



False Accusations Can Return to Bite You!

by Michael J. Gelfand, Esq.

What do you do if you suspect that someone in your community has committed a criminal activity? If you go around making accusations that turn out to be wrong, you may end up paying for it with hard cash.

A Florida appellate court recently ruled that spoken words falsely stating that another person committed a criminal offense are “actionable per se.” This means that a person falsely accused of a crime may be able to recover money damages for slander. Although this ruling was issued in a case not involving a community association, *Myers v. Jim Russo Prison Ministries, Inc.*, 34 Fla. L. Weekly D310 (Fla. 2nd DCA, February 6, 2009), the ruling is instructive.

Upon release from prison, Myers stayed at a Ministries’ facility that provided life skills training and substance abuse recovery. Allegedly, a Ministries’ employee stated that Myers stole a television and VCR from the facility. The statement was allegedly made to Myers’ probation

officer, Myers' employer, the staff at the facility, a hospital, Myers' mother, and Myers' girlfriend. After a police investigation of the alleged theft, no charges were filed and the investigation was dropped.

Myers filed a slander lawsuit, claiming that the alleged statements were false. The trial court granted judgment for the Ministries. The trial court ruled that Myers did not suffer any damages because the police did not arrest him, the hospital did not refuse to treat him, his employer did not fire him, his probation officer did not write him up for a probation violation, and his relationships with his mother and his girlfriend did not change.

Although the Florida appellate court found the trial court correctly ruled that the statements made to the police were "qualifiedly privileged," meaning that the statements to the police could not be the subject of the slander claim, the appellate court reversed the trial court's decision on the remainder of the slander claim. Even if Myers could not prove actual money damages, the court determined that a jury could still find the Ministries liable for nominal damages. "Spoken words falsely stating that another committed a criminal offense are actionable per se," the court explained.

The lesson to be taken from this decision is simple—do not go around accusing your neighbors of committing crimes. Contact the police if you reasonably suspect criminal activity.

Response to 911 Call May Lead to Liability

What happens if you discover someone who appears to need medical attention? Once you begin to administer assistance, if you act unreasonably and cause further harm, then you may be subjecting yourself to potential liability.

The Florida Supreme Court recently ruled that a Sheriff's deputy owed a duty of care to a woman after responding to a 911 call. In *Wallace v. Ed Dean, Sheriff of Marion County*, 34 Fla. L. Weekly 552 (Fla., January 29, 2009), the facts indicated that Wallace's daughter, who was living out of state, called her mother's neighbor when her mother failed to answer the phone. The neighbor called 911 because Wallace did not respond to her knocking at the door.

The Sheriff's deputy entered the home and found Wallace apparently asleep. Although the deputy was unable to arouse Wallace, the deputy allegedly assured the neighbor that Wallace was sleeping. The next morning,

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the neighbor discovered Wallace in the same position and she requested an ambulance. Wallace died several days later.

Wallace's daughter filed a wrongful death action against the Sheriff, alleging the Sheriff's deputy negligently increased the risk of harm to Wallace by failing to call an ambulance which resulted in Wallace's death. The trial court dismissed the complaint on the grounds that the deputy did not owe Wallace a duty of care. The Florida appellate court affirmed the trial court decision, explaining that the deputy was accused of merely exhibiting poor judgment.

As a general rule, one who undertakes to act, even when he or she is under no obligation to act, becomes obligated to complete the act with reasonable care. The Supreme Court explained with reference to the "undertaker's doctrine" which provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking,

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.

Applying the undertaker's doctrine to the facts of the case, the Florida Supreme Court held that the complaint did in fact state a wrongful death cause of action against the Sheriff. The Court found that the lawsuit claimed that the deputy undertook to provide aid to Wallace and repeatedly provided assurances to the neighbor who relied on the assurances, thereby increasing the risk of harm Wallace faced.

This case should not deter Good Samaritans from acting because most volunteers "do the right thing" and properly follow through. The court explained how in Florida the undertaker doctrine can lead to liability when a person is alleged to act unreasonably making the situation worse, not creating liability by just being there. This is just one more reason why directors should refer management issues to management and not undertake the role of a manager!

Michael J. Gelfand is a partner in the law firm of Gelfand & Arpe, P.A., in West Palm Beach, Florida. You may reach him by email at Michael@flcaj.com or by phone at (561) 655-6224. ■

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