

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

MARVIN HOLMES,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. N13C-11-136 MMJ
	)	
THE NEWS JOURNAL CO.,	)	
	)	
Defendant.	)	
	)	

Submitted: March 16, 2015  
Decided: April 20, 2015

Upon Defendant's Motion to Dismiss  
**GRANTED**  
Upon Plaintiff's Motion for Default Judgment  
**DENIED**

**MEMORANDUM OPINION**

Marvin Holmes, Plaintiff, *Pro Se*.

Chad M. Shandler, Esquire, Christine D. Haynes, Esquire, Richards, Layton & Finger, P.A., Attorneys for Defendant

**JOHNSTON, J.**

## **FACTUAL AND PROCEDURAL CONTEXT**

On January 31, 2012, Defendant The News Journal Company (“The News Journal”) published an article (“January 2012 Article”), reporting that Plaintiff Marvin Holmes (“Holmes”) had been arrested. The article stated that Holmes had been sought since November 2011 for the attempted rape of a Newark woman. It reported that Holmes was charged with Attempted Rape Second Degree and Strangulation. The News Journal published a second article on February 25, 2013 (“February 2013 Article”), reporting that Holmes had been arrested a second time. The article stated that Holmes was charged with Escape After Conviction, as well as a violation of probation in connection with a violent assault that occurred in 2012. It also noted that the crime for which Holmes was on probation was unknown at the time the article was published.

On November 12, 2013, Holmes filed a Complaint asserting a defamation claim against The News Journal. Holmes states that The News Journal was under a duty to inform the public that the attempted rape and strangulation charges had been dismissed. Holmes further claims that the February 2013 Article was inaccurate because it suggested that he had been convicted of the attempted rape and strangulation charge. He also states that the February 2013 Article incorrectly reported that he was charged with Escape After Conviction on February 25, 2013, and claims that he was charged with that crime at a later date. Holmes seeks

monetary damages in the amount of \$34 million. In addition, Holmes seeks to have the Court compel The News Journal to publish an article stating that Holmes was not convicted of attempted rape and strangulation, thus “clearing his name.”

On September 23, 2014, Holmes filed a Motion for Default Judgment. Holmes stated that the Complaint was filed in November 2013 and at the time of filing the Motion for Default Judgment, The News Journal had yet to respond to the Complaint.

On October 31, 2014, counsel for the News Journal entered their appearance. On November 7, 2014, The News Journal filed a Motion to Dismiss Plaintiff’s Complaint and a Response to Plaintiff’s Motion for Default Judgment.

On November 21, 2014, Holmes filed a “Response to All of Christine Haynes’ Motions, Responses, Affidavits . . . etc., Dated November 7, 2014.” In his response, Holmes renewed the arguments previously made in his Complaint and Motion for Default Judgment.

## **STANDARD OF REVIEW**

### ***Motion to Dismiss***

When reviewing a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6), the Court must determine whether the claimant “may recover under any reasonably conceivable set of circumstances susceptible of proof.”<sup>1</sup> The Court

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<sup>1</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

must accept as true all non-conclusory, well-pleaded allegations.<sup>2</sup> Every reasonable factual inference will be drawn in favor of the non-moving party.<sup>3</sup> If the claimant may recover under that standard of review, the Court must deny the motion to dismiss.<sup>4</sup>

### ***Default Judgment***

Superior Court Rule Civil 55(b) provides in pertinent part: “[W]hen a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default may be entered . . . .”<sup>5</sup> In analyzing Rule 55(b), this Court has held that “[t]here is no hard and fast rule that the filing of an entry of appearance or an untimely answer renders default judgment unavailable.”<sup>6</sup> After an entry of appearance or an untimely answer is filed, a motion for default judgment still may be granted in the Court’s discretion.<sup>7</sup> However, the preference of Delaware courts is to decide cases on their merits.<sup>8</sup> Therefore, public policy

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<sup>2</sup> *Id.*

<sup>3</sup> *Wilmington Sav. Fund. Soc’y, F.S.B. v. Anderson*, 2009 WL 597268, at \*2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

<sup>4</sup> *Spence*, 396 A.2d at 968.

<sup>5</sup> Super. Ct. Civ. R. 55(b).

<sup>6</sup> *Pinkett ex rel. Britt v. Nationwide Mut. Ins. Co.*, 832 A.2d 747, 750 (Del. Super. 2003).

<sup>7</sup> *Id.*

<sup>8</sup> *Marvel v. Prison Industries*, 2006 WL 2242750, at \*1 (Del. Super.).

requires that any reasonable doubt be resolved in favor of the party opposing the default judgment.<sup>9</sup>

## **ANALYSIS**

### ***Default Judgment***

In the present case, Holmes correctly filed a motion for default judgment because The News Journal failed to file a timely response to the Complaint. The News Journal stated in its Response to Plaintiff's Motion for Default Judgment that service of the Complaint was made on a receptionist for The News Journal on December 13, 2013. However, due to either inadvertence or mistake, the Complaint never was forwarded to the appropriate person at The News Journal. The News Journal learned of the Complaint on October 16, 2014, when it received the Amended Motion for Default Judgment. Upon learning of the action against it, The News Journal promptly engaged counsel, who entered their appearance and filed a response to the Complaint.

Although counsel for The News Journal failed to enter an appearance until eleven months after Holmes' Complaint was filed, the Court finds that The News Journal's proffered explanation constitutes excusable neglect. The Court exercises its discretion against entering a default judgment against The News Journal.

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<sup>9</sup> *Id.*; see also *Old Guard Ins. Co. v. Jimmy's Grille, Inc.*, 2004 WL 2154286, at \*3 (Del.) (TABLE).

Further, as a matter of public policy, the Court will decide Holmes' case on its merits.

### *Defamation Claim*

Holmes asserts that The News Journal is liable for defamation against him. Holmes claims that The News Journal had a duty to report that the attempted rape and strangulation charges had been dismissed. Holmes also states that the February 2013 Article is libelous because it led the public to believe that the crime for which he was arrested was in connection with the attempted rape and strangulation charges from 2011. Holmes contends that the January 2012 Article and the February 2013 Article have caused him severe psychological damage and public humiliation for which he now seeks relief.

The News Journal contends that Holmes' claim for defamation must fail because the articles in question are true or substantially true. Additionally, The News Journal is protected by the fair report privilege. The News Journal also states that it cannot be forced to print an article regarding the dismissal of the attempted rape and strangulation charges, because it has discretion over the articles it chooses to publish.

A statement is defamatory "if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from

associating or dealing with him.”<sup>10</sup> To succeed in a claim for defamation, a plaintiff must show: “(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party’s understanding of the communication’s defamatory character; and (5) injury.”<sup>11</sup> Truth is an absolute defense. Where the alleged defamatory statement is shown not to be false, it is unnecessary to delve into any of the additional factors.<sup>12</sup>

The Court first turns to the January 2012 Article. The January 2012 Article accurately reported on the arrest and charges against Holmes. The facts of the article were reported correctly and were based on the press releases issued by the Newark Police Department on November 14, 2011 and November 15, 2011, as well as on the January 31, 2012 U.S. Marshalls Service report. The fact that the underlying charges ultimately were dismissed has no effect on the truthfulness of the article at the time of publishing. Accordingly, The News Journal is not liable for defamation regarding the January 2012 Article.

Holmes’ contention that The News Journal has a duty to print an article informing the public that the attempted rape and strangulation charges were dismissed is without merit. Newspaper editorial boards retain control over the

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<sup>10</sup> *Spence v. Funk*, 396 A.2d 967, 967 (Del. 1978) (quoting Restatement (First) of Torts § 559 (1938)).

<sup>11</sup> *Read v. Carpenter*, 1995 WL 945544, at \*2 (Del. Super.).

<sup>12</sup> *DeBonaventura v. Nationwide Mut. Ins. Co.*, 428 A.2d 1151, 1155 (Del. 1981).

content to be printed in their papers.<sup>13</sup> It is not within the discretion of courts to compel the coverage of certain events.<sup>14</sup> Therefore, there is no legal basis for this Court to require publication of an article detailing the dismissal of the attempted rape and strangulation charges against Holmes.

Holmes' claim for defamation also fails with respect to the February 2013 Article. "Under Delaware law there is no liability for defamation when a statement is determined to be substantially true."<sup>15</sup> Holmes argues that the article suggested that he had been convicted of attempted rape and strangulation. However, the article states that the details of the conviction and sentence for which Holmes was placed on probation were unknown at the time the article was published. The Court finds that the February 2013 Article was substantially true and, therefore, not defamatory.

### **CONCLUSION**

The Court finds that the Complaint fails to state a basis upon which relief can be granted for alleged defamation. Viewed in the light most favorable to Plaintiff, the alleged defamatory statements are either objectively true or substantially true.

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<sup>13</sup> *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

<sup>14</sup> *Id.*

<sup>15</sup> *Riley v. Moyed*, 529 A.2d 248, 253 (Del. 1987) (citing *Gannett Co., Inc. v. Re*, 496 A.2d 553, 557 (Del. 1985)).

**THEREFORE**, Defendant's Motion to Dismiss is hereby **GRANTED**.

This action is hereby **DISMISSED WITH PREJUDICE**.<sup>16</sup>

Plaintiff's Motion for Default Judgment is hereby **DENIED AS MOOT**.

**IT IS SO ORDERED.**

/s/ Mary M. Johnston

The Honorable Mary M. Johnston

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<sup>16</sup> This case also is appropriate for dismissal pursuant to Superior Court Civil Rule 56(b), the Court having considered documents (of undisputed authenticity) supported by affidavit.