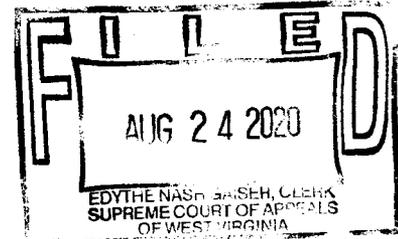


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 20-0349



WILLIAM DAVID HAUGHT
Plaintiff below, PETITIONER,

vs.

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**DAVID FLETCHER individually and as Mayor of the
Town of Belle, West Virginia and
TOWN OF BELLE, WEST VIRGINIA, a municipal corporation,
Defendants below, RESPONDENTS,**

Appeal from a Final Order of the Circuit Court of Kanawha County (19-C-1154)

RESPONDENTS' RESPONSE BRIEF

COUNSEL FOR RESPONDENTS:

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**William David Haught,
Plaintiff below, Petitioner**

Vs.

Docket No. 20-0349

**David Fletcher, individually and as
Mayor of the Town of Belle, West
Virginia, and Town of Belle, West
Virginia, a municipal corporation
Defendants below, Respondents**

RESPONDENTS' BRIEF

COME NOW Respondents David Fletcher and the Town of Belle, by and through counsel, Cy A. Hill, Jr, Allison M. Subacz, and the law firm of Cipriani & Werner, P.C., hereby respond to Petitioner's Brief and Assignments of Error as follows:

I. STATEMENT OF THE CASE

The instant appeal arises from an order granting Respondents' Motion to Dismiss in the Circuit Court of Kanawha County, West Virginia. Generally, the Respondents do not object to the majority of the facts presented by the Petitioner in his Brief for Appeal, as the facts presented are supported and documented in the Appendix to Brief for Appeal. Nevertheless, the alleged facts require context. The husband who had personally complained to Mayor Fletcher regarding Officer Haught's conduct with his wife was present at the council meeting on the night in question and asked questions regarding ordinances and protesting the police department. Not surprisingly, some council members were curious who he was and why he was there asking questions about his right to protest against the police department. However, there is no allegation in this case that Mayor Fletcher or any other Town representative discussed the matter regarding Officer Haught in front

of third-party citizens. The husband, likewise, made no specific comments about the matter during the open council meeting.

Furthermore, as indicated in Exhibit A to Plaintiff's Response to Defendants' Motion to Dismiss, Plaintiff acknowledges that Darick Vance addressed the Council as a visitor regarding some of the Town of Belle's ordinances. Appx at p. 26. After the public meeting, Mayor Fletcher did speak with members of city council regarding Mr. Vance's inquires and allegation that Officer Haught was having an extra-marital affair with Mr. Vance's wife while on duty. *Id.*

For the reasons set forth below, the Circuit Court properly found that David Fletcher was entitled to qualified privilege for Plaintiff's claim of defamation.

II. SUMMARY OF ARGUMENT

The Court should uphold the Circuit Court's decision finding that David Fletcher was entitled to qualified privilege regarding Plaintiff's claim of defamation. Mayor Fletcher is privileged, as the mayor, to have communications with Town representatives regarding alleged conduct of a patrolman while on duty with the Town.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondents do not request oral argument in this appeal as it believes "the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument." W. Va. R. App. P. Rule 18(a)(4).

IV. ARGUMENT

A. Standard of Review

1. Standard of Review

Generally, the standard of review applied to granted motions to dismiss is well-recognized as follows: "'Appellate review of a circuit court's order granting a motion to dismiss a complaint is de novo.' Syllabus point 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995)." Syl. pt. 1, *Albright v. White*, 202 W. Va. 292, 503 S.E.2d 860 (1998).

B. The Circuit Court Correctly Found That Mayor Fletcher is Entitled to Qualified Privilege Regarding Plaintiff's Defamation Claim

In his sole assignment of error, Petitioner asserts that the Circuit Court erred in finding that Mayor Fletcher was entitled to qualified privilege on the grounds that Mayor Fletcher's statement was not made in good faith about a subject in which he had an interest or duty. The Petitioner asserts that Mayor Fletcher's statements were not made in good faith because at the time of making such statements, he knew that the statements were false.

In *Crump v. Beckley Newspapers, Inc.*, 173 W. Va. 699, 320 S.E.2d 70 (1984), this Court found that "The essential elements for a successful defamation action by a private individual are (1) defamatory statements; (2) a non-privileged communication to a third party; (3) falsity; (4) reference to the plaintiff; (5) at least negligence on the part of the publisher; and (6) resulting injury."

Moreover, qualified privileges are "based upon a public policy that it is essential that true information be given whenever it is reasonably necessary for the protection of one's own interests, the interests of third persons or certain interests of the public." Restatement (Second) of Torts,

Topic 3: Conditional Privileges, Title A: Occasions Making a Publication Conditionally Privileged, Scope Note (1977). The Supreme Court of Appeals of West Virginia has stated that, "A qualified privilege exists when a person publishes a statement in good faith about a subject in which he has an interest or duty and limits the publication of the statement to those persons who have a legitimate interest in the subject matter. *Swearingen v. Parkersburg Sentinel Co.*, 125 W.Va. 731, 744, 26 S.E.2d 209, 215 (1943). *See also England v. Daily Gazette Co.*, 143 W.Va. 700, 104 S.E.2d 306 (1958)." *Mauck v. City of Martinsburg*, 167 W.Va. 332, 280 S.E.2d 216, 221 (1981).

Additionally, the question of whether Mayor Fletcher's comment to Town representatives was a privileged communication, and not defamation, is a question of law for the Court to decide. *Id.*; *see also Kerr v. Marshall Univ. Bd. of Governors*, 824 F.3d 62 (4th Cir. 2016). Mayor Fletcher made certain comments regarding Mr. Haught's alleged actions to Town representatives following a council meeting in the confines of council chambers and outside the presence of third-party citizens. These comments were informally made after a public council meeting where the husband of the female with whom Officer Haught was reportedly engaged in an inappropriate relationship, which was carried out at least to some extent while on duty, appeared and asked questions of council.

The Court properly held that Mayor Fletcher discussed this matter in good faith and without malice toward the Petitioner. Mayor Fletcher only discussed the internal personnel matter with representatives of the Town of Belle outside the presence of third-party citizens, which demonstrates his good faith. If the Mayor had ill motive, malice, or sought to embarrass Officer Haught and otherwise abuse his qualified privilege, he could have easily brought up the personnel issues surrounding Officer Haught to any number of third-persons who have no direct interest in

the subject matter. The Plaintiff makes no such allegation here. In fact, the exact same discussion described in the Complaint could have been had in a formal executive session involving the same people with the same result. Mayor Fletcher certainly had an interest, and arguably a duty, as the mayor to address a complaint from a citizen that a Town patrolman was having an inappropriate relationship with his wife while on duty. There is simply no defamation when a mayor discusses a citizen complaint involving personnel matters pertaining to a Town of Belle police officer with Town representatives as such matters fall well-within the mayor's qualified privilege as an elected official of the Town.

V. CONCLUSION

The Circuit Court properly considered all applicable case law, applied the appropriate legal standard, and properly granted the Respondents' Motion to Dismiss on the basis of qualified privilege. For the foregoing reasons, the Respondents David Fletcher and the Town of Belle respectfully request that this Honorable Court affirm the Circuit Court of Kanawha County's order granting Defendants' Motion to Dismiss.

**TOWN OF BELLE and
DAVID FLETCHER**

By Counsel:



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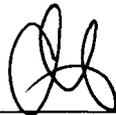
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Defendants below, RESPONDENTS,

Appeal from a Final Order of the Circuit Court of Kanawha County (19-C-1154)

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 24th day of August, 2020, I served the foregoing **RESPONDENTS' RESPONSE BRIEF** upon counsel of record by first-class U.S. Mail to the following:

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