

NORTH CAROLINA
WAKE COUNTY

FILED

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 Cvs 4005

WAKE COUNTY, O.S.C.

KEVIN A. MONCE,

BY _____)

Plaintiff,)

vs.)

NANCY G. DEAS and EDNA E. DEAS,)

Defendants.)

ORDER

This matter came on for hearing before the undersigned at the June 4, 2007, session of Wake County Superior Court on the parties' motions for partial summary judgment. The plaintiff appeared through his counsel, Michael Crowell of Tharrington Smith LLP. The defendants, who were present in court, were represented by Hugh Stevens and C. Amanda Martin of Everett, Gaskins, Hancock & Stevens, LLP. The court, having reviewed the record and having considered the memoranda of law submitted by the parties and the arguments of counsel, finds and concludes as follows:

1. The North Carolina Court of Appeals has held that a threshold legal issue for the court in a libel case is whether the statements at issue deal with matters of public concern or address matters of solely private concern. *Neill Grading & Const. Co., Inc. v. Lingafelt*, 168 N.C. App. 36, 43, 606 S.E.2d 734, 739 (2005). *Neill Grading* and cases cited by the defendants from other jurisdictions are instructive on the question of what constitutes a matter of public concern. Application of the principles set out in those cases to the undisputed facts of this case leads to the legal conclusion that the speech challenged in this lawsuit was addressed to a matter of public concern. Accordingly, plaintiff's motion for partial summary judgment on the issue of public concern is denied. Pursuant to Rule 56(c) of the North Carolina Rules of Civil Procedure, partial summary judgment on that issue is entered in favor of the defendants.

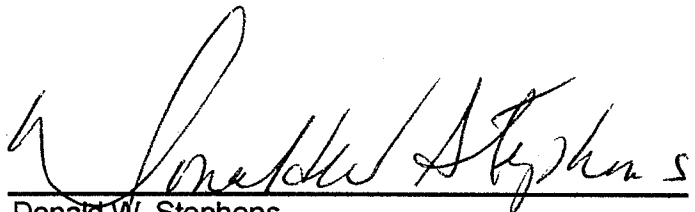
2. There being no discernible legal basis for an award of attorney fees to the plaintiff, summary judgment is entered in favor of defendants on that issue.

3. In order to prevail on a claim for punitive damages, the plaintiff must allege and prove, by clear and convincing evidence, that the defendants published the challenged statements with actual malice -- that is with knowledge that they were false or with reckless disregard to their truth or falsity. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). There is no evidence in the record that the defendants published with actual malice, and plaintiff's counsel acknowledged in open court that he could forecast none. Therefore, summary judgment on the issue of punitive damages is entered in favor of defendants.

4. The Court reserves for the trial judge all remaining issues.

WHEREFORE, IT IS SO ORDERED.

This the 7 day of June, 2007.



Donald W. Stephens
Senior Resident Superior Court Judge