

Circuit Court for Worcester County
Case No. C-23-CV-17-000080

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0371

September Term, 2020

ROBERT J. RICCIO, *et al.*

v.

RICHARD A. MORELLI

Friedman,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 20, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In this case of dueling defamation claims between one-time friends, appellants Robert J. Riccio and the Mr. and Mrs. Riccio Memorial Foundation (“Riccio”) challenge an arbitrator’s decision that awarded punitive damages to appellee Richard A. Morelli (“Morelli”) and rejected Riccio’s claim. Morelli petitioned the Circuit Court for Worcester County to confirm the arbitration award and Riccio petitioned to vacate it. In June of 2020, the court denied the petition to vacate and granted the petition to confirm. This appeal followed.

QUESTIONS PRESENTED

Riccio presents the following questions that we quote verbatim:

1. Did the Circuit Court err in denying vacation of the Award where the Arbitrator failed to consider material evidence and resolve the dispute?
2. Did the Circuit Court err in denying vacation of the punitive damages portion of the Award where the Arbitrator’s punitive damages award was issued in manifest disregard of law?

FACTS AND PROCEEDINGS

We need set forth only an abbreviated version of the facts.¹ In her decision, the Arbitrator, retired Court of Appeals Judge Irma S. Raker, laid out the background of the case:

¹ A longer exposition is not needed for several reasons:

- 1) Both parties pressed multiple causes of action, but the only claims at issue here are the two alleged defamations;
- 2) Although Riccio seeks reinstatement of his defamation action, he asserts, for the most part, a procedural/evidentiary challenge; and

Robert Riccio and Richard Morelli were friends for many years. This dispute arises from the [Riccio] Foundation golf tournament in June 2016, held in Ocean City, Maryland. The registration fee for the tournament was \$450.00. Many of the participants, including Riccio and Morelli, stayed at the Tideland Hotel in Ocean City. On the evening of June 4, 2016, Morelli and several of the other tournament participants ate dinner at the Embers Restaurant where the tournament sponsored an all-you-can-eat buffet dinner. A dispute arose between Morelli and the management regarding an unpaid bar bill (\$25.00) and some missing cash left on the table. The Ocean City Police Department was called by the restaurant. The incident was resolved with no arrests and Morelli and his friend returned to the hotel by city bus.

The next morning, Riccio called Morelli in a heated telephone call. Morelli stated that before Riccio hung up, he said: “you’re going to find out how many ways I can hurt you, now pack your bags.” Riccio wanted Morelli to return to the Embers Restaurant to clear the air, to resolve any unresolved issues with the restaurant, and to generally protect the reputation of the golf event. Morelli refused. Ultimately, Riccio, who leased all the hotel rooms, asked the hotel to “evict” or remove Morelli, and according to Riccio, the hotel management told Morelli to leave. Morelli also issued a stop payment order on his golf tournament registration of \$450 (and later sent a check for \$94.99, which Riccio never cashed). Without laying out the details, Morelli left the hotel, returned, and then left.

Beginning in June 2016, Morelli began to seek information about the finances of the Foundation. The State of Maryland informed Morelli that the Foundation had not registered properly in Maryland and had failed to file required annual filings in Maryland and similarly in Pennsylvania. The Charities Division of the Maryland Secretary of State’s Office and Commonwealth of Pennsylvania both investigated the Foundation’s lack of compliance and as a result took regulatory action against the Foundation.

In December 2016, Ocean City Police Officer Grady applied for a statement of charges against Morelli, alleging trespass and theft arising out of a June golf event dispute. The Commissioner issued charges for trespass but declined the theft charge; the State’s Attorney later filed a criminal information against Morelli for theft. Morelli eventually resolved the criminal charges; the charges were first placed on the stet docket to enable Morelli to perform community service and to reimburse the Foundation for

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- 3) Riccio does not attack the finding of defamation liability against him or the award of compensatory damages.

\$450.00. Following Morelli's performance of community service, the charges were *nolle prossed*.

Thereafter, much of the alleged defamatory activity occurred. [Morelli] made inquiries to the State of Maryland requesting information about the Foundation. He made a complaint to the Better Business Bureau and made a posting on Facebook about the Oasis Bar. An unsigned letter, including a copy of the Ocean City arrest report related to Morelli, was circulated around the Pennsylvania community, to Morelli's employer, the local airport Board, and others. [Jack Seamon, vice president and treasurer of the Foundation] sent a copy of [Morelli's] arrest report and the "anonymous" letter to the Better Business Bureau. [Morelli's] employer, Morgan Stanley, and others received the "anonymous" letter about [Morelli] and the Foundation's counsel (Luke Rommel) issued, on March 10, 2017, a Press Release about the dispute. Morelli sent a Letter to the Editor to the local Pennsylvania newspaper, which the paper published.

Morelli made assertions about Riccio's employment history, activities alleged to have occurred at a bar the latter owned, and the operation of the Riccio Foundation. The anonymous letter asserted in essence that Morelli was immoral, dishonest, lacked integrity, had professional shortcomings, was guilty of marital infidelity, and was an unfit parent. The press release accused Morelli of making vindictive and false allegations about the Foundation.

This war of words turned into a legal battle when, on March 1, 2017, Riccio and the Foundation sued Morelli in the Circuit Court for Worcester County, alleging defamation and conversion. On April 21st, Morelli filed a counterclaim, asserting actions for defamation and abuse of process. When discovery had ended, both parties agreed to binding arbitration of the live claims, and filed a joint motion for referral to arbitration. Under the agreement, no further discovery was permitted and the transcript of the proceedings was to be made available only to the Arbitrator.

Both parties agreed on Judge Raker as the Arbitrator. And they both asked her for a “reasoned award,” which is apparently arbitration-talk for a standard that obligates the arbitrator to provide “something more than a line of unexplained conclusions, but something less than full findings of fact and conclusions of law on each issue before the panel. *Leeward Construction, LTD v. American University of Antigua-College of Medicine*, 826 F.3d 634, 640 (2nd Cir. 2016).² The Arbitrator required both sides to file a statement of claim, which mirrored the complaint and counterclaim filed in the circuit court.

Riccio’s statement of claim specifically stated that Morelli made defamatory statements that the Foundation did not file required financial documents; that the Foundation had not disclosed its financial information; that the Foundation had misappropriated funds; and that it had been less-than-transparent in its charitable mission. Riccio asserted that he had been defamed by Morelli when he published the statement that Riccio “was kicked out of the OC Police Department,” as well as statements that illegal drugs were sold at a bar owned by Riccio. Morelli’s statement of claim asserted defamatory statements in the anonymous letter and press release.

² The Arbitrator’s decision also stated that she “has considered all of the admissible testimony and exhibits in this record, although testimony may not be summarized herein.”

The Arbitrator held evidentiary hearings at which both Riccio and Morelli testified.³ On March 31, 2020, the Arbitrator issued her award. In this written decision, she rejected the defamation claims of Riccio and the Foundation; but found both claimants liable for defaming Morelli in the anonymous letter. She awarded Morelli \$10,000 in compensatory damage against Riccio and \$450 in damages against the Foundation.⁴ The decision also stated:

As to punitive damages, the Arbitrator finds that Respondent has established by clear and convincing evidence both constitutional malice and actual malice and awards punitive damage [of] \$25,000 in favor of ... Morelli against Claimant.

The Arbitrator hinged liability only on the anonymous letter, not the press release, which she found not to be malicious. Because Morelli was a “limited purpose public figure” due to his involvement in the controversy over the Foundation, he had to show a higher element of fault to prevail, what the Arbitrator termed “constitutional malice,” *viz.* knowing or reckless falsity.⁵

Riccio and the Foundation defended on the ground that they had not sent the letter; causing the Arbitrator to pointedly observe that Riccio “did not defend or represent that the letter was not with actual malice.” However, the Arbitrator found that the anonymous

³ We have no transcript of that testimony. A memorandum filed by Morelli with the Arbitrator and included in the record extract contains a rather jaundiced account of the testimony.

⁴ This was the amount of the registration fee for the Ocean City golf tournament.

⁵ At one point, the Arbitrator stated that Morelli had to establish “actual constitutional malice.” She also noted that “[t]he actual malice standard is not satisfied simply by showing ill will or ‘malice’ in the ordinary or non-constitutional sense of the term...”

letter was sent by Riccio and the Foundation, pointing to evidence, such as the fact that the claimant had requested Morelli's police record from the Ocean City Police Department, that Seamon (who lived with Riccio) admitted that he sent the letter and the police record to the Better Business Bureau and that Riccio bore "personal ill will" towards Morelli. Thus, the Arbitrator concluded that the key statements in the letter were false and were made with "reckless disregard [as] to [their] truth or falsity," and "constitutional malice" had been proven.

As to the punitive damages award, the Arbitrator stated:

Punitive damages are allowable in a defamation case if the plaintiff proves the actual malice standard, even if the plaintiff is a private person. *Seley-Radtke v. Hosmane*, 450 Md. 468, 489-903 (2016). Thus, to be entitled to punitive damages, a Claimant or plaintiff must establish that the Respondent or defendant had actual knowledge, or [published] with reckless disregard that the defamatory statement was false. *Id.* at 495.⁶

She went on to note:

Punitive damages require proof by the plaintiff or claimant of actual malice. Morelli has proven by clear and convincing evidence that Claimant Riccio, in publishing the letter, exhibited actual malice toward him. There is direct evidence (as well as strong circumstantial evidence) that Riccio intended to harm Morelli. For example, Morelli stated, uncontradicted, that before Riccio hung up in the June phone call at the Foundation event, he said: "you're going to find out how many ways I can hurt you, now pack your bags." The statements were made with at least reckless disregard to the truth. A defamatory communication constitutes defamation *per se* if it would tend to injure the plaintiff in his trade, business, profession or office.

⁶ The pin cite to *Seley-Radtke* refers to a discussion of *LeMarc's Mgmt Corp. v. Valentin*, 349 Md. 645 (1998), where the Court of Appeals held that actual knowledge of falsity was necessary to support a punitive damages award in a defamation case, not reckless disregard of the truth or falsity.

The letter at issue is defamation *per se*, and it was published with actual malice.

Before she issued her decision, the Arbitrator directed the parties to file closing memoranda. During the exchange of filings, a dispute arose over whether Riccio was permitted to assert additional alleged defamatory statements not contained in the statement of claim.

The Arbitrator addressed the issue in her written decision. She cited authorities which said that in a defamation case, because the defendant is entitled to know the precise language at issue, the plaintiff is limited to the complaint in defining the scope of the defamation. The Arbitrator recognized that a variance between pleading and proof is permissible as long as the variance is not substantial, misleading, constitutes surprise and is a prejudicial departure from the pleadings. She said that Morelli had to receive fair notice as to which statements are defamatory and that “statements that Morelli may or may have not made, outside of the Statement of Claim, are improper, constitute unfair surprise and will not be considered as a basis for this defamation action.”

After Riccio’s application for modification or correction of the arbitration award was filed and denied, the parties went back to circuit court. On June 11, 2020, the circuit court, without a written opinion, denied Riccio’s petition to vacate the arbitration award and granted Morelli’s petition to confirm the arbitration award and to enter judgment.

DISCUSSION

Standard of Review

Maryland recognizes manifest disregard of the law as a permissible ground for vacating an arbitration award. *WFC/2005 LLC v. Trio Ventures Associates*, 460 Md. 244, 256 (2018).⁷ Under this standard, a court must determine whether the arbitrator made a palpable mistake of law or fact apparent on the face of the award. *Id.* at 260. Mere errors of law or fact do not “ordinarily” furnish ground for a court to vacate or to refuse enforcement of an arbitration award. *Id.* at 260-61. Courts will not look into the merits of the matter and review findings of law or fact made by the arbitrator nor substitute its opinion. *Id.* at 261.⁸

In *Trio Ventures*, the Court of Appeals said:

Federal courts have explained that manifest disregard of the law occurs when: (1) the applicable legal standard is clearly defined and not subject to reasonable debate; and (2) the arbitrator refused to heed that legal principle.

Id. at 262.

The Court also quoted from a treatise that a challenger must show that the award is “based on reasoning so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling....” *Id.* at 263 (quoting from Thomas H. Oethmke & Joan M. Brovins, *Oehmke Commercial Arbitration*, § 149:2, at 149-4 (3d ed. 2017)). Even if an arbitrator’s award does not “expressly rely upon applicable principles of law,

⁷ We reject Morelli’s contention that “manifest disregard of the law” cannot be asserted here as a ground for overturning the Arbitrator’s award.

⁸ Even if it is established that the arbitrator failed to understand and apply the law, that alone does not constitute manifest disregard of the law. *Id.* at 262.

it will still be upheld if it “is reasonably consistent with them.” *Trio Ventures*, 460 Md. at 268.

This Court has held that failure of the arbitrator to grant a remedy is a palpable error. *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 108 Md. App. 167 (1996); and that if an arbitrator fails to rule on a counterclaim, such a failure results in an exceeding of his or her power. *McKinney Drilling Co. v. Mach I Limited Partnership*, 32 Md. App. 205 (1976).

An arbitrator does not have to use “magic words” to convey his or her findings and conclusions. In *Terkosky v. Indiana Dept. of Educ.*, 996 N.E. 2d 832 (Ind. Ct. App. 2013), a teacher challenged an ALJ’s conclusion her termination was justified on the following basis:

First, Terkosky notes that Section 7 “mandate a finding that a teacher’s conduct constitutes *inter alia*, ‘immorality’ or ‘misconduct in office’ before a suspension or revocation determination can be rendered” and “[n]owhere in the Order does the ALJ conclude that Terkosky’s alleged conduct” constitutes either immorality or misconduct in the office. Appellant’s Brief at 21. Terkosky therefore suggests that “the ALJ’s Order is defective because it does not adequately resolve the factual issues necessary to the determination of the ultimate fact ... nor does it make an ultimate finding of fact, *i.e.*, whether [she] committed conduct that constitutes ‘immorality’ or ‘misconduct in office.’” *Id.*

The Indiana appellate court rejected this argument, noting that “no magic words” were needed, because the findings and reasoning and the conclusions are “extremely clear.” *Id.* at 851.

I. Did the Arbitrator Fail to Consider Material Evidence and Resolve the Dispute?

Riccio claims that the Arbitrator abdicated her responsibility to resolve the dispute and refused to consider all properly submitted claims. He relies on cases such as *Baltimore Teachers Union, supra*, which upset an arbitrator’s decision for failing to provide a remedy and *McKinney, supra*, which overturned an arbitrator’s award for failing to consider a counterclaim. Riccio also asserts that there was no unfair surprise, because Morelli was aware of the added statements via discovery.

The cases cited by Riccio are far off the mark. The Arbitrator considered all claims and did not reject a necessary remedy. Rather, the Arbitrator made a procedural/evidentiary ruling that declined to consider allegedly defamatory statements not contained in the statement of claim.⁹ This is the kind of ruling that occurs in countless trials where the determination is subject to the discretion of the adjudicator.¹⁰ We have no authority to reject an arbitrator’s discretionary findings of “unfair surprise” or prejudice to Morelli as a result of allowing amendment of the statement of claim.

We should also point out that to the extent that the additional allegedly defamatory statements surfaced during discovery, that discovery concluded in the circuit court. At that time, Riccio could have included those additional statements in his statement of claim. But he did not. Thus, we reject Riccio’s first assignment of error.

II. Was the Punitive Damage Award Issued in Manifest Disregard of the Law?

⁹ The briefs are a little fuzzy about which additional statements are at play here. We assume that at least one of those is a letter to the editor written by Morelli.

¹⁰ The Arbitrator relied on out-of-state authority governing prejudice by amendment, probably because Maryland Rule 2-341 regarding the amendment of a complaint does not apply to amendments to a statement of claim in an arbitration proceeding.

Riccio claims that the Arbitrator based her award of punitive damages on a finding of reckless falsity and not on Riccio's knowledge that his defamatory statements were false. He points to language in the decision where the Arbitrator says that his defamatory statements were made "with at least reckless disregard to the truth" and that the anonymous letter was sent "in reckless disregard to the truth or falsity" of the statements.

In our view, Riccio's argument flows from a selective reading of the Arbitrator's decision and failure to appreciate the complexity of the Arbitrator's necessary analysis of "actual malice" in a defamation case such as this one.

About those complexities, first, a defamation award in favor of a public figure must meet both federal constitutional standards as well as state law standards with respect to liability and punitive damages. To prevail on liability, a public figure must show by clear and convincing evidence "actual malice," which the U.S. Supreme Court has defined as knowing *or* reckless falsity. *Curtis Publishing Co. v. Batts*, 388 U.S. 686 (1967). To recover punitive damages in a defamation action, a plaintiff, as a matter of federal constitutional law, must also show "actual malice" defined as knowing *or* reckless falsity. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). However, as a matter of Maryland common law, a plaintiff in a defamation action cannot recover punitive damages without a showing of knowing falsity, *LeMarc's Management Corp. v. Valentin*,

349 Md. 645 (1998), a standard which the Court of Appeals has also referred to as “actual malice,” *Sele Radtke v. Hosmane*, 450 Md. 468, 495-96 (2016).¹¹

The Arbitrator clearly understood the difference between the knowing or reckless falsity standard, which she termed “constitutional malice,” and the higher standard of “actual malice.” In the most prominent place in her decision – the Executive Summary – the Arbitrator found that as to punitive damages, Morelli had established “both constitutional malice and actual malice.”¹² In fact, the Arbitrator uses the term “actual malice” in her findings/conclusions at least seven times. In addition, in her concluding paragraph on punitive damages, the Arbitrator cites to the page of *Sele-Radtke* that recognizes the knowing falsity standard for punitive damages. *See n.6 supra*.

We find no fault in the Arbitrator’s references to the knowing or reckless falsity standard. Because she was addressing federal constitutional requirements, where this

¹¹ In *Piscatelli v. Van Smith*, 424 Md. 294 (2012), the Court of Appeals applied the knowing falsity standard to the showing a defamation plaintiff must make to overcome a common law privilege. *Id.* at 307-08. At one time common law malice (ill will, hatred, spite), also known as actual malice, was the standard in such cases. However, in *Marchesi v. Franchino*, 283 Md. 131 (1978), the Court at that time adopted the knowing or reckless falsity standard, endorsing the State appellant’s contention that “only a lexicographer could reasonably draw ... distinctions” between the elements of common law malice.

¹² The Arbitrator was obviously aware of the requirement that knowing falsity had to be shown to justify punitive damages. As a member of the Court of Appeals, she joined the Court’s opinion in *LeMarc’s Management*. And she authored the Court of Special Appeals opinion in *Seley-Radtke*, recognizing that the standard for awarding punitive damages in a defamation case is knowing falsity. *See Hosmane v. Sele-Radtke*, 227 Md. App. 11, 19-20 (2016), *aff’d*, 450 Md. 468 (2016).

standard is in play both as to liability and punitive damages, these are understandable statements.

While we have no knowledge of the testimony of the parties or their arguments before the Arbitrator about actual malice, and punitive damages, we find revealing the decision's finding/conclusion that Riccio "did not defend or represent that the letter was not with actual malice." Thus, it would appear that Riccio is belatedly raising the knowing falsity issue.

If there were a purported conflict between portions of the Arbitrator's decision, we are inclined to rely on the most critically important finding in the Executive Summary, that actual malice and constitutional malice supported the award of punitive damages – a determination that supports the award, rather than undermines it.

Ultimately, as we have noted earlier, there are no magic words needed to support an arbitrator's decision if the reasoning and conclusions are extremely clear. *See* pages 8-9, *supra*. Thus, as an additional safeguard, we will address whether the Arbitrator's determination of actual malice, i.e., knowing falsity, is supported by the evidentiary findings.

Piscatelli sets forth the most current definition of actual malice for the purpose of punitive damages and abuse of privilege: "[A] person's actual knowledge that his or her statement is false, coupled with his or her intent to deceive another by reason of that statement." 424 Md. at 307-08. Earlier, in *LeMarc's Management*, the Court suggested

that a punitive damage award must be based on “conscious and deliberate wrongdoing” by the defendant. 349 Md. at 652-53.¹³

In *Ellerin v. Fairfax Savings, F.S.B.*, the Court of Appeals, quoting from *Owens-Illinois v. Zenobia*, 325 Md. 420, 462 (1992), said that actual knowledge of falsity does not mean “constructive knowledge,” “substantial knowledge” or “should have known.” However, this does not mean that knowing falsity must only be proven by the defendant’s admissions. Rather, the U.S. Supreme Court has said that actual malice in a defamation case can be proven by indirect or direct evidence. *Herbert v. Lando*, 441 U.S. 153, 160 (1979).¹⁴

Here, the evidence before the Arbitrator showed conscious wrongdoing on Riccio’s part – from the threats of harm to Morelli to the “laundry list” of outrageous attacks on Morelli, whom he had known for decades, to the focused and lengthy collection of recipients of the offensive letter, including Morelli’s employer. However, most revealing of actual knowledge of falsity is the vehicle chosen by Riccio to spread the falsehoods – the anonymous letter. In many ways it is like an anonymous tip to the police where the informant cannot “be held responsible if [his or] her allegations turn out to be fabricated.” *Florida v. J.L.*, 529 U.S. 266, 270 (2000), *see also McIntyre v. Ohio Elections Com’n*, 514 U.S. 334, 372, 382 (dissenting opinion of Justice Scalia) (“I am

¹³ The Court also said that actual knowledge also includes the willful refusal to know. 349 Md. at 653 n.4.

¹⁴ The Court also observed that “courts have traditionally admitted any direct or indirect evidence relevant to the state of mind of the defendant and necessary to defeat a conditional privilege or enhance damages.” 441 U.S. at 165.

sure, however, that ... a person who is required to put his name to a document is less likely to lie than one who can lie anonymously...”); and Charles Doskow, Peek-a-boo I see you: The Constitution, Defamation Plaintiffs, and Pseudonymous Internet Defendants, 5 Fla. A&M U.L. 197, 217 (2010) (“There is nothing commendable about anonymous libel or slander and scant reason to protect it.”)

One author has identified as “harmful” motivations for anonymous speech: 1) anonymity as intimidation and 2) anonymity as insulation and concealment. Victoria Smith Ekstrand, The Many Masks of Anon: Anonymity as Cultural Practice and Reflection in Case Law, 18 J. Tech, L & Policy 1, 23-29 (2013). Both such motivations are evidenced here. Riccio tried to conceal his involvement in the preparation and distribution of the anonymous letter, insulate himself from any accountability for it and intimidate Morelli’s investigation into the family foundation. These facts exhibit consciousness of the falsehoods, as well as *Piscatelli’s* requirement of an intent to deceive another by reason of the statements. In our view, the Arbitrator did not err in her finding of actual malice and her award of punitive damages.

For these reasons, we affirm the decision of the circuit court confirming the arbitration award and denying the petition to vacate.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**