

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

ERIC SPOFFORD

v.

NEW HAMPSHIRE PUBLIC RADIO, INC., ET AL.

Docket No. 218-2022-CV-00803

ORDER FOLLOWING IN CAMERA REVIEW

Plaintiff Eric Spofford brought this defamation action against Defendants New Hampshire Public Radio, Inc. (“NHPR”), Lauren Chooljian, Jason Moon, Dan Barrick, (collectively, the “NHPR Defendants”), Nancy Borque, Justin Downey, and Brian Stoesz stemming from NHPR’s reporting on multiple accusations of sexual misconduct against Spofford. Doc. 26 (Am. Compl.). As discussed below, the Court conducted an *in camera* review of discovery materials in connection with this case. This Order follows.

Background

The following facts are derived from Spofford’s Amended Complaint. See Doc. 26. On March 22, 2022, NHPR published a written article (the “Article”) entitled: *He built New Hampshire’s largest addiction treatment network. Now, he faces accusations of sexual misconduct*, along with an accompanying online podcast and two-day radio broadcast. See Doc. 26 ¶ 2. NHPR reported that Spofford, founder and former owner of Granite Recovery Centers (“GRC”), had sexually harassed a former GRC client and sexually assaulted two former GRC employees. Id. ¶ 110. Although the accusers remained anonymous, their allegations were substantiated by interviews with nearly 50

former clients, current and past employees, and others in the New Hampshire recovery community. Id. ¶ 111.

Chooljian, NHPR Senior Reporter and Producer, acted as lead reporter for the Article, while Moon, another NHPR Senior Reporter and Producer, contributed to it. Id. ¶¶ 16–17, 108. Barrick, NHPR’s News Director, was involved in the editing and approval of the story. Id. ¶¶ 18, 108. Bourque and Stoesz were former GRC employees who were interviewed for the Article, while Downey was another source who provided corroboration for one of Spofford’s accusers. Id. ¶¶ 6, 19–21.

On September 20, 2022, after unsuccessfully demanding that NHPR take down the Article, Spofford brought this action seeking damages for defamation, defamation by implication, and false light invasion of privacy. See Doc. 1 (Compl.); see also Doc. 26. By Order dated April 17, 2023, the Court granted Defendants’ motions to dismiss for, among other things, failure to sufficiently allege actual malice. See Doc. 82 (Order on Mots. Dismiss). However, the Court afforded Spofford the opportunity to further amend his Complaint to remedy its deficiencies. See id. at 23. Subsequently, the Court granted, in part, Spofford’s request to obtain limited discovery materials which he contended he needed to review in order to meaningfully amend his Complaint. See Doc. 94 (May 30, 2023 Order on Mot. Limited Discovery). The Court concluded that an *in camera* review of the materials in question appropriately balanced the parties’ competing interests, and thus ordered the NHPR Defendants to provide a limited set of documents for the Court’s review. See id. at 5. The NHPR provided the requested documents on October 17, 2023. See Doc. 108.

Analysis

In limiting Spofford's request for discovery documents, the Court ordered the NHPR Defendants to provide the following:

- Lauren Chooljian's notes about, communications with, and transcribed interviews of "Elizabeth" and "Employee A," with all identifying information (name, address, phone number, etc.) redacted or replaced with anonymized identifiers.
- Lauren Chooljian's notes about, communications with, and transcribed interviews of Nancy Borque, Justin Downey, Brian Stoesz, Piers Kaniuka, Lysie Metivier, and Amy Cloutier.
- Lauren Chooljian's communications with NHPR personnel concerning the credibility of "Elizabeth," "Employee A," Nancy Borque, Justin Downey, Brian Stoesz, Piers Kaniuka, Lysie Metivier, and Amy Cloutier.

See Doc. 94 at 5. The above-described documents were further limited in time and scope to those pertaining to the story in question, not the entire span of Chooljian's reporting on Spofford. See id. at 4–5.

Using sets of keyword searches, the NHPR Defendants narrowed the universe of potentially responsive materials to only those pertaining to the sources, topics, and time periods in question. See Doc. 104 (NHPR Defs.' Mem. Compliance). Through this process, the NHPR Defendants identified 2,868 pages of responsive discovery documents, providing those documents for the Court's review. See Doc. 108 (Notice of Delivery). These documents consisted of roughly 1,000 pages of transcribed source interviews, 800 pages of Chooljian's electronic communications with sources, 400 pages of Chooljian's electronic communications with Moon and other NHPR colleagues, and 600 pages of Chooljian's notes. See id. As this list makes clear, even the narrowed set of materials was extensive.

In conducting the *in camera* review, the Court devoted substantial resources and numerous hours to exhaustively reviewing the nearly 3,000 pages of discovery

documents. Having now completed this review, the Court concludes that the documents produced contain no evidence that any of the NHPR Defendants acted with actual malice.

As the Court has previously explained, “[i]f the plaintiff in a defamation case is a public official or public figure”—which Spofford is for purposes of this action, see Doc. 82 at 9—“he or she must prove that the statement was made with ‘actual malice,’ meaning ‘with knowledge that the statement was false or with reckless disregard of whether it was false or not.’” MacDonald v. Jacobs, 171 N.H. 668, 674–75 (2019) (brackets omitted) (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 280 (1964)). The actual malice requirement has been characterized as a “heavy, and often insurmountable” burden for a plaintiff to meet. See Lluberes v. Uncommon Prods., LLC, 663 F.3d 6, 14 (1st Cir. 2011). “[R]eckless disregard of truth” will be found only where there is a “subjective awareness of probably falsity: ‘There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.’” Gertz v. Robert Welch, Inc., 418 U.S. 323, 334 n.6 (quoting St. Amant v. Thompson, 390 U.S. 727, 731 (1968)).

Here, in conducting the *in camera* review, the Court found no indication that Chooljian or the other NHPR Defendants possessed knowledge that their reporting was false, acted with reckless disregard of its falsity, or entertained doubts as to the truth of their publication. See MacDonald, 181 N.H. at 674–75; see also Gertz, 418 U.S. at 334 n.6. On the contrary, Spofford’s assertion of actual malice has no merit as compared to the depth, detail, and accuracy of Chooljian’s investigation as reviewed by the Court.

Chooljian's notes and communications constantly referenced the need to speak to other sources to provide corroboration and verification of the accusers' stories. She interviewed dozens of sources for these purposes. While many of these sources remained anonymous, reliance on unnamed sources does not constitute actual malice. See Michel v. NYP Holdings, Inc., 816 F.3d 686, 704 (11th Cir. 2016) ("[t]hat many of the sources were not identified by name does not render them or the reliance on them invalid"). Chooljian was also assisted by Moon, Barrick, and other members of NHPR staff who were similarly concerned with veracity and corroboration. In addition, Chooljian compiled detailed lists of former GRC staff members and clients with information about the accusations, evaluating their accounts with transparency as to any shortcomings or contradictions in recollection (of which there were few, and none of material significance).

In short, the *in camera* review documents reflect professional and diligent reporting, and are totally devoid of any evidence that the NHPR Defendants had reason to doubt the truth of their publication. While Spofford maintains that the accusations against him are baseless and entirely fabricated, the *in camera* review documents contain absolutely no evidence of falsity. On this record, Spofford has no viable basis to sue the NHPR Defendants or their sources for defamation. See id. ("[e]ven if the statements made in the article were false as an objective matter, the allegations here are insufficient to show that the defendants knew they were false or acted in reckless disregard of their falsity").

Spofford has also argued that a phone conversation between Chooljian and Lysie Metivier, GRC's HR Director before Borque, is indicative of actual malice. See

Doc. 77 (Spofford's Post-Hr'g Brief) at 3. During the phone call, which occurred following the first day of the two-day radio broadcast, Metivier expressed "serious doubts about the truthfulness of Employee A's allegation" because she "firmly believe[d] [Employee A] would have told me about those things if they had happened." See id. (citing Doc. 26 Ex. 19 (Metivier Aff.) ¶¶ 32, 33, 39). Notes Chooljian took during the call align with the position Metivier takes in her affidavit, describing her doubts but failing to provide evidence of falsehood or otherwise refute the other sources' accounts.

While Metivier's doubts may be genuine, her skepticism stands in stark contrast to the otherwise unanimous agreement among Chooljian's many sources regarding Spofford's alleged predatory behavior. Moreover, the documents the Court reviewed *in camera* undermine Metivier's belief that employees would have reported relevant events to her. Indeed, one source told Chooljian they considered reporting such information to Metivier but decided not to because it "wouldn't have made any differen[ce]" and "would have been completely pointless." Therefore, the Court remains unpersuaded that Metivier's phone call establishes that the NHPR Defendants acted with actual malice.

Based on Chooljian's notes, Metivier also apparently disputed that Spofford had blinds in his office, in contrast to Employee A's description of the office as having blinds when she was allegedly assaulted. However, Metivier's claim that the office did not have blinds does not cast such serious doubt on Employee A's accusations as to compel the conclusion that the NHPR Defendants acted with reckless disregard for the truth in believing her and reporting her story. Thus, even if Metivier's account is assumed accurate, the Court disagrees with Spofford's position that such a minor

factual discrepancy provided the NHPD Defendants with a subjective awareness that Employee A's accusations were probably false. See Gertz, 418 U.S. at 334 n.6.

Spofford also takes issue with Chooljian's reliance on Amy Cloutier, the mother of Spofford's eldest son, arguing that Cloutier's obvious bias against him "corrupted [Chooljian's] supposedly independent investigation and reporting." See Doc. 92 (Spofford's Reply Obj. Mot. Limited Discovery) at 2–3. While the *in camera* review documents do support an inference that Cloutier was not fond of Spofford, that does not mean Chooljian's reliance on her rises to the level of actual malice. To the contrary, the documents reflect that Cloutier—who notably did not reach out until Chooljian had already been working on the story for over a year—primarily offered background on Spofford paired with her views on his treatment of women, little of which was reported in the Article.

Regardless, even if Cloutier had provided corroboration for specific accusations of harassment or assault, "a defendant's ill will toward a plaintiff is relevant to actual malice 'only when combined with other, more substantial evidence of a defendant's bad faith.'" See Doc. 82 (Apr. 17, 2023 Order on Mots. Dismiss) (quoting Tavoulareas v. Piro, 817 F.2d 762, 795 (1987)). The Court sees no reason why this proposition would not apply to ill-willed witnesses as well. Therefore, to the extent Cloutier or other sources held personal biases against Spofford, this does not mean the NHPD Defendants acted with actual malice in relying on those sources, particularly given the degree of corroboration present here. See Tavoulareas, 817 F.2d at 795. For the same reasons, Spofford's attempts to undermine the accuracy of the story by labeling several

sources as disgruntled employees, see Doc. 77 at 3, or by referring to Chooljian as being blinded by ambition, see Doc. 26 ¶ 118, are also unpersuasive.

Conclusion

Spofford requested the limited discovery documents in order to cure the deficiencies in his Complaint. Having reviewed the documents in question, the Court concludes that those documents offer him no support, and instead serve only to erode the validity of his claims. Thus, the Court declines to provide any of the *in camera* review documents to Spofford.

Although Spofford is still free to amend his Complaint, see *ERG, Inc. v. Barnes*, 137 N.H. 186, 189 (1993), absent new evidence that constitutes a total departure from the *in camera* review materials, any amendment will likely be futile. Any such amendment should be submitted **within thirty (30) days** of the Clerk's Notice of Decision accompanying this Order.

SO ORDERED.

Date: December 13, 2023



Hon. Daniel I. St. Hilaire
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 12/13/2023