

**IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO**

**JUDGE EUGENE A. LUCCI**

<b>GEORGE A. YOUNG, <i>et al.</i></b>	)	
	)	
Plaintiffs	)	
	)	
v.	)	<b>CASE NO. 02CV000974</b>
	)	
<b>RICHARD RUSS, <i>et al.</i></b>	)	
	)	
Defendants	)	

**JUDGMENT ENTRY GRANTING  
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

{¶1} Where: (1) the uncontroverted evidence shows that a television reporter conducted a reasonable investigation prior to broadcasting a controversial story about children who accused a private individual of using excessive force in disciplining them at a public elementary school, and (2) the defendants' broadcast presented both the accusations and the denial of the accusations, and (3) there is no evidence in the record to show that the defendants actually knew or should have known that the children's accusations were false or exaggerated, then the defendants are not negligent – even when the children's accusations later turn out to have been exaggerations and/or lies. In the absence of a genuine issue of material fact showing that the defendants were negligent, the defendants are not liable for defamation as a matter of law.

{¶2} The centerpiece of this defamation case features two television news stories – broadcast in northeast Ohio on February 21 and February 22, 2002 – in which the defendants<sup>1</sup> reported that some elementary school students in the Painesville City school system were accusing George Young, a custodian/lunchroom monitor, of using excessive force to physically discipline them. After the broadcasts, school and police authorities

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<sup>1</sup> As explained in the court's order granting Defendant Gannett Co., Inc.'s motion for attorney fees, there is no genuine issue of material fact regarding whether Defendant Gannett had any involvement in the events giving rise to this action. It did not.

finally determined that the children were either exaggerating or lying, or both. No criminal charges were ever filed, and after a brief re-assignment to another building during the school district's investigation, Plaintiff George Young was restored to his previous place of employment. The crucial issue in this case is whether, as a matter of law, the defendants were negligent<sup>2</sup> in failing to discover – prior to the broadcasts – that the children were either exaggerating or lying.

{¶3} Prior to broadcasting the original story on February 21, 2002, Defendant Richard Russ conducted a six-day investigation, interviewing 17 people, including the children making the accusations, other children who attended the school, parents, the principal of the school, the superintendent of the school district, the assistant superintendent of the school district, and the plaintiff. The initial broadcast presented the accusations as well as plaintiff's denial of any wrongdoing.

{¶4} The day after the initial broadcast, Defendant Russ became aware that a police investigation of the incidents had begun; however, because the police investigation had not yet concluded, Defendant Russ was unable to obtain any substantive information from the Painesville City Police prior to the follow-up broadcast on February 22, 2002.<sup>3</sup> The record is devoid of any evidence that defendants actually knew – prior to the broadcasts – that the children's accusations were false or exaggerated. In addition, the record does not contain

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<sup>2</sup> The court recognizes that the issue of negligence is before the court on a motion for summary judgment. Accordingly, the test is whether the plaintiffs have produced sufficient evidence to show that there is a genuine issue of material fact about whether the defendants were negligent. At trial, however, the plaintiffs would have to prove the negligence element by clear and convincing evidence.

<sup>3</sup> Judith Poluga was the principal of Huntington Elementary School. Her deposition testimony was unclear as to her recollection of the timing of the police investigation and her contact with Officer Levicki and with Defendant Russ. However, in her deposition, she claims she informed Defendant Russ that: (1) the officer had been there at the school, (2) the officer had completed his investigation with Ignacio Rios, (3) the officer was writing up his report, (4) Mr. Russ could go over to the police department and pick up the report, (5) the officer had found no violations, (6) the officer found that what Ignacio Rios had said was not true. (Poluga Deposition, pp. 15-17).

Plaintiffs argue that these statements show that Principal Poluga communicated to Defendant Russ prior to the broadcasts that the police had concluded that no criminal violations had occurred. (Plaintiff's memorandum in opposition, page 33). However, since the police investigation was not concluded until February 26, 2002 – after the broadcasts – it is obvious that the police had not concluded anything. Indeed, Defendant Russ's attempt to find out information from the Painesville Police Department was unsuccessful precisely because the police investigation had not yet concluded.

evidence sufficient to create a genuine issue of material fact regarding whether defendants should have known<sup>4</sup> – prior to the broadcasts – that the children’s accusations were false or exaggerated.

{¶5} The court has considered the separate motions for summary judgment filed by defendants Timothy White, Richard Russ, WKYC-TV3, and Gannett Co., Inc., and the defendants’ joint motion for summary judgment seeking dismissal of Plaintiff Maribel Young’s claims, all filed on April 11, 2003, together with the plaintiffs’ memoranda in opposition, filed on May 7, 2003, and the defendants’ reply memoranda filed on May 16, 2003. The court has also read all of the 12 depositions filed in this case, viewed the television broadcasts, and carefully examined all of the evidence.

{¶6} The court finds, as a matter of law, that Plaintiff George Young – as an elementary school custodian and lunchroom monitor – was not a public official.<sup>5</sup> The court also finds that the “neutral reportage” doctrine has been rejected by the Ohio Supreme Court.<sup>6</sup> Accordingly, the court finds that plaintiffs must ultimately prove the elements of defamation by a preponderance of the evidence, and that plaintiffs must prove by clear and convincing evidence that the defendants were negligent. The court also finds that there is a genuine issue of material fact regarding whether the broadcasts in question – when viewed in their entirety – were substantially true.

{¶7} However, having made these findings, the court rules – with respect to the issue of whether the defendants were negligent – that: (1) there is no genuine issue of material fact, (2) defendants are entitled to judgment as a matter of law because they were not negligent,

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<sup>4</sup> At best, construing the evidence most strongly in favor of the plaintiffs, a reasonable jury might be able to find that the defendants knew enough from Principal Poluga to have considered the possibility that the children’s accusations may have been false or exaggerated. But in the absence of corroboration of Principal Poluga’s hearsay statements about what Officer Levicki told her, and in the context of an ongoing police investigation, and all of the other corroborated information that defendants had, this is a long way from showing that defendants should have known that the children’s accusations actually were false or exaggerated.

<sup>5</sup> *East Canton Education Association v. McIntosh* (1999), 85 Ohio St. 3d 465, 709 N.E.2d 468.

<sup>6</sup> *Young v. The Morning Journal* (1996), 76 Ohio St. 3d 627, 669 N.E.2d 1136.

and (3) reasonable minds, construing the evidence most strongly in favor of the plaintiffs can reach but one conclusion, and that conclusion is adverse to the plaintiffs.

{¶8} The court also has considered Defendant Gannett Co., Inc.'s motion for an award of attorney fees under R.C. §2323.51, which was contained in footnote 2 of Defendant Gannett's memorandum in support of its motion for summary judgment, together with the arguments made in plaintiffs' brief in opposition to Defendant Gannett Co., Inc.'s motion for summary judgment, filed May 7, 2003, and defendant's reply memorandum, filed May 16, 2003. The evidence is clear and uncontroverted that defendant's counsel repeatedly requested that Gannett Co., Inc. be voluntarily dismissed from the case by plaintiffs as it had nothing whatsoever to do with the case. Plaintiffs produced no evidence which would give rise to any liability on the part of Gannett even if there was a genuine issue of material fact on the issue of negligence.

{¶9} For good cause shown, the motion is well-taken and is granted. An evidentiary hearing to determine the amount of Defendant Gannett Co., Inc.'s reasonable attorney fees incurred in preparing its motion for summary judgment and reply memorandum is necessary.

{¶10} Accordingly, the court grants each of the defendants' motions for summary judgment. The complaint is dismissed in its entirety. Costs shall be paid by the plaintiffs. The evidentiary hearing on attorney's fees stated in Paragraph 9 shall take place on January 23, 2004, at 2:30 p.m. The court determines there is no just reason for delay, pursuant to Civ. R. 54(B).

**IT IS SO ORDERED.**

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**JUDGE EUGENE A. LUCCI**

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