC Probationer Daryl Thornton . . . was arrested for domestic assault and public intoxication on November 17, 2002. The arrest is annotated on the monthly report form dated November 21, 2002 and TOMIS conversation "LCDG". An inconsistency exists between the Contact Notes and the associated comments. One indicates a negative arrest check and the other provided a brief description of the arrest. There is a violation report in your supervision file on him dated January 13, 2003. The promptness in which the violation report was submitted is questionable.

- ISC Probationer Timothy Stottler . . . was supervised by you from May 29, 1998 through November 1, 2000. After his transfer to Tennessee, Probationer Stottler stated that you did not make any home visits with him, nor did you give him any drug screens. Contrary to Probationer Stottler's statement, TOMIS Contact Notes reflect ten home visits were made between February 3, 1999 and October 3, 2000. The Contact Notes reflect that in six of the ten home visits, that you made the

contact. Four Contact Note entries do not identify who made the contact. . . .

- Probationer Stottler has stated that in the summer of 1998 he received an invitation in the mail (RSVP) from you requesting he attend an event for a District Attorney who was running for office. Probationer Stottler stated he did not attend the event.

- ISC Probationer Bill Renfro . . . was supervised by you from August 15, 1997 through November 1, 2000. He stated that while he was under your supervision that you made no home visits to his residence and you did not test him for drug use. TOMIS Contact Notes reflect that twelve home visits and three drug screens were conducted. Someone other than you posted Contact Notes for twelve home visits and three drug screens. It is recorded in the comments that you were the person who made the contact for one of the three drug screens conducted. There is no contact person identified for the remaining two drug screens. Probationer Renfro further stated that he traveled to Oklahoma four or five times to visit his family without being issued a written travel permit; but, that on each occasion, you gave him verbal permission to travel.

- Licensed Clinical Social Worker Nan Buturff, provides counseling services to sex offenders. Ms. Buturff stated that on several occasions she had attempted to communicate Probationer Timothy Stottler's and Probationer Bill Renfro's behavior to you, both under your supervision. Both offenders expressed a lack of trust in you. Ms. Buturff reported that during a session on April 30, 2001, that Probationer Stottler stated that you had invited him to a cookout at your home. . . . He expressed a fear of a "set up" and did not attend the event. She stated that at times Probationer Stottler would not take polygraph examinations, failed a polygraph on fantasizing, poor attendance at individual and group counseling and drug use. In calendar year 2000 she left

you multiple telephone messages, but you did not return her telephone calls. She has written notations on her attempts to contact you regarding Progress Reports. Ms Buturff informed your supervisor . . . of her unsuccessful communication with you.

- Polygraph Examiner Jim Morris of Advanced Polygraph Services, stated that in the course of administering a polygraph examination to Probationer Bill Renfro he asked if he had violated any conditions of his probation. Probationer Renfro answered "yes" and "no." Probationer Renfro's response was that when reporting to you that you had him sign forms indicating that you had completed actions in his case that had not been completed. He also stated that you had requested a meeting with him outside the office.

  Mr. Morris had no knowledge if this meeting ever occurred, but he did report his conversation with Probationer Renfro to you supervisor . . . . He further stated that he did receive a telephone call from you attempting to explain that there was nothing improper with wanting to meet with Probationer Renfro outside the office because his wife was a friend of yours. A copy of the polygraph report dated April 27, 2001 delineates accusations by Probationer Stottler regarding your supervision of his case.

- An interview was conducted with Probation/Parole Officer 2, Shirley Castlevecchi, of the Knoxville office. Officer Castlevecchi stated that you had conducted political activities in the office. PPO2 Castlevecchi stated she could not be specific about the time period other than it was during Judge Baumgartner's reelection campaign, stating that you distributed Truman Day Dinner tickets, but that she did not observe any collection of monies.

- Probation/Parole Officer 2, Terry Zaiko, of the Knoxville Office, stated that he had observed you conducting

Democratic political activity in the office for years. PPO2 Zaiko observed you selling tickets for fundraisers and encouraging people to attend parades. He also stated that he observed you selling tickets in the office to a Truman Day Dinner. He observed you placing a flyer, with your name on it as the contact person in promoting the event, in his office mailbox. PPO2 Zaiko said this occurred in approximately 1995.

- An interview was conducted with Conley Dockery, Investigator with the Anderson County Public Defender's Office, regarding any knowledge of improprieties on your part. Mr. Dockery stated that you used a female Probationer to work in your home (cooking, cleaning, etc). That during the period that you were building a new home, you and the Probationer resided together in a trailer. The individual was subsequently identified as . . . Cynthia O'Neal[3] . . . , who was supervised by you from February 8, 1996 until February 10, 2000. Mr. Dockery also stated that in approximately September 2000 you used two male Probationers, under your supervision, to do backhoe work by building a drainage system for a garage apartment on your property.

- Former Probation/Parole Manager 2, John Clabo, East Tennessee Region, stated that you invited him to your home for dinner close to the time he retired in 1999. You introduced him to a female identified as Lee Taylor[4]. Mr. Clabo stated he was later informed by Conley

[3] This case became even more bizarre after the trial concluded. Specifically, Cynthia O'Neal, who provided affidavits and later testified at trial on Plaintiff's behalf, apparently called defendant Dockery and left him a message claiming that she (i.e., O'Neal) had perjured herself at trial and that Plaintiff's ex-husband, a local Knoxville attorney, had coached her on what to say at trial. After leaving this message, O'Neal drove her truck through Plaintiff's garage. O'Neal apparently knew where Plaintiff kept a gun. O'Neal found that gun and committed suicide while inside Plaintiff's home. While perhaps interesting and definitely tragic, these post-trial events play no part in our resolution of this appeal.

[4] "Lee Taylor" and "Cynthia O'Neal" are the same person. At one point she is identified in Plaintiff's brief as "Cynthia Lee O'Neal Taylor."

Dockery that Lee Taylor was a Probationer under your supervision.

- The investigation also revealed that some offenders, under your supervision, were issued state travel permits and others were not. Offenders [Russell Dyer, James Staples, Ed Sloan, Iva Warren, Steve Lowery, and Jennifer Garland] stated they had traveled out of state, but that you did not issue them a written travel permit. You did give some offenders verbal permission to travel, and other offenders stated you knew of their travel, but you told them they did not need a permit. Your February 3, 2003 Contact Note regarding Offender James Staples shows that you were aware of his travel to Buffalo, New York, but you did not inform him that a travel permit was necessary; no permit was located in the offender's file.

- Offender Ed Sloan . . . stated that you had informed him a Nichols Campaign BBQ would be held and he later got an invitation in the mail to attend. Offender Iva Warren . . . advised that she and her parents received an invitation card in the mail from you to attend a political fund raiser and did see you in attendance at the function.

- Offender Ralph Ward . . . reported that he travels to North Carolina regularly to visit his family and that he does not have a travel permit, stating, "She knows I will be right back." He also said he drove a truck out of state previously and you did not issue him a travel permit.

- Offender Steve Baker . . . stated that you asked him about six months ago to give your son an estimate for trim work on his house. He stated he did not give the estimate, but gave you references on other contractors.

- Offender Brian Debord . . . reported to you that he was arrested in Trenton, Georgia on June 16, 2003 for LSD possession. TOMIS reflects a note of June 20, 2003 entered by Probation/Parole Manager 1, Debbie Martin, which states that Offender Debord was arrested in

Trenton, Georgia on June 16, 2003 and had in his possession 100 hits of LSD. TOMIS does not reflect that Offender Debord had a travel permit to be in Georgia when arrested or that his sending state had been notified of this arrest. Contact Note of August 5, 2003 by Probation/Parole Manager 1, Debbie Martin, indicates that you gave this offender a travel permit to Louisiana for a weekend to visit his girlfriend.

- Offender Robert Ramirez . . . stated that he had been on supervision in Tennessee since February 18, 2003 and was supervised by you. He advised that he had never received a home visit by you. Contact Notes reveal two home visits had been conducted, verification by collateral contact (HOMC). A home visit was made on May 21, 2003, comments reflect contact with the Offender's mother. Another home visit was made on June 17, 2003, and had no comments to tell who was contacted.

- Offender Chris Fawver . . . who was under your supervision advised he traveled to Las Vegas without a travel permit.

You have failed to perform your duties in an acceptable manner. Caseload records of offenders, under your supervision, were falsified which is totally unacceptable. Your caseload included sex offenders who require a heightened level of supervision. Your performance places public safety at risk.

The seriousness of inefficiencies, negligence in the performance of your duties as a Probation/Parole Officer 2, and violation of policies, to include Conflict of Interest, Code of Ethics, Travel Permit and Little Hatch Act compromises your employment as a Probation/Parole Officer 2. A due process hearing is scheduled for Wednesday, October 22, 2003, at 10:00 a.m. . . . The hearing will allow you to present any information that would change my intent to terminate your employment with this agency. If you choose not to attend the hearing, I will consider all aspects of due process to have been met and you will be notified of the effective date of your termination.

> Termination will be in accordance with Department of Personnel Rules, Chapter 1120-10 to include: Disciplinary Action Policy 1120-10-.02, "A Career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists;" Causes for Disciplinary Offenses 1120-10-.06(1) Inefficiency or incompetency in the performance of duties, (2) Negligence in the performance of duties, (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees, (8) Gross Misconduct or conduct unbecoming a State employee; (11) Falsification of an official document relating to or affecting employment, (15) Acts that would endanger the lives and property of others, (23) Political activity prohibited by T.C.A. Title 2, Chapter 19 (The Little Hatch Act) and (24) for the good of the service as outlined in T.C.A. 8-30-326. . . .

Plaintiff's employment eventually was terminated, but after she secured the services of an attorney, a further investigation was conducted. Plaintiff was informed after this later investigation that her employment would not be terminated after all. Some of the findings in the immediately preceding letter were not addressed in this later investigation. In addition, some of the more serious allegations were found not to have any merit based in large part on an affidavit from Lee Taylor a/k/a Cynthia O'Neal denying any improper action by Plaintiff. Chairman Traughber then sent Plaintiff a letter informing her that she would be reinstated with full back pay and no loss of benefits. However, Plaintiff was issued a written warning for violating the Board's policy as it pertains to Offender Travel Permits with regard to several "Offenders" assigned to Plaintiff.

When Plaintiff was reinstated, she initially was assigned to the Clinton office. The employees in the Clinton office, however, refused to work with Plaintiff, and the manager of the Clinton office allegedly stated that Plaintiff was not going to be allowed to cause problems there. Because the employees at the Clinton office refused to work with Plaintiff, she was placed on paid leave until she eventually was assigned to the office in Maryville.

The jury trial on Plaintiff's defamation claim lasted roughly four days. The jury returned a verdict for compensatory damages against Dyer in the amount of $250,000, and against Dockery in the amount of $100,000. The jury declined to award punitive damages.

Defendants filed separate post-trial motions for a judgment notwithstanding the verdict or, in the alternative, motions for a new trial or suggestion of remittitur. The Trial Court granted the post-trial motions and made the following comments following the hearing[5]:

> This was an action filed by the Plaintiff Ms. Brasfield for defamation against the Defendant Dyer who was a co-worker as a Department of Probation and Parole Officer and the Defendant Dockery, who was her former "boyfriend", he was an employee of the Public Defender's Office of Anderson County. . . . This is an action for defamation. An action for defamation is either oral, what we call slander, or written, what we refer to as libel. Both of those forms of defamation have been raised in this case.
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> "To establish a prima facie case of defamation, the Plaintiff must prove that: (1) a party published the statement; (2) with knowledge that the statement was false and defaming to the other or, (3) with reckless disregard for the truth of the statement or with negligence [in] failing to ascertain the truth of the statement." *Sullivan v. Baptist Memorial Hospital*, 995 S.W.2d 569, 571 (Tenn. 1998). . . . Continuing with the quotation, "If the Plaintiff in a case of libel is a public official or public figure, they must also prove that the libelous statements were made with 'actual malice,' - that is with knowledge that it was false or with reckless disregard of whether it was false or not." . . . You must prove both of those factors. That citation is from the *New York Times v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).
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> Then continuing on later in the opinion, the cite to which I'll give you at the end of this quotation, "Tennessee has adopted the standards of 580(a) and 580(b) of the Restatement (2d) of Torts, 1977, which establishes the distinction between defamation as to a public official or public figure and defamation as to a private person." citing *Press, Inc. v. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978).

[5] These comments were transcribed and incorporated into the Trial Court's final judgment.

"As to public official, one can only be held liable if he or she knows that the statement is false and that it defames another person, or if he or she acts with reckless disregard of such matters." *Id*. at 442.

"As to a private person, he or she may be held liable if she or he knows that the statement is false and it defames the person, or if he or she acts with reckless disregard of these matters or acts negligently in failing to ascertain them. [*Id*]. at 442." That quotation is from *Hibben v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005). . . .

[W]ithout getting into public figure issues which relates to whether private citizens getting involved in certain controversies then make themselves a pubic figure so the standard changes. . . . Just focusing on public official in this case, it's undisputed by the Plaintiff here that for purposes of the defamation law, she meets the test of a public official.

The unique part of that is, back to what we kicked around the courtroom a little bit this morning, this discussion of conditional privilege or not. If you look at the caselaw, I think, the terminology gets mixed depending on from case to case and situation to situation.

Here, the situation is where we have, one, it's a public employee. Without doubt, anyone who is a policy maker, a decisionmaker, a publically elected official is thrown into that category of public official for purpose of defamation.

However, an employee of government, generally, is not considered a public official under the defamation law. . . . [A] public employee who is not a decisionmaker or in high management is generally not considered a public official for the defamation standard for general purposes.

But when you talk about or the issue arises about a particular public employee's job performance, performance of function[s] for which they're duty bound to perform while in the public service, or certain matters of "public interest," [then that]

public employee is considered a public official for the defamation standard. . . . As long as the comments fairly relate to that subject matter and not some private matter about the public employee. . . .

The Restatement, which is adopted in the cases in Tennessee, 508-508(a) as to a defamation of a public official or public figure says, "One who publishes a false and defamatory communication concerning a public official or public figure in regard to his conduct, fitness or role in that capacity, is subject to liability if and only if he: (a) knows the statement is false and that it defames the other person, or (b) acts in reckless disregard of these matters." *Press Inc. v. Verran*, 569 S.W.2d 435, 442.

All right. So as to Ms. Brasfield, what is the status of the law? . . . "Public figures who desire to pursue defamation actions bear a heavy burden of proof because of our society's commitments to the principle that 'debate on public issues should be uninhibited, robust, and wide open'", a quote from the U.S. Supreme Court in *New York Times Company v. Sullivan*, 376 U.S. 254 at 270 . . . .

Then going on, "In order to recover damages, they must prove with convincing clarity that the Defendant acted with actual malice." . . . Then the law in Tennessee . . . [is that] the proof of the basis of defamation to a public official must be by clear and convincing evidence. . . .

Now, we've also got into the question of what about what type of comments are not considered or you do not consider to be defamation. . . . [T]he U.S. Supreme Court says, "Likewise, statements that cannot 'reasonably [be] interpreted as stating actual facts about an individual' because they are expressed in 'loose, figurative or hyperbolic language,' and/or the content and tenor of the statements 'negate the impression that the author seriously has maintained as assertion of actual fact,' about a Plaintiff are not provable false and, as such, will not provide a legal basis for defamation." *Milkovich v. Lorain Journal*, 497 U.S. 1, 21, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990).

The other requirement that exists is that the basis for the act of defamation, whether it be libel or slander, has to result in injury.

* * *

In this case, Plaintiff's evidence of Mr. Dyer's defamation basically comes from her testimony, the testimony of Ms. Martin, and basically most of it is in the exhibits. . . . Those exhibits are the initial supervisor's investigation, Mr. Newble's statement, the Level 4 report of Chairman Traughber, the letter of intent to terminate given, and then the letter of warning and reinstate letter, because in those statements are statements about Ms. Brasfield.

The question is, one, were those statements proven to be made by . . . Defendant Dyer, as to him? The other question then, were they proven to be defamatory to her?

All right. As to Ms. Brasfield's claim as to damages . . . [t]here was this one comment about this supervisor about causing trouble. But other than that, it was her comment, "I went out there, and no one would talk to me or associate with me." That's basically her proof of damages in this case. . . .

The Court finds that there is no evidence, much less evidence that meets the standard of clear and convincing evidence, that Mr. Dyer knew that the statements of any other person in this case were false, or that his actions in regard to the statements of any other person other than himself [were] taken with reckless disregard of the truth or falsity of the other statements made by the other persons. This includes all the persons as stated in those documents who may have made some negative comments about Ms. Brasfield.

As to Mr. Dockery in regard to Mr. Dyer – this has already been referred to – . . . as to whether Mr. Dyer can be liable for or would be liable for any statement Mr. Dockery made, there's no proof in this record whatsoever that Mr. Dyer ever spoke with or ever met with Mr. Dockery prior to the

depositions in this case. So there's no proof whatsoever how he should have or would have known or had any way to be liable for any false statements made by Mr. Dockery.

All right. So what is the Plaintiff's damages? . . . The Court agrees with the Defendant that the statements to Mr. Newble that she never showed up at work, she never violated anybody, and she never made home visits, . . . the Court finds that no reasonable jury could find that those statements were other than loose, figurative, hyperbolic language, and that there's no impression that the author seriously maintains assertion of those as actual facts. . . . The best example of that is those [comments that] were made in oral statements to Mr. Newble. Nowhere did any of that appear . . . in Mr. Newble's report of finding any wrongdoing of Ms. Brasfield.

* * *

The important part is – the question here is, did what Mr. Dyer and/or Mr. Dockery do cause injury to the Plaintiff's reputation? That's the question. First of all, was it false and all of those things we've talked about. But then the bottom line is she's got to prove that that was the cause of the harm to her. One of the things she relies upon . . . [is that] her termination has got to hurt you.

The problem is there are 16 individuals not included with the Defendants in this case who were interviewed and gave information to Mr. Newble as related in his report. There was no proof in this record that either of these Defendants had anything to do with soliciting or causing, or causing those statements to be made, much less for those statements to be false.

In fact, there's no proof that those statements are false, other than one says it's true and Ms. Brasfield denies it. So where is the clear and convincing evidence that all of those things by the 16 other people were false and they didn't cause the harm to Ms. Brasfield rather than what we have here.

The more trouble-some situation with this judgment is, we had a statement by Mr. Dockery for which Mr. Dyer, there's no proof he would be responsible for and vice versa. Ms. Brasfield sues for the same damage between the two of them, and the jury returns two different verdicts between the two of them. . . . The problem is there's no proof here as to what caused the people in Anderson County not to talk with her. No proof was offered by anybody why. . . . No proof was offered, "I thought any less of Ms. Brasfield than I did before," or her reputation was in some way harmed by Mr. Newble's findings long before all this started. A substantial number of co-employees thought she was an ineffectual probation officer before those statements [were allegedly made].

So with all of that, the Court finds – let's assume you can prove by clear and convincing evidence that the statements by Mr. Dyer are false or that they were [made with] reckless disregard. Let's assume that. Even with that, my problem is, what proof is there that those are the things that harmed Ms. Brasfield. . . . The Court finds that she did not meet the burden of proof required by our law. The Court grants the motion for directed verdict [and dismisses] the cases against both of these Defendants. In doing so, I want to be clear. The difference as to Mr. Dockery is somewhat different.

The only reason why the Court's granting the motion as to Mr. Dockery is the failure to establish that the statements were harmful. The Court clearly finds that the question of whether Mr. Docker's statements were true or false was purely a jury question. If they were false, the Court was totally comfortable with the idea that he had to know why they were false, because of the nature in how the statements were made.

But the granting of Mr. Dockery's motion for directed verdict is purely upon and solely upon the fact there's no proof as to what, if any, harm [was] caused to hurt her reputation, or how the jury could find him liable for what happened to her comparing all these other things that could have caused it, including the statements of Mr. Dyer and including the 16 other people.

> So I want to be clear that the Court finds a distinct difference here between the Dyer case and the Dockery case, particularly to the proof of falsity of statements in the case.
>
> Now, as I understand what I am supposed to do having granted the motion and dismissed the cases, I'm supposed to make a conditional ruling on the remaining motion for new trial. . . . I think, clearly, based upon the Court's finding as 13th juror, I would grant a new trial in this case. I don't think there is any reason to have done it otherwise based upon what I've said here of the failure of the proof. . . .

Following entry of judgment for Defendants, Plaintiff timely appealed and raises the following issues which we quote from her brief:

> I. Because material evidence supporting the Plaintiff's claims was presented to the jury, the trial court erred in Granting Judgment Notwithstanding the Verdict (JNOV) for the Defendants.
>
> II. The trial court erred in dismissing Plaintiff's intentional interference with contract claims.
>
> III. The Jury's Verdict Should be Reinstated because Tennessee's 13th Juror Rule, which permits a trial court to grant a new trial because it disagrees with the verdict, violates the Seventh Amendment and Article 1, § 6 of the Tennessee Constitution.
>
> IV. Exceptional Circumstances Justify this Court in Reinstating the Jury's Verdict.

Not surprisingly, Defendants argue on appeal that the Trial Court correctly granted the JNOV or, alternatively, a new trial. Defendants also argue that the Trial Court correctly dismissed the interference with contract claims. As separate issues, Defendants assert that the Trial Court erred when it denied their motions for summary judgment on the basis that Defendants were entitled to qualified immunity and because the challenged comments were privileged.

Discussion

We first discuss whether the Trial Court erred when it granted Defendants' motion for judgment notwithstanding the verdict. This Court recently discussed the applicable standard when reviewing a judgment notwithstanding the verdict in *Howell ex rel. Williams v. Turner*, No. M2008-01588-COA-R3-CV, 2009 WL 1422982 (Tenn. Ct. App. May 21, 2009), *no appl. perm. appeal filed*, wherein we stated:

> A judgment notwithstanding the verdict is a post-trial motion for a directed verdict. *Whaley v. Perkins*, 197 S.W.3d 665, 669 n.3 (Tenn. 2006). It is, therefore, governed by the same standard of review as a directed verdict and is subject to the provisions of Tennessee Rule of Civil Procedure 50. *Id.*; *Mairose v. Fed. Express Corp.*, 86 S.W.3d 502, 511 (Tenn. Ct. App. 2001). Thus, a judgment notwithstanding the verdict is appropriate only when reasonable minds cannot differ as to the conclusions to be drawn from the evidence. *Johnson v. Tenn. Farmers Mut. Ins. Co.*, 205 S.W.3d 365, 370 (Tenn. 2006). Upon review, we construe all evidence in favor of the nonmoving party and disregard all countervailing evidence. *Johnson*, 205 S.W.3d at 370. Like the trial court, an appellate court is not permitted to weigh the evidence or evaluate the credibility of witnesses. *Id.*; *see Blackburn v. CSX Transp., Inc.*, No. M2006-01352-COA-R10-CV, 2008 WL 2278497, at *3-4 (Tenn. Ct. App. May 30, 2008) (no perm app. filed). If material evidence is in dispute or doubt exists as to the conclusions to be drawn, a motion for a judgment notwithstanding the verdict is properly denied. *Johnson*, 205 S.W.3d at 370.

Howell, 2009 WL 1422982, at * 2.

As we interpret the Trial Court opinion granting the JNOV, the Trial Court did not believe that Dyer had defamed Plaintiff, and there was a jury question as to whether Dockery's comments were defamatory. However, the Trial Court went on to conclude that even if defamatory comments were made by either or both Defendants, Plaintiff had failed to offer any proof that she suffered any damages or, if she did suffer any damages, that it was Defendants who were responsible for the injury. Due to this lack of proof on damages, the Trial Court concluded that Defendants were entitled to a judgment notwithstanding the verdict.

In *Davis v. The Tennesseean*, 83 S.W.3d 125 (Tenn. Ct App. 2001), this Court discussed damages in a defamation case as follows:

> '[T]he basis for an action for defamation, whether it be slander or libel, is that the defamation has resulted in an injury to the person's character and reputation.' *Quality Auto Parts*, 876 S.W.2d at 820. To be actionable, the allegedly defamatory statement must 'constitute a serious threat to the plaintiff's reputation.' *Stones River Motors, Inc. v. Mid-South Publ'g Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983). *Damages from false or inaccurate statements cannot be presumed; actual damage must be sustained and proved. Memphis Publ'g Co. v. Nichols*, 569 S.W.2d 412, 416, 419 (Tenn. 1978).

Davis, 83 S.W.3d at 128 (emphasis added).

Similarly, in *McLeay v. Huddleston*, No. M2005-02118-COA-R3-CV, 2006 WL 2855164 (Tenn. Ct. App. Oct. 6, 2006), *perm. app. denied Feb. 26, 2007*, this Court affirmed the granting of summary judgment to the defendants because the plaintiff failed to establish any injury as a result of the defamatory statements. In reaching this conclusion, we noted that:

> [T]his Court has held that the plaintiff must show that her standing in the community and her public reputation for character has been injured by the alleged defamatory statement and that as a result she suffered real or actual damages due to that loss of standing or reputation. . . . [B]ecause McLeay failed to establish that she suffered any injury as a result of the defamatory statements, the trial court was correct in granting summary judgment for the defendants on the defamation claim.

McLeay, 2006 WL 2855164, at * 9, 10.

In the present case, Plaintiff devotes the vast majority of her brief to arguing whether the comments made by Defendants Dyer and Dockery were defamatory. The primary issue on appeal, however, is not whether Defendants made defamatory statements. Rather, the issue is whether Plaintiff offered any material proof establishing that Defendants' defamatory statements damaged her reputation, assuming the statements were defamatory.

Plaintiff cites us to nothing in the record that would support her claim that she suffered any damage to her reputation as a result of the Defendants' alleged defamation. Plaintiff argues that the fact that the Clinton office refused to work with her is evidence of damage to her reputation. While this may be evidence that Plaintiff did not enjoy a good reputation among some of her peers, there is no evidence that Defendants were in any way responsible for this situation. Numerous people were interviewed during the investigatory process and many of these people provided information that was negative towards Plaintiff and her work performance. Even though the Board ultimately decided not to terminate Plaintiff's employment, problems with her work performance were nevertheless found to exist, and she received a written warning.

We agree with the Trial Court that Plaintiff's defamation claim fails for lack of proof on two accounts. First, the only proof cited by Plaintiff in her brief to the effect that her reputation was injured was her assertion that the Clinton office employees refused to work with her. Unfortunately for Plaintiff, she offered absolutely no proof as to *why* any of the Clinton employees did not want to work with her. The point is, based on the record before us we simply do not know why these employees acted the way they did because Plaintiff presented no material proof on that issue. It would be pure speculation for us to conclude that Defendants' alleged defamatory comments were the cause of the Clinton employees' refusal to work with Plaintiff. This is even more apparent when considering Defendants' comments were only a small fraction of the overall investigation into Plaintiff's work performance which ultimately resulted in disciplinary action being taken against Plaintiff.

Second, even assuming that Plaintiff did show that her reputation was injured, she offered nothing to show that Dyer or Dockery were responsible for that injury, as opposed to the numerous other people who were interviewed and had less than positive things to say about Plaintiff's work performance. As set forth in *Davis*, *supra*, in order for a plaintiff to recover for defamation, she must prove that she sustained damages because of Defendants' defamatory statements. Plaintiff has offered nothing to show that her reputation was in any way affected by the comments she attributes to Dyer and Dockery.

Accordingly, we affirm the Trial Court's judgment that: (1) Plaintiff failed to present material evidence that she suffered any damage to her reputation; and (2) even if Plaintiff had proven damage to her reputation, she failed to present material evidence that Defendants' defamatory statements were responsible for that damage. The judgment of the Trial Court granting Defendants a judgment notwithstanding the verdict is, therefore, affirmed.

Plaintiff's next issue is her claim that the Trial Court erred in dismissing her common law and statutory intentional interference with contract claims. In *Quality Auto Parts, Inc. v. Bluff City Buick Co, Inc.*, 876 S.W.2d 818 (Tenn. 1994), our Supreme Court stated:

> Tennessee undoubtedly does recognize both a statutory and common law action for unlawful inducement of a breach of contract. Tenn. Code Ann. § 47-50-109 (1988 & Supp.1993); *Polk & Sullivan, Inc. v. United Cities Gas Co.*, 783 S.W.2d 538, 543 (Tenn. 1989). In order to establish such a cause of action, a plaintiff must prove that there was a legal contract, of which the wrongdoer was aware, that the wrongdoer maliciously intended to induce a breach, and that as a proximate result of the wrongdoer's actions, *a breach occurred that resulted in damages to the plaintiff. Id*.

Quality Auto Parts, 876 S.W.2d at 822 (emphasis added).[6]

We conclude that these claims were properly dismissed by the Trial Court. To begin with, there is no evidence that any employment contract with the Board ever was breached. Contrary to Plaintiff's assertions, just because someone's employment is terminated does not automatically mean that there has been a breach of contract. This is even more apparent if the employee is an at-will employee. Here, Plaintiff simply concludes that the Board automatically breached a contract with her when it initially terminated her employment. She cites us to nowhere in the record supporting her allegation that there was an actual breach of contract.

More importantly, however, we conclude that even if her initial termination was improper, there no longer was any breach of contract once Plaintiff was reinstated with full back pay and benefits. Likewise, even if there was a breach, Plaintiff suffered no damages once reinstated with full back pay and benefits. As there was no breach of contract

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[6] Tenn. Code Ann. § 47-50-109 (2001) provides as follows:

> It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.

and Plaintiff incurred no damages, and because both the common law and statutory causes of action require that a breach occurred that resulted in damages to the plaintiff, *see Quality Auto Parts*, 876 S.W.2d at 822, we affirm the judgment of the Trial Court dismissing these claims.

The judgment of the Trial Court granting Defendants' motion for judgment notwithstanding the verdict on Plaintiff's defamation claim is affirmed. Likewise, the Trial Court's dismissal of Plaintiff's common law and statutory claims for intentional interference with contract are affirmed. In light of these holdings, we pretermit the following: (1) Plaintiff's claim that Tennessee's 13th juror rule is unconstitutional; (2) Plaintiff's claim that the jury verdict should be reinstated due to exceptional circumstances; and (3) all separate issues raised by Defendants Dyer and Dockery.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court solely for collection of the costs below. Costs on appeal are taxed to the Appellant, Betty Brasfield, and her surety, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE