

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2011 CA 0618**

**MARIE REED**

**VERSUS**

**BATON ROUGE CRIME STOPPERS, HEIDI BOURGEOIS  
& WAFB, LLC**

**Judgment Rendered: November 9, 2011**

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**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket Number C592643**

**The Honorable Wilson E. Fields, Judge Presiding**

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**Marie Reed  
Baton Rouge, LA**

**Plaintiff/Appellant,  
In Proper Person**

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**BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.**

Handwritten signatures and initials in black ink, including what appears to be 'W.E. Fields' and other illegible marks.

**WHIPPLE, J.**

This matter is before us on appeal by plaintiff, Marie Reed,<sup>1</sup> from a judgment of the trial court granting a special motion to strike and maintaining exceptions of prescription and no cause of action. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On July 16, 2010, plaintiff, Marie Reed, filed a petition for defamation against defendants Baton Rouge Crime Stoppers, Inc., Heidi Bourgeois, an employee of Crime Stoppers, and WAFB, LLC d/b/a WAFB-TV (“WAFB”), contending that on April 1, 2009, July 7, 2009, and on July 22, 2009, Crime Stoppers published and sent to WAFB-TV an announcement that arrest warrants had been issued for her arrest for the crime of theft and for operating a business that defendants called a “scam,” which was broadcast by WAFB-TV.<sup>2</sup> As a result of the alleged defamation, plaintiff sought damages for humiliation, mental suffering, anguish, and physical distress.

The defendants responded by filing numerous exceptions to plaintiff’s petition and a special motion to strike pursuant to LSA-C.C.P. art. 971, which were set for hearing. After a hearing on December 6, 2010, the trial court maintained exceptions of vagueness, no cause of action, and prescription filed by Baton Rouge Crime Stoppers and dismissed plaintiff’s claims against it with prejudice. The court further maintained exceptions of vagueness, no cause of action, and prescription filed by Heidi Bourgeois and likewise dismissed

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<sup>1</sup>Plaintiff represented herself in proper person in these proceedings.

<sup>2</sup>The briefs filed in this matter represent that Baton Rouge Crime Stoppers (“Crime Stoppers”) is a partnership of the community, the media and law enforcement designed to combat crime and keep the streets of Baton Rouge safe. Crime Stoppers programs are operated as non-profit organizations and managed by a volunteer board of directors who take the responsibility of fundraising and paying rewards to individuals who anonymously call with information that helps solve the crime. Crime Stoppers routinely provides factual information to WAFB TV, who, in turn, broadcasts the information. Crime Stoppers often receives factual information regarding arrests and arrest warrants from the Baton Rouge Police Department and thereafter provides that information to WAFB TV.

plaintiff's claims against her with prejudice. Written judgments conforming to these rulings were signed by the trial court on January 11, 2001. After a hearing on January 31, 2011, the trial court also rendered judgment granting the special motion to strike filed by WAFB and maintaining WAFB's exceptions of no cause of action and prescription. A written judgment was signed by the trial court on February 23, 2001.

On January 31, 2011, plaintiff filed a "Notice of Appeal" and "Order" from the trial court's decision to maintain WAFB's exceptions. Although, on its face, the "Notice of Appeal" filed by plaintiff was premature as the judgment at issue was not signed by the trial court until February 23, 2011, we note that the prematurity of the appeal was cured by the trial court's subsequent signing of the written judgment herein.<sup>3</sup> LSA-C.C.P. art. 1911; Overmier v. Traylor, 475 So. 2d 1094-1095 (La. 1985).

On appeal, plaintiff contends that the trial court erred in: (1) ruling that the statements made by defendants were "true privileged and prescribed"; (2) ruling that the statements were not continuously published after the charges were dismissed; and (3) finding that the first publication on April 21, 2009, was prescribed.

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<sup>3</sup>We further note that although plaintiff also filed a "Motion to Appeal Denied Appeal" and a "Motion to Appeal" seeking to appeal the trial court's dismissal of defendants Baton Rouge Crime Stoppers and Heidi Bourgeois on February 23, 2011, the orders accompanying these motions are not signed by the trial court. Accordingly, because no order of appeal was granted by the trial court, the purported appeal of these judgments was not perfected or lodged before this court. Thus, the judgment dismissing these defendants appear to be final and are not before us in this matter. See LSA-C.C.P. arts. 2088 and 2121.

## DISCUSSION

### Exceptions of Prescription

At the outset, we note that claims for defamation are delictual in nature and are subject to the one-year prescriptive period set forth in LSA-C.C. art. 3492, which commences to run from the day injury or damage is sustained. See Wiggins v. Creary, 475 So. 2d 780, 781 (La. App. 1<sup>st</sup> Cir.), writ denied, 478 So. 2d 910 (La. 1985). For prescription purposes, damages are sustained from the date the injury is inflicted, if immediately apparent to the victim, even though the extent of the damages may not yet be known. Wiggins v. Creary, 475 So. 2d at 781. In Wiggins v. Creary, 475 So. 2d at 781 and Rice v. Felterman, 2000-2525 (La. App. 1<sup>st</sup> Cir. 3/28/02), 814 So. 2d 696, 699, this court found that knowledge of the damage-causing publication by the plaintiff is required for the commencement of the one-year prescriptive period. See Clark v. Wilcox, 2004-2254 (La. App. 1<sup>st</sup> Cir. 12/22/05), 928 So. 2d 104, 112-113, writ denied, 2006-0185 (La. 6/2/06), 929 So. 2d 1252. Moreover, the jurisprudence recognizes that defamation is not a continuous tort. Wiggins v. Creary, 475 So. 2d at 781. Since each and every publication or communication to a third person constitutes a separate cause of action, the conduct causing the damages, *i.e.*, the publication, cannot be said to be continuous. Wiggins v. Creary, 475 So. 2d at 781.

Here, plaintiff's petition states that her claim for defamation against WAFB was based on a publication made by WAFB on April 1, 2009. Plaintiff, urging a "republication" theory, further claims that the publication again occurred when the information was broadcasted by WAFB on July 7, 2009 and July 22, 2009, and was posted on the WAFB website.

WAFB acknowledges that it broadcasted two news reports concerning plaintiff. The transcripts of these reports, on April 21, 2009 and July 22, 2009, are as follows:

Broadcast on April 21, 2009:

Our “most wanted fugitive” tonight is this woman. Baton Rouge police say she has a long list of charges. 42-year-old Marie Marcell Reed. She’s wanted for, among many other things, felony theft, identity theft, contributing to the delinquency of a juvenile. The list just goes on. Police say Reed has been arrested several times in the past [and] allegedly told police she will not turn herself in. So, if you can help police, call Crime Stoppers. The Number – 344-STOP.

Broadcast on July 22, 2009:

A woman featured as one of our “most wanted fugitives” in April is now behind bars. U.S. Marshals arrested Marie Reed yesterday at a local hotel. Reed is facing a long list of charges including felony theft, identity theft and contributing to the delinquency of a juvenile.

Plaintiff’s petition for defamation, filed on July 16, 2010, is clearly prescribed on its face as to claims based on the first broadcast on April 21, 2009, which is outside of the one-year prescriptive period. Thus, plaintiff had the burden to show that her defamation claims relating to the April 21, 2009 publication were not prescribed. On review of the record on appeal, we agree with the trial court that plaintiff has failed to do so.

Nonetheless, since we are mindful that each and every publication or communication to a third person constitutes a separate cause of action, we find that plaintiff’s claim for defamation arising from the July 22, 2009 broadcast was filed within the one-year prescriptive period and thus, was not prescribed at the time she filed suit herein. Accordingly, to the extent that the trial court dismissed the suit on the basis that plaintiff’s claims for defamation for any broadcast by WAFB made after July 16, 2009 were prescribed, the trial court erred. Nonetheless, for the reasons that follow, we affirm the ultimate result

reached by the trial court herein, finding no error in the dismissal, in its entirety, of plaintiff's petition for defamation against WAFB.

### **Special Motion to Strike**

The record reflects that the trial court granted WAFB's special motion to strike. The special motion to strike is governed by LSA-C.C.P. art. 971, which provides in pertinent part:

A. (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

B. In any action subject to Paragraph A of this Article, a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs.

Louisiana Code of Civil Procedure article 971 was enacted by the legislature as a procedural device to be used in the early stages of litigation to screen out meritless claims brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. Thinkstream, Inc. v. Rubin, 2006-1595 (La. App. 1<sup>st</sup> Cir. 9/26/07), 971 So. 2d 1092, 1100, writ denied, 2007-2113 (La. 1/7/08), 973 So. 2d 730. Under the shifting burdens of proof established by the article, the mover must first establish that the cause of action against him arises from an act by him in the exercise of his right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue. If the mover satisfies this initial burden of proof, the burden then shifts to the plaintiff to demonstrate

a probability of success on the claim. Thinkstream, Inc. v. Rubin, 971 So. 2d at 1100.

The granting of a special motion to strike presents a question of law. Appellate review of questions of law is simply a review of whether the trial court was legally correct or legally incorrect. Starr v. Boudreaux, 2007-0652 (La. App. 1<sup>st</sup> Cir. 12/21/07), 978 So. 2d 384, 388. On legal issues, the appellate court gives no special weight to the findings of the trial court, but exercises its constitutional duty to review questions of law and renders judgment on the record. Lamz v. Wells, 2005-1497 (La. App. 1<sup>st</sup> Cir. 6/9/06), 938 So. 2d 792, 795.

In the instant case, WAFB established that its broadcasting of two news reports with information provided by the Baton Rouge Police Department, stating in the first, that plaintiff was wanted by Baton Rouge law enforcement officials, and in the second, that plaintiff had been arrested, is conduct in furtherance of its exercise of its constitutional right to free speech in connection with a public issue or an issue of public interest.<sup>4</sup> See Johnson v. KTBS, Inc., 39,022 (La. App. 2<sup>nd</sup> Cir. 11/23/04), 889 So. 2d 329, 332, writ denied, 2004-3192 (La. 3/11/05), 896 So. 2d 68. Thus, once WAFB met its initial burden, the burden shifted to plaintiff to establish the probability of success on her defamation claim against WAFB.

A cause of action for defamation arises from a violation of LSA-C.C. art. 2315. Lamz v. Wells, 938 So. 2d at 797. In order to prevail on a cause of action for defamation, plaintiff has the burden of proving: (1) defamatory words; (2) unprivileged publications; (3) falsity; (4) actual or implied malice; and (5) resulting injury. Lamz v. Wells, 938 So. 2d at 797.

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<sup>4</sup>Although the trial court correctly determined that plaintiff's claim for defamation as a result of the April 21, 2009, and any other broadcast prior to July 16, 2009 had prescribed, to the extent that plaintiff argues that these statements were also posted on WAFB's website, we address herein the substance of the information contained in both broadcasts.

Defamatory words are those that harm the reputation of another so as to lower him in the estimation of the community or to deter others from associating with him. Thinkstream, Inc. v. Rubin, 971 So. 2d at 1101. Words that convey an element of personal disgrace, dishonesty, or disrepute are defamatory. Thinkstream, Inc. v. Rubin, 971 So. 2d at 1101. The question of whether a communication is capable of a particular meaning and whether that meaning is defamatory is ultimately a legal question for the court. See Lamz v. Wells, 938 So. 2d at 798. The question is answered by determining whether a listener could have reasonably understood the communication, taken in context, to have been intended in a defamatory sense. Thinkstream, Inc. v. Rubin, 971 So. 2d at 1101.

Malice, for purposes of the tort of defamation, is a lack of reasonable belief in the truth of the allegedly defamatory statement. Thinkstream, Inc. v. Rubin, 971 So. 2d at 1101. Only when a court finds that a statement has been made without reasonable grounds for believing it to be true can the person making the statement be found to be motivated by malice or ill will. Thinkstream, Inc. v. Rubin, 971 So. 2d at 1102.

After thoroughly reviewing the record herein, we find no evidence to suggest in any way that WAFB acted with malice in publishing the news reports concerning plaintiff as reported by Baton Rouge law enforcement authorities. WAFB established herein that its broadcasts were based on information provided to it by law enforcement agencies. In particular, WAFB introduced the affidavit of its station manager, copies of the transcripts of the news reports, the notice from Crime Stoppers, and copies of warrants for plaintiff's arrest and "rap sheet" evidencing the charges for which authorities sought plaintiff. Because WAFB had reasonable grounds to believe that plaintiff was sought by authorities in connection with these charges, as shown and supported by the



publicly available documents noted herein, we cannot find that WAFB was motivated by malice or ill will. As the element of malice is necessary to prevail on a cause of action for defamation, plaintiff's claim falls.<sup>5</sup>

Thus, once the burden shifted to plaintiff to establish the probability of success on her defamation claim against WAFB, plaintiff failed to do so. Accordingly, we find no error in the trial court's decision to grant the special motion to strike by WAFB and dismiss plaintiff's defamation claims.<sup>6</sup>

### CONCLUSION

For the above and foregoing reasons, although the trial court incorrectly sustained the exception of prescription as to those claims for defamation based on broadcasts made after July 16, 2009, because it correctly dismissed plaintiff's defamation suit in its entirety based on its grant of the motion to strike, the February 23, 2001 judgment is affirmed. Costs of this appeal are assessed against the plaintiff/appellant, Marie Reed.

**AFFIRMED.**

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<sup>5</sup>Although plaintiff contends that some of the charges were ultimately dismissed, we note that the dismissal of these charges was subsequent to the broadcast of these reports. Moreover, the statements broadcast by WAFB simply conveyed that plaintiff was wanted by law enforcement in connection with certain charges. The statements in no way assigned guilt or innocence of these charges to plaintiff.

<sup>6</sup>Although plaintiff did not specifically assign error to the portion of the trial court's judgment maintaining WAFB's exception of no cause of action, we note that given our ruling herein that the trial court properly granted WAFB's preliminary special motion to strike, any discussion of same is rendered moot and pretermitted.