

# **SUPREME COURT OF LOUISIANA**

**No. 96-C-2388**

**GORDON J. TRENTACOSTA**

**Versus**

**ROBERT BECK, RONNIE JONES, KERMIT SMITH AND THE  
STATE OF LOUISIANA, DEPARTMENT OF PUBLIC SAFETY &  
CORRECTION, ET AL**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FOURTH CIRCUIT, CIRCUIT, PARISH OF ST. BERNARD, STATE  
OF LOUISIANA**

**JOHNSON, Justice dissenting**

The question of whether a private individual can recover damages when factual misstatements are made about a public issue was presented, addressed and disposed of by this court in Romero v. Thompson Newspapers, 94-1105, (1/17/195); 648 So. 2d 866. Romero involved a physician seeking damages against several defendants based on a newspaper article criticizing the high incidence of Caesarean sections performed in this state. The article provided that women in Louisiana were being "butchered" by their obstetricians based on the many surgeries performed. It further stated that Abrom Kaplan Memorial Hospital in the Lafayette area had the highest number of Caesareans out of the 2,657 hospitals in the 34 states analyzed. The plaintiff, Dr. Romero, was singled out because he was the only obstetrician at this hospital. The defendants filed a motion for summary judgment to dismiss plaintiffs' complaint. The trial court denied summary judgment and the Third Circuit Court of Appeal denied review.

Relying on Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L. Ed.2d 789 (1974), we held in Romero that private plaintiffs with a defamation claim for factual misstatements on a public issue cannot recover either presumed or punitive

damages without the showing of actual malice. In other words, private and public plaintiffs must still meet the requirement of proving "actual malice" as described in New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

Further, we noted that misstatements relating to matters of public concern will still receive full protection from the constitution. Id. at 870. See also, Milkovich v. Lorain Journal Co., 497 U.S. 1, 110 S. Ct. 2695, 111 L.Ed.2d 783 (1990). Mashburn v. Collin, 355 So. 2d 879 (La. 1977) makes it clear that an opinion expressed on a matter of "public concern" cannot form the basis of an action for defamation. Ordinarily, a defamation action based on an expressed opinion must fall, unless the opinion implies a false and libelous fact **and** the opinion was expressed with actual malice. Bussie v. Lowenthal, 535 So. 2d 378 (La. 1988)". Romero at 870.

The majority concedes that this investigation which involved the illegal operation of a charitable gaming facility, is a matter of public interest. In my opinion, the statements by the State Police officers, Robert Beck, Sgt. Kermit Smith and Lt. Ronnie Jones fall within the parameters of protection as stated in Romero and the cases cited therein. The majority holds that Sgt. Smith's "bilking" statement was made with such "reckless disregard" of its falsity that liability follows.

Plaintiff has not met his burden of proof that the statement was made with knowing and reckless disregard for its falsity. Because there was no proof of "actual malice", damages are improper. "There can be no recovery without proof of malice, even if there were a defamatory implication. Bussie v. Lowenthal." Romero at 870.

Accordingly, for the reasons expressed above, I dissent.