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Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002017-MR

WANDA JONES — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 01-CI-002361

ADECCO STAFFING, FORMERLY
KNOWN AS OLSTEN STAFFING SERVICES — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BARBER, McANULTY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Wanda Jones (hereinafter, Jones) appeals from the July 17, 2002 order of the Jefferson Circuit Court granting summary judgment in favor of Adecco Staffing, formerly known as Olsten Staffing Services (hereinafter, Adecco). We affirm.

Adecco is an employment agency that provides companies with clerical, administrative, and technical staff. Humana, Inc., a healthcare corporation, has an account with Adecco to provide temporary staff according to Humana's needs. In

February 2000, Jones obtained temporary employment as an executive assistant at Humana through Adecco. This position was to continue until Humana hired a full-time executive assistant. Jones maintains that she left this position in May 2000 because it was "finished." Adecco, however, asserts that she voluntarily terminated her assignment at Humana and, consequently her employment relationship with Adecco, before the employment had been completed. Adecco also contends that Jones failed to provide the five-day notice of early termination requested upon her original employment.

Later in September 2000, Jones saw a newspaper advertisement purchased by Lakeshore Staffing (hereinafter, Lakeshore), another temporary employment agency. Jones submitted her résumé. Gretchen Christensen, a Lakeshore representative, informed her that she was eligible for various positions, including one at Humana, which was to be filled by Adecco. Lakeshore and Adecco have an agreement that if the latter cannot fill all of the temporary position needs of Humana, with whom it has a staffing contract, Lakeshore, if requested, may provide candidates to Adecco. Christensen submitted Jones' résumé for the Humana position. Lakeshore's employment file on Jones indicated that Steve Davis, the National Account Director for Adecco responsible for the Humana account, informed Christensen that Jones was not eligible for

rehire to Humana through Adecco. The file noted that Davis did not give reasons, but only her eligibility status.

Jones' account of this application process stands in stark contrast. She testified that Christensen told her she had gotten a negative report from Davis and that he would not consider her for any positions at Humana. Jones alleges that Christensen reported to her that Davis said he would not consider her because Jones "threatened Adecco by sending a five page letter and that Steve Davis said that he would not have me [Jones] back at Humana on my high horse."

In June 2001, Jones initiated an action in circuit court. In her complaint, she alleged that the above statements of Davis, as related to her by Christensen, constitute slander *per se* and an intentional interference with her prospect of future employment. The latter claim was dismissed and is not raised on appeal. On the former claim, holding there was insufficient evidence to prove that the allegedly defamatory statement was made and that the statements were not actionable *per se*, the circuit court granted Adecco's motion for summary judgment. Jones' motion to set aside judgment pursuant to Kentucky Rule of Civil Procedure (CR) 59.05 was subsequently denied. This appeal followed.

Summary judgment is to be cautiously applied. Lipsteuer v. CSX Transportation, Inc., Ky., 37 S.W.3d 732

(2000). It is not a substitute for trial as the circuit judge is not required to decide any issue of fact, but to discover if a real issue for trial exists. Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet v. Neace, Ky., 14 S.W.3d 15 (2000). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). Summary judgment is "only proper where the movant shows that the adverse party could not prevail under any circumstances," that is, there are no genuine issues of material fact. *Id.* (citation omitted). A party opposing a properly supported motion for summary judgment carries the burden of proving the existence of a genuine issue of fact, Hubble v. Johnson, Ky., 841 S.W.2d 169, 171 (1992), but one "cannot rely on [one's] own claims or arguments without significant evidence in order to prevent a summary judgment." Wymer v. J.H. Properties, Inc., Ky., 50 S.W.3d 195, 199 (2001). Summary judgment may be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . ." Scrifres v. Kraft, 916 S.W.2d 779, 781 (1996)(citing Huddleston v. Hughes, Ky. App., 843 S.W.2d 901, 903 (1992)).

The standard of review on appeal is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." Scifres, 916 S.W.2d at 781 (citing CR 56.03). Summary judgment is not a question of fact, but rather of law, thus subjecting it to *de novo* review. *Id*. (citation omitted).

In the case *sub judice*, after a thorough review, we hold that the circuit court erred, albeit harmless error, when it held, based on its interpretation of Wymer, that Jones presented insufficient evidence that the statement in issue was made. The evidence in the record consists of the depositional testimony of Jones, Davis, and Christensen. As described in our recitation of the facts, the latter two accounts of the incident in question stand in stark contrast to the first. The question of whether the statement was made is one of fact and when the affidavits of the parties are in conflict, the testimony of the party against whom the motion is made must be accepted. McCollum v. Garrett, Ky., 880 S.W.2d 530, 531 n.2 (1994); *see also* Steelvest, 807 S.W.2d at 480 ("The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor."). We hold that Jones' testimony meets the requirement of "significant evidence" as stated in Wymer.

Adecco argues that even if we hold that Jones' testimony clears the "significant evidence" hurdle of Wymer, that summary judgment remains appropriate as a result of insufficient evidence because Jones' testimony consists of inadmissible hearsay. We disagree.

Jones alleges that Christensen "related to her that she had gotten a negative report . . . from Davis" and that this report had been accompanied by the statement in issue. Brief for Appellant, p. 2. Christensen denies that Davis ever made the alleged statement in a conversation with her. Record, pp. 342-43. She also denies relating any such statement to Jones. *Id.* Thus, the only evidence of the making of the statement is found in Jones' testimony: "She [Christensen] told me [Jones] that she was told [by Davis] that I [Jones] threatened Adecco by sending a five-page letter and that Steve Davis said that he would not have me back at Humana on my high horse. . . ." Record, p. 295.

In its simplest form, Jones' testimony is that Christensen said that Davis made a negative statement about Jones. Two potential levels of hearsay are contained in this testimony: 1) the statement allegedly made by Davis to Christensen and 2) the statement allegedly made by Christensen to Jones. Adecco argues that Jones' testimony is "double hearsay" (or hearsay-within-hearsay). Such evidence is

admissible only if each layer is admissible under an exception to the hearsay rule or for its nonhearsay use. Kentucky Rule of Evidence (KRE) 805.

The first level is admissible for its nonhearsay use.[1] "Hearsay" is defined under KRE 801 as "a statement, other than one made by the declarant while testifying at the trial . . ., offered in evidence to prove the truth of the matter asserted." Such statements are not admissible at trial. KRE 802. Professor Robert G. Lawson explains that a "legitimate nonhearsay use of an out-of-court statement always involves relevancy in the mere utterance of the words comprising the statement (i.e., a logical connection between the utterance of the words and some material element of the case). R. Lawson, The Kentucky Evidence Law Handbook § 8.05 II, at 361 (3d ed. Michie 1993).[2] One category of nonhearsay use includes "Utterances in Issue (or 'Verbal Act')." *Id.* A "'verbal act' usually denominates an out-of-court statement that is at issue in the case, such as a . . . defamation." White v. Commonwealth, Ky., 5 S.W.3d 140, 141 (1999)(citing Lawson at 361-63).

[1] Because Jones' testimony is admissible as such, we do not need to address her argument that Davis' statement to Christensen is admissible under KRE 801A(b)(4) as a statement of a party's agent concerning a matter within the scope of his agency made during the existence of the agency relationship. *See* Brief for Appellant, p. 6.

[2] We note that although Professor Lawson's important work is not controlling precedent, it is highly persuasive. Adecco would agree with our assessment of Lawson's persuasive value, based on its reliance thereon in its brief. *See* Brief for Appellee, pp. 10-11, 13-14.

Because the statement allegedly made by Davis to Christensen is a "verbal act," Jones' testimony involves only a single layer of hearsay, that portion alleging Christensen's relation of Davis' statement to Jones.[3] Jones argues that this is admissible pursuant to KRE 801A(a) as a prior statement of a witness.[4]

Contrary to Adecco's arguments, the alleged recitation of Davis' statement to Jones by Christensen is admissible as an exception to the hearsay rule under KRE 801A(a)(1). It is the prior inconsistent statement of a declarant testifying at trial. While Adecco argues that Christensen denies making any statement, thus making it impossible to testify inconsistently, "[i]t is clear that the *Jett* exception requires neither a written record of the prior statement nor an admission by the declarant that the statement was made; in fact, the prior

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[3] In their briefs, the parties argue that Jones' testimony involved hearsay within hearsay, or "double-hearsay." *See* Brief for Appellant, p.7; Brief for Appellee, pp. 9-14. This portion of Jones' testimony is clearly being used to prove the truth of the asserted matter—that Christensen recited Davis' statement to Jones—and; thus, it is hearsay and inadmissible unless it satisfies an exception. *See* KRE 801; KRE 802.

[4] KRE 801A(a) reads, in pertinent part,

> (a) A statement is not excluded by the hearsay rule . . . if the declarant testifies at the trial or hearing and is examined concerning the statement . . . and the statement is:
> (1) Inconsistent with the declarant's testimony;
> (2) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or
> (3) One of identification of a person made after perceiving the person.

KRE 801A(a)(1)-(3).

inconsistent statement in *Jett* itself was oral and was disavowed by the declarant from the witness stand." Lawson, *supra*, at 375-76 (citing Jett v. Commonwealth, Ky., 436 S.W.2d 788 (1969)). The second layer of Jones' testimony is admissible under the hearsay exception for prior inconsistent statements.

Jones' testimony proving that the allegedly slanderous *per se* statement was made is sufficient to withstand Adecco's motion for summary judgment. Significant evidence in the form of depositional testimony was presented to the circuit court. This evidence was not inadmissible hearsay. Despite the circuit court's error in granting summary judgment for lack of evidence, we hold that the decision was harmless because the statement does not constitute slander *per se* and its publication was subject to both the absolute and qualified privileges.

In Kentucky, four elements are necessary to establish an action for slander: 1) defamatory language;[5] 2) about the plaintiff; 3) which is published; and 4) which causes injury to reputation. Columbia Sussex Corp., Inc. v. Hay, Ky. App., 627 S.W.2d 270, 273 (1981). Slander *per se* "differs from ordinary slander in that the words themselves, absent any development of extrinsic facts or circumstances, are actionable." *Id.* at 274.

[5] The Restatement of Torts (Second) §558 states: "To create liability for defamation there must be: (a) a *false* and defamatory statement concerning another. . . ." RESTATEMENT (SECOND) OF TORTS § 558 (quoted in LIEBSON, KENTUCKY PRACTICE, VOL. 13, TORT LAW § 15.1 (1995)(emphasis added).

A showing of special damages is not required. *Id.* Instead, "general damages are presumed to have accrued from the wrong done and need not be averred." Shields v. Booles, Ky., 38 S.W.2d 677, 681 (1931).

Words actionable *per se* are those that "necessarily damage [the] plaintiff." Digest Publishing Co. v. Perry Publishing Co., Ky., 284 S.W.2d 832, 834 (1955). The very nature of the defamatory or slanderous "utterance is presumptive evidence of the injury to reputation." Columbia Sussex, 627 S.W.2d at 274. The statement must "tend to expose the plaintiff to public hatred, ridicule, contempt or disgrace, or to induce an evil opinion of him in the minds of right-thinking people and to deprive him of their friendship, intercourse and society." Digest Publishing, 284 S.W.2d at 834. Words falsely spoken are actionable *per se* where they impute "unfitness to perform the duties of an office, occupation, or employment, or having a tendency to prejudice him in his trade, calling, or profession,"[6] Shields, 38 S.W.2d at 681, "directly or indirectly import[ing] fraud, dishonesty, or sharp or unethical practices," White v. Hanks, Ky., 255 S.W.2d 602, 603 (1953). Whether the words rise

[6] This is only one type of statement that is actionable *per se*. Additionally, statements including words falsely spoken are actionable *per se* when they impute the commission of a crime involving moral turpitude, affliction with an infectious disease likely to exclude the accused from society, or acts which might tend to disinherit him. Shields v. Booles, Ky., 38 S.W.2d 677, 681 (1931).

to this level and, thus, are actionable *per se* is a matter of law. Columbia Sussex, 627 S.W.2d at 274.

We agree with the circuit court's holding that the allegedly slanderous statement of Davis, that Jones " . . . threatened Adecco by sending a five page letter and that Steve Davis said that he would not have me [Jones] back at Humana on my high horse," does not constitute slander *per se*. Appellant cites several cases in support of her argument that the statement reaches the level illustrated above, but we are not persuaded.[7] All of these cases involve statements suggesting

[7] Furthermore, Jones has picked apart the statements that were in issue in the illustrative cases she cites, including in her brief only the mildest portions. *See, e.g.,* Brief for Appellant, p. 8, wherein Jones attempts to illustrate what type of words are actionable *per se* with examples from several cases. One such case is Tucker. Jones posits that the defamatory language in issue was a statement by the defendant that a police officer has "'limited training, no culture,' and that he is a 'professional moocher' . . . ." Brief for Appellant, p. 8. In reality, the statement in issue was as follows:

> 'NEGROES OF LOUISVILLE--WAKE UP--AND GET WISE TO THESE ORGANIZATIONS WHO LOOK DOWN WITH DERISION UPON THE MASSES OF THE PEOPLE. 'The Tea Sippers and pseudo-aristocrats have held their convention at the Sheraton Hotel--The Alpha Boys have departed, unwept, unhonored and unsung as far as the masses of Negroes in Louisville are concerned--and we have got 'good riddance' of 'bad rubbish'. 'This Greek letter Fraternity--like others of its kind operates on the theory of the exclusion of what they term the 'common people'.
> 'Some of these society--crazy folk--members of the Alpha Phi Alpha Fraternity would not recognize a Greek letter if they saw it written in box car letters. Among them Robert Kilgore--of limited training, no culture and a professional moocher, who strikes you for 50c or a dollar every time he meets you on the streets. This man was used in an attempt to embarrass me at the Sheraton Hotel--without justification or warrant of law--illegally using his temporary authority as a policeman, and acting at the behest of his masters--in this phony race organization. I asked him to arrest me but he did not have the nerve to do so. C. Ewbank Tucker is never embarrassed when he fights for the Civil Rights of his people, and when he smokes out organizations like the Alpha Phi Alpha Fraternity which never

unfitness, dishonesty, or unethical practices specifically related to a central aspect of the plaintiff's employment or profession.[8]

In contrast, the statement at issue in the case *sub judice* does not rise to this level. While writing threatening letters after being terminated from employment and being on a "high horse" may not be desirable qualities of an employee, such

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> made any contribution to the integration fight in Louisville. I shall continue to do so, and to fight until hell freezes over against any charlatan group that sets itself up as an aristocratic oligarchy.

Tucker, 388 S.W.2d at 113-14. Clearly, these words are much stronger than Jones' distortion of this Kentucky precedent displays.

[8] Jones recites the following cases in support of her argument. *See* Tucker v. Kilgore, Ky., 388 S.W.2d 112, 113-14 (1964) (holding that statement accusing on-duty police officer of "illegally using his . . . authority" was actionable *per se*); Commercial Tribune v. Haines, Ky., 15 S.W.2d 306, 307 (1929)(holding that statement asserting police officer is "unqualified to fill the office" was actionable *per se*); Register Newspaper v. Worten, Ky., 111 S.W. 693, 697 (1908)(holding that "[w]e know of nothing that would be more damaging to the reputation of a lawyer than to create the impression on the public that he was so unprofessional as to bring a suit without being employed for that purpose"); Brewer v. American National Insurance Co., 636 F.2d 150, 154 (6th Cir. 1980)(holding false statement that "morale in appellant's agency was bad and his agents wanted to quit," which resulted in the termination of appellant's agency contract, was libelous when there was evidence that ill-will and malice were intended); Louisville Taxicab & Transfer Co. v. Ingle, 17 S.W.2d 709, 710 (1929)(statement that professional chauffeur was unfit for employment as such due to his penchant for over-indulgence of intoxicating liquors was libelous, especially due to the implication that he had engaged in such behavior while on the job); White v. Hanks, Ky., 255 S.W.2d 602, 603 (1953)(holding statement imputing unethical or criminal business practices—i.e., "fraud, deceit, dishonesty or other reprehensible conduct on the part of the merchant"—in the sale of an automobile to be actionable *per se*); Axton Fisher Tobacco Co. v. Evening Post Co., 183 S.W. 269 (1916)(holding written publication intended to arouse public anger based on now-archaic, segregationist notions and grossly inaccurate description of working conditions to be actionable *per se* and noting that "many words are actionable when written or printed and published which would not be actionable if merely spoken"); Paducah Newspapers v. Wise, Ky., 247 S.W.2d 989, 992 (1951), *cert. denied* 343 U.S. 942 (1952)(holding that "labor unions . . . may be civilly liable when they falsely charge an employer with being 'unfair,' where there exists no controversy or other circumstance which would reasonably justify the intentional damage of the employer's business").

is far removed from the level of unfitness for one's occupation that must be imputed for a statement to be actionable *per se*. Neither the act of writing threatening letters nor being on a "high horse" import fraud, dishonesty, or unethical practices. Such behavior relates in no way to Jones' ability to perform the duties of an administrative or executive assistant. This statement would not prejudice Jones in her profession. Because the statement by Davis does not constitute slander *per se,* summary judgment is appropriate.

We also hold that any defamatory statement made by Davis was privileged.[9] There are two broad categories of privilege, absolute and qualified (or conditional). In Kentucky, a statement expressing truth[10] or pure opinion is absolutely privileged. Bell v. Courier-Journal & Louisville Times Co., Ky., 402 S.W.2d 84, 87 (1966); Yancey v. Hamilton, Ky., 786 S.W.2d 854, 857 (1989). Pure opinion "occurs where the commentator states the facts on which the opinion is based, or where both parties to the communication know or assume the

[9] We note that Jones has not conclusively proven that the allegedly slanderous statement of Davis was actually made. Enough evidence of its making has been presented by Jones to escape summary judgment, albeit barely. For the purposes of our analysis of privilege, we assume that the statement was made as alleged by Jones. *See* Brief of Appellant, p. 3.

[10] A statement expressing truth is absolutely privileged regardless of whether its publication was inspired by malice or ill-will or if it is actionable *per se*. Bell, 402 S.W.2d at 87.

exclusive facts on which the comment is clearly based."[11] Yancey, 786 S.W.2d at 857 (citing RESTATEMENT (SECOND) OF TORTS § 566 cmt. b (1977)). Questions regarding the existence of privilege are a matter of law. Landrum v. Braun, Ky. App., 978 S.W.2d 756 (1998).

Davis' statement is protected by the absolute privilege of truth and pure opinion. The allegedly slanderous statement contains two parts: 1) that Jones "threatened Adecco by sending a five page letter"; and 2) that Davis said "he would not have [Jones] back at Humana on [her] high horse." Record, p. 295. When this statement is construed as a whole, as it must be, Yancey, 786 S.W.2d at 857, we hold that the second part is pure opinion based on the truthful facts asserted in the first and thus, absolutely privileged.

Attached to Adecco's Memorandum in Support of Motion for Summary Judgment is a copy of the five-page letter sent by Jones.[12] Record, pp. 353-56. The letter is, apparently, part of a continuing effort by Jones to be compensated for expenses

[11] This contrasts with statements containing "mixed opinion" in that the mixed type "is apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant or assumed to exist by the parties to the communication . . . ." With mixed opinion, "if the recipient draws the reasonable conclusion that the derogatory opinion expressed in the comment must have been based on undisclosed defamatory facts, the defendant is subject to liability . . . ." Yancey, 786 S.W.2d at 857 (citations omitted).

[12] Jones' assertion that "[t]he letter to which [Davis] referred as 'threatening' has never even been introduced into evidence" lacks merit—it was entered into the record as an exhibit attached to Adecco's Motion for Summary Judgment. Record, pp. 353-56. Jones has not disputed its authenticity.

incurred while employed with Adecco. Its tone is cold, aggravated, and unpleasant. She closes with the following sentence: "If there is any justice, if there is any compensation, or apologies, please direct these to the Joneses." Record, p. 356.

One "threatens" another when he "give[s] signs of the approach of something evil or unpleasant" or "exert[s] pressure upon," "urge[s]," or "press[es]."[13] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED, Vol. II, 2382 (Philip Babcock Gove ed., 1971). Our reading of Jones' letter leaves us with no doubt that it "exerts pressure upon" Adecco to accede to Jones' compensatory demands, "or else" implying the "approach of something evil or unpleasant" if her demands are not satisfied. We hold that this letter operated to threaten Adecco, or, at the very least, could have been interpreted reasonably by their employee Davis as threatening. Thus, a statement expressing the fact that Jones threatened Adecco by sending this letter is one of truth.

The second part of Davis' statement, that he would not hire Jones when she was on her "high horse," is one of pure opinion based upon the truthful facts outlined in the first part. One may be described as being on his "high horse" when he

[13] A "threat" is "an indication of something impending and usu[ally] undesirable or unpleasant." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED, Vol. II, 2382 (Philip Babcock Gove ed., 1971).

displays "an unyielding, pretentious, or arrogant mood: a high and mighty air or attitude." WEBSTER'S at 1068 (also "a sulky or resentful mood, air, or attitude"). Davis' description of Jones is particularly apt when viewed in light of Adecco's receipt of Jones' letter. The fact that the letter could be interpreted as threatening provides ample foundation on which Davis could reasonably base his pure opinion in regard to Jones' attitude. No additional undisclosed defamatory facts are needed to justify Davis' opinion that Jones was on a "high horse." Davis' statement is protected by the absolute privilege of truth and pure opinion.

Even if we declined to hold that the making of the statement by Davis was absolutely privileged, we hold that it was qualifiedly or conditionally privileged. In Kentucky, a statement that has been published is qualifiedly privileged "if made in good faith, without actual malice, by one who believes he has a duty or an interest to a person with a corresponding duty or interest." Brewer v. American Nat. Ins. Co., 636 F.2d 150, 154 (6th Cir. 1980) (citing Tucker, 388 S.W.2d at 114-15). This duty "need not be strictly legal, but it may be one of doubtful or imperfect obligation." Rich v. Kentucky Country Day, Inc., Ky. App., 793 S.W.2d 832, 838 (1990).
As explained by Professor Liebson,

> statements about the competence of an employee made internally and to prospective employers, are the subject of the privilege in many jurisdictions. Kentucky is no exception. In Brewer v. American Nat'l Ins. Co., the court held that, under Kentucky law, statements made by one corporate employee to another about the competence of a third employee may qualify for the privilege so long as the publisher "believes he has a duty or an interest to a person with a corresponding duty or interest. . . ."

Liebson, *supra*, § 15.16, at 491.

Here, Jones becomes entangled in her own arguments. Jones asserts that Christensen and Davis were acting as agents for a common employer, Adecco.[14] *See* Brief for Appellant, pp. 5-6; Reply Brief for Appellant, p. 3. She further asserts that the statement in issue described her fitness or competence or lack thereof as an executive assistant. Brief for Appellant, p. 8 ("Certainly such statements impute unfitness. . . ."). These are the exact parameters for qualified privilege described in Brewer. Jones has presented no evidence suggesting that Davis'

[14] We express no opinion about the existence of such agency relationship, except to note that Jones has asserted its existence. However, even if we were to hold that no agency relationship existed between Lakeshore (through Christensen) and Adecco (through Davis), the elements of qualified privilege still have been met. Davis could have very reasonably believed he had a duty or interest that corresponded to a duty or interest of Christensen—the employment of Jones.

statement was maliciously uttered.[15] Therefore, the statement is protected by the qualified privilege of common interest.

Because the statement made by Davis was absolutely and qualifiedly privileged, no cause of action for slander may arise from its making. Bell, 402 S.W.2d at 87; Stewart, 218 S.W.2d at 950. After a careful and thorough review, summary judgment is appropriate as no actionable words were spoken. CR 56.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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[15] A false defamatory statement subject to a qualified privilege remains actionable for slander if the words were maliciously uttered. Stewart v. Williams, Ky., 218 S.W.2d 948 (1949).