Patrick v. Society for Creative Anachronism

129 Wash.App. 1037 (2005) | Cited 0 times | Court of Appeals of Washington | September 27, 2005

JUDGES: Concurring: Christine Quinn-Brintnall Elaine Houghton

UNPUBLISHED OPINION

Walter Patrick sued The Society for Creative Anachronism (SCA) and others for defamation, tortious interference with a business expectancy, and violating the Consumer Protection Act (CPA). The trial court granted summary judgment and attorney fees to SCA. Patrick appeals pro se.

Patrick sued SCA before. We resolved that case (Patrick I) on November 14, 2002, and the Supreme Court denied review on September 4, 2003.[1]

On February 22, 2002, while Patrick I was still pending, Patrick filed this case (Patrick II) against SCA, Derrick Olson, Rachel Olson, and Harvey Palmer. He alleged defamation, tortious interference with business interests, tortious interference with prospective business interests, and violation of Washington's CPA.

In June 2002, at SCA's request, the trial court stayed Patrick II pending resolution of Patrick I. The court ordered, however, that Patrick be allowed to participate in SCA's activities to the same extent as anyone else.

At some point, Patrick moved for injunctive relief and damages. The record does not show when he did that, what he alleged, or how SCA responded, because it does not include the motion, a response, or any transcripts. The record shows only that the trial court held hearings on July 19 and August 2, 2002; that the trial court entered a written order on September 13, 2002, in which it stated that a three-hour evidentiary hearing would be scheduled at some future time; that Patrick requested discretionary review by the Supreme Court; and that the Supreme Court denied his request on May 22, 2003.

On March 12, 2004, SCA moved for an order lifting the stay and granting summary judgment. Patrick did not oppose the motion to lift the stay, but he asked that the motion for summary judgment not be heard for at least 60 days. On April 16, 2004, the trial court held a hearing, and on May 7, 2004 it signed an order lifting the stay and granting summary judgment to SCA. The court found that Patrick's claims were frivolous and awarded SCA $32,000 in attorney fees.[2]

I.

Patrick argues that he showed good cause to continue the summary judgment hearing because the stay prevented him from deposing Derrick Olson and Alan Andrist. Hence, he says, the trial court abused its discretion by holding the hearing when it did. SCA responds that Patrick failed to comply with CR 56(f).

CR 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

By virtue of this rule, a trial court has discretion to deny a continuance when '(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.'[3] We can reverse only if the trial court abused its discretion.[4]

The trial court did not abuse its discretion here. CR 56(f) obligated Patrick to submit affidavits that showed the facts 'essential to his opposition' that he expected to adduce by deposing Olson and Andrist. The stay did not relieve him of that obligation. He did not submit any affidavits or show any such facts. Thus, he did not show that a continuance would have accomplished anything, and the trial court did not err.

II.

Patrick argues that even if the trial court did not err by denying a continuance, it erred by granting summary judgment on the merits. Taking the evidence and reasonable inferences in the light most favorable to Patrick,[5] we separately address (A) his defamation claim, (B) his tortious interference claim, (C) his CPA claim, and (D) two of his other claims.

A.

Patrick claims that a rational trier of fact could find that SCA defamed him by publishing the following statement in its newsletter:

Trade coins, i.e. Baraks and others, are not endorsed by the Kingdom of An Tir. The Kingdom of An Tir does not officially recognize any currency other than legal tender. Any purchase of 'trade coins' is done at the peril of the purchaser. The Kingdom of An Tir does NOT guarantee or insure redemption of any trade coins.[6]

Before this statement can serve as the basis for a defamation action, the record must support inferences that it is false and unprivileged.[7] The record does not support an inference that it is false, as it does not show that SCA endorses trade coins or officially recognizes any currency other than legal tender.[8] Nor does the record support an inference that the statement is unprivileged; absent exceptional facts not present here, anyone can proclaim that he or she will not be liable by the occurrence of specified facts and events. The trial court properly dismissed the defamation claim.

B.

Patrick argues that the trial court erred by dismissing his claim for tortious interference. He disclaims any contract with which SCA unlawfully interfered; he claims only that he had a non-contractual expectancy with which SCA unlawfully interfered.

A claim for unlawful interference with a business expectancy can go to the jury only if the evidence supports the existence of a valid business expectancy with which the defendant was not privileged to interfere.[9] The evidence here shows only that SCA was a private organization that staged recreational events in which Patrick had previously participated; it does not show that SCA had a duty to allow Patrick to operate without restriction at its private events, or that Patrick had an enforceable expectancy with which SCA was not privileged to interfere. The trial court properly dismissed the unlawful interference claim.

C.

Patrick argues that SCA violated the CPA by engaging in 'bait-and-switch' advertising[10] and by soliciting donations without registering as a charity under Chapter 19.09 RCW. Before a private CPA claim can go to the jury, the evidence must support the existence of an unfair or deceptive act or practice that occurred in trade or commerce, impacted the public interest, and caused injury to the plaintiff's business or property.[11] The evidence here does not support an inference that SCA engaged in a practice of inducing merchants to rent sites next to a scheduled event but then moving the scheduled event; rather, it shows only that SCA decided, at the last minute on one occasion, to change the site of a previously arranged event. Nor does the evidence show that SCA was a charity that solicited donations within the meaning of Chapter 19.09 RCW or, if it was, that Patrick was thereby damaged. The record does not show an act or practice that impacted the public interest, and the trial court properly dismissed the CPA claim.

D.

Patrick makes two additional claims that we will address briefly. First, he argues that the trial court 'erred by relying on the unsworn testimony of individuals lacking personal knowledge of the facts of the case.'[12] The record does not show that the trial court did that, nor does it show that Patrick objected thereto.[13]

Second, Patrick argues that the trial court erred by striking some of his exhibits. Although the record shows that SCA moved to strike some of his exhibits, it does not show that the trial court ever ruled on the motion; indeed, when the trial court entered its written order granting SCA's motion for summary judgment, it listed the exhibits as items it had considered. The record does not show a ruling adverse to Patrick, so this argument fails.

III.

Finally, Patrick argues that the trial court improperly awarded SCA costs and reasonable attorney fees. RCW 4.84.185 and CR 11 authorize a court to grant reasonable attorney fees against a party who brings a frivolous action.[14] An action is frivolous if it 'cannot be supported by any rational argument on the law or facts'[15] or the issues are so devoid of merit that no reasonable possibility of reversal exists.[16] We ruled in 2002 that Patrick's earlier action was frivolous,[17] and this second action is likewise frivolous. The trial court had discretion to grant costs and reasonable attorney fees incurred below, and we grant costs and reasonable attorney fees incurred on appeal, provided that SCA complies with RAP 18.1.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Morgan, J.

We concur:

Houghton, J.

Quinn-Brintnall, C.J.

1. Patrick v. Soc'y for Creative Anachronism, noted at 114 Wn. App. 1038 (2002), 2002 Wash. App. LEXIS 2871, review denied, 149 Wn.2d 1029 (2003).

2. SCA had requested $44,436.50 in fees and $2,300.85 in costs.

3. Tellevik v. 31641 W. Rutherford St., 120 Wn.2d 68, 90, 838 P.2d 111 (1992) (quoting Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)).

4. Tellevik, 120 Wn.2d at 90.

5. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

6. Clerk's Papers (CP) at 164 (altered from original). The initial publication omitted 'NOT,' apparently inadvertently. The omission was corrected later. See CP at 165.

7. Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, 107 Wn.2d 524, 529, 730 P.2d 1299, cert. denied, 484 U.S. 815 (1987); Bender v. City of Seattle, 99 Wn.2d 582, 599, 664 P.2d 492 (1983).

8. Patrick relies on Exhibit 17, an e-mail exchange between persons whose relationship to SCA the record does not show. Exhibit 17 does not show that the SCA endorses trade coins or officially recognizes currency other than legal tender. Nor does Exhibit 17 show that the statements made therein are legally attributable to SCA, as nothing in the record shows the nature of the relationship, if any, between SCA and the persons whose statements Exhibit 17 contains.

9. Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 157, 930 P.2d 288 (1997); Commodore v. Univ. Mech. Contractors, Inc., 120 Wn.2d 120, 137, 839 P.2d 314 (1992).

10. Br. of Appellant at 21 (emphasis omitted).

11. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co ., 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

12. Br. of Appellant at 8 (emphasis omitted).

13. See Lamon v. McDonnell Douglas Corp., 91 Wn.2d 345, 352, 588 P.2d 1346 (1979); Smith v. Showalter, 47 Wn. App. 245, 248, 734 P.2d 928 (1987).

14. See also RAP 18.9(a).

15. Clarke v. Equinox Holdings, Ltd., 56 Wn. App. 125, 132, 783 P.2d 82, review denied, 113 Wn.2d 1001 (1989).

16. Harrington v. Pailthorp, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992), review denied, 121 Wn.2d 1018 (1993).

17. Patrick, 2002 Wash. App. LEXIS 2871, at *8.