

Virginia Supreme Court Clarifies Defamation Claims in Employment Context Need Defamatory ‘Sting’

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Statements made in a disciplinary action form that did not hold the requisite defamatory “sting” to the reputation of the plaintiff cannot support a defamation claim, and statements made during proceedings before the Virginia Employment Commission (VEC) are protected by absolute privilege and cannot form the basis of a defamation claim, the Supreme Court of Virginia has held. *Bryant-Shannon v. Hampton Roads Community Action Program, Inc.*, No. 200153 (Va. Apr. 8, 2021).

Relevant Background

Lisha Bryant-Shannon was a 31-year employee of Hampton Roads Community Action Program (HRCAP), serving as deputy director for nearly 14 years. When the former executive director resigned in 2015, Shannon vied for the position. Despite a written succession plan that provided that the deputy director would fill the vacancy, HRCAP’s board of directors nominated its chairwoman, Tina Vick, as interim executive director.

Shortly after Vick was appointed, Vick met with Shannon and issued her a Disciplinary Action Form and placed it in Shannon’s personnel file.

While she was still employed by HRCAP, Shannon initiated a defamation lawsuit in the Newport News Circuit Court based on statements in the write-up. She was terminated approximately three months later. Shannon voluntarily withdrew her first lawsuit but subsequently filed another alleging claims of defamation based on the statement in the write-up, as well as statements made during VEC proceedings relating to Shannon’s application for unemployment benefits.

Shannon claimed the Disciplinary Action Form falsely accused her of abusing her paid vacation-sick leave, violating HRCAP’s email policy, and treating salaried employees as if they were hourly employees. Shannon also claimed HRCAP falsely accused her of “stealing” HRCAP emails during the proceedings before the VEC.

The Newport News Circuit Court dismissed Shannon’s lawsuit with prejudice, without leave to amend.

The Supreme Court of Virginia’s Opinion

On appeal, the Supreme Court of Virginia reiterated well-settled principles that, in order for a statement to be defamatory, it must carry the requisite defamatory “sting,” meaning that it contains language that:

tends to injury one’s reputation in the common estimation of mankind, to throw contumely, shame, or disgrace upon him, or which tends to hold him up to scorn, ridicule, or contempt, or which is calculated to render him infamous, odious, or ridiculous.

The Supreme Court then analyzed the three statements at issue in the Disciplinary Action Form and held that none of them carried the requisite defamatory “sting.” Therefore, it concluded they were not actionable defamation. The court explained that the first was an instruction from a supervisor to a subordinate to improve clarity and communication regarding planned absences; the second was merely a request that Shannon refrain from communicating with staff while on vacation; and the third was a communication between coworkers about office policy and did not impute or accuse Shannon of doing anything. According to the Supreme Court:

None of the statements contained in the Disciplinary Action Form would make Shannon appear odious, infamous, or ridiculous, or would otherwise subject her to contempt,

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shame, scorn, or disgrace. This Court's jurisprudence on defamation acknowledges that statements can be made that are offensive, unpleasant, harsh, and critical without necessarily constituting defamation. The Disciplinary Action Form did not convey defamatory "sting" and rightfully did not survive demurrer. We hold that the statements were not defamatory as a matter of law.

Turning to the statements made during VEC proceedings, the Supreme Court first looked at Virginia Code § 60.2-623(B), which provides that "information furnished [to the VEC]" may not "be used in any judicial or administrative proceeding other than one arising out of the provisions of this title[.]"

After citing the relevant public policy considerations, the Supreme Court noted several decisions from Virginia circuit courts and federal district courts in Virginia that precluded the use of statements made in VEC proceedings to support defamation claims. It held that Virginia Code § 60.2-623(B) provides an absolute privilege over statements made during VEC proceedings. Accordingly, statements made by or attributed to an employer during unemployment proceedings may not be used to support a later defamation claim.

Takeaways

This case provides employers in Virginia additional clarity about the contours of defamation claims stemming from breakdowns in the employment relationship. Statements in a write-up that do not carry the requisite defamatory "sting" and statements made during unemployment proceedings cannot support a defamation claim.

Nevertheless, employers should remain diligent in documenting employee discipline and continue to exercise care in ensuring all documentation is professional, non-personal, and does not include anything that would tend to injure an employee's reputation.

Please contact a Jackson Lewis attorney with any questions related to defamation, unemployment proceedings, training for management and employees, and other preventive practices.

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