2019 IL App (4th) 190010-U

NO. 4-19-0010

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 13, 2019
Carla Bender
4th District Appellate
Court, IL

WAYNE CHANNELL and JOHN WHITAKER,	)	Appeal from the
Plaintiffs-Appellants,	)	Circuit Court of
v.	)	Pike County
BRYAN TITTSWORTH,	)	No. 17L5
Defendant-Appellee.	)	
	)	Honorable
	)	Charles H.W. Burch,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err by ruling against plaintiffs' *per se* defamation claim.

¶ 2 In March 2017, plaintiffs, Wayne Channell and John Whitaker, as members of the board of trustees of the Village of El Dara (Village), filed a complaint for defamation *per se*, alleging defendant, Bryan Tittsworth, the president and mayor of the Village, made knowingly false statements of a disparaging nature about them. In September 2018, the trial court conducted a bench trial. In November 2018, the court ruled against plaintiffs' claim.

¶ 3 On appeal, plaintiffs argue the trial court erred by finding defamation *per se* was not proved at trial. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2017, plaintiffs, along with Robert Colston and Karen Saxbury, filed an action for defamation against defendant due to written statements he made and addressed to the

board of trustees, which were about the actions of the board and were during the Village's board meetings. The statements, in their entirety, are included below and referenced as exhibits A through E.

¶ 6 Exhibit A, titled "Veto letter 02 September 2015 minutes of meeting" and dated May 15, 2016, stated as follows:

> "I do not and will not support the the [*sic*] addition of the minutes from a meeting held on 02 Sept 2015. On that day four trustees, clerk and treasurer held a meeting, hired a company and conspired to keep any and all information from the rest of the board and residents. Freedom of Information Requests were denied and even omitted from posted agendas of regular meetings breaking the municipal codes and state law. These same people at the meeting conspired to defraud the village residents for the amount of $14,252.00. I will not be a part of there [*sic*] illegal activity with the entry of these minutes eight months after the meeting took place as it violates ILCS 5/3.1-35-90, Illinois Freedom of Information Act and Open Meetings Act."

¶ 7 Exhibit B, titled "Veto Letter of vote to approve minutes from March 15-April 19 2016," and dated June 19, 2016, stated:

> "I do not and will not support the forgery of village records as voted by the village board. I will not be a part of there [*sic*] illegal activity with the deletion of a legal vote and vetoes that did happen during these meetings. In addition to the vote and vetoes

several other things took place during those meetings that 'I believe' were intentionally left out of the minutes. 1. Freedom of Information requests that was [*sic*] formally denied by the board. 2. The boards [*sic*] refusal to answer questions about the ordinances brought to the board by Trustee Channell. 3. The minutes list Trustee Colston as a chairman of a committee, I never appointed Trustee Colston as a chairman of any project. Trustee Colston also would not provide all bids that had never been received as outlined in the minutes from 02SEPT2015. 4. The boards [*sic*] refusal to answer who appointed Trustee Channell to update the ordinances iaw [*sic*] the municipal codes/law. 5. The minutes states [*sic*] that the president 'called for debate to end'. Never did I call for debate to end and actually vetoer [*sic*] of the vote to end debate as outlined in the minutes. These actions violates [*sic*] Illinois Freedom of Information Act, Open Meetings Act, municipal codes and state laws. I will be contacting the state as to these matters and if charges are brought against the ones who voted for and took part of the forgery of these villages document so be it!"

¶ 8 Exhibit C, titled "Veto letter for mowing deadline," stated:

"I do not support and will not support the vote to end this years [*sic*] mowing contract. The village entered into verbal contract with Judi Sutton to mow the village properties on an as needed basis. As you can see the weather still requires mowing to

be done. A deadline to stop mowing on a certain date should have been discussed when the village accepted the bid. I believe this is a personal attack on Mrs. Sutton by Trustee Whitaker and other board members over personal issues. This corrupt board should use its time following the municipal codes and state laws."

¶ 9 Exhibit D was titled "Veto Letter Animal Control Yearly Contract" and stated:

"I do not support and will not support the vote to approve the animal control contract. The board vote to approve the contract without even letting the clerk fully read it and verifying the number of residents we have in the village is gross negligence and financially irresponsible. This is just another reminder of why the village has been in multiple laws suits [*sic*] this year. I am asking for the resignations of all who voted to approve this due to there [*sic*] own inability to uphold there [*sic*] oaths of office."

¶ 10 Exhibit E was titled "Veto January meeting minutes" and stated the following:

"The reasons for veto of meeting minutes- 1. The clerk did not put legal vetos in the village record. This boards [*sic*] vote to exclude legal information is just another example of the forgery and corruption that this board continues to display to the residents."

¶ 11 In September 2016, the trial court conducted a bench trial on the petition, and plaintiffs called four witnesses, including defendant as an adverse witness.

¶ 12 A. Defendant

¶ 13 Defendant was the mayor and president of the Village from 2013 to 2017. His responsibilities included presiding over the meetings of the board of trustees. During meetings, his duties would include (1) calling for the minutes to be read and voted on and (2) calling motions for a vote to approve or terminate contracts and to enact or amend ordinances. He testified regular meetings were held monthly.

¶ 14 At the time defendant was elected, plaintiff Whitaker was already on the board of trustees, and plaintiff Chanell was elected to the board of trustees in 2015. Karen Saxbury and Robert Colston were elected to the board in 2013.

¶ 15 In a regularly scheduled board of trustees meeting, around August 2015, as part of a discussion about drainage and culvert repair, defendant mentioned the need to replace some of the "road tubes," which are galvanized tubes passing under the roadway to allow for drainage. Defendant was aware that in the past, Cecil Scranton, a previous road commissioner, had done this type of project for the Village at no cost other than the cost of the tubes, gravel, and pavement over the tubes. Defendant requested Scranton, Robert Colston, a Village board member, and Harold Colston, Robert Colston's father, look into the matter and come up with a "feasible way to proceed." However, defendant testified, unbeknownst to him, plaintiffs had taken it upon themselves to form a committee and collect bids for the project. Although it was the responsibility of the mayor to form a committee, either unilaterally or at the suggestion of one or more trustees, defendant did not learn of this, he said, until eight months later. Plaintiffs selected a bid on their own at a special meeting on September 2, 2015, which was held without proper advance notice, according to defendant, and apparently called only by the few members of the board who were in attendance. Defendant said he did not find out about the meeting until

he happened to drive by the county building and saw an agenda for the meeting posted. He acknowledged having later found an e-mail regarding the meeting.

¶ 16 In this special meeting, which defendant contended was unauthorized, four board of trustees members including plaintiffs voted to approve a bid from a company for $14,252 to replace the road tubes. When asked during the regular September 15 meeting about what happened during the special meeting, plaintiff Whitaker merely responded, "What meeting?" Defendant did not pursue the matter further until he saw six road tubes being unloaded for the Village and a bill for $14,252. Plaintiffs showed defendant a document signed by the board members who had been in attendance at the special meeting, which approved the project, and wanted defendant to sign it. Defendant refused to do so and, as a result, the construction company picked up its tubes and never completed the project. Defendant testified the Village only had a budget of $10,000, so the amount requested for the project was well outside of what it could allocate. Residents of the Village ultimately made Freedom of Information Act (FOIA) requests to find out what happened in the special meeting, since the board members involved would not answer questions in that regard. The minutes for the special meeting were not presented at the next regular meeting, as had normally been the practice, and were not submitted until the regular April 2016 board meeting.

¶ 17 Exhibit A was defendant's method of objecting to the actions which transpired at the special meeting and ultimately resulted in the presentation of minutes for the special September meeting at the April 2016 regular board meeting. Defendant explained how his use of terms relating to the corruption, forgery, and conspiracy of the board in his "vetoes" were related more to the behavior of the plaintiffs than specific legal definitions of those terms. He voiced his concerns for what he considered to be violations of the municipal code, the Open Meetings Act

(Act) (5 ILCS 120/1 *et seq.* (West 2014)) and various state statutes. He acknowledged he did not have personal knowledge of plaintiffs defrauding the Village in a technical sense; however, as an example, he believed the special meeting was called in violation of the Act, since neither he nor the other board members were given proper notice for the meeting. He also thought it was improper to approve the minutes seven months later. He believed it was within his authority to veto the vote and stated, if not, it served as an expression of his disapproval of the minutes.

¶ 18 In regards to exhibit B, defendant believed it necessary to note his objection to how actions of the board were not properly recorded in the minutes. He acknowledged the Village clerk was the person responsible for the minutes and the accurate recording of them, including defendant's vetoes, but stated the minutes were only approved because plaintiffs, along with Saxbury and Robert Colston, were complicit. As an example, he noted the minutes of the meeting referenced in exhibit B listed Robert Colston as a committee chairman; however, defendant never appointed Robert Colston to that position, a function which was his to perform as mayor under the municipal code. The minutes also incorrectly stated plaintiff Channell was appointed to update the municipal code and ordinances even though no such appointment had been made by defendant. Defendant said during Saxbury's, Robert Colston's, and plaintiffs' tenure on the board of trustees, they made multiple attempts to pass ordinances while precluding discussion from the public or other board members and he was attempting to address this recurring issue in his vetoes.

¶ 19 Defendant stated he wrote exhibit C as a response to a pattern of behavior by plaintiffs wherein they continually failed to follow "municipal codes, state laws, [and the] Open Meeting[s] Act." As an example, he noted the previous oral contract the Village had with Judy Sutton to perform mowing services for Village property, which the board approved. At some

point, plaintiff Whitaker moved to terminate her contract, with a second by plaintiff Channell, which was motivated, in defendant's opinion, by a boundary dispute between plaintiff Whitaker and Sutton. Defendant believed the desire to terminate her contract for services was motivated by personal, not performance, reasons and disapproved.

¶ 20 In explaining exhibit D, defendant testified regarding the annual animal control contract with Pike County Animal Control. Defendant explained that as the clerk was beginning to read the contract, plaintiff Whitaker moved to approve it before it had ever been read into the minutes. This was not the normal practice with Village contracts and defendant objected to being forced to vote on a Village contract which created a financial obligation on the Village without having it fully read to the board. Defendant believed plaintiff Whitaker wanted to leave the meeting because the Village attorney had just explained to plaintiffs how a number of their actions were not in compliance with the municipal code and state law.

¶ 21 Defendant explained the "forgery" term used in Exhibit E was in relation to information missing from the Village's record relating to previous vetoes defendant had prepared in writing and read into the minutes. Although the minutes were actually prepared by the Village clerk, defendant considered the board members complicit by approving minutes which did not accurately record everything which transpired at the meeting.

¶ 22 Defendant described several situations where plaintiffs attempted to hire village attorneys, some of whom were to report only to several of the board members. No committee had been approved by the mayor to seek out and hire Village attorneys, as had been the past practice, and no one had authorized the hiring of a Village attorney who would only report to designated members of the board. Defendant believed these things were in violation of the Illinois Municipal Code and were opposed by other members of the board. As a result, defendant

considered this to be corrupt behavior by plaintiffs. Defendant also complained about the fact he, other board members, and residents of the Village filed various FOIA requests with the board, to which no responses were provided. He believed this to be corrupt behavior as well.

¶ 23 Defendant testified that on multiple occasions plaintiff Channell prepared ordinances intended to to strip power from the mayor. These included an ordinance attempting to limit who could speak at open meetings, normally a determination left to the mayor as chair of the meeting. Defendant considered this to be in violation of the freedom of speech rights of villagers. Various ordinances attempted by plaintiffs resulted in lawsuits against the Village.

¶ 24 B. Plaintiff Wayne Channell

¶ 25 Plaintiff Channell described the situation surrounding the bids for road repairs differently than defendant. According to plaintiff Channell, the Colstons, who were appointed by the mayor to research road repair, ultimately sought and obtained bids with full approval from the board and subsequently recommended "J & L" for the job. Plaintiff Channell said defendant had asked for the Village checkbook and informed the board he and Scranton were going to do the repairs. Instead, plaintiff Channell said the board thought they should go through a bidding process and requested the Colstons to conduct the process. He said all this was done with the full knowledge of defendant. Regarding the special meeting on September 2, 2015, plaintiff Channell said the Village clerk, as was normal procedure, e-mailed the board of trustees and defendant about the meeting. He acknowledged he did not personally tell any of the missing members about the meeting ahead of time.

¶ 26 In regards to exhibit B, plaintiff Channell stated plaintiffs were "novice legislatures" and did their best "with the knowledge that [they] had at the time." He said he did not believe it was illegal "to present an ordinance for debate, voting, acceptance, etc." He

explained the Village had 30-year-old ordinances that needed to be updated, so they attempted to hire attorneys for the job but defendant fired every attorney they tried to hire. At one point, plaintiff Channell personally went to speak with one attorney to interview him for the position and get advice from him. It was plaintiff Channell's opinion the poor decorum of the meetings was due to defendant's behavior. He would on occasions walk out of meetings in frustration or refuse to call matters for a vote or debate. According to plaintiff Channell, defendant walked out of board meetings in October 2014, August 2015, January 2016, and March 2016. Plaintiff Channell also alleged coarse language was used during meetings and defendant at one point turned the lights off on him while he was reading an ordinance.

¶ 27 In discussion about exhibit D, plaintiff Channell stated defendant vetoed the bill for a dog catcher, a bill which plaintiff Channell thought was trivial. In a village of approximately 95 people, defendant wanted a head count to determine the exact number of people in the Village because the contract was per capita.

¶ 28 Plaintiff Channell did not think any of his actions relating to the appointment of committees violated the municipal code but were instead in a "vague, gray area." He thought while the mayor traditionally appointed committees, it was possible for the board of trustees to appoint committees because, according to the Municipal Code, "only with the consent and approval of the council can you form a committee."

¶ 29 Plaintiff Channell described the various actions done by plaintiffs as intending to improve or give some level of stability to board meetings and conduct business in a more professional manner. Nothing he did resulted in any personal or monetary gain for himself.

¶ 30 C. Robert Colston

¶ 31 Robert Colston testified the special meeting to which defendant objected was actually the result of defendant appointing Scranton, Harold Colston, and him to gather bids for the road project. The bids were collected by calling different contractors. Robert Colston said the special meeting was called because there was a time issue involved with the contractor's availability. He had other projects planned, and the weather was going to be a prohibitive factor in getting the work completed unless something was done soon to authorize the work. Robert Colston said addressing the bids was actually on the agenda of the regular meeting prior to the special meeting, but since defendant left the prior meeting while it was in progress, nothing was done. Once the bids were obtained, three members of the board called for a special meeting, which neither defendant nor two other board members attended. Robert Colston said everyone received an e-mail for the meeting generated by the Village clerk and he had experience with being called to meetings in that fashion before. Ultimately, although the road tubes were dropped off, payment for the contractor was never authorized, and the contractor had to return to retrieve his tubes.

¶ 32 D. Plaintiff John Whitaker

¶ 33 Plaintiff Whitaker stated he was also aware of the formation of the three person committee appointed by defendant to investigate the road work to be done. Prior to the special meeting on September 2, 2015, plaintiff Whitaker was informed of the fact there were only three bids and the company that ultimately was approved to do the work, D&L, had to get it done before it started doing tiling jobs for farmers. He believed he learned this information from plaintiff Channell, who had found out about the status of bids from Robert Colston. Plaintiff Whitaker denied ever informing defendant or the other board members about the bids or the need for urgency and said he never talked to them about Village business. It was ultimately stipulated

by counsel for both sides the mayor and the other two board members made up one faction of the board, while plaintiffs were part of the other faction. At the close of plaintiff's case, counsel for defendant moved for a directed finding, which was denied. Defendant then presented his evidence.

¶ 34 E. Judy Sutton

¶ 35 Judy Sutton was a resident of the Village for 44 years and served on the Village's board of trustees for 30 years—having previously served as Village president for two terms. She described the tone of board meetings during the period in question as "deplorable, embarrassing. Everybody fighting, arguing, pushing, shoving, pounding hands on the table." She denied receiving notice of the September 2 special meeting other than seeing a notice in the window of the county building a couple of hours before the meeting. During her tenure on the board, she did not recall special meetings being called except under emergency circumstances, and, when special meetings were called, board members were notified by telephone. She had never known of a meeting noticed only through a posting in the meeting hall window. Regarding the use of e-mail as a method of communication, she noted she did not then, nor did she at the time of her testimony, possess an e-mail account. However, she lived directly across the street from the Village hall, where the board meetings took place, and any one of the three board members who called the meeting could have knocked on her door or called her on the phone to inform her of the meeting. Sutton explained, under the normal bidding procedure for the Village, requests for bids were published publicly and were not simply the result of "call[ing] your buddies and say[ing], [']hey, you want to bid on this.['] " She opined she had purposely been excluded from the special meeting on September 2, although she attended almost every village board meeting, specifically because she would have been aware the bids being discussed had not been gathered

properly. She was not aware of any vote taken to waive the normal bidding procedure. When it was suggested defendant merely wanted to give the job to Scranton without going through the bidding process, Sutton explained Scranton had previously done work for the Village, cleaning up fallen trees or cleaning out ditches, either at no charge or for some minimal amount like $500. According to Sutton, since the Village was small—95 people according to plaintiff Channell's testimony—it did not have much in the way of municipal funds. As a result, they had a practice of asking Scranton first. She did not quarrel with deciding to put the job out for bids, but she objected to the fact plaintiffs merely contacted their "buddies" without even allowing Scranton to bid on the job. She attributed this to plaintiff Channell's dislike for Scranton, stating, "he detested [Scranton] and to this day we don't know why."

¶ 36 F. Cecily Edwards

¶ 37 Cecily Edwards is a lifelong resident and current president of the Village. She is also the daughter of Scranton. She received no notice of the special meeting of September 2, 2015, when she was still serving as a member of the board. She found out about the meeting an hour before it was supposed to commence, and by that time she was at her place of employment over an hour away. She only learned of the meeting after Sutton saw the notice in the window and contacted defendant, who texted Edwards.

¶ 38 G. Katrina Osienger

¶ 39 At the time of the hearing, Katrina Osienger was the clerk for the Village and was the keeper of the official ledger books containing the minutes of Village meetings, which went back to the 1950s. She explained meeting minutes are handwritten into a bound volume in chronological order and eventually signed by the Village clerk when the minutes were approved at the following month's meeting. When asked to review the books for the minutes of the

September 2, 2015, special meeting, she said no such entry existed. Instead, she found a reference, months later, where the board members requested minutes from the September meeting to be read. She also found typed minutes of that meeting in a separate file, but they had never been formally entered into the ledger book. Osienger also said there were minutes from the July 2015 meeting discussing the formation of a committee consisting of the Colstons to look into the culvert repair work. When Scranton's name was suggested to be included in the committee, plaintiff Channell instead suggested the Colstons could decide with whom else they might choose to work.

¶ 40 Once testimony was concluded, defendant sought and obtained judicial notice of a series of petitions for stalking/no contact orders sought against him by plaintiffs and others, which were never pursued and ultimately dismissed.

¶ 41 The trial court allowed the parties to submit their closing arguments, along with any supplemental case authority in writing, and set the matter for further hearing on November 19, 2018, where counsel could make any additional arguments in support of their respective positions. While entering its ruling on that date, the court noted its own prior experience in private practice representing various municipal villages, school boards, and fire protection districts. The court pointed out, during that time, it had never witnessed the level of discord seen from the evidence presented in this case. There was no dispute defendant, as president of the Village board, made the statements alleged to be defamatory by plaintiffs. The court found both defendant and plaintiffs, as public officials and public figures, fell within the holding of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), precluding a public official from recovery for alleged defamatory statements published about the official's conduct or fitness absent proof of actual malice, that is, the defendant knew the statements were false or were made with reckless

disregard for their truth or falsity. The court found the evidence revealed plaintiffs did operate in a manner which could reasonably be perceived as "unlawful or illegal and certainly contrary to that which would be expected of someone serving in that capacity, that being as a village board trustee." The court also found defendant did not have actual knowledge his statements were false and did not operate with reckless disregard of whether the statements were false. The court concluded there was no actual malice proved by plaintiffs. The court further found the statements were made in defendant's official capacity and were related to ongoing proceedings and business by the Village board and, as such, his actions were immune from tort liability. It was also relevant to the court's ruling that while plaintiffs were claiming they had been defamed, they were never specifically named within the statements. The court also concluded plaintiffs presented no evidence they suffered any personal humiliation or mental anguish necessary to support a claim for damages. The court entered judgment for defendant, assessing costs and fees to the respective parties.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 Plaintiffs argue the trial court erred by ruling against plaintiffs in their defamation claim. We disagree.

¶ 45 To prove defamation of a public official, a plaintiff must show the defendant made the statement with " 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Sullivan*, 376 U.S. at 280. To establish recklessness, "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Tunnell v. Edwardsville Intelligencer, Inc.*, 43 Ill. 2d 239, 244, 252 N.E.2d 538, 541 (1969). As noted by our supreme

court, the actual malice standard in *Sullivan* requires "both that the utterance was false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true." *Catalano v. Pechous*, 83 Ill. 2d 146, 155, 419 N.E.2d 350, 355 (1980). The court went on to point out proof of actual malice, however, does not establish the statement was false. *Catalano*, 83 Ill. 2d at 155 (citing Restatement (Second) of Torts, § 581A, cmt. f (1977)). The burden remains with the plaintiff to prove "actual malice," and we will not overturn a trial court's determination of whether the comments constitute "actual malice" unless it is against the manifest weight of the evidence. *Anagnost v. Chicago Bar Ass'n*, 83 Ill. App. 3d 466, 471, 404 N.E.2d 326, 329 (1980).

¶ 46 Here, the trial court not only found plaintiffs did not prove actual malice but commented on the fact plaintiffs appeared to have engaged in possible illegal conduct for which they were never prosecuted. As a result, it is reasonable to conclude defendant believed the statements he made were either true or at least were not entirely false. Much like an argument discredited in *Catalano*, defendant's veto memoranda were not merely expressions of opinion plaintiffs were " 'acting contrary to the public interest and out of political motives.' " *Catalano*, 83 Ill. 2d at 158. Instead, defendant alleged three main things—corruption, forgery, and fraud—all of which amount to illegal activity. Defendant also alleged violations of the Illinois Municipal Code and the Open Meetings Act.

¶ 47 "All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." 5 ILCS 120/2(a) (West 2014). "A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act." 5 ILCS 120/2a (West 2014). "Public notice of any

special meeting *** shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special" meeting. 5 ILCS 120/2.02(a) (West 2014).

¶ 48 From the record, it is at least unclear, if not unlikely, whether plaintiffs gave proper notice for the September 2, 2015, meeting. There was some reference to an e-mail; although at least one member, Sutton, had no e-mail account. Further, other than posting a notice on the window of the Village board meeting place at some unspecified time, there is no clear evidence any of the board members not aligned with plaintiffs were ever notified. Obviously, plaintiffs must have communicated among themselves to set the date and time of the meeting; however, they clearly did not do so with defendant and the other board members who were more aligned with him. Plaintiffs acknowledged they did not contact the members who were not present. It does not stretch credulity to believe it was because they did not want the other members present. As Sutton noted, having been a longtime member of the board, she was known to attend almost every meeting and was aware of the bidding requirements for village projects. Sutton lived across the street from the meeting place and was not notified. In a town of around 95 people, it can reasonably be presumed the Village clerk knew how to contact each board member. It is also reasonable to assume they knew Edwards worked over an hour away and would be hard pressed to get back into town for a poorly noticed meeting. At the very least, plaintiffs did not care to make any effort to ensure the presence of the other board members since they did not notify them by phone or in person, as they had done with the board members who were present. Plaintiffs also admittedly did not post the road construction project publicly and instead called a limited number of specific contractors.

> "All proposals to award purchase orders or contracts involving amounts in excess of $10,000 shall be published at least 10 days,

> excluding Sundays and legal holidays, in advance of the date announced for the receiving of bids, in a secular English language daily newspaper of general circulation throughout such municipality and shall simultaneously be posted on readily accessible bulletin boards in the office of the purchasing agent." 65 ILCS 5/8-10-7 (West 2014).

It is not unreasonable to believe plaintiffs were cognizant of the willingness of Scranton to do some Village work at no or little cost to the Village. Plaintiffs chose, however, to accept a final bid of $14,252—well in excess of the $10,000 requirement for public posting—after contacting several contractors directly. This was in violation of the Illinois Municipal Code and eliminated any possibility for others to submit a bid. One could understandably see why defendant was making the allegations he did. In light of plaintiffs' attempt to hire an attorney for the Village who would only report to certain members of the board, in violation of Illinois law, it was not unreasonable for defendant to believe there might be some truth to his allegations of corruption. While plaintiff Channell's argument that they were only "novice legislatures" attempting to perform their duties might have had merit at the outset, after repeated attempts to conduct business in apparent violation of Village ordinances and state statutes, such an argument becomes far less persuasive. Although there is no evidence plaintiffs obtained any personal benefits from their actions, their conduct understandably drew scrutiny and lent credence to defendant's claim of "corruption."

¶ 49 Defendant explained his use of the term "forgery" was in relation to the submission of the Village meeting minutes, which failed to contain certain information on vetoes or votes. Since the opposing faction of the board was in the position to decide what information

was included in the minutes through votes to approve them, it was not unreasonable for defendant to conclude they were attempting to distort the content of the meeting minutes themselves. According to a stipulation by the parties, the board consisted of factions and plaintiffs, along with Saxbury and Robert Colston, were part of one faction. From the record, it appears they voted in concert, including votes to approve minutes, which, according to defendant, did not contain vetoes and certain votes taken. It was not defendant's burden to prove the truth of these statements, but plaintiffs' burden to prove defendant acted with actual malice when making the statements. Therefore, where the evidence appears to indicate certain members of the board attempted or engaged in conduct which, although never prosecuted, could have arguably been considered in violation of law or at least justified defendant's reasonable belief they were in violation of the law, we cannot say the trial court's finding there was a lack of evidence of actual malice is against the manifest weight of the evidence.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the trial court's judgment.

¶ 52 Affirmed.