

IN THE COURT OF APPEALS OF VIRGINIA

JOHN C. DEPP, II,

Appellant,

v.

AMBER LAURA HEARD,

Appellee.

Record No.: 1072-22-4

**APPELLANT JOHN C. DEPP, II'S ASSIGNMENTS OF ERROR**

Appellant John C. Depp, II ("Mr. Depp" or "Plaintiff"), by and through his undersigned counsel, hereby submits the following assignments of error:

- (1) The trial court erred by denying: (1) Mr. Depp's Motion for Summary Judgment as to Appellee Amber Laura Heard's ("Ms. Heard") Counterclaim ("Counterclaim"); and (2) Mr. Depp's Motion to Strike the Evidence as to Ms. Heard's Counterclaim.
  - a. Mr. Waldman is an independent contractor, not an employee agent, and Mr. Depp is not liable for Mr. Waldman's allegedly tortious conduct as a matter of law.
  - b. The statements ("Counterclaim Statements") by nonparty Adam Waldman ("Mr. Waldman") that are the subject of Ms. Heard's

Counterclaim are not actionable statements sufficient to support a claim for defamation.

- c. Ms. Heard failed to present any clear and convincing evidence that Mr. Waldman made the Counterclaim Statements with actual malice.

[Preserved: Plaintiff's Memoranda to Sustain Demurrer, Plea in Bar to all Counterclaims (6256-74; 6878-85), which motion the parties argued before the trial court on October 16, 2020 (23267-292) and the trial court denied on January 4, 2021 with respect to the three statements that ultimately formed the basis for the Counterclaim at trial (8384-93); Plaintiff's Memoranda in Support of Motion for Summary Judgment regarding Counterclaim (14303-314; 15454-464), which motion the parties argued and the trial court denied on March 24, 2022 (24206-247) as further reflected in the trial court's order (16881-883); Plaintiff's Memorandum in Support of Motion to Strike (20175-187), which motion the trial court denied after argument on May 24, 2022 (28098-107) and May 26, 2022 (28531)].

- (2) The trial court erred in refusing Mr. Depp's Proposed Jury Instruction Nos. 22, 23, and 24, as to whether Mr. Waldman was acting as an independent contractor when he made the Counterclaim Statements. [Preserved: Mr.

Depp's Proposed Jury Instruction Nos. 22-24 (21402-404), which the trial court denied on May 20, 2022 (27727-728)].

- (3) The trial court erred in excluding from evidence the full, unredacted versions of Mr. Depp's Exhibit Nos. 881A, 881B, and 881C, which are copies of the news articles in which the Counterclaim Statements appeared, instead admitting only redacted versions that showed the Counterclaim Statements out of context. [Preserved: Depp's Exhibit Nos. 881A, 881B, and 881C, copies of which Ms. Heard attached to her Counterclaim as exhibits F, G, and H (5186-5223), which Plaintiff argued should be admitted in their entirety (27209; 27542-27543)].

October 11, 2022

Respectfully submitted,



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