

COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

JOSE BALZAGA, et al.

Plaintiffs/Appellants,

vs.

FOX NEWS NETWORK, LLC

Defendant, Respondent.

Case No. D052743
(SDSC Case No.
37-2007-00077593-CU-CR-CTL)

APPELLANTS' OPENING BRIEF

Appeal From Order Granting Anti-SLAPP Motion,
San Diego County Superior Court,
Judge Ronald L. Styn

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1. Plaintiffs Proved They Were Defamed By Defendant Fox News Network, LLC's Broadcast Stating They Had Been Charged With Crimes And Were Fugitives.

Plaintiffs and appellants Jose Balzaga, Estanislao Gonzalez, Alberto Jimenez, Ascensio Hernandez, Aristeo Lopez, Roberto Pena and Ricardo Valle were involved in a verbal and physical confrontation with defendant John Monti, an anti-immigration activist, on November 18, 2006 in the Rancho Penasquitos area of San Diego. Monti reported to the San Diego Police that the men had attacked him. The police proceedings and report show the police charged no one with a crime, although Balzaga was arrested for a brief time at the scene, then released pending further investigation.

Monti pitched his story to defendant Fox News Network, LLC's Hannity & Colmes cable television news program. Fox bit and put the story on the program's November 28, 2006 broadcast. Fox had the right to broadcast a fair and true report of what the police did and were doing. Fox, instead, changed the story. Its headline announced "Manhunt At The Border", underneath photographs of Balzaga, Gonzalez, Jimenez, Hernandez, Lopez, Pena and Valle, with the caption "Wanted Robbery, Assault, And Battery." These words and pictures told the average television viewer, and would allow the average juror to conclude, that these seven men, who had not been

charged with a crime for the incident on November 18, 2006, actually had been, and were wanted and being pursued by the police for the crimes of assault, robbery and battery.

The problem and the subject of this appeal is this — the trial court did what it is not supposed to do in ruling on an anti-SLAPP motion. The court resolved inferences from the language of the broadcast in favor of Fox, finding the broadcast was a privileged fair and true account of the police report, granted Fox's anti-SLAPP motion and struck the plaintiffs' defamation claim against Fox.

Since reasonable minds could readily conclude that Fox's broadcast went well-beyond the "substance of the police report," by suggesting that Balzaga and the others had been charged with crimes and were fugitives, whether the broadcast was a fair and true report was a question of fact for a jury. The plaintiffs also believe the trial court's interpretation of the plain meaning of the broadcast, measured by the standard of the average television viewer, was wrong. As a matter of law, the broadcast was not a fair and true account of the police proceedings and privileged under Civil Code § 47(d)(1)(C)(D).

The court's decision was wrong and should be reversed.

2. The Facts.

a. The November 18, 2006 Confrontation In Rancho Penasquitos And Resulting Police Investigation.

Monti is a self-described anti-illegal immigration activist. (Appellants' Appendix "AA" 146: ¶¶ 1, 2, 147: ¶ 1.) On November 18, 2006, Monti was participating in a protest at a day laborer camp in McGonigle Canyon near Rancho Penasquitos Boulevard, San Diego. He was taking photographs of some laborers and the persons who were hiring them and was handing out flyers. He had a verbal and physical confrontation with some of the laborers, including Balzaga and the other plaintiffs. Monti called the San Diego Police and complained that the men had assaulted, battered and robbed him. (AA 140-148.) The police questioned Monti, Balzaga and several other witnesses and arrested Balzaga at the scene, but only briefly, releasing him pending additional investigation. He was not charged. The other plaintiffs were not mentioned in the report by name, or charged with any crime. (AA 147, ¶ 1, 152, 153.) Despite Monti's complaint, the police did not re-arrest Balzaga or ever charge him or the others with any crimes. (AA 152, 153.)

b. The November 28, 2006 Hannity & Colmes Broadcast.

Monti pitched his story to the Hannity & Colmes news program on Fox Cable News Network, a nightly news program broadcast to a nationwide audience. Fox decided to run it on the November 28, 2006 program. The production staff was able to confirm but one thing with the police, besides what a police report stated, that as of November 28, there was "an investigation in progress" into Monti's report of an assault. (AA 42, 43.) The broadcast told a substantially different story. (AA 62-67, attached.)¹

The headline for the broadcast consisted of photographs Monti and his injuries, photographs of the seven plaintiffs prefaced by the words "Wanted Robbery, Assault, And Battery," all with the title "Manhunt At The Border." (AA 62-65.) The voice over by Colmes while the four photographs and the headline ran was:

"The San Diego Police are investigating an attack on an anti-illegal immigration advocate near a migrants' encampment close to the San Diego/Mexico border. The victim managed to take these photographs of his

¹ A written transcript of the videotape of the broadcast and copies of the photographs and headline for the program are part of the record on appeal and are attached, per CRC Rule 8.204(d). A DVD of the broadcast, also part of the record on appeal, will be transmitted to this Court, under CRC Rule 8.224.

alleged attackers before the crime took place, and now needs your help. We're joined now from the scene of the incident by the assault victim, John Monti. John, thanks for being with us. Explain to us what happened to you, what was going on." (AA 66, ¶ 1.)

After this introduction, Monti then briefly described what he claimed happened to him and was asked by Holmes to confirm that he took the photographs, which Monti did. (AA 66, ¶¶ 2-8; AA 67, ¶¶ 1-3.) The rest of the broadcast was Monti describing migrant campgrounds in San Diego County and giving his opinion they were crime zones (drug abuse, child prostitution) that harbored criminals. (AA 67, ¶¶ 3-12.)

On January 22, 2007, the lawyer for the men portrayed in the news broadcast, Daniel M. Gilleon, wrote Fox claiming the broadcast had falsely portrayed and slandered Balzaga and the others as criminals or fugitives. He asked Fox to publish a retraction, as provided under Civil Code § 48a. (AA 6:3-5, 16, 17.) Fox refused. This lawsuit followed on October 11, 2007.

3. The Plaintiffs' Lawsuit And Fox's Anti-SLAPP Motion.

The lawsuit by Balzaga, Gonzalez, Jimenez, Hernandez, Lopez, Pena and Valle contained one cause of action for defamation against Fox. They alleged that Hannity & Colmes' November 28, 2006 broadcast (that was incorrectly described as on November 29) defamed

them by falsely portraying them as wanted men charged with crimes and refusing to retract this. (AA 5:20-6:14, 7:24-27, 8:10-27.)

Fox filed an anti-SLAPP motion under CCP § 425.16 to strike the defamation action. Fox contended the alleged offending broadcast was not "of and concerning" plaintiffs, was substantially true, was a fair and true report and privileged under Civil Code § 47(d)(1)(C), or was privileged fair comment or opinion. (AA 19-47.) Fox included the broadcast and the police report with its motion. (AA 51:4-5, 60:3-4, 60:18, 62-67, 138-153.)

After the plaintiffs moved for and the trial court granted limited discovery on the substantial truth defense, Fox, for purposes of the motion, withdrew this defense. (AA 319.) The motion then proceeded on the other three grounds. On January 28, 2008, the trial court, Judge Ronald L. Styn, granted the motion. He first determined, as the plaintiffs had conceded, that the SLAPP statute applied. He then found that the broadcast and police report, did not establish a prima facie slander case against Fox because, as a matter of law, the broadcast was a privileged fair and true report or fair comment or opinion about the police proceedings. (AA 353-360.) This appeal followed. (AA 365.)

4. Standard Of Review And Issues Presented.

To successfully oppose an anti-SLAPP motion where the defendant has met the burden of establishing CCP § 425.16 coverage, a plaintiff must make a prima facie showing of admissible evidence, that, if credited by a jury, would merit a favorable judgment on the challenged claims. See *1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 584; see also *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.

This burden has been compared to that required to resist a motion for a nonsuit. See *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 823, 824; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851, 852. The required showing is one of "minimal merit." See *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, 95 at fn. 11.

The standard for granting a nonsuit, at the trial and appeal levels, is a high one. All presumptions, inferences and doubts must be resolved in the plaintiff's favor and against the defendant; only if the evidence viewed in this light requires a judgment for the defendant as a matter of law should a judgment of nonsuit be granted or affirmed. See *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291; see also *Bell v. State of California* (1998) 63 Cal.App.4th 919, 928, 929; see

also generally 7 Witkin, California Procedure (4th Ed. 1997) Trial §§ 431, 432, pp. 492, 493. "All inferences and intendments are resolved in favor of denial [of a nonsuit]." See Bell 927.

In considering whether a plaintiff has met the evidentiary burden of showing a prima facie case to resist an anti-SLAPP motion, the court must consider the pleadings and the evidence submitted by the parties. However, the court cannot weigh the evidence, but instead, must simply determine whether plaintiff's evidence would, if credited by a jury, be sufficient to meet the plaintiff's burden of proof. See *Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 537, 538; see also *Wilcox* 823-825.

On appeal, the court reviews de novo the trial court's ruling on an anti-SLAPP motion. See *Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, 339.

This appeal presents these main issues:

- ◆ Was the offending broadcast by Fox, as a matter of law, privileged as a fair and true report of the police action, or was it not, or was this issue a question of fact for a jury based on conflicting inferences to be drawn from the contents of the broadcast and the police proceedings?

- ◆ Does the fair comment or opinion privilege apply, and if it does, did the broadcast meet this standard?

The evidence proved the broadcast slandered Balzaga, Gonzalez, Jimenez, Hernandez, Lopez, Pena and Valle, the broadcast itself, and the police report about describing November 18, 2006 incident and the police response. They believe this evidence shows that whether the broadcast was a fair and true report, was a disputed question of fact, or as a matter of law, was not privileged, under Civil Code § 47(d)(1)(C)(D) where granting the anti-SLAPP motion was inappropriate. In addition, the fair comment or opinion privilege applies only to public figures proving actual malice, not to private persons, like the plaintiffs, who do not have this requirement. In any event, the broadcast was not, as a matter of law, fair comment or opinion on the police proceedings.²

² Over half broadcast was "of and concerning" the plaintiffs. It included their photographs and referred to them as "wanted" for crimes and identified them as the "alleged attackers." (AA 65 -67, ¶ 3.) This non-issue will not be discussed.

5. The Broadcast Was Not A Fair And True Account Of The Police Proceeding.
 - a. The Privilege For A Fair And True Broadcast Of An Official Proceeding Is Determined By Measuring The Impact On The Average Television Viewer.

A privileged publication or broadcast consists of a "fair and true report of a public official proceeding, or anything said in the course thereof." Civil Code § 47(d)(1)(C)(D); see also *McClatchy Newspapers, Inc. v. Superior Court* (1987) 189 Cal.App.3d 961, 975. The privilege applies as long as the substance of the publication or broadcast captures the "gist or sting" of the official proceedings, like police action or reports. See *Hayward v. Watsonville Register-Pajaronian & Sun* (1968) 265 Cal.App.2d 255, 262.

A reporter is not bound by the exact words of the proceeding; a degree of flexibility or literary license is tolerated in determining what is a fair report. See *McClatchy Newspapers, Inc.* 976; see also *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 262, fn. 13. The privilege applies unless the deviation from the words of the proceeding is of such a "substantial character" that it produces a different effect on the reader or viewer. See *Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1558.

The test is the impact of the substance of the broadcast or article on the average reader or viewer. See *Colt* 1558; *Crane v. Arizona Republic* (9th Cir. 1992) 972 F.2d 1511, 1519; see also *Handelsman v. San Francisco Chronicle* (1970) 11. Cal.App. 3d 381, 387 ("the publication is measured by the natural and probable effect it would have on the mind of the average reader.")

The standard of interpretation under the fair and true report privilege is how persons in the community where the broadcast occurred would reasonably understand it. See *Handelsman* 387. This case also held that effect produced by the particular words in a news article and the fairness of the report is a question of fact for the jury. See *Handelsman* 386. Where reasonable minds could disagree on what is a fair report of an official proceeding, the issue is a question of fact for the jury. See *Pierce v. San Jose Mercury News* (1989) 214 Cal.App.3d 1626, 1634.

b. The Substance Of The Police Proceedings Was An Investigation Of Monti's Report Of A Crime.

The police report of the incident on November 18, 2006 shows Monti accused the plaintiffs, who he photographed beforehand, of attacking and robbing him. The police questioned Monti and several other witnesses. They also questioned Balzaga, who was arrested briefly, but not charged, and then released him pending

further investigation. None of the other plaintiffs photographed by Monti was identified in the report, was questioned by the police or was arrested, or charged. Ten days later, just before the November 28 Hannity & Colmes broadcast, Fox confirmed only that the police were still investigating Monti's complaint.

The substance of the police proceedings was simply this — the police had investigated Monti's complaint of a crime, just one suspect, Balzaga, had been arrested at the scene, questioned and then released without being charged, pending further investigation, and the investigation was continuing. Here is what the substance was not — there was not so much as a hint that the police had charged, or were even contemplating charging anyone with a crime, were searching for seven or more suspects who had eluded them, or that any person was wanted or fugitive from the police because of the incident. The police proceedings were an investigation, nothing more.

- c. **The Broadcast Substantially Deviated From The Substance Of The Police Proceedings By Suggesting The Plaintiffs Were Fugitives Wanted By The Police For Crimes.**

The decision in *Colt*, defined what the role of the court was not to be in determining if a news article captured the substance of the police proceeding. The court was not "to engage in a detailed parsing of words, phrases and sentences to note the subtle differences

between" the official proceeding and the broadcast, or to interpret the words used in a broadcast at a level beyond the knowledge of the average television viewer. See *Colt* 250-252. The test is whether the difference between the facts and the manner in which they were described is substantial enough to produce a different effect on the average reader or viewer. See *Colt* 252; *Crane* 1519.

The difference between the facts and the broadcast are not subtle. Watching the broadcast shows that the differences are, with no reflective thought at all, striking. At the moment Colmes stated the police were investigating an attack on Monti, and says he took the photographs of the alleged attackers before the crime took place, the headline told the average television viewer something substantially different was then happening.

The bold headline below the four introductory photographs, including the one of the plaintiffs, announced there was a "Manhunt At The Border." The common meaning of these words, especially in the context of an American television news program, and their immediate impact on the average television viewer who has no time to reflect on the meaning, is that the police are actively searching for these men who are wanted for crimes and are fugitives from the law. The average television viewer does not need to "look it up," as

New York Yankees' manager Casey Stengel once quipped, to instantly know what a manhunt means. It means a search by the authorities for a fugitive or criminal. Even the six dictionary definitions provided by Fox with its motion defined the word exactly this way. (AA 200-205.) So does the definitive dictionary of English, Webster's, "a hunt for fugitive or criminal suspect." See Webster's New World Dictionary, 3d. Collegiate Ed., p. 822.

The words "Manhunt At The Border," shown with the photographs of the plaintiffs, was enough to instantly tell the average viewer, who is bombarded constantly with the alleged problems caused by migrant workers, that the police were not only investigating Monti's complaint, but were actively searching the U.S./Mexico border for the men in the photographs, the plaintiffs, who were fugitives.

Fox did more to enhance this effect. The headline was prefaced with the words "Wanted Robbery, Assault, And Battery" right above the plaintiffs' photographs.³ No subtle difference here between these words and their unmistakable meaning and a police investiga-

³ While Monti stated the photographs were taken by him, he never said the "Wanted" phrase was his words or were part of the photographs. Nor do the words look like they are part of the photographs. To the average viewer, the "Wanted" phrase looks like part of the headline.

tion with no arrests or charges. It reinforces the impression that these men are fugitives, when they were not.

Could the average television viewer, or average juror for that matter, glean from the broadcast that the manhunt was by Monti, not the police, like the court found? Maybe. But only by divining a subtle meaning from Colmes saying Monti "now needs your help," and doing what Colt held is not the test, interpreting the broadcast using "a level of exegesis beyond the ken of the average [television viewer]." See Colt 252.

Fox asked the trial court to, and the court did, engage in this exercise that is not the test for determining whether the broadcast was a fair and true report of the police proceedings. After all, an average television viewer watching a two minute sound bite with four photographs highlighted with a bold attention-grabbing headline, would not be expected to, nor do the networks want, that viewer to take the time to notice the subtleties between the headline and the language in the broadcast.

The exercise Fox and the court engaged in is also not the test for ruling on an anti-SLAPP motion. The nonsuit standard for such motions requires the court to consider the evidence and the

legitimate inferences to be drawn from it most favorably to the plaintiffs. cf. *Nally* 291; see also *Wilcox* 823-825.

View the evidence this way, measuring the impact of the broadcast on the average television viewer, and the broadcast is instantly recognizable as substantially deviating from the substance of the police proceedings, that were a mere investigation with no charges, by suggesting the plaintiffs were wanted by the police for crimes and were fugitives from the law.

At the very minimum, the fairness and accuracy of the broadcast was a question of fact for a jury, especially since the standard is the broadcast's probable effect on the average viewer. Stating there was a police investigation at the same moment as the headline announced there was a manhunt at the border for the men whose photographs were shown may or may not clarify the headline for the average viewer. At best, the words are ambiguous.

McNair v. Hearst Corp. (9th Cir 1974) 494 F.2d 1309, examined the relationship between the headline and the text of a newspaper article. Stating the well-known fact that what the news media regards as newsworthy is usually placed in the headlines, the court held that whether the rest of a newspaper article eliminated the false impression given by the headline was a question of fact for the jury.

McNair 1311.⁴ Does calling something a police investigation at the same moment the headline states the plaintiffs are fugitives wanted for crimes, erase the false impression the headline conveys at the very same instant to the average viewer? The answer is for the average television viewer, twelve jurors, to decide.

6. The Fair Comment Or Opinion Privilege Does Not Apply Here.

Both Fox's and the trial court's applying the fair comment or opinion privilege was misplaced. It does not apply to this situation.

The fair comment or opinion privilege applies to defamation actions by public figures where actual malice in publishing the defamatory material must be proved by the plaintiff. It is a defense to proving actual malice in publishing a false statement. See *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 281. The other cases cited by the court and Fox all involved public figures and applied the privilege as part of the test to determine if the defamatory publication was made with actual malice. See e.g. *Bose Corporation v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485; *Time, Inc. v. Pape* (1971) 401

⁴ A headline in the Los Angeles Times sports section once falsely reported something that Detroit Tiger's manager, Sparky Anderson, had done. When it was pointed out the article was not quite as unflattering, Sparky said "whoever 's writing the story better control the headline." This apt observation applies to the broadcast here.

U.S. 279; *Massou v. New Yorker Magazine* (1991) 501 U.S. 496; *Greenbelt Cooperative Assn. v. Bresler* (1973) 398 U.S. 6; *Old Dominion Branch No. 496 v. Austin* (1974) 418 U.S. 264; *Metabolife Int., Inc. v. Wornick* (9th Cir. 2001) 264 F.3d 382; *Standing Committee On Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430; *Dodds v. American Broadcasting Co.* (9th Cir. 1998) 145 F.3d 1053; and *Newton v. National Broadcasting Co. Inc.* (9th Cir. 1990) 930 F.2d. 662.

Because the plaintiffs are not public figures they do not need to prove the false broadcast was made with actual malice. The fair comment or opinion privilege does not apply to them.

The privilege also applies only to interpreting an ambiguous source. See *Bose Corp.*; *Metabolife Int., Inc.* Here the police proceedings were unambiguous, leaving no doubt in any reasonable person's mind there was no more than an investigation. None of the plaintiffs had been charged with any crimes, was wanted or a fugitive and only one of them, Balzaga, was even questioned or mentioned in the police report. Fox was not interpreting an ambiguous source, which means the fair comment or opinion privilege cannot apply.

And, using the headline "Manhunt At The Border" to describe the police proceedings, cannot possibly be a rational interpretation of the proceedings that were, without question, as Fox confirmed just

hours before it aired the broadcast, an investigation only at all times. The fair comment and opinion privilege also overlaps the fair and true report privilege in the context to proving actual malice. If the broadcast was not fair and accurate, it cannot be, at the same time, a fair comment or opinion on the police proceedings.

The fair comment or opinion privilege does not apply. Even assuming it did, the broadcast was either not fair comment or opinion, or this issue was a disputed question of fact for a jury. See e.g. *McNair* 1311; *Handelsman* 386; *Pierce* 1634.

7. **The Fox Broadcast Falsely Portrayed The Plaintiffs As Wanted Fugitives Charged With Crimes.**

Not that long ago, the newsboys hawking newspapers on the street corners downtown held up their papers and yelled out the headlines to passersby to get them to buy the paper. The headlines told the passersby, this is the news you need to know, buy me, read me. The headline for each story in the newspaper told the reader the same thing, this is the news you need to know, read me.

The headlines on television news broadcasts say the same thing. They tell the viewer — this is the news you need to know, watch me, don't hit the remote. In a two minute sound bite, like the broadcast here, the headline is the story, by design.

The headline was like that newsboy yelling out "get your paper here, manhunt at the border, men wanted for robbing and assaulting anti-immigration activist." This falsely portrayed Jose Balzaga, Estanislao Gonzalez, Alberto Jimenez, Ascensio Hernandez, Aristeo Lopez, Roberto Pena and Ricardo Valle as wanted criminals and fugitives from the law. Fox's anti-SLAPP motion should have been denied. The decision should be reversed.

Dated: August 15, 2008

Mitchell & Gilleon

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CRC, Rule 8.204(a)(1) Certification:

I certify, based on the word count of the computer program used to produce this Appellants' Opening Brief, that the number of words in the brief are: 4157.

James C. Mitchell

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7 Witkin, California Procedure (4th Ed. 1997)
 Trial §§ 431, 432, pp. 492, 493 8
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 3d. Collegiate Ed., p. 822 14