

Exhibit W

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DAVID SCHIED,

Plaintiff,

-vs-

Case No. 06 633 604 NO

NORTHVILLE PUBLIC SCHOOL DISTRICT,

Defendant.

MOTION HEARING BEFORE THE

HONORABLE CYNTHIA D. STEPHENS, CIRCUIT JUDGE

Friday, March 30, 2007 - Detroit, Michigan

APPEARANCES:

For the Plaintiff:

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965-7610

WITNESSES

none,

EXHIBITS

, none,

(Friday, March 30, 2007)

THE COURT: Good morning.

06 633 604, David Schied versus Northville Public Schools.

MR. SALISBURY: Good morning, your Honor, Darrell Salisbury on behalf of the plaintiff.

MR. BAGDADY: Good morning, your Honor, Bruce Bagdady here on behalf of Northville Schools.

THE COURT: Counsel, I've had an opportunity to read the motion for summary disposition and its response. What would you wish to highlight briefly?

MR. BAGDADY: What I would like to highlight briefly, your Honor, is apparently what we have here -- the underlying case is libel and slander. And it's about a document that everybody agrees speaks the truth. So consequently, you cannot have a claim for libel and slander. I would like to highlight the fact that the lease signed by the plaintiff in this case specifically authorized not only the release of any document that professes, we believe [REDACTED] [REDACTED] but it also authorizes the release of any document within the personnel record, and holds and releases the district from

liability for the release of the document. Those are the two things to realize in this case.

There's other things, the governmental immunity, it says the case should be dismissed on that basis as well. We have the truth. We have the governmental immunity, and we have the release. Frankly, I think the tort claim goes automatically on one of those grounds, which leaves count one, basically left hanging with no support whatsoever.

MR. SALISBURY: The case was filed as a matter for injunctive relief. The second count dealt with the issues as to whether or not there was any libel or slander as a result of the defamation of this information. What I tried to point out in my response is that we're dealing with very specific wording and very specific portions of this law. The release that the Defendant is relying upon does not include, it specifically specifies -- what is specifically to be called unprofessional conduct. And in that definition, in that release, it does not include the information that was submitted to the Brighton School District.

The -- the other part is that there is this ongoing history and promises from the district, from the Defendant district not to have that information be

part of my client's personnel file. We have the e-mails, which I attached as far as the responses in reliance, in that these documents were going to be held under lock and key, in the attorney's office, would not be part of the file, and instead, when the request was made, they did release it, and they checked the box saying unprofessional conduct, record was expunged, pardoned.

This is a history from Texas, where he went through, as a young person. Had that record not only in Texas, they call it a set aside, but similar to Holmes Youthful Trainee Act here in Michigan. It was set aside. After that, he got a pardon from the governor of Texas. After that he got an actual separate expungment. All those things were part of the Defendant district's knowledge and the e-mails show that they were going to hold those things separately.

Instead, they went ahead and released it and forwarded it to the current district. Now, that's why we're seeking injunctive relief. That's the main portion of this case. The other parts, I think those would be matters that we'd have to get into more information as far as proofs, as far as additional proof.

THE COURT: Counsel, would you tell me how even

wrongful release of an accurate document amounts to libel, slander or false light?

MR. SALISBURY: No, I would agree with that, to the extent of the accurate documents. What I have a problem with is what the, Mr. Bothillo (phonetic), for the school district signed with regard to the transmission of the documents. And that seems wrong. Because he checks saying that, was the person involved in unprofessional conduct. And he says, yes. And he goes on to answer this about it, which has nothing to do with the definition of unprofessional conduct. So the added --

THE COURT: What are you pointing to, sir?

You're looking at a particular page in a document.

MR. SALISBURY: Right. This is what -- these were part of the exhibits. And there's so many.

THE COURT: So what number is it?

MR. SALISBURY: It is number 13, 14, 13 and 14, both of those.

THE COURT: Okay. This becomes interesting because they're not tabbed. But let me -- and some of them are not numbered.

MR. SALISBURY: I can hand you these.

So my concern is --

THE COURT: You believe it was saying, was the

person involved in unprofessional conduct, question, unprofessional conduct includes misconduct, act or immorality, moral turpitude or inappropriate behavior involving a minor or the commission of a crime involving a minor. And it's your contention that the fact that it was [REDACTED] because it didn't involve a minor, and it says, record was expunged or pardoned, that that amounts to libel or slander or false light?

MR. SALISBURY: I'm saying that that is something that we should examine. As far as the basis for the case --

THE COURT: I don't have to examine it. I want you to tell me how that fits under the definition of libel, slander, or false light?

MR. SALISBURY: Because this went to a current employer. This information was provided to a current employer. And what took place was not that [REDACTED] [REDACTED] but where it goes on and says, involving a minor or commission of a crime involving a minor, and it says handwritten in, record was expunged, pardoned.

THE COURT: But you acknowledge that this went along with the documents that did, in fact, speak to the nature of the actual conviction, expugment, Dardon, et.cetera, in Texas.

MR. SALISBURY: Well, the expungement, yes.

THE COURT: Okay. They could read into it and say, that's fine. What I'm saying is from my client's perspective.

THE COURT: Counsel, your injunctive case makes some sense to me. The libel and slander, I'm not getting it. If, in fact, I make one erroneous statement, because this didn't involve a minor, and I gave the documents that tell what actually happened, how that amounts to anything other than stupid, I don't know.

MR. SALISBURY: And that could be, and from a damages standpoint, I talked to my client about that, that even if we got to that point. He may not have damages. He has a job, and that's working. That was a count, that if we didn't get results on the other, we could pursue, so --

THE COURT: Counsel, you have a two part complaint. One that speaks to libel and slander or false -- defamation, and the other one which speaks to injunctive relief.

So, could you tell me why the claim for injunctive relief should be released -- should be dismissed.

MR. BAGDADY: Yes, your Honor. First, to the extent it relies upon the libel and slander. I think

it should fail. But even if you look at the statute that he appears to rely upon, if you examine the statute itself, it speaks to the issue of -- specifically says, school district shall provide. It does not give us an option. It would appear as though plaintiff's argument is the cover letter from Brighton School says, please give us information that occurred -- well, in your employ, in other words, in Northville's employ. That's what the cover letter says.

The releases, you are authorized to release any unprofessional conduct as well as anything in the personnel record. And if you look at the statute, 380.1230 (B). It says, someone in Mr. Sheet's (phonetic) position, has to sign an authorization, authorizing the release of information relating to any unprofessional conduct.

The district seeking to possibly employ the individual, has to request information of any unprofessional conduct, not limited to, while in the employ of the professional district, not unprofessional conduct, and the district which receives the information -

THE COURT: Counsel, what minor is involved in this?

MR. BAGDADY: Oh, there is no minor.

THE COURT: But if you've got a statute that says unprofessional conduct is defined as conduct involving a minor, and this is property, yep, that's from footnote one, and I do hate footnotes, footnote one on page three says, the statute defines unprofessional conduct to mean, one or more acts of immorality, moral turpitude or inappropriate behavior involving a minor or commission of a crime involving a minor.

MR. BAGDADY: Judge, I can tell you when this statute came out there was a flurry of discussion about what does it mean. And I can tell you the vast majority of districts as they interpret this, for whatever worth this has, read this to say, one or more acts of misconduct.. One or more acts of immoral, or moral turpitude, or inappropriate behavior involving a minor or commission of crime involving a minor.

In other words, the offenses are not simply those related to minors. They are misconduct, immorality, or, then those things specifically related to minor.

If they were all intended to be just related to a minor, you wouldn't have to use the word minor twice.

In other words, one or more acts of immorality, moral turpitude or inappropriate behavior or commission of a crime, involving a minor.

Instead when they wanted to specifically limit it to minor, they had those clauses specifically identified, minor.

THE COURT: Probably me. I'm looking at the use of punctuation. There is one or more abilities of misconduct, semicolon, or more acts of -- one or more acts of immorality, moral turpitude or inappropriate behavior involving a minor.

You believe that it is appropriate under this and that you are required to release the information involving the expunged conviction in Texas. Is that correct?

MR. BAGDADY: Yes.

THE COURT: So, that would mean that your interpretation of this is that even an expunged conviction is a lifetime offense?

MR. BAGDADY: I don't know if I would call it lifetime offense.

THE COURT: I would. It would follow you around forever.

MR. BAGDADY: The robbery was an act of misconduct. In 1977, yes, in Texas, yes.

THE COURT: But it's a lifetime conviction.

MR. BAGDADY: It is frankly, Judge, and I'm sure you're aware.

THE COURT: So expungement is a myth.

MR. SALISBURY: A myth.

MR. BAGDADY: We have, not in the school code context, your Honor. School district, more and more, if I may --

THE COURT: It's a myth.

MR. BAGDADY: If you would like to call it a myth.

It may be a myth that the legislature has decided we're going to have. You don't make the decision. It's not personal. And I think that's a point well-taken. In the school code conducts where districts have to share information where there is this heightened and legitimate concern for student safety, maybe the way you're saying it is. Maybe it's a myth, but when it says any act of misconduct, and I don't think the average human being would say [REDACTED] [REDACTED] not an act of misconduct. The school code does not say, except conduct that's been expunged, or except conduct that is so old, any act of misconduct. And if you're a school district and required to release any evidence of misconduct, you are not in a position to be -- to say --

THE COURT: I understand your view.

MR. SALISBURY: Your Honor, I do have something to add to that.

THE COURT: Which is what?

MR. SALISBURY: It's a two part process. When a person goes to a new school district, that school district is to get and obtain information from the state police and from the FBI. That's the criminal, involving things like moral turpitude and crimes with a child, whatever.

The release that Exhibit Number 14 specifies what takes place. You go to a prior district. That occurred as it says here. The individual's personnel record relating to any incidents of unprofessional conduct which occurred in your employ. So they did not say that. The statute provides for the current employer to get the criminal background information. And for the former district to provide things of unprofessional conduct that occurred in their employ.

1977 when my client was 20 years old, 19 years old in Texas, was not in their employ.

MR. BAGDADY: I know we've already gone through this, but while they're in your employ is not the statute. It is in a cover letter from Brighton Schools. It's not in the law. The statute says any unprofessional conduct, which includes misconduct.

THE COURT: It appears to me that we do not have a case for which there is a material question of fact.

As to whether or not plaintiff's libel or slander claim survives, because the information in toto was accurate, it cannot be the basis of libel or slander or false light. It exactly explained what it was.

There it was an erroneous, depending on your interpretation, there was an erroneous statement on the - that was delivered to - on November 16th, 2005, along with the accurate information. However, frankly, given the grammarians in the Supreme Court, we have a statutory definition which starts with one or more acts of misconduct, semicolon, indicating that it is now going to give us some additional information and substituting for the conjunctive and -- and then it goes on, one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor, that being a second set of things, or nouns, with modifiers. Another semicolon, or commission of a crime involving a minor. And a criminal conviction is not an essential element of determining whether a particular act constitutes unprofessional conduct, which is completely confusing. But at least we know that misconduct is different than immorality, moral turpitude or inappropriate behavior involving a minor or commission of a crime involving a minor. Misconduct generally defining those things that were

inappropriate.

It would appear that the release of this information is, in fact, authorized by the statute, not required, but authorized by the statute. In reviewing the statute, and looking for cases defining it, which was fun, because there didn't seem to be any, it appeared to me that, in fact, the legislature did decide that any individual who worked in the public schools who had ever had a conviction of any kind did, in fact, subject themselves to a pretty much life sentence. And that while the school district was not authorized specifically to use expunged convictions as a basis for rejecting an employee, they were authorized to have information and authorized to pass it on ad nauseam.

I do not like it. I do not agree with it. But it appears to me that the activity here was authorized by the legislature. And that the school district is, unfortunately, absolutely immune from liability as a consequence thereof.

MR. BAGDADY: Thank you, your Honor.

MR. SALISBURY: Thank you, your Honor.

THE COURT: Motion is granted.

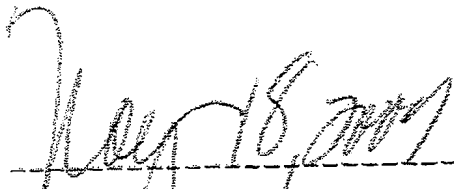
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STATE OF MICHIGAN

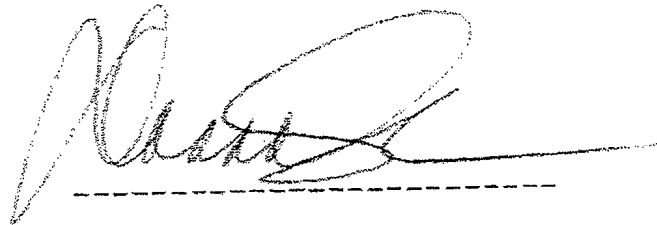
SS

COUNTY OF WAYNE)

I certify that this transcript, consisting of 11 pages, is a true, accurate and correct transcription of the proceedings and testimony held on Friday, March 30, 2007.



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