TURNER v. HALLIBURTON CO.

240 Kan. 1 (1986) | Cited 127 times | Supreme Court of Kansas | July 30, 1986

The opinion of the court was delivered by

Halliburton Company, Inc., (Halliburton) and its employeeWilliam Arend, defendants below, appeal from a jury verdictrendered in favor of Hiram Turner in a defamation and tortiousinterference with the right to contract case involving Turner'stermination from employment for allegedly stealing companyproperty. The jury returned a verdict in favor of Turner for$86,700.

Appellee first went to work for Halliburton in early 1981 as abulk material operator in Winfield. He was considered a goodemployee until March 1983, when the events leading to hisdischarge and this lawsuit occurred. On March 11, 1983, Turner,who had the day off, and his neighbor John Coffey set out to findsome automobile parts with which to repair Turner's car. Coffeydrove his pickup truck and, upon leaving Gueda Springs where bothlived, they proceeded to Arkansas City, Winfield, and Newkirk andPonca City, Oklahoma. During their travels the two consumed acase of beer but were unsuccessful in locating the neededautomobile parts. Finally, about 2:00 p.m. they contacted a manin Winfield who indicated he might have the necessary parts butthat he would not be available until after 5:00 p.m. Turner andCoffey then decided to go fishing and on the way stopped in GuedaSprings and picked up Mike Burr. The next stop was Arkansas Citywhere they replenished their beer supply and purchased somewhiskey. They then spent the rest of the afternoon fishing andaround 5:00 p.m. returned to Winfield where Turner was successfulin obtaining the necessary parts. Turner claims the last thing heremembers is passing the Desperado

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Saloon on old highway 77, headed toward Gueda Springs. The nexthe remembers is waking up at home in Gueda Springs on the morningof March 12, 1983.

The evidence at trial disclosed that on the way home the threedecided to stop at Daisy Mae's Cafe. Ron Ryser, anotherHalliburton employee, who was in the cafe, had his Halliburtontruck parked in the parking lot. While in the parking lot, thethree men took some Halliburton tools from Ryser's truck andplaced them in Coffey's truck. They were observed taking thetools by other patrons of the cafe, who advised Ryser and alsotold him the other truck had a personalized license plate reading"Wizard." Ryser proceeded to the lot but before he could getthere the truck with Wizard plates had departed. Ryser thenreported to the Arkansas City police and to his superiors thatthe tools had been stolen by three men at Daisy Mae's parkinglot. He also reported the description of Coffey's truck,including the distinctive Wizard license plate.

On Saturday morning, after Turner awoke, he went to Coffey'struck to retrieve his newly purchased auto parts and his fishingequipment. When he did so he observed the Halliburton tools andthought they looked familiar due to some distinguishing features.Later that day, Daniel Krueger, another Halliburton employee anda friend of Turner's, stopped by Turner's house and told himabout the missing tools and the theft at Daisy Mae's Cafe. Turnertook no action at that time. On Monday, March 14, 1983, Turnerreported for work at Halliburton where the employees were talkingabout the theft of Ryser's tools. Investigation by the ArkansasCity police inevitably led to John Coffey, who was picked up bythe Sumner County sheriff's office on March 15. Turner was awareof Coffey's arrest (on other charges) and then called Ryser andtold him he knew where the missing tools were located. Ryseradvised Turner to return them to him and then called hissuperiors at Halliburton to report these latest developments.Turner waited until the evening of March 16 to return the toolsto Ryser and, during that same evening, Turner was notified bytelephone to report to the company offices at 8:00 a.m. the nextmorning. Also that evening, Turner was contacted by an officer ofthe Arkansas City police department relative to the missingtools. Turner advised the officer he did not know anything aboutthem. The next morning, Turner reported to the

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appellant William Arend and Gary Rodveldt, both managerial andsupervisory employees, at the Halliburton offices. During thisconfrontation Turner's employment with Halliburton was terminatedon the grounds he had stolen company property. During theinterview he made no explanation of his connection with themissing tools except to state that he had been drinking the dayof the theft and that he hadn't had anything to do with themissing tools. At trial Coffey and Burr testified that the toolswere taken from the Halliburton truck because Turner wanted toplay a joke upon his co-worker Ryser and that at the time allthree of them were intoxicated. This testimony was consistentwith the statements originally given to police by Coffey andBurr. At the meeting with Arend and Rodveldt, it was made clearto Turner that he was being terminated and that the reason washis theft of company property. While the appellant Arend wasobviously upset and the conversation became heated and loud,there was no evidence that any other employees of Halliburtonheard any part of the confrontation except Rodveldt, who waspresent in a supervisory capacity. There was no evidence thatArend or Rodveldt told any other Halliburton employees of thefiring and reason therefor, except such supervisory andmanagerial personnel as were required to be notified understandard company procedure. It is also clear that Turner told hisfriend Krueger, and perhaps others, that he had been fired andthe reason therefor. In any event it became common knowledgeamong the Halliburton employees, which would not be unexpected.

Being out of a job, Turner sought employment the same day withArk City Packing Company and filled out an application form. Inthat application form Turner stated that his reason for leavinghis Halliburton employment was "lay off." Turner well knew, atthe time, he had been terminated at Halliburton for allegedlystealing company property. The same application form provided: "I authorize any school or previous employer named in this application to provide Ark City Packing

Company with any relevant information that may be required to arrive at any employment decision."On April 28, 1983, Turner was interviewed by a personnel officerof Ark City Packing Company and considered satisfactory foremployment "pending receipt of reference check." On April 30,1983, an employee of the Ark City Packing Company personnel

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office contacted Halliburton to verify Turner's formeremployment. She was advised that Turner had been terminated for"stealing company property." This inquiry was followed up bymailing a form to Halliburton seeking verification of thetelephone report. Halliburton returned the form to Ark CityPacking Company answering their various inquiries. The answersindicated that while Turner's work record had been satisfactory,he was not subject to rehire because of stealing companyproperty. Upon receipt of this information, Turner's applicationfor employment was given no further consideration by the packingcompany.

Turner filed this action against Halliburton and Arendasserting three causes of action: (1) defamation, (2) breach ofthe employment contract, and (3) tortious interference with theright to contract. He sought both actual and punitive damages.Upon completion of the evidence, the court dismissed count two ofthe petition, overruled defendants' motions for a directedverdict, and submitted the matter to the jury. The jury found forTurner on the defamation claim, awarding actual damages of$23,500 and punitive damages of $41,000 and on the claim oftortious interference with the right to contract, awarding $6,900actual damages and $15,300 punitive damages for a total verdictof $86,700. Halliburton and Arend have appealed. Additional factswill be set forth as necessary for the various issues on appeal.

Appellants contend the trial court committed error when itoverruled their motions for a directed verdict made at the end ofplaintiff's evidence and again after all the evidence waspresented, and in overruling motions for judgment notwithstandingthe verdict. The basis of the motions as to the defamationverdict was twofold: first, the allegedly defamatory statementswere subject to a qualified privilege requiring actual malice tobe proven and there was insufficient evidence to support theverdict and, second, Turner is precluded from recovering damagesas he failed to show any damage to his reputation. As to theinterference with the right to contract, appellants claimedinsufficient evidence and a duplication of recovery.

K.S.A. 60-250 allows a litigant to move for a directed verdict,and for judgment notwithstanding the verdict. In ruling on amotion for directed verdict pursuant to K.S.A. 60-250, the courtis required to resolve all facts and inferences reasonably to be

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drawn from the evidence in favor of the party against whom theruling is sought and where

reasonable minds could reach differentconclusions based on the evidence the motion must be denied andthe matter submitted to the jury. This rule must also be appliedwhen appellate review is sought on a motion for directed verdict.Sampson v. Hunt, 233 Kan. 572, Syl. ¶ 1, 665 P.2d 743 (1983).The same test is applicable to a motion for judgmentnotwithstanding the verdict. 1 Gard's Kansas C. Civ. Proc.2dAnnot. § 60-250 (1979).

The law of defamation, including both libel and slander, is afascinating subject which always seems to be in a state of flux.As stated by Justice Wedell, "In actions involving libel orslander the temptation quite naturally exists to write a treatiseon the subject." Bennett v. Seimiller, 175 Kan. 764, 766,267 P.2d 926 (1954). The constraints of time, fortunately, preventour doing so in this case. For those interested, certain areas ofthe subject have recently been given exhaustive consideration ina trilogy of cases before this court: Gobin v. Globe PublishingCo., 216 Kan. 223, 531 P.2d 76 (1975); Gobin v. GlobePublishing Co., 229 Kan. 1, 620 P.2d 1163 (1980); and Gobin v.Globe Publishing Co., 232 Kan. 1, 649 P.2d 1239 (1982).

The first issue raised by appellants is that they were entitledto prevail, as a matter of law, in the defamation action becausethey were privileged in their communications and no evidence waspresented to support a finding of actual malice.

In any proceeding where the plaintiff complains that he or shehas been defamed, a number of affirmative defenses are available,among them privilege and truth. Whether a privilege is availablein an action for defamation must be determined based on thestatus of the particular defendant and the content of the allegeddefamatory communication. To facilitate the effective performanceof government, absolute privilege is granted by constitution,legislative enactment or case law to those who serve in alegislative, executive or judicial capacity. Redmond v. SunPublishing Co., 239 Kan. 30, 36, 716 P.2d 168 (1986). Aqualified or limited privilege is granted to those with a specialinterest or duty in the subject matter of the communication.Redmond v. Sun Publishing Co., 239 Kan. at 36. The availabilityof a limited privilege is generally restricted to thosesituations where public policy is deemed to favor the freeexchange of

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information over the individual's interest in his or her goodreputation. One such qualified privilege exists with respect tobusiness or employment communications made in good faith andbetween individuals with a corresponding interest or duty in thesubject matter of the communication. Luttrell v. UnitedTelephone System, Inc., 9 Kan. App. 2d 620, 683 P.2d 1292 (1984);Munsell v. Ideal Food Stores, 208 Kan. 909, 494 P.2d 1063(1972). The question whether or not a publication is privilegedis a question of law to be determined by the court. Munsell v.Ideal Food Stores, 208 Kan. at 921.

"Where a defamatory statement is made in a situation where there is a qualified privilege the injured party has the burden of proving not only that the statements were false, but also that the statements

were made with actual malice — with actual evil-mindedness or specific intent to injure." Munsell v. Ideal Food Stores, 208 Kan. at 920-21.See also Stice v. Beacon Newspaper Corporation, 185 Kan. 61,340 P.2d 396 (1959); PIK Civ.2d 14.54.

In general, the question of actual malice in a defamationaction is a question for the jury. However, under certaincircumstances, a motion for directed verdict and the granting ofthat motion is appropriate.

"`If the plaintiff fails to offer evidence of an extrinsic character to prove actual malice on the part of the defendant, in the publication of a libel on a qualifiedly privileged occasion, and if the language of the communication and the circumstances attending its publication by the defendant are as consistent with the nonexistence of malice as with its existence, there is no issue for the jury, and it is the duty of the trial court to direct a verdict for the defendant.'" Marsh v. Commercial and Savings Bank of Winchester, Va., 265 F. Supp. 614, 621 (W.D. Va. 1967).In Hall v. Hercules, Incorporated, 494 F.2d 420 (10th Cir.1974), a Tenth Circuit Court opinion applying Kansas law, thecourt upheld the trial judge, who had directed a verdict fordefendant where there was no evidence of actual malice. See alsoSteere v. Cupp, 226 Kan. 566, 602 P.2d 1267 (1979), wherein amajority of this court found that summary judgment was proper ina libel case.

In the present case, the allegedly defamatory statementspertaining to Turner's termination, that he stole companyproperty, were communicated to supervisory and managerialemployees of Halliburton in its ordinary course of business, topolice officers who were conducting an investigation into thereported theft of tools, and to Ark City Packing Co. inconnection with Turner's

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application for employment. It appears clear from the record thatTurner took the tools out of the Halliburton pickup while it wasparked in Daisy Mae's parking lot. Both Coffey and Burr testifiedthat Turner took the equipment to play a joke or prank on afellow employee. Turner has never denied taking the tools fromthe back of the pickup, but instead claims to have been sointoxicated at the time that he has no recollection of the event.While Turner alluded to the fact that his termination because oftheft was widely known, he failed to produce any evidence toprove that this information came from communications from thedefendants. Two Halliburton employees, Ron Ryser and DanielKrueger, possessed independent knowledge of the incident.Additionally, Turner told Krueger of his termination and thebasis therefor.

The evidence relied upon by appellee to establish actual maliceis detailed in his brief and will be reviewed here in the bestpossible light from appellee's standpoint. Arend, at thetermination meeting, accused Turner of theft of the tools, otherthefts, and of fencing property in Gueda Springs; Arend did notundertake his own outside investigation after being advisedTurner was involved in the missing tools incident; there werediscrepancies between the police officers' testimony and that ofArend as to

when the officers first talked to Arend and gave himthe information that Turner was involved; Arend made statementsto police that Turner may have been involved in other thefts ofcompany property and was being watched; Arend also stated hewanted Turner prosecuted; Ryser valued the tools at $80.00, whileArend valued them at cost less 20% for a figure of $125.88;Halliburton had a list of 69 different grounds for terminationbut Arend chose stealing company property, knowing this would gointo Turner's records and possibly be relayed to otherprospective employers; and Arend had a bad attitude at theconference wherein Turner was terminated.

At best the evidence relied upon by Turner to proveevil-mindedness or specific intent to injure shows an employerwho was understandably upset over the theft of the Ryser andother company tools, and who had been given information thatTurner was involved in the disappearance of the Ryser tools. Foran employer to classify such a disappearance as a theft or thestealing of company property would be the natural and logicalconclusion under the facts of this case. Turner makes much of a

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failure by Arend to make an investigation. He appears to contendthat Arend should have contacted Coffey and Burr, neither of whomwere Halliburton employees, and makes much of Arend's failure toseek out other witnesses. Such activities are more appropriatelyleft to the police. If Arend had undertaken an investigationprior to his meeting with Turner, there might be seriousquestions about the propriety of such action. Following themeeting with Turner, where Turner continued to maintain that hewas drunk and didn't know anything about the alleged theft of thetools, Arend had no alternative but to terminate Turner and choseto report the appropriate grounds for his action. There is noshowing in the record before us that any of the other sixty-eightpossible reasons for termination would have been applicable. Theonly showing of evil-mindedness or specific intent to injurecomes from the assumptions of the appellee in his brief and notfrom the evidence produced at trial. It is unfortunate thatTurner's "prank" or "joke" backfired and that he sufferedunanticipated and unwanted results, but that, in and of itself,does not show malice by or place liability upon the defendants.Turner created the situation which led to the unfortunateresults.

Employee conduct, particularly involving theft, is a matterwithin the bounds of the qualified privilege pertaining tocommunications within the company. All of the Halliburtonpersonnel who testified to having knowledge of the communicationswere shown to be managerial level employees with an interest inthe situation. While evidence was offered to indicate thedefendant Arend was upset about the taking of Halliburtonproperty, no evidence tended to establish an evil motive on thepart of the defendants. Therefore, with respect to theintra-company communications, it does not appear Turner overcamethe defendants' privilege by proving actual malice.

A privilege also existed with respect to communications betweenHalliburton and Ark City Packing. High v. Hardware Co.,115 Kan. 400, 223 P. 264 (1924); 50 Am.Jur.2d, Libel and Slander §§202, 271. See

generally Annot., Defamation — Employer's QualifiedPrivilege, 24 A.L.R. 4th 144. Therefore, it is also necessary forTurner to demonstrate actual malice on the part of the defendantsto be entitled to recover on this claim.

At trial the plaintiff presented Carolyn Borror, who was incharge of screening applicants at Ark City Packing Co. Borror

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testified that she had accepted an application for employmentfrom the appellee. Turner's application indicated that he hadformerly worked for Halliburton and the reason for his unemployedstatus was "lay off." When Borror checked with Turner's formeremployer, Halliburton, she was informed that Turner wasterminated for "stealing company property." This information wasprovided over the telephone by Wilbur Bright, and subsequentlyconfirmed by written communication. Again there is absolutely noevidence that the appellants acted with evil-mindedness orspecific intent to injure Turner. The rule stated in Munsell v.Ideal Food Stores, 208 Kan. 909, Syl. ¶ 1, and in 50 Am.Jur.2d,Libel and Slander § 149, would also appear to preclude recoveryon the basis of Turner's consent to or request for thecommunication to Ark City Packing Co. See also Richters v.Rollins Protective Service Co., Inc., 442 F. Supp. 941 (D. Kan.1977).

The communications with the police department were initiated bythe police during a routine investigation of the reported theftof the Halliburton tools. There was a duty on the part ofHalliburton's employees to cooperate in that investigation andthe communications were subject to a qualified privilege. Marshv. Commercial and Savings Bank of Winchester, Va., 265 F. Supp. 614.

The trial court correctly ruled, and appellee does not contendotherwise, that the communications complained of were subject toa qualified privilege. The evidence, considered only in the lightmost favorable to the plaintiff, is insufficient to show actualmalice upon the part of the defendants.

We hold that, based upon this record, when all of the facts andthe inferences to be drawn therefrom are resolved in favor ofTurner, there is no credible evidence to support a finding ofactual malice upon the part of the defendants. The judgment onthe defamation issue must be reversed. In view of the decisionreached upon this issue, it is not necessary for us to considerthe question of whether Gobin v. Globe Publishing Co.,232 Kan. 1, requires actual proof of damage to reputation when thedefendant is not a member of the news media. That question mustbe left for another day.

The remaining issue is whether the trial court erred in failingto sustain defendants' motions for a directed verdict or forjudgment

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notwithstanding the verdict as to plaintiff's claim of tortiousinterference with contractual relations. Much of what has alreadybeen said applies equally to this issue.

Kansas has long recognized that a party who, withoutjustification, induces or causes a breach of contract will beanswerable for damages caused thereby. Vaught v. Pettyjohn &Co., 104 Kan. 174, 178 P. 623 (1919); Nulty v. Lumber andGrain Co., 116 Kan. 446, 227 P. 254 (1924); see alsoRestatement (Second) of Torts § 766 (1977); Prosser & Keeton onTorts § 129, p. 978-1004 (5th ed. 1984). It is also recognizedthat a cause of action exists for tortious interference with aprospective business advantage or relationship. The requirementsfor this tort were recently set forth in Maxwell v. SouthwestNat. Bank, Wichita, Kan., 593 F. Supp. 250, 253 (D. Kan. 1984),as: (1) the existence of a business relationship or expectancywith the probability of future economic benefit to the plaintiff;(2) knowledge of the relationship or expectancy by the defendant;(3) that, except for the conduct of the defendant, plaintiff wasreasonably certain to have continued the relationship or realizedthe expectancy; (4) intentional misconduct by defendant; and (5)damages suffered by plaintiff as a direct or proximate result ofdefendant's misconduct.

Both tortious interference with a contract and tortiousinterference with contractual expectations or a prospectivebusiness advantage are predicated on malicious conduct by thedefendant. While these torts tend to merge somewhat in theordinary course, the former is aimed at preserving existingcontracts and the latter at protecting future or potentialcontractual relations. Here, it is contended that appellants, bycommunicating to Ark City Packing Co. that Turner had beenterminated for "stealing company property," interfered with hisprospects for employment and caused Turner to fail to obtain thatemployment.

It is recognized that not all interference in present or futurecontractual relations is tortious. A person may be privileged orjustified to interfere with contractual relations in certainsituations. May v. Santa Fe Trail Transportation Co.,189 Kan. 419, 424-25, 370 P.2d 390 (1962). See also Restatement (Second)of Torts § 767. In 45 Am.Jur.2d, Interference § 27 it is stated:

"Justification is the most common affirmative defense to an action for interference. The term `justification' has been said not to be susceptible of any precise

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definition. It is employed to denote the presence of exceptional circumstances which show that no tort has been in fact committed and to connote lawful excuse which excludes actual or legal malice. It has been suggested that, rather than to express this defense to interference in terms of justification, it might be more accurately stated to be a matter of privilege; that is, the defendant may show that interference, although it occurred, is privileged by reason of the interests furthered by his conduct. Whichever word is used, the defense comes into play only after interference has occurred, as shown by judicial statements that interference is actionable only if without justification or, alternately, that

interference which is justifiable is not actionable, and that one is not liable in damages even though his acts and conduct constitute interference with contractual rights of another if he employs fair means and acts in good faith and with justification.

"The law has crystallized relatively few concrete rules to determine the existence or want of justification or privilege in connection with the tort of interference. The issue raised on a plea of justification has been said to depend on the circumstances of the particular case, bearing in mind such factors as the nature of the interferer's conduct, the character of the expectancy with which the conduct interfered, the relationship between the various parties, the interest sought to be advanced by the interferer, and the social desirability of protecting the expectancy or the interferer's freedom of action. Generally, a circumstance is effective as a justification if the defendant acts in the exercise of a right equal or superior to that of the plaintiff, or in the pursuit of some lawful interest or purpose, but only if the right is as broad as the act and covers not only the motive and purpose but also the means used." pp. 304-05.Occasions privileged under the law of defamation are alsooccasions in which interference with contractual relations may beconsidered justified or privileged. Prosser & Keeton on Torts §129, p. 989. It appears that in the area of interference withprospective contractual relations the terminology of privilege,proper vs. improper, and justification are used interchangeablywith no overwhelming preference for any term. Kansas has notpreviously dealt with the existence of a privilege orjustification for a former employer to communicate informationfrom personnel files regarding a former employee. Otherjurisdictions have recognized such a privilege where anemployee's record of performance was an issue. In Leibowitz v.Szoverffy, 80 A.D.2d 692, 436 N.Y.S.2d 451 (1981), a formerteacher brought an action against her department chairman fortortious interference with contractual relations and libel aftershe had been denied tenure. On appeal the court held that summaryjudgment was properly granted, stating:

"A predicate for both alleged causes of action is malice. As to the tortious interference with contractual relations cause of action, the defendant's conduct must be shown to be solely malicious [citation omitted]." p. 693.

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The Restatement (Second) of Torts considers the subject more inthe light of what conduct is improper when tortious interferencewith a prospective contractual relation is alleged rather than inthe terms of privilege or justification. Section 767 provides: "In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors: (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties."

Thus, it appears clear that there may be justification or aqualified privilege in an action for tortious interference with abusiness prospect. In the terms of the Restatement, if theactions complained of were not improper there is no ground forrecovery. Here, Ark City Packing Co. was considering hiringappellee and inquired of Halliburton as to his work record andreason for termination. Halliburton's employee then transmittedto the packing company the information that Turner was terminatedfor stealing company property. This statement was technicallytrue. In the present world of trade and commerce, it isimperative that a prospective employer have access to informationabout an employee's prior work record from sources other than theprospective employee. As shown by the facts in this case, notevery prospective employee will give truthful information on anemployment application. Where the allegation of tortiousinterference with contract, or the prospect of a contract, isbased upon alleged defamatory statements from the former employerto the prospective employer, we hold that such communication issubject to a qualified privilege which requires the plaintiff toprove actual malice by the defendant in making suchcommunication. Such would appear to be clearly required in thepresent case where Turner authorized the communication, knew thegrounds for his termination, and knew that they would be relayedto Ark City Packing Co. Assuming the allegation that Turner stolecompany property was false, which was certainly open to question

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at the time all the communications herein were made, the evidencerelied upon to show malice is the same as previously detailed inour discussion of the defamation issue. Again, we hold there wasno credible evidence to sustain the verdict for tortiousinterference with a contractual right or business prospect. Inview of the decision reached, we are not called upon to determinewhether recovery for interference with Turner's application foremployment constituted a double recovery when based upon the samefacts and allegedly defamatory statements as relied upon in thedefamation action.

The judgment is reversed.