

Case No. S239686

SUPREME COURT
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IN THE SUPREME COURT OF CALIFORNIA

Deputy

STANLEY WILSON,

Plaintiff and Appellant,

vs.

CABLE NEWS NETWORK, INC., a Delaware corporation; CNN AMERICA, INC., a Delaware corporation; TURNER SERVICES, INC., a Georgia corporation; TURNER BROADCASTING SYSTEM, INC., a Georgia corporation; PETER JANOS, an individual,

Defendants, Respondents and Petitioners.

APPEAL AFTER DECISION BY THE COURT OF APPEAL
SECOND DISTRICT, DIVISION ONE, CASE No: B264944
LOS ANGELES SUPERIOR COURT CASE No: BC559720

ANSWER TO PETITION FOR REVIEW

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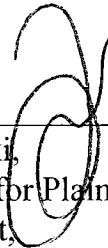
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(1) Appellant Stanley Wilson is a natural person and no entity possesses an ownership interest in his claim.

(2) Appellant does not know of any other person or entity that has a financial or other interest in the outcome of the proceeding that Appellant reasonably believes the Justices should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

(3) Appellant knows of no interested entity or person that must be listed under the California Rules of Court.

Dated: February 13, 2017



Lisa Maki,
Counsel for Plaintiff and
Appellant,
Stanley Wilson

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I. INTRODUCTION & SUMMARY OF *WILSON v CNN* OPINION

“The California anti-SLAPP statute was intended to counter the ‘disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.’ (*Code Civ. Proc.*, § 425.16, subd. (a).) It has been suggested that ‘[t]he cure has become the disease- SLAPP motions are now just the latest form of abusive litigation.’” (*Nam v. Regents of University of California* (2016) 1 Cal.App.4th 1176, 1179, quoting *Navellier v. Sletten* (2002) 29 Cal.4th 82, 96 (dis. opn. Brown).) And, the disease will become fatal to the rights of employees of media conglomerates, if this Court accepts Cable News Network, Inc.’s (“CNN,” collectively references all defendants) flawed interpretation of anti-SLAPP laws. Media employees attempting to assert their rights are already engaging in David versus Goliath battles against behemoths such as CNN, with the media one hundred percent against the little guy.¹ Add the obstacle of anti-SLAPP motions requiring evidentiary proof without the benefit of discovery, threats of attorney fees when the media giants win and lengthy appellate delays when the media giants lose, and practically speaking, employees of media conglomerate lose their basic rights under California law.

Applying CNN’s logic here, all of its employment-related decisions will be subject to special motions to strike, because its employees’ end

¹ This fact is apparent in the amicus briefs already filed in the appellate court and anticipated supporting CNN’s Petition. These media employers lecture about the threat to the press’s First Amendment rights posed by litigation, citing to cases involving plaintiffs’ attempts to compel, to prevent or to punish the publication of news/stories, which have no applicability here. Joining CNN’s battle, these media employers’ interests are not as broadcasters and publishers communicating to the public. Their interests are as employers of thousands of people attempting to exclude themselves from laws applicable to all other California employers.

product is connected to an issue of public interest – CNN’s news reporting. Under CNN’s approach, whether the media employer’s actions “giving rise” to the employee’s claim (*e.g.*, actions alleged to be discriminatory) actually “furthered” its right to free speech and how attenuated the connection is between its tortious conduct and the news produced are both irrelevant. The anti-SLAPP statute, however, provides that causes of action “arising from” acts “in furtherance” of a person’s constitutional right of free speech “in connection with a public issue” are subject to a special motion to strike.² CNN’s analysis discounts these requirements.

After receiving “above-satisfactory” performance reviews as a behind the scene producer at CNN for 18 years, Stanley Wilson sued CNN for discrimination, retaliation, wrongful termination and defamation. CNN moved to strike all of Wilson’s claims. To determine whether the conduct is protected, courts look to the definitions in subsection 425.16(e). (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 422.) CNN relied upon the “catchall” subdivision 425.16(e)(4), defining anti-SLAPP as applicable to any “conduct in furtherance of the exercise of... the constitutional right of free speech in connection with a public issue or an issue of public interest.” (V3AA/754:13-755:14) CNN produced no evidence demonstrating that Wilson’s claims *arise from* CNN’s conduct *in furtherance* of its right of free speech *in connection* with a public issue or issue of public interest.

The Division One of the Second District summarizes the parties’ positions:

“With respect to [Wilson’s] ‘employment-related claims,’ ... plaintiff contends that defendants’ ‘behind-the-scene treatment of a behind-the-scene producer’ is neither in furtherance of defendants’ free speech nor in connection with

² *Code of Civil Procedure* §425.16(b). Statutory references are to the Code of Civil Procedure unless otherwise specified.

a matter of public interest. Defendants, in contrast, argue that because CNN is a news provider, all of its ‘staffing decisions’ regarding plaintiff were part of its ‘editorial discretion’ and ‘so inextricably linked with the content of the news that the decisions themselves’ are acts in furtherance of CNN’s right of free speech that were ‘necessarily ‘in connection’ with a matter of public interest news stories relating to current events and matter[s] of interest to CNN’s news consumers.’”

(Opinion, p. 10.)

Regarding Wilson’s employment-related claims, the appellate court distinguished *hiring* decisions from CNN’s later discrimination and retaliation against “a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable to shape its news reporting.”

(Opinion, p. 10.) Wilson alleges “that beginning in 2004 and continuing thereafter, he was subject to discrimination, harassment and retaliation because, inter alia, he was African American and disliked by his superiors. He alleges that he repeatedly complained of his circumstances to no avail.”

(Opinion, pp. 13-14.) The appellate court reasoned:

“CNN’s actions in 2014 premised upon the alleged plagiarism concerning Sheriff Baca are not the basis of Wilson’s claims that CNN subjected him to discrimination, harassment and retaliation before he even wrote the Baca report. If we accept CNN’s argument as to the first prong, we must necessarily disregard what Wilson has alleged CNN did for a decade prior to his termination—conduct that was not a matter of public interest and could not be justified on the basis of CNN’s status as a news entity.”

(*Id.*, p. 14.) It found that Wilson’s employment-related claims were *not based* on an act in furtherance of CNN’s right of free speech. (*Ibid.*)

Regarding Wilson’s defamation claim, the appellate court found “no connection between the defendants’ allegedly defamatory statements about plaintiff and a public issue or issue of public interest.” (Opinion, p. 14.)

“The statement precipitating plaintiff’s defamation claim was that plaintiff

had plagiarized passages in the Baca article, not that Baca was retiring or why.” (*Id.*, p. 17.) His article regarding Baca was never published, and his “alleged ‘plagiarism’ underlying the allegedly defamatory statement did not consist of large-scale copying of another’s unique work embodying original research, but merely using a few of the same or similar phrases or sentences regarding accurate background information.” (*Id.*, pp. 16-17.) The appellate court reasoned first that “the record does not show that plaintiff was a person in the public eye. He was a producer,” and writing for the CNN Wire desk was a comparatively small percentage of his work by comparison to his producing. (*Id.*, pp. 14-15.) Second, “nothing indicates that plaintiff was a celebrity at any level,” and “nothing in the record indicates he had name recognition.” (*Id.*, p. 15.) Third, “Defendants’ allegedly defamatory statements about plaintiff did not involve conduct that could affect large numbers of people beyond the direct participants” and was a private issue. (*Id.*, p. 16.) Fourth, the statements “did not involve a topic of widespread public interest.” (*Ibid.*) Having never been communicated it to the public, “Defendants’ allegedly defamatory statement to the effect that plaintiff plagiarized passages in the Baca article in no way contributed to public debate regarding Baca’s retirement.” (*Id.*, p. 17.) Although it challenges the appellate court’s finding that CNN failed to meet the first prong regarding Wilson’s defamation claim, CNN’s Petition addresses none of this preceding analysis of that claim.

“[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation omitted.] Moreover, that a cause of action arguably may have been ‘triggered’ by protected activity does not entail it is one arising from such.... [T]he critical consideration is whether the cause of action is based on the defendant’s protected free speech or petitioning activity.” (*Navellier, supra*, 29 Cal.4th at p. 89, citing to *City of Cotati v.*

Cashman (2002) 29 Cal.4th 69.) The appellate court accurately applied that principle here.

The appellate court noted that authorities reveal “no support for the treatment of employment discrimination and retaliation as a mere motive of no consequence in the determination of the applicability of section 425.16.” (Opinion, pp. 10-11.) It did not hold that mere allegations of a discriminatory or retaliatory motive are sufficient to take a case outside the protections of the anti-SLAPP statute. “The critical issue concerns whether ‘the plaintiff’s cause of action itself was *based on* an act in furtherance of the defendants’ right of petition or free speech.’” (Petition, p. 14, quoting *Gotterba v. Travolta* (2016) 228 Cal.App.4th 35, 42, quoting *City of Cotati, supra*, 29 Cal.4th at p. 78.) It rejected “defendants’ characterization of their allegedly discriminatory and retaliatory conduct as mere ‘staffing decisions’ in furtherance of their free speech rights.” (Opinion, p. 13.) To determine which actions “give rise” to a plaintiff’s claim the court looks to the actions making the claim actionable.

Wilson does not dispute CNN’s right to not publish an internet piece and does not contend that non-publication of an article gave rise to his claims. Had Wilson sued to have some story/article published, for damages from non-publication of an article, or to assert he had the right to change or not to apply CNN’s editorial guidelines -- that would be completely different. Wilson, however, did not contest CNN’s right to set its own editorial guidelines and does not seek to influence those standards. Although repeatedly referenced by CNN to suggest its free speech rights are at issue, the unpublished Baca articles does not form the controversy upon which Wilson’s discrimination claim rests.

Wilson also did not seek an on-air position or role. The person conveying a message on-air constitutes part of the message being communicated, a type of non-verbal communication (*e.g.*, choosing a

distinguished older man or sexy young blonde as a television show host is an obvious part of the message being conveyed). In contrast, Wilson's role was behind the scenes for almost two decades. His connection to the news is incidental to his discrimination and retaliation claims.

CNN is attempting to use its right to publish/air or not to publish whatever it chooses, *which is absolutely undisputed*, to transform Wilson's employment claims. "[I]f the allegations of protected activity are only incidental to a cause of action based essentially on nonprotected activity, the mere mention of the protected activity does not subject the cause of action to an anti-SLAPP motion." (*Scott v. Metabolife International, Inc.* (2004) 115 Cal.App.4th 404, 414.) "Where the defendant's protected activity will only be used as evidence in the plaintiff's case, and none of the claims are based on it, the protected activity is only incidental to the claims." (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1388-1389.)

Wilson's case in chief is not based upon protected activity. The appellate court applied section 425.16 consistently with case precedent.

II. NO ISSUE REQUIRES SUPREME COURT REVIEW

A. Section 425.16(b) requires that the first step in analyzing anti-SLAPP motions requires that the plaintiff's claims arise from conduct in furtherance of defendant's right of free speech in connection with a public issue or issue of public interest. Allegations regarding a defendant employer's discriminatory intent/motive are thereby relevant to determining what wrongful actions give rise to the claims. The appellate court's consideration of the employer's discriminatory intent in determining whether the first step of the anti-SLAPP statute has been satisfied is proper.

B. Suggesting that the appellate court held that a defendant "must" "demonstrate that the plaintiff had 'name recognition' or was 'otherwise in the public eye'" to meet the first prong of the anti-SLAPP statute, CNN argues this holding requires review. (Petition, p. 7.) That was not its holding. The appellate court properly considered these factors, among others, regarding whether CNN's alleged conduct furthered its free speech rights in connection with a public issue or issue of public interest. (Opinion, p. 9, 14-16; quoting *Commonwealth Energy Corp. v. Investor Data Exchange* (2003) 110 Cal.App.4th 26, 33.)

Neither of CNN's suggested issues requires review by this Court.

III. CORRECTIONS TO CNN'S FACTUAL OVERVIEW

A. Overview.

From 1996 to 2014, Wilson worked at CNN and remained the only African-American news producer in CNN's entire Western Region for over a decade. (V2AA/346:27-348:23, 349:1-10)

In 2004, Janos became the Bureau Chief of CNN Los Angeles and Wilson's supervisor; news room supervisors also had supervisory responsibilities over Wilson. (V2AA/349:27-350:3, 350:12-14) Janos was promoted to Western Regional Chief and in 2013 was promoted to Vice President and Bureau Chief of CNN Western Region. (*Ibid.*) Until Wilson's termination, Janos was Wilson's direct supervisor. (V2AA/346:9-10, 349:27-350:3)

Janos showed his preference for his white leadership team and discriminated against, humiliated, isolated and told Wilson to keep up with the "young blood" after repeatedly passing him over for promotion, despite Wilson's excellent qualifications. (V2AA/349:1-350:24, 352:17-20, 353:18-354:2, 354:10-21)

Wilson felt isolated and was left out by Janos both at work and at social events. When Wilson raised the issue of needing diversity in the news room at CNN during meetings and at his reviews, Janos was dismissive towards any such suggestions and conveyed his deep opposition. (V2AA/350:15-25) Janos particularly directed this hostility toward Wilson and humiliated him. (V2AA/352:16-20)

In 2004, Wilson complained in writing to Bob Melisso that journalists of color were still being relegated at CNN to minor roles in the coverage of major breaking news or events. (V2AA/351:14-15)

On four separate occasions in 2007, 2008, 2009 and 2010, Wilson complained to Tim Goodly, the CNN Senior Vice-President of Human Resources in Atlanta, that African-American men outside of Atlanta,

Washington, D.C., and New York were not being promoted and that African-American producers and photographers were not being treated fairly based upon the merits of their work. (V2AA/352:12-353:2) Janos played an important role in the discrimination against African-American men regarding the failure to hire or promote them as staff producers and television photographers in Los Angeles, Chicago and San Francisco. (*Ibid.*) Wilson also informed Goodly of his own concerns that his age and compensation package were increasingly being viewed by Janos as a liability. (V2AA/353:1-2)

Wilson observed no investigation of his complaints of discrimination and was never questioned about it. (V2AA/353:3-5; 352:12-16)

After 2004, Wilson was rejected for all CNN positions for which he applied, and Wilson's complaints of discrimination were ignored by corporate HR. (V2AA/350:25-351:15, 352:12-353:5)

Wilson met with Janos about a week before his paternity leave (in August of 2013) and stated that his experience and performance reviews merited a promotion to Senior Producer, especially since he had already been performing the same duties as other Senior Producers and was writing and producing more than the other producers in that position. Janos stated that he had no senior position for him. (V2AA/353:24-354:2)

After his twins were born in September 2013, Wilson took five weeks of paternity leave (three of which were vacation time). (V2AA/353:11-17) Upon Wilson's return, Janos assigned Hannah to high profile field assignments and prime time documentary programs, and Wilson was frequently relegated to in-house packaging and fill-in work on the Assignment Desk. (V2AA/354:3-9) Hannah was performing many of Wilson's duties after Wilson's paternity leave, and Janos had retaliated against Wilson for exercising his right to paternity leave and complaining about discrimination in the workplace. (V2AA/355:14-21) Hannah's

promotion was a step toward replacing Wilson, based upon his age, race, color, association with a disabled person (his wife). (V2AA/355:14-21)

In December 2013, Wilson spoke with Janos and expressed his concern about being relegated to inferior assignments since his paternity leave and what that meant for his future. (V2AA/354:10-13)

On January 28, 2014, Wilson was terminated at age 51 and was replaced by a much younger Caucasian man. (V2AA/345:5-6, 359:23-350:24, 383:11-20)

B. CNN'S Assertion That Wilson Plagiarized Is Pure Pretext.

On January 7, 2014, Wilson covered a press conference about Sheriff Baca's retirement and offered to provide a story for the CNN wire desk. (V2AA/354:23-25) In preparing the Baca story, Wilson relied upon his presence at the press conference and his notes, as well as several sources that offered background content and facts about the circumstances of Baca's retirement.³ (V2AA/355:10-13) While returning to the Bureau, Wilson handwrote an outline that he would have wanted to use and highlighted/underlined places where he needed to independently verify information that may come from a published source or broadcast source, which is a common practice. (V2AA/355:13-18)

At the Bureau, Wilson was unable to find his reporter's notebook with his highlighted draft, so he started a new story on his computer. (*Ibid.*) Wilson completed his story to the best recollection of his reporter's notes, and independently verified any information from other sources. (V2AA/355:19-20) Sources included press releases from the Sheriff's

³ Using sourced material and publicly provided information is common practice when writing a story at news agencies. (V2AA/354:27-355:4)

Department about Baca's retirement and from the U.S. Justice Department regarding a lawsuit against the Sheriff Department and about Baca's retirement. (V2AA/355:20-28; V3AA/503-507) Wilson confirmed the information about Baca's service and added his own observations for context. (V2AA/355:28-356:2) Background stories that he used included a previously published CNN story about the indictment of Los Angeles sheriff's officials, written by CNN's Alan Duke and Wilson's byline. (V2AA/356:2-7; V3AA/517-519) Wilson also viewed a digital piece posted by the *Los Angeles Times* and local CNN affiliates about Baca's retirement, in case his editors instructed him to match any reporting Wilson didn't have in their story. (V2AA/7-15; V3AA/509-515)

Wilson prematurely sent the story to the wire desk for copy edit, because he accidentally had not included all references to the independent sources, Department of Justice and Press Release documents. Wilson was aware that copy editing was in place at CNN when he submitted it. (V2AA/356:16-20) Wilson then heard from Cathy Straight, the copy editor. (V2AA/356:21-357:5, 358:22) Straight expressed concern that some of the passages looked similar to the *Los Angeles Times* article on the subject. She and Wilson exchanged e-mails, he offered to submit a re-write, and he wrote back fifteen minutes later with a few revisions and informed her that he needed to leave but could answer any of her questions from home. (*Ibid.*) That evening, Straight informed Wilson by e-mail that Janos had been notified and his Baca piece would not be published. (*Ibid.*; V3AA/521-527)

Straight allegedly identified three areas of concern regarding Wilson's 19 paragraph article, and he detailed the source of each in his declaration. (V2AA/357:6-358:21) Straight identified the following excerpts as similar or identical to source materials: 1. "...who spent 48 years with the department, including 15 as sheriff;" 2. "The news of Baca's decision to

step down startled people inside and outside the agency. He was engaged in a tough re-election battle amid several scandals that had plagued the department;” and 3. “Last year, the U.S. Department of Justice also accused sheriff’s deputies of engaging in widespread unlawful searches of homes, improper detentions, unreasonable force and a systematic effort to discriminate against African Americans who received low-income, subsidized housing in the Antelope Valley section of Los Angeles County.” (Opinion, pp. 5-6, V3AA/522-524)

Janos saw Wilson on January 8, 2013, but did not listen to his explanation of the incident. Janos warned “there are going to be consequences.” (V2AA/358:23-28)

On January 9, 2013, Wilson met with Janos and the Broadcasting HR Manager Zaki and was placed on a leave of absence. (V2AA/359:1-5)

On January 16, 2014, Wilson had a telephone conversation with Zaki, and she suggested that Wilson write to Straight, emphasizing that Wilson should add that he had made a mistake. (V2AA/359:23-360:3)

Wilson has written approximately 200 articles for publication while at CNN, without a single suggestion that he had plagiarized or used source materials without attribution prior to January of 2014. (V2AA/359:18-22)

On January 16th, Wilson requested that Zaki identify those who were involved in evaluating the plagiarism allegation. She refused to provide any names or even titles; she stated that the appropriate “stakeholders” were conducting a review. (V2AA/359:23-27, 360:10-13)

On January 28, 2014, Janos and Zaki met with Wilson, informing him that he had violated company policy and was terminated. Janos identified no one other than himself involved in the termination decision. (V2AA/360:9-12)

CNN failed to ever identify who made the decision to terminate. *It provided no declarations from those: who supervised Wilson; who*

purportedly discovered his plagiarism; who investigated the allegation; and who ultimately decided to terminate him, including Janos. (V1AA/61-67, 107-108, 110-111) No declaration explained the involvement of Wilson's direct supervisor Janos, who was alleged to have discriminated against Wilson. (V1AA/7:21-11:14; V2AA/350:16-353:2, 354:5-21, 360:9-13) Declarations stating, "CNN elected to terminate Wilson's employment..." without foundation, without personal knowledge, and without identifying decision makers are not evidence. (V1AA/110:27-28, 62:14-16)

C. CNN Incorrectly Asserts that Wilson Admitted that "the Plagiarism Was Solely His 'Fault.'"

Contrary to CNN's assertions, Wilson did not "admit" that he plagiarized and did not plagiarize. In Wilson's January 17th letter to Straight, he acknowledged that he'd accidentally sent the Baca story and took full responsibility for having sent the story prematurely. (V2AA/360:6-8) Wilson stated that he accidentally sent his draft version instead of the finished versions and regretted having rushed the story. (V1AA/115-117)

Wilson testified: "I did not plagiarize the Los Angeles Times article. I have never stated that I plagiarized it. I used it as one of my reference materials for my Baca article and verified information from it with my independent sources (such as Justice Department press release) and then prematurely submitted the copy before noting all independent sources. In both the first draft submitted and the revised version that I submitted to Ms. Straight, I had independently verified all information within them. From a journalist's perspective, to plagiarize would suggest that I intentionally used content from another source without proper attribution regarding substantial and original information and without independent verification. I neither intentionally used content from another source, nor used substantial

content from another source. First and foremost, I did not intentionally submit that copy. Second, the phrases that I had used were background information with little individualized style involved (such as years of service). Third, the article was never published, and when I submitted it, I knew that the article would be copy edited.” (V2AA/359: 6-17)

A CNN declaration states, when “the Row detects such similarities between a draft story and another news source, the editor typically contacts the reporter or field producer to discuss the issue. The editor then determines whether or not the story can be published.... As necessary, writing supervisors may modify stories prior to running them or in some cases after the stories have been published....” (V1AA/65:1-9) Use of the term “typically” suggests that inadequate attribution happens with some regularity, but CNN fails to identify how often that occurs and identifies no policy requiring termination at the first instance of inadequate attribution.

Wilson’s copy editors had previously re-written portions of his stories using background information similar to other published news reports without attribution and had moved them to digital publication without inquiring or even notifying him of these changes first. (V2AA/355:5-9)

The record includes evidence that Janos was responsible for specific CNN stories that contained similar or identical language to a previously published Omaha.com article. (V2AA/372:7-374:23; V3AA/563-582) Burke also published two articles on CNN.com without attribution that contained similar or identical language to previously published Associated Press articles. (V2AA/370:11-372:6; V3AA/546-554; V3AA/556-561) The record also includes numerous examples of CNN stories using sourced material and publicly provided information without attribution by on-air personality Fareed Zakaria. (V2AA/374:24-26, 374:27-383:7; V3AA/584-673) Zakaria was not terminated for his conduct. (V2AA/383:8) Burke is presently employed by CNN. (V1AA/61-62)

D. Additional Articles Cited By CNN Do Not Evidence Plagiarism And Were Not Grounds For Termination.

CNN alleges that Wilson's January 2014 termination was based upon plagiarism in these five articles, but all of these pieces remained on CNN's site at least until the end of 2014, almost a year later. (V2AA/36, 360:14-24) Wilson was never told that anyone at CNN believed that he had plagiarized any of these stories and was not allowed to respond to these claims. (V2AA/360:14-24)

Three of the five articles had co-authors. (V2AA/360:25-17, 365:19-21, 367:1-2, 369:16-19; V3AA/517-519, 536-541) Wilson was not the final writer submitting two of the articles. (V2AA/365:19-21, 369:16-19; V3AA/517-519, 536-538) Wilson's Declaration compared verbatim these five articles to the source materials from which he allegedly plagiarized. (V2AA/361:11-369:11)