IN THE COURT OF COMMON PLEAS OF

CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY, Plaintiff v. THE PENNSYLVANIA STATE UNIVERSITY, Defendant	Docket No. 2012-1804 (Judge Gavin)

Plaintiff's Response to the Trial Memorandum of Defendant Concerning Public-Figure Status

Plaintiff, Michael McQueary, is not a limited-purpose public figure nor is he an all-purpose public figure.

It is well established that a plaintiff is not a public figure where he is "dragged unwillingly into the controversy." Wolston v. Reader's Digest Ass'n, Inc. 443 U.S. 157, 166 (1979), see also Gertz v. Robert Wlch, Inc., 418 U.S. 323 (1974). The burden of proof is on the defendant to prove that a plaintiff is a limited-purpose public figure. Joseph v. The Scranton Times, L.P., No. 200203816, 2011 WL 12830623 at *8 (Ct. Comm. Pleas Luzerne Cnty, Dec. 8, 2011) ("Joseph I") (citing Gertz), aff'd and reinstated, 129 A.3d 404 (Pa. 2015).

In Wolston, the plaintiff, who pled guilty to contempt of court after he failed to appear before a grand jury called for the investigation of Soviet espionage in the United States, was not a public figure even though his actions and the issue attracted media attention. Wolston, 443 U.S. at 166. The Supreme Court held that while Plaintiff's actions were:

> "newsworthy. . . the simple fact that these events attracted media attention . . . is not conclusive of the public-figure issue. A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention."

Id. at 167. The plaintiff in Wolston "never discussed this matter with the press and limited his involvement to that necessary to defend himself against the contempt charge." Id. In Gertz, the plaintiff, an attorney, was found not to be public figure "even though he voluntarily associated himself with a case that was certain to receive extensive media exposure." Id. discussion of Gertz, supra.[1]

Here, the Plaintiff was called to testify before a grand jury, at preliminary hearings, and at criminal trial. He never discussed his testimony with the press and, even though the underlying matter attracted media attention, he limited his involvement to only the judicial testimony. Accordingly, the Defendant fails to meet its burden of proof. The Plaintiff is not a limited-purpose public figure.

The Defendant raises the argument that Mr. McQueary qualifies as an all-purpose public figure because he was recognized for playing intercollegiate football and was hired as an assistant coach. This argument fails in two respects. First, the Defendant cites absolutely no authority to

[1] The Defendant relies upon Gertz and Joseph, supra, to support its argument that the Plaintiff is a limited-purpose public figure. Such reliance is misleading. In both cases the plaintiffs were found to be private figures.

support its argument. Moreover, one of the keynotes of the Coach Paterno era, and indeed a keynote of the entirety of the football program at Penn State was the de-emphasis on personal recognition and notoriety of players. This includes "the tradition that represented Penn State for 125 years" that no names would be on the back of players' jerseys.[2]

Accordingly, the claims raised in the Trial Memorandum on behalf of the Defendant, the Pennsylvania State University, Concerning Plaintiff's Public-Figure Status are baseless. Mr. McQueary is neither a limited-purpose nor all-purpose public figure.

Respectfully submitted,

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[2] Penn State Football to Remove Names from Jerseys, GoPSUSports.com, July 16, 2015 <http://www.gopsusports.com/sports/m-footbl/spec-rel/071615aaa.html> (accessed October 16, 2016).

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have this day served a true and correct copy of the foregoing Plaintiff's Trial Brief on the Whistleblower Law by email on the following person(s):

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Dated: 10/16/16

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