

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

E. ROBERT TEMPLE,)
)
 Plaintiff)
v.) Civ. No. 98-CV-160-B
)
CITY OF BELFAST ET AL,)
)
 Defendants)

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

In Count V of his Complaint, Plaintiff E. Robert Temple (“Plaintiff”) alleges that Defendant The Waldo Independent, Inc. (“The Waldo Independent”) defamed Plaintiff by publishing a letter critical of Plaintiff’s job performance. The Waldo Independent filed a Motion to Dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12 (b)(6).¹ For the reasons discussed below, The Waldo Independent’s Motion to Dismiss is GRANTED.

I. MOTION TO DISMISS

When faced with a Motion to Dismiss brought pursuant to Fed. R. Civ. P. 12 (b)(6), the Court views all of Plaintiff’s factual averments as true and indulges every reasonable inference in Plaintiff’s favor. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996). The Court may grant Defendant’s Motion to Dismiss “only if it clearly appears, according to the facts alleged, that the plaintiff cannot recover on any viable theory.” Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 52 (1st Cir. 1990).

¹ Plaintiff did not respond to The Waldo Independent’s Motion to Dismiss.

II. BACKGROUND

Plaintiff was hired by Defendant City of Belfast (“Belfast”) as a licensed plumbing inspector in 1985. In 1987, Plaintiff became Belfast’s Assistant Code Enforcement Officer, and in 1994, he was appointed Belfast’s Code Enforcement Officer.

In 1997, Belfast hired Robert E. Miller, Esq. (“Miller”) to compile information regarding Plaintiff’s job performance. On or about February 3, 1998, Miller drafted a letter to the Belfast City Council alleging various deficiencies in Plaintiff’s job performance and recommending that he be terminated from employment. Prior to forwarding this February 3 letter to the City Council, Miller sent the City Council a letter dated January 6, 1998, stating his preliminary determinations that Plaintiff:

. . . has demonstrated a lack of good understanding of the ordinances within his jurisdiction and a failure to enforce local regulations in a uniform and non-discriminatory manner. In my view, the Council will find that his conduct has affected his ability and fitness to perform his duties as Code Enforcement Officer.

It will be my recommendation that the Council give serious consideration to a revocation of his appointment as Code Enforcement Officer and dismissal as an employee of the City of Belfast . . .

(Complaint, ¶ 21.)

Sometime after receipt of the January 6 letter from Miller, Defendant Jon Cheston, a City Council member, provided a copy of that letter to The Waldo Independent, which thereafter accurately published the contents of the letter in its newspaper.

Plaintiff claims that The Waldo Independent “intentionally published confidential statements about [Plaintiff] . . . for the wrongful purpose of causing the confidential and false statements to form the basis of charges against [Plaintiff] designed to lead to the termination of

[Plaintiff] from his position as Code Enforcement Officer.” (Complaint, ¶ 68.) Plaintiff contends that The Waldo Independent “knew the letter was confidential . . . [and] acted with careless disregard for the truth or falsity of the information and its confidential nature all to [Plaintiff]’s detriment.” (Complaint, ¶ 70.)

III. DISCUSSION

The Waldo Independent raises two arguments in its Motion to Dismiss.² First, it argues that Plaintiff cannot make out a prima facie case of defamation because Plaintiff cannot demonstrate actual malice. Second, it contends that the letter in question was privileged because it was merely a reiteration of the contents of a government record. The Court finds the former argument dispositive and therefore does not reach the latter argument.

A public official who brings a defamation suit against critics of his official conduct must, to succeed in the action, prove that the allegedly defamatory statements were in fact false and that the statements were made with “actual malice,” that is, that the statements were made with knowledge of their falsity or with reckless disregard as to whether they were true or false. See New York Times Co. v. Sullivan, 376 U.S. 254, 283 (U.S. 1964); see also Beal v. Bangor Publishing Co., No. Was-97-298, 1998 WL 399713 at *2 (Me. July 17, 1998); True v. Ladner, 513 A.2d 257, 262 (Me. 1986); Michaud v. Town of Livermore Falls, 381 A.2d 1110, 1113 (Me. 1978); Restatement (Second) of Torts § 580A (1977). Actual malice must be proved with “convincing clarity.” See New York Times, 376 U.S. at 285-86; Michaud, 381 A.2d at 1114-15. See also Restatement (Second) of Torts § 580A comment f (1977) (equating proof of

² The Waldo Independent defends against both defamation and invasion of privacy claims in its Motion to Dismiss. Because Plaintiff did not assert an invasion of privacy claim against The Waldo Independent in his Complaint, the Court does not address this issue.

“convincing clarity” with proof by clear and convincing evidence).

Not every public employee is a “public official.” See Hutchinson v. Proxmire, 443 U.S. 111, 119 n. 8 (1979). However, in this case, Plaintiff is a “public official” within the meaning of the above-cited authorities. An individual is a “public official” if the public has an “independent interest in the qualifications and performance of the person” holding the office beyond the interest in the qualifications and performance of all government employees; this “independent interest” may be found “at the very least” when an employee has “substantial responsibility for or control over the conduct of governmental affairs.” Rosenblatt v. Baer, 383 U.S. 75, 85-86 (1966); see also True v. Ladner, 513 A.2d 257 (Me. 1986) (holding that public school teacher was not “public official” for defamation purposes); Roche v. Egan, 433 A.2d 757 (Me. 1981) (holding that police detective was “public official” for defamation purposes).

Here, as Code Enforcement Officer for Belfast, Plaintiff apparently was responsible for citizens’ safety and welfare in the areas of building safety, fire safety, and sanitation, in addition to other matters. Like the police detective position in Roche, Plaintiff’s job is “a uniquely governmental affair” involving “substantial responsibility for the safety and welfare of the citizenry impinging most directly and intimately on daily living.” True, 513 A.2d at 264; Roche, 433 A.2d at 762. Because the Court concludes that Plaintiff is a “public official” for purposes of this defamation action, and because the letter in question involves criticism of Plaintiff’s official conduct, this case falls under the purview of New York Times and Plaintiff must allege facts sufficient to support a finding of “actual malice.”

In determining whether a publisher acted with “actual malice” (reckless disregard as to the truth or falsity of the statements in question), the inquiry is not

whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 U.S. 727, 731 (1968).

In this case, Plaintiff has alleged no facts amounting to either direct or circumstantial evidence that The Waldo Independent “entertained serious doubts as to the truth” of the content of the letter or had any reason to do so. Rather, Plaintiff has merely alleged that The Waldo Independent published the letter after receiving it from a City Council member, that it “knew or should have known the . . . letter . . . was a confidential matter under Maine law,” and that it published the letter “with malice toward [Plaintiff] in an attempt to ruin his standing and reputation in the community.” (Complaint, ¶ 25.) Other than asserting that Miller’s opinion statements in the letter were false, Plaintiff has failed to assert any facts that might support the assertion that The Waldo Independent exercised reckless disregard as to the truth or falsity of the letter’s content.

IV. CONCLUSION

Because Plaintiff has not averred any facts to support an allegation of actual malice, The Waldo Independent’s Motion to Dismiss is GRANTED.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 16th day of September, 1998.