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2 No. 24
Monroe Yale Mann,
Respondent,
v.
Bernard Abel et al.,
Appellants,
et al.,
Defendants.

Henry R. Kaufman, for appellants.
Submitted by Monroe Yale Mann, for respondent.
Advance Publications, Inc. et al., amici curiae.

PIGOTT, J.:

This action for libel arises out of an article published on August 22, 2003 in the Westmore News, an independent newspaper serving the Town of Rye. The newspaper's founder, defendant Bernard Abel, wrote the article as part of his regularly featured column called "The Town Crier." The column is

located on the opinion page of the newspaper and is identified by an editor's note that it represents the opinion of the author and "not necessarily that of this newspaper."

The article at issue, entitled "Borrelli on par with Marie Antoinette" (referring to Rye Town Councilman Mike Borrelli), was written by Abel during a heated local election for control of the Rye Town Board. Under a subheading, entitled "Who is the real Mann?", Abel wrote about plaintiff Monroe Yale Mann, the Rye Town Attorney. Abel described Mann as a "political hatchet Mann" and "one of the biggest powers behind the throne" in the Town of Rye government. Abel wrote that it appeared that "Mann pulls the strings" and questioned whether Mann was "leading the Town of Rye to destruction." The article identified Mann as playing an "instrumental" role in a decision by the Port Chester School Board, some 35 years earlier, to discontinue its practice of allowing high school students from the Blind Brook School District to attend Port Chester High School.

Following publication, Mann commenced this action against defendants Abel and Westmore News, Inc., alleging that the statements contained in the article were false and published with actual malice. Before engaging in discovery, defendants moved to dismiss the complaint, contending that the action was filed in bad faith to chill the exercise of protected free speech and that the suit was frivolous. Supreme Court denied the motion and the Appellate Division affirmed without addressing

defendants' constitutional claim. Thereafter, Mann moved for summary judgment on the complaint. Defendants opposed the motion and cross-moved for summary judgment asserting that the article contained only expressions of opinion by Abel. Supreme Court denied both motions on the ground that there were disputed issues of fact, and did not address whether the article constituted protected opinion. The parties were directed to proceed to trial.

At the conclusion of the trial, the jury found that the statements in the article were defamatory and that defendant Westmore News had published the statements either with the knowledge that they were false or in reckless disregard of their truth or falsity. The jury awarded Mann $75,000 in compensatory damages against Westmore News and punitive damages against both Westmore News and Abel in the amount of $15,000 each. Defendants appealed, arguing that the statements were constitutionally protected opinion. The Appellate Division upheld the jury's determination that Mann was defamed, and concluded that he was entitled to compensatory damages, albeit at a reduced amount. The court dismissed the punitive damages awards and ordered a new trial unless Mann stipulated to a reduction in the compensatory damage award, which he did, leaving in place only the reduced award against Westmore News. Defendants then appealed as of right on the basis of a substantial constitutional question. We now reverse on the ground that the alleged defamatory statements

constitute nonactionable statements of opinion as a matter of law.

Whether a particular statement constitutes an opinion or an objective fact is a question of law (see Rinaldi v Holt, Rinehart & Winston, 42 NY2d 369, 381 [1977], cert denied 434 US 969 [1977]). Expressions of opinion, as opposed to assertions of fact, are deemed privileged and, no matter how offensive, cannot be the subject of an action for defamation (see Weiner v Doubleday & Co., 74 NY2d 586, 593 [1989], cert denied 495 US 930 [1990], citing Steinhilber v Alphonse, 68 NY2d 283 [1986]). Distinguishing between opinion and fact has "proved a difficult task", but this Court, in furtherance of that endeavor, has set out the following factors to be considered:

> "(1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal . . . readers or listeners that what is being read or heard is likely to be opinion, not fact"

(Brian v Richardson, 87 NY2d 46, 51 [1995], citing Gross v New York Times Co., 82 NY2d 146, 153 [1993], quoting Steinhilber, 68 NY2d at 292 [internal quotations omitted]).

In Immuno AG. v Moor-Jankowski (77 NY2d 235 [1991]), we declined to adopt an analysis that would require courts first to search the article for particular factual statements and then to hold such statements actionable unless couched in figurative or

hyperbolic language (id. at 254). Rather, we held that "courts must consider the content of the communication as a whole, as well as its tone and apparent purpose" and in particular "should look to the over-all context in which the assertions were made and determine on that basis 'whether the reasonable reader would have believed that the challenged statements were conveying facts about the libel plaintiff'" (Brian, 87 NY2d at 51, quoting Immuno, 77 NY2d at 254).

Applying that test to the facts of this case, we hold that, when viewed within the context of the article as a whole, a reasonable reader would conclude that the statements at issue were opinion. Although not dispositive, we note that the column was on the "opinion" page of the newspaper and accompanied by an editor's note that the article was an expression of opinion by the author. Moreover, the tenor of the column, including allegations that Mann was a "political hatchet Mann" who appeared to "pull[] the strings", clearly signals the reader that the piece is likely to be opinion, not fact. Likewise, the statement that Abel thought Mann's actions were "leading the Town of Rye to destruction" could not be anything but a statement of opinion. Although one could sift through the article and argue that false factual assertions were made by the author, viewing the content of the article as a whole, as we must, we conclude that the article constituted an expression of protected opinion and therefore, summary judgment should have been awarded to

defendants (see Millus v Newsday, Inc., 89 NY2d 840 [1996]).

Accordingly, the order of the Appellate Division insofar as appealed should be reversed with costs, and the complaint dismissed in its entirety.

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Order, insofar as appealed from, reversed, with costs, and complaint dismissed in its entirety. Opinion by Judge Pigott. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith and Jones concur.

Decided March 25, 2008