

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

JAMES M. THOMAS

Plaintiff

v.

SHAD WHITE,
STATE AUDITOR OF MISSISSIPPI

Defendant

FILED

DEC 30 2020

ZACK WALLACE, CIRCUIT CLERK

BY Jh D.C.

20-806

COMPLAINT

Introduction

1. In an attack on James M. Thomas, a faculty member and teacher at the University of Mississippi, Mississippi State Auditor Shad White falsely accused Dr. Thomas of violating Mississippi's law prohibiting certain public employee strikes and called on the University to terminate his employment as a result. The false statement was made by Mr. White in a letter to the Chancellor of the University, in a subsequent letter to Dr. Thomas himself, in at least one press release, and in a number of interviews and other public statements.

2. This lawsuit is brought on behalf of Dr. Thomas. It seeks to hold Mr. White accountable under the law of defamation for this false statement. However, Dr. Thomas does not seek the payment of any taxpayer money. This defamation suit is brought against Mr. White in his individual capacity. If Mr. White is found to be liable for this false statement, the jury can decide whether he personally should pay any money. If the jury says he should pay one dollar, that is fine. If the jury orders payment of more money, that is fine too. But no taxpayer money will be paid to Dr. Thomas as a result of this lawsuit.

3. Dr. Thomas need not allege any economic harm or harm to his reputation from this false statement. Instead, this false statement falls under the legal concept of “defamation per se.” Under the law, certain false statements are considered defamatory even if no economic harm or harm to reputation are proven. The doctrine of “defamation per se” encompasses statements implying a lack of fitness for one’s job.

4. Mr. White first made his false statement in a letter sent to the Chancellor of the University of the Mississippi on September 14, 2020. In that letter, Mr. White accused Dr. Thomas of participating in an illegal strike under Mississippi Code § 37-9-75 when he joined college professors from around the country in a two-day event known by the hashtag “#ScholarStrike.” As stated by the organizers of that event, it was designed to “underscore the urgent importance of addressing racism and injustice in the United States.” The Auditor’s letter claimed that “[s]trikes are illegal in Mississippi” and “[t]he University should . . . proceed to court” to seek Professor Thomas’s termination, which is the penalty for violating that law. Despite quoting several portions of that law, the Auditor studiously avoided quoting the key provision defining an illegal “strike” as one taken “for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.” Miss. Code Ann. § 37-9-75(1)(a).

5. It was clear that Dr. Thomas did not join the #ScholarStrike to change his working conditions or increase his compensation. Instead, he did it as part of the national effort to highlight and combat racism and injustice. His actions plainly did not violate this law.

6. Rather than limit his false claim about Dr. Thomas to University officials, Mr. White promoted and repeated it in an array of public statements, interviews, and social media posts. As with his letter to the Chancellor, Mr. White continued to pretend as if this key provision

of the law did not exist. This failure allowed him to continue claiming that Dr. Thomas's actions violated the no-strike law when they clearly did not. These statements are listed later in this Complaint.

7. In one of those statements, which he posted on Facebook two days after the September 14 letter to the Chancellor, Mr. White attached that letter and added that he would enforce the law prohibiting illegal strikes against Dr. Thomas. He then said: "If you want someone who will ignore the law, go find someone else to be State Auditor." Unfortunately, Mr. White did ignore the law, apparently because the key provision contradicted his false narrative of Dr. Thomas as an illegal striker.

8. Dr. Thomas is an accomplished scholar with a good reputation as a teacher. Due to this unprecedented COVID-19 pandemic, he taught his fall 2020 classes remotely as permitted by the University. Because of the varied scheduling challenges that the pandemic poses for many students, Dr. Thomas did not schedule mandatory online class times but spent considerable time preparing and providing students in advance with weekly lesson plans that consisted of a combination of readings, videos of his own lectures that he had recorded for the classes, videos of other lectures, other multimedia content, and assessments in the form of writing prompts, quizzes, data exercises, and discussion board participation. The plans allowed students to work in a way that made the most sense for them in light of their individual schedules as long as they finished the work by the end of the week. Dr. Thomas was available most of the time to meet with students by video to discuss the subject and the materials and he responded to emails from the students in his classes. For the week of the two day #ScholarStrike on Tuesday-Wednesday, September 8-9, Dr. Thomas prepared the weekly lesson materials in advance and responded to emails from students the prior weekend and on the Labor Day holiday September 7. Although he did not hold

video conferences or respond to emails September 8-9, he did so on Thursday and Friday of that week. Prior to September 8, he explained the #ScholarStrike to the students in an email, provided them links to materials related to the event and its subject matter, and informed them in advance that he would not be responding to emails during those two days. Although he had initially indicated on social media that he would engage in a “work stoppage” those two days, he ended up finishing work during those two days on a scholarly manuscript that he also had worked on the prior weekend and the Labor Day holiday. All in all, Dr. Thomas earned his salary that week as he does every week.

9. Indeed, on December 8, 2020, the Faculty Senate of the University of Mississippi passed a resolution referencing Mr. White’s attack on Dr. Thomas and stating that “participation in the ‘Scholar Strike’ in no way contradicts the full, faithful and proper performance of the duties of employment of a faculty member of the University.” The Faculty Senate resolution also highlighted the language of § 37-9-7(1)(a) stating that an illegal strike occurs only when the action is undertaken to improve working conditions or compensation, and made the obvious point that the Scholar Strike was not for that purpose.

10. A person need not be a lawyer to read Mississippi Code § 37-9-75 and realize that it did not prohibit Dr. Thomas’s participation in the two-day event. But Mr. White actually is a lawyer and has no excuse for misleading the public about the law. Mr. White has publicly claimed that he read the statute before accusing Dr. Thomas of violating it and before asking that Dr. Thomas be fired from his job. If he did read it, he knew the law applied only to actions undertaken for the purpose of improving compensation or working conditions, and that Dr. Thomas did not violate the law. Thus, his numerous claims that Dr. Thomas did violate that law were knowingly false. And if for some reason he made the accusation without reading that key provision of the

statute, his accusation was stunningly irresponsible and was made in reckless disregard of the truth. Either way, he acted with what is known in the law as “actual malice.” By claiming that Dr. Thomas violated a law that carries a punishment of termination, Mr. White indicated that Dr. Thomas was unfit to remain in his job. Mr. White’s statements constitute defamation for which he is liable under the law.

11. In addition to the defamation claim, this lawsuit seeks a declaratory judgment from the Court of what Mr. White refused to admit: that Dr. Thomas did not violate the no-strike law, Miss. Code Ann. § 37-9-75, and there is no ground to terminate or penalize Dr. Thomas for an alleged violation of the law.

Jurisdiction, Venue, and Capacity

12. Mr. White is sued in his individual capacity only for the defamation claim in this complaint. He is sued in his individual and in his official capacity for purposes of the declaratory judgment request.

13. This Court has jurisdiction over this case pursuant to Miss. Const. art. VI, § 156. This Court has the authority to issue a declaratory judgment under Mississippi Rule of Civil Procedure 57.

14. Venue lies in this Court pursuant to Miss. Code Ann § 11-11-3. Hinds County is where the Office of the State Auditor is located and is the seat of the Mississippi state government. One or more “substantial alleged act[s] . . . occurred” in Hinds County, making venue appropriate under § 11-11-3. Most or all of the written communications at issue in this case were transmitted by the Office of the State Auditor, often from an official auditor’s office email address which is part of the collection of state government email addresses. Some of the communications were on official letterhead of the Office of the State Auditor. Upon information and belief, Mr. White also

was in Hinds County when he made some or all of the oral statements at issue, although that is not essential to establish venue. In addition, the declaratory judgment request in this case is against the Auditor in his official capacity as well as his individual capacity, which makes venue appropriate under Miss. Code Ann § 11-45-1.

Allegations

15. As mentioned in the introduction, Mr. White first made his false statement in a letter sent to the Chancellor on September 14, 2020 accusing Dr. Thomas of violating Miss. Code Ann. § 37-9-75 and urging the University to take steps to impose the mandatory penalty of termination. Mr. White conspicuously avoided pointing out the key provision in §35-9-75(1)(a) defining an illegal "strike" as one taken "for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment." That provision makes it clear that Dr. Thomas did not violate this law.

16. Two days later, on September 16, Mr. White issued the following statement on his Twitter feed, along with a copy of the letter he sent to the Chancellor: "Re: the strike of Prof. Thomas at UM: It is my job to ensure no public money is illegally spent. Strikes and work stoppages are illegal in Mississippi. He cannot be paid for days he didn't work. The penalty for striking is termination. The law is the law. See the letter here."

17. That same day, September 16, Mr. White posted the following on his Facebook page, again sharing the letter sent to the Chancellor: "Regarding the strike of Prof. Thomas at the University of Mississippi: I'm not afraid to enforce the law. The law says strikes and work stoppages are illegal in Mississippi. We will not be spending public money on someone who went on strike. If you want someone who will ignore the law, go find someone else to be State Auditor. See the letter here."

18. Also on September 16, he made another post on Facebook: "It is my job to ensure no public money is illegally spent. Strikes and work stoppages are illegal in Mississippi. He cannot be paid for days he didn't work. The penalty for striking is termination. The law is the law. He is not above it."

19. The next day, September 17, he spoke about Dr. Thomas on the Paul Gallo radio show: "[H]e violated the law and as a result of that he cannot be paid for those two days. And also as a result of that, the no strike statute applies and the penalties in the no strike statute are pretty plain. It says a court shall order the termination of that employee. Now I've read some headlines that say State Auditor pushes for this, State Auditor argues for that. I literally just read the statute out loud and that's what I have stated. And if folks don't like what the statute says they're free to run for the legislature. . . ."

20. Five days later, in a September 22 podcast sponsored by Mississippi Today, Mr. White spoke of Dr. Thomas and again accused him of an illegal strike: "[T]hat strike is illegal in Mississippi under the no-strike law. And the no-strike law states that there are some pretty plain consequences for what happens when somebody does that. So in one section of that law it says that when this happens it says the employer, quote, shall file suit. And then two sections below that it says that a court shall order the termination of his or her employment...If you engage in a strike in Mississippi you are engaging in an illegal activity and I can't allow you to be paid for those two days that would be public money, taxpayer money, being spent in contravention of the law...All I've done up to this point is say, this is what the law says and we should follow the law."

21. On December 1, Mr. White sent a letter by hand-delivery to Dr. Thomas demanding payment of \$1912.42 within 30 days, consisting of \$946.74, which Mr. White contends is two days pay, plus another \$946.74 in investigative costs plus \$18.94 in interest. Mr. White claimed in the

letter that Dr. Thomas owed this money because he allegedly “participated in a work stoppage in violated Miss. Code Ann. § 37-9-75 and § 25-1-105 (1972).” The letter also stated that “[t]hese salary payments were also made in violation of the Mississippi Constitution Article 4, §66 and §96.”

22. A few minutes after the letter was delivered to Dr. Thomas on December 1, Mr. White issued a press statement. It said: “Today my office issued a demand for \$1,912.42 (\$946.74 principal and \$965.68 interest and investigative costs) to Prof. James Thomas for his ‘work stoppage’ (his words) on September 8th and 9th. ‘Concerted work stoppages’ and strikes are illegal under Mississippi’s no-strike law, and paying someone for not working violates Sections 66 and 96 of the state constitution.”

23. In a December 16 Interview with Yall Poltics, Mr. White said "there was a professor who went on a work stoppage at the University of Mississippi for two days, he was paid for those two days. Under the constitution, section 66 and and 96, he cannot be paid for those two days. The constitution is further codified by Mississippi's no-strike law."

24. Beginning with his September 14 letter to the Chancellor through his statements in December, Mr. White has continued to claim faisely that Dr. Thomas violated Mississippi’s no-strike law, which is contained in Miss. Code Ann. § 37-9-75, even though subsection (1)(a) of that statute makes it clear that an illegal strike occurs only if the action was taken “for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.” Dr. Thomas’s participation in the #ScholarStrike was for the purpose of underscoring the importance of addressing racism and injustice in the United States. He did not seek a raise or different working conditions or anything else that would violate the no-strike law. Yet Mr. White called for his termination and also claimed that his purported violation

of this law required him to pay the \$1912.42 referenced in Mr. White's December 1 letter and press statement. (Mr. White also referred on December 1 to Miss. Code Ann. § 25-1-105, which provides that § 37-9-75 "applies to all public employees and public employers respectively.").

25. In addition to stating repeatedly that Dr. Thomas's alleged violation of § 37-9-75 required the payment of two days salary plus other costs, Mr. White added a new wrinkle in December by claiming that the payment was also required by § 66 and § 96 of the Mississippi Constitution. But that is not apparent from the text of those provisions, both of which relate to limits on the legislature. Section 66 states: "No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the Legislature, nor by any vote for a sectarian purpose or use." Section 96 states: "Extra compensation and unauthorized payments prohibited. The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections." The legislature has not granted any donations or extra compensation to Dr. Thomas and nothing in these provisions requires Dr. Thomas to pay any money.

26. As explained earlier in this document, Dr. Thomas earned his salary the week of September 7, 2020 as he did every week during the academic year. He prepared his lesson plans in advance that week and fulfilled his responsibilities. Like state executive officials and many professionals, university teachers are not paid by the hour but are paid a salary. Some tasks are done some days and some are done others, and if professionals change course and leave particular tasks undone on particular days, this is not necessarily a dereliction of duty as long as they do their

job. While Dr. Thomas did not answer emails or engage in video meetings with students on September 8-9, he did so later in the week just as he answered emails the prior weekend and Labor Day. Although Mr. White publicly complained about Dr. Thomas not answering student emails on September 8-9, faculty members are not required to respond to emails within a specific period of time. A one or two day response time is perfectly reasonable.

27. As mentioned earlier, the University of Mississippi Faculty Senate stated in its December 8 resolution that “participation in the ‘Scholar Strike’ in no way contradicts the full, faithful and proper performance of the duties of employment of a faculty member of the University.” The Faculty Senate also made the obvious point that, given the language of Section 37-9-7(1)(a) stating that an illegal strike occurs only when the action is undertaken to improve working conditions or compensation, participation in the #ScholarStrike did not violate that law. However, Mr. White continues to insist falsely that Dr. Thomas broke that law and should be penalized for it.

Causes of Action and Relief

28. Shad White’s false statements that Dr. James Thomas violated Mississippi’s no-strike law, Miss. Code Ann. § 37-9-75, were made with actual malice and constitute defamation per se. Accordingly, Mr. White, in his individual capacity, should be held liable for defamation and should be required to pay whatever amount the jury assesses in damages. This amount should not be paid by the taxpayers of Mississippi.

29. This Court should issue a declaratory judgment that Dr. Thomas did not violate Miss. Code Ann. § 37-9-75 and therefore is not subject to termination or any other penalty that might be imposed on someone who did violate it.

December 30, 2020

Respectfully Submitted

A handwritten signature in black ink, appearing to be 'R. McDuff', written in a cursive style.

ROBERT B. MCDUFF (Miss. Bar No. 2532)

PALOMA WU (Miss. Bar No. 105464)

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