CUTHBERT O. SIMPKINS, M.D. : NUMBER: 516,764, “B”

VERSUS : FIRST JUDICIAL DISTRICT COURT

BOARD OF SUPERVISORS OF

LOUISIANA STATE UNIVERSITY AND

AGRICULTURAL AND MECHANICAL

COLLEGE AND RICHARD TURNAGE : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT DENYING PLAINTIFFS**

**MOTION FOR PARTIAL SUMMARY JUDGMENT**

**ON ISSUE OF DEFAMATION**

 The Court has thoroughly considered the Motion for Partial Summary Judgment on the Issue of Defamation, filed March 10, 2011, with its seventeen exhibits; the Court has also considered the opposition of Board of Supervisors and Louisiana State University and Agricultural and Mechanical College (LSUHSC-S) and Richard Turnage, M.D., filed April 29, 2011; plaintiff’s reply memorandum of May 5, 2011; oral arguments of May 9, 2011 and various memoranda filed April 30, May 10, and May 18, 2011. For reasons which follow, the plaintiff’s motion is denied in favor of another full jury trial on the merits.

 Following a three week jury trial, which resulted in a “hung jury” and thus a mistrial, two of plaintiff’s previous counsel withdrew and William F. Kendig enrolled as co-counsel to Kobie Flowers. Upon re-examination, plaintiff has narrowed his claims and focuses on the defamation cause of action, for which he now seeks summary judgment, asserting that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law.

Plaintiff counsel has written[[1]](#footnote-1):

Undersigned respects that the Court is loath to grant summary judgments in large and complicated cases such as this matter. Nonetheless, on the single issue before the court…defamation…there are no material facts in dispute. The allegations of substance abuse were false. No competent proof has ever been offered in support of that allegation...

Defense counsel has written[[2]](#footnote-2):

Plaintiff’s original petition alleged various instances of defamation, but before trial, plaintiff dismissed all defamation counts except one: defendants’ publication of conditions placed on Dr. Simpkins’ clinical privileges at LSUHSC-S to Overton Brooks Veterans Administration Hospital. This case, including the defamation claim related to Overton Brooks, was tried to a jury in February 2010. Although plaintiff’s memorandum is replete with references to the evidence presented at trial, suggesting that it is conclusive support for this motion, the twelve-person jury, having heard the evidence for nearly a month and having deliberated for two or three days, was unable to return a verdict in Dr. Simpkins’ favor on the defamation claim. In other words, Dr. Simpkins, armed with all of the evidence and argument at trial that he now sets forth in his summary judgment motion, failed to carry his burden of proving defamation at trial. The jury’s failure to find in favor of Dr. Simpkins’ on the defamation issue at trial undermines Dr. Simpkins’ argument that he is entitled to summary judgment after trial. If the jury could not find that defendants defamed Dr. Simpkins, then its twelve members found genuine issues of disputed fact to preclude a decision on this issue in plaintiff’s favor.

 Having presided over the three week jury trial and having revisited this record in connection with plaintiff’s motion, the Court believes that the written practice restriction placed on Dr. Simpkins is problematic particularly under the circumstances of there being no competent evidence of drug use[[3]](#footnote-3) by Dr. Simpkins and no competent psychiatric opinion evidence of mental disorder.[[4]](#footnote-4) However, a determination as to whether the communication of this restriction to Overton Brooks constitutes defamation is an issue which requires careful and thorough examination of all relevant evidence.

Defamation occurs when (1) a false or defamatory statement is made about another, (2) there is a publication to a third party, (3) there is negligence or greater on the part of the publisher, and (4) there is a resulting injury.[[5]](#footnote-5) Words that, by their very nature, tend to injure a person’s professional reputation are considered defamatory per se. The fault and injury elements may be presumed only if the words are found to be defamatory per se. [[6]](#footnote-6)

In 2009 and 2010 pretrial rulings[[7]](#footnote-7) this Court noted the fact intensive nature of this case, stating as follows:

This is a fact intensive case requiring the trier of fact to properly evaluate what is mostly a volume of circumstantial evidence and to make credibility determinations, drawing reasonable inferences therefrom. The claims as to LSU are not ripe or appropriate for summary judgment.

Plaintiff counsel has eloquently argued his motion referencing the event as “LSU’s coup de grace to Dr. Simpkin’s career”.[[8]](#footnote-8) However, the Court again points out that all of the circumstances surrounding Dr. Simpkins’ behavior while at LSUHSC-S should be examined so that the trier of fact can determine the ultimate issue of whether Dr. Turnage or LSU defamed Dr. Simpkins when Dr. Turnage sent a copy of the Clinical Board’s letter setting forth Dr. Simpkins’ privileges to Overton Brooks.

The alleged defamatory statement in this case is the report issued by the Clinical Board which recommended substance testing and a psychiatric evaluation/testing, as well as the restrictions placed on Dr. Simpkins’ privileges at LSUHSC-S. Defendants suggest that these restrictions were imposed due to the “unprofessional/hostile behavior” of Dr. Simpkins in stressful settings.[[9]](#footnote-9) Dr. Simpkins alleges that there is no evidence to support allegations of substance abuse or a mental disorder that would warrant such restrictions.[[10]](#footnote-10) The inability of the previous jury to reach a verdict on the defamation claim supports the notion that reasonable minds could differ, and in fact have differed, as to whether the restrictions placed upon Dr. Simpkins and communicated to Overton Brooks were defamatory. The somewhat contradictory evidence presented by opposing sides reflects a clear genuine issue of material fact.

Credibility of witnesses, including the credibility of Drs. Simpkins and Turnage, along with the fact intensive examination of all circumstances considered in context is a task for a second jury. The Court is not “loath to grant summary judgment in large and complicated cases”[[11]](#footnote-11) but, rather, unable to grant summary judgment where there are genuine issues of material fact and credibility and circumstances are relevant. Certainly, at the very least, plaintiff is not entitled to pre-trial judgment as a matter of law under the facts and evidence of this case. Accordingly, the motion is denied.

 Counsel shall submit a formal judgment in accordance with La. Dist. Ct. R. 9.5.

 Signed this 2nd day of June, 2011 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

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1. Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment, filed March 10, 2011. [↑](#footnote-ref-1)
2. Memorandum in Opposition to Plaintiff’s Partial Summary Judgment, pages 1 and 2. [↑](#footnote-ref-2)
3. Primarily anecdotal evidence and hospital gossip. [↑](#footnote-ref-3)
4. Citing the negative drug test results and the psychiatric report, negative of disorders, plaintiff counsel has argued that there is “not one nanogram in the record of the trial that Dr. Simpkins is or ever was a substance abuser in need of psychiatric treatment.” Plaintiff’s memorandum, page 3. [↑](#footnote-ref-4)
5. *Costello v. Hardy*, 2003-1146 (La. 1/21/04); 864 So.2d 129 at 139. [↑](#footnote-ref-5)
6. Id at 140. [↑](#footnote-ref-6)
7. See Reasons for Judgment issued June 3, 2009 and reiterated January 27, 2010. [↑](#footnote-ref-7)
8. Memorandum in Support of Plaintiff’s Motion, page 2. The term coup de grace is a deathblow or death shot administered to end the suffering of one mortally wounded. Caddo Parish Coroner George M. McCormick II favored this term in describing a decisive finishing act in the context of a violent homicide. [↑](#footnote-ref-8)
9. Memorandum in Opposition to Plaintiff’s Partial Summary Judgment, page 4. [↑](#footnote-ref-9)
10. Plaintiff’s Memorandum, page 3. [↑](#footnote-ref-10)
11. Reply Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment, pg. 7. [↑](#footnote-ref-11)