FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

EVERETT A. MARTIN JR.
JUDGE

150 ST. PAUL'S BOULEVARD, SUITE 800
NORFOLK, VIRGINIA 23510

August 8, 2023

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**Re: Stephanie Ann Wadnola v. City of Norfolk**
**CL22-8500**

Dear Gentlemen:

This defamation action was tried to a jury on April 24-25, 2023. The jury returned a verdict of $300,000 for Wadnola. The City of Norfolk (the "City") has moved for judgment notwithstanding the verdict. For the reasons stated in this letter, I sustain the motion.

*The Pleadings and Pre-Trial Proceedings*

In their second amended complaint, Wadnola and Jhanesis, LLC (the "LLC"), a company Wadnola controlled, sued the City, Katherine Taylor, Esq., an assistant city attorney, and Susan Pollock, a member of the Norfolk Planning Department. They pleaded rights of action for defamation *per se*, malicious prosecution, intentional interference with a contract or business expectancy, intentional interference with a contract expectancy and prospective business relationship, and statutory conspiracy.

The City filed an answer and plea in bar of sovereign immunity to all counts of the amended complaint.[1] By order of April 17, 2023, Judge Atkins sustained the City's plea[2] to all

[1] I assume counsel agreed the defendants' answer to the amended complaint would also go to plaintiffs' second amended complaint, as the defendants filed no response to the latter pleading, except for a plea in bar concerning the LLC's failure to file a fictitious name certificate.
[2] The City's plea in bar did not cover Taylor and Pollock.

remaining counts[3] except for defamation. Judge Atkins concluded sovereign immunity did not apply to Taylor's statement because she made it after the General District Court hearing was over. Letter opinion of April 17, 2023, at pg. 4.

On April 13, 2023, the City filed a plea in bar against all claims of the LLC based on its failure to file a fictitious name certificate with the State Corporation Commission, as required by *Code* §§ 59.1-69, -76.

By order entered April 24, 2023, just before the trial began, the LLC suffered a nonsuit of all of its claims and Wadnola suffered a nonsuit of her claims against Taylor and Pollock. Thus all that remained for trial was Wadnola's defamation claim against the City.

*The Background as shown by the Evidence at Trial*

In September of 2016, Wadnola, through "Jhane's LLC" (sic), applied for a conditional use permit (also known as a special exception) from the City to operate an "entertainment establishment." By Ordinance No. 46,668, of December 13, 2016, the city council granted her a special exception to operate an entertainment establishment with alcoholic beverages known as "Jhane's Sweet Lounge" at 731 Granby Street. Defendant's exhibit 4. Wadnola testified the sign at the front of the establishment read simply "Jhane's." She operated the business there until February or March of 2020.

The LLC entered into a contract with Christopher Skipper on December 2, 2019, to sell its assets for $175,000, with monthly payments of almost $11,000. Plaintiff's exhibit 3. In February of 2020, Wadnola leased 731 Granby Street to Suite 1200, an entity controlled by Skipper, Donta Williams and another, for a one-year term at a monthly rent of $5,633. Defendant's exhibit 1. By a lease made February 1, 2021, she leased the property to Suite 1200 for a term of three years at a monthly rent of $6,990. Defendant's exhibit 3.

Wadnola testified that she and Skipper went to the City's zoning office on March 2, 2020, and informed Pollock of the change of ownership of the business at 731 Granby Street. Plaintiff's exhibit 6 corroborates this. Under section 2(d) of Wadnola's special exception, Skipper and Williams could operate Suite 1200 at 731 Granby Street for 120 days after the change in ownership. Skipper applied for a conditional use permit on March 4, 2020. Defendant's exhibit 2. Williams testified he did not know what happened to the application. Skipper did not testify. In any event, Skipper never received a conditional use permit, and Suite 1200 ceased operations at 731 Granby Street by March of 2021. Neither Skipper nor Suite 1200 made any payments to Wadnola or the LLC under the contract or the lease after March of 2021, when they received notice of a zoning violation from the City. Transcript, April 24 (henceforth "Transcript"), pp. 60, 76. On March 23, 2021, Taylor appeared before the city council to request the revocation of Wadnola's special exception, which the city council revoked.

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[3] By order of January 9, 2023, Judge Atkins had sustained the City's demurrer to the statutory conspiracy count of the original complaint and dismissed it with prejudice. The plaintiff again pleaded this count in the second amended complaint, I suppose, to preserve it for appeal.

On December 9, 2020, months after Skipper and Suite 1200 had taken over at 731 Granby Street, a Norfolk zoning officer obtained a misdemeanor warrant against Wadnola for failing to update the manager's list for her special exception. Plaintiff's exhibit 4. The warrant was not served for ten months.

*The Statement*

In early 2021, City officials secured a criminal warrant against Suite 1200 for a zoning ordinance violation. That warrant was heard in the Norfolk General District Court on May 4, 2021. As the city council had previously revoked Wadnola's conditional use permit, the City, by Taylor, moved to *nolle prosequi* the charge. The Court granted the motion.

After the entry of the *nolle prosequi*, Williams testified that he, Skipper, and Taylor met in a "back" room near the courtroom. During that meeting he testified that Taylor said: "We was (sic) in an unfortunate situation. Ms. Wadnola had been operating illegally." Transcript, pg. 61. Taylor denied making this statement, but the jury's verdict resolved that dispute of fact in Wadnola's favor.

When asked how the statement affected him, Williams stated: "I kind of didn't know what to think." Transcript, pg. 61. Wadnola learned of the statement when she met Skipper and Williams at 731 Granby Street. Upon hearing the statement Wadnola testified: "I was crushed, because I'm the type of individual to where, you know, my word is my bond. I don't do shady business." Transcript, pg. 106. This was the only evidence of her damages.

*A Subsequent Development*

Wadnola testified she learned of the warrant against her when she went to the Chesapeake Circuit court to apply for a concealed weapons permit. She turned herself in and was released on a summons on September 17, 2021. On Taylor's motion, the Norfolk General District Court dismissed the warrant that same day.

*The City's Motions at Trial*

After the plaintiff rested, the City made a motion to strike on two grounds: (1) the statement was true, and (2) the statement was not defamatory *per se*. I took the motion under advisement. At the conclusion of all the evidence the City renewed its motion to strike. In addition, the City also asked me to overrule Judge Atkins's decision on sovereign immunity.

*Was the Statement True?*

In a defamation case the truth of the statement is usually a question of fact for the jury. Here, however, there can be no doubt the statement was in one sense true. Wadnola, through the LLC, had been operating Jhane's Sweet Lounge without filing a statutorily required fictitious name certificate, a class 1 misdemeanor. *Code* §§ 59.1-59, -76. See transcript, pp. 109-12. But was this the sense in which Taylor made the statement or in which Williams understood it? I think not.

Wadnola claimed at trial that this was not the illegality to which Taylor referred. She claimed Taylor meant she had been in violation of her conditional use permit by allowing Suite 1200 to operate at 731 Granby Street. The violation later charged against Wadnola was "failure to update managers lists for Special Exception Ordinance ..." with a date of offense "on or about 12/03/20." Plaintiff's exhibit 4; transcript, pp. 101-02.

In discussing truth as a defense[4] in defamation actions our Supreme Court stated:

> The truth which is admitted as a defense, in such an action as this, is the truth of the alleged words in substance and in fact, in the sense in which they were used and intended to be understood, or were reasonably understood in accordance with the usual construction and common acceptation of the meaning of the words as used, in the light of all the surrounding circumstances.

*White v. White,* 129 Va. 621, 630, 106 S.E. 350, 352 (1921). A commentator our Supreme Court has often cited in defamation cases wrote that in interpreting defamatory language: "The question always is: How did the persons to whom the words were originally spoken or published understand them." Newell & Newell, *The Law of Slander and Libel in Civil and Criminal Cases,* § 267 "Defamatory Words to be Taken in the Sense Which Fairly Belongs to Them," pg. 304 (4th ed. 1924).

The time, place, and, circumstances of Taylor's statement (and the filing of the special plea on the lack of a fictitious name certificate only eleven days before trial) support Wadnola's argument. Taylor was not accusing Wadnola of operating without a fictitious name certificate; she was accusing her of operating in violation of her conditional use permit. There was no evidence of that. In any event, both constructions of the statement were argued to the jury, and the jury found for Wadnola. Wadnola proved falsity.

*Was the Statement Defamatory per se?*

The plaintiff pleaded the statement was defamatory *per se* as (1) imputing to her the commission of a criminal offense, or (2) prejudicing her in her trade. Second amended complaint, paragraphs 36, 37. I refused to instruct the jury on the former class of defamation *per se* as the statement suggested she was operating an establishment in violation of a zoning ordinance, a misdemeanor, but not one involving moral turpitude. *Great Coastal Express v. Ellington*, 230 Va. 142, 147-49, 334 S.E.2d 846, 850-51 (1985), *overruled on another ground, Cashion v. Smith*, 286 Va. 327, 749 S.E.2d 526 (2013); see also *Tronfield v. National Mut. Ins. Co.*, 272 Va. 709, 636 S.E.2d 447 (2006).

With respect to the latter class of defamation *per se*, the City asked me at trial to strike the evidence at the close of the plaintiff's case as she was no longer in the restaurant business. Transcript, pp. 150-51. The City renewed the motion on that ground at the close of all the evidence. Transcript, pp. 203-4. Having some doubt about the question, I took the motion under

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[4] Truth is no longer a defense. The plaintiff must prove falsity. *The Gazette, Inc. v. Harris,* 229 Va. 1, 15, 325 S.E.2d 713, 725 (1985).

advisement on both occasions and submitted the issue to the jury as recommended in *Brown v. Koulizakis,* 229 Va. 524, 531, 331 S.E.2d 440, 445 (1985). Transcript, pp. 149, 206.

No Virginia decision I have found explicitly holds a plaintiff must be engaged in her trade when the defamatory statement is made, but the law suggests this:

> Every false and unauthorized imputation, spoken, written or printed which imputes to a business or professional man conduct which tends to injure him in his business or profession is libelous and actionable without allegation or proof of special damages.

*Carwile v. Richmond Newspapers,* 196 Va. 1, 8, 82 S.E.2d 588, 592 (1954). Professor Prosser, however, in discussing this category of defamatory words, wrote:

> Furthermore, since the object of the exception is to protect the plaintiff in his office or calling, it was decided quite early that it must appear that he held or was engaged in it, or at least about to be so engaged, when the words complained of were published.

W. Prosser & Keeton, *The Law of Torts*, § 112 (5th ed. 1984) (The exception to which he referred is to the general rule that a plaintiff prove actual damage). Professor Prosser did not cite any Virginia case in support of this proposition, but he did cite one case that supplies the rule of decision.

In *Collis v. Malin,* Cro. Car. 282, 79 Eng. Rep. 847, Jones W. 304, 82 Eng. Rep. 161 (K.B. 1632), the plaintiff appears at some time to have been a drover. The defendant stated of him: "Thou art a bankrupt." There was a verdict for the plaintiff, and on motion in arrest of judgment the Court of King's Bench found for the defendant, holding that the action for slander of a tradesman "lies not, unless at the time of speaking the words [the plaintiff] used the trade of buying and selling of cattle."

This remained the law of England until our Independence. 1 Comyns' *Digest*[5] 195 (1780 ed.). ("So if he say, *He is a Bankrupt*, the Declaration must shew, that he was *then* a trader") (emphasis in original; citing *Collis*). 1 Viner's *General Abridgement of Law and Equity,*[6] "Actions [for Words]" (Ua), pl. 45 (1746) (citing *Collis*). Unless altered by the General Assembly or "repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth,"[7] the common law of England "shall continue in full force ..., and be the rule of

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[5] Sir John Comyns was a baron of the Court of Exchequer from 1726-1736; a judge of the Court of Common Pleas from 1736-1738; Chief Baron of the Court of Exchequer 1738-1740. His *Digest* was published posthumously in the 1760s and went through several English and American editions. It "had a high reputation well into the nineteenth century." J.H. Baker, *An Introduction to English Legal History* 186 (4th ed. 2002).

[6] Baker wrote of Viner's *Abridgement* that it "remains one of the first resources for lawyers searching into pre-1800 law." *Id.*

[7] As at least three of the classes of words we recognize now as defamatory *per se,* including those "which may impair or hurt his trade or livelihood," come from English law, it is doubtful this limitation could be repugnant to such principles. See 3 W. Blackstone, *Commentaries on the Laws of England* 123 (1768).

decision." *Code* § 1-200. The General Assembly has not altered the rule of *Collis*. Thus it is the law of Virginia. *White v. United States,* 300 Va. 269, 277, n.5, 863 S.E.2d 483, 486 (2021).[8]

This is also the general American law. 53 *C.J.S.*, "Libel and Slander; Injurious Falsehood," § 55 (2005) ("Words spoken or written of a person, in order to be actionable within the foregoing rules, must be spoken or written while he or she is engaged in the business or profession."); 50 *Am. Jur. 2d*, "Libel and Slander," § 207 (2017) ("One suing for defamation on account of imputations tending to injure him in his business, trade, or profession must allege and prove that he or she was engaged therein when the imputations were made ....").

At argument on the City's motion for judgment notwithstanding the verdict, Wadnola argued that the statement prejudiced her as a commercial landlord. However, she did not so testify at trial.

> Q. Ms. Wadnola, that statement that you had been operating your business illegally, was that true?
>
> A. Absolutely not.
>
> Q. Okay. Why, explain to the jury why it was not true.
>
> A. I had been operating since April of 2017. There's no way the City of Norfolk would allow anybody to operate illegally for three years. I did everything by the book. There were inspections. There were inspectors that came in and out of the establishment. There was nothing illegal going on. I had all of my permits in place, all of my licenses, everything.
>
> Q. You testified earlier that you had had that building since 2017, the 731 Granby?
>
> A. I've had it since September of 2016 when I purchased it.
>
> Q. And you were running the Jhanesis out of that building since 2017?
>
> A. April, yes.
>
> Q. April of 2017. And during that time period, did you operate illegally during that time period?
>
> A. No, I was doing renovations.
>
> Q. Okay and had you ever been convicted of anything or charged with any criminal acts by the City for that building?

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[8] This has remained the common law of England until the present. 32 *Halsbury's Laws of England,* "Defamation," ¶557 (5th ed. 2019); 32(1) *The Digest,* "Libel and Slander," pg. 210, case 1938 (2nd reissue 1993) (both citing *Collis*).

A. No.

Q. So at least, how long approximately had you been in the restaurant/bar business?

A. I mean my family owns restaurants in New York, so I grew up in it.

Q. When you ...

A. I mean here since 2007.

Q. And when you moved here in 2007 ...

A. Or '05. I'm sorry, '05.

Q. ... 2005, was that the type of business you wanted to go into and did go into eventually?

A. I opened up a bakery on Granby Street right across from the federal building.

Transcript, pg. 104, l. 18 - pg 106, l. 8.

Wadnola, through the LLC, operated Jhane's Sweet Lounge from April 2017 through January, February, or March of 2020, almost three years. Plaintiff's exhibit 3; defendant's exhibit 1; transcript, pp. 92-93, 97. Suite 1200 was a tenant of Wadnola from February 2020 through February or March 2021. Defendant's exhibits 1 and 2; transcript, pp 107, 122.

Nor did Wadnola's counsel contend at trial that Wadnola's trade was as a landlord. In discussing whether a damages instruction should include a lost income element, counsel described "the restaurant business" as her "chosen profession." Transcript, pg. 203, ll. 1-19. Finally, as noted above, the warrant against Wadnola was for violating her special exception, Plaintiff's exhibit 4, not, for example, allowing a nonconforming use on her property.

Even construing the evidence in the light most favorable to Wadnola, her trade was as a restaurateur. She was not engaged in that trade when Taylor made the statement. The statement was not defamatory *per se.*

*The City's other Motions, Defamation per quod, Damages, Jury Instructions, and Law of the Case*

The City claims Wadnola did not prove any damages caused by Taylor's statement and that damages could not be presumed because Taylor's statement was not defamatory *per se*. One argument the City makes, which I reject, is that its motion should be granted because Wadnola never asked the Court to determine if the statement was defamatory *per se*. This is true as far as

it goes, but Wadnola *pleaded* the statement was defamatory *per se* and the City never filed a demurrer or defensive motion to contest this.

The first 33 paragraphs of the second amended complaint identify certain persons, allege facts, and make some legal conclusions. The defamation count of the second amended complaint in its entirely is:

Count 1 – Defamation

> 34. Wadnola and Jhanesis hereby incorporate by reference paragraphs 1-33 of the Second Amended Complaint.
>
> 35. On May 4, 2021, Taylor and Norfolk maliciously published the false statements about Wadnola and Jhanesis knowing that the statements were untrue and defamatory. Those statements were:
>
> "Jhanesis and Wadnola were at fault for your (Suite 1200, Skipper and Williams) restaurant being shut down and charged with violations of law. Wadnola has been operating her business illegally since day one of opening."[9]
>
> 36. The statements are defamatory *per se* as they impute to both Wadnola and Jhanesis an unfitness to work in their chosen profession or trade.
>
> 37. The statements are defamatory *per se* as they state that both Wadnola and Jhanesis had engaged in criminal activity.
>
> 38. As a direct and proximate result of the malicious publication of the false and defamatory statements by Taylor and Norfolk, Wadnola and Jhanesis have suffered injuries including damage to their reputation in the community as well as loss of business.

There was no evidence Wadnola suffered damage to her reputation from the statement. Williams was the only witness at trial who heard the statement, and he said he did not know what to think. Wadnola suffered no loss of "business." She sold her business and her purchaser stopped paying her *before* Taylor made the statement.

I gave the jury the plaintiff's proposed instructions without objection from the City. They were inconsistent concerning damages, and the issues and finding instructions were improper for a case of defamation *per se*.

Instruction No. 12 told the jury that if they found their verdict for Wadnola she was "entitled to recover compensatory damages, without any proof of actual or pecuniary injury." This is the first sentence of Virginia Model Jury Instruction ("VMJI") 37.105 "for use where the statement is defamatory *per se* ...." Paragraph 5 of instruction No. 10 told the jury they should

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[9] This was not quite the statement Williams recalled.

return their verdict for Wadnola if she showed by the greater weight of the evidence that she "sustained actual damage as a result of the statement ...." No. 10 was VMJI 37.095 and is to be used when "the statement did NOT make substantial danger to the plaintiff's reputation apparent."[10] (emphasis in the original).

The jury was also given instruction No. 13, a modified version of VMJI No. 37.100, which allowed the jury to compensate Wadnola for "any insult to her, including any pain, embarrassment, humiliation or mental suffering." Wadnola's testimony set forth earlier, transcript, pg. 106, establishes she was insulted by the statement.[11]

With respect to the issues and finding instructions, paragraph 5 of instruction No. 9, which is VMJI 37.010, told the jury an issue in the case was whether the statement tended "to so harm the reputation of Stephanie Wadnola as to lower her in estimation of the community, to deter others from associating or dealing with her, or make her seem repulsive, infamous, or ridiculous?" Instruction No. 9, like No. 10, is to be used when "the statement did NOT make substantial danger to the plaintiff's reputation apparent." Paragraph 4 of No. 10 had the same requirement.[12] (emphasis in the original).

I also agree with the City that it did not concede the statement was defamatory *per se* by failing to object to instruction No. 12, as that instruction was predicated on No. 10, a *per quod*[13] finding instruction.

However, Wadnola did not plead defamation *per quod.* In pleading defamation *per quod* a plaintiff must plead special damages.

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[10] The instruction given omitted the last paragraph of the model, which allows the jury to return a verdict for the defendant.

[11] The City does not claim the damages are excessive.

[12] This requirement is defamatory "sting," which would rarely, if ever, be at issue in a *per se* case. See *Schaecher v. Bouffault,* 290 Va. 83, 772 S.E.2d 589 (2015).

[13] The terms *"per se"* and *"per quod"* have been used for centuries to classify defamatory statements. The plaintiff had to plead some particular damage to have happened (the *per quod*) "with regard to words that do not thus apparently, and upon the face of them, import such defamation as will of course be injurious" 3 Blackstone, *Commentaries* 124.

The terms "substantial danger to reputation apparent" and "substantial danger to reputation not apparent" seem to be derived from *New York Times v. Sullivan,* 376 U.S. 284 (1964) and its progeny. See *Curtis Pub. Co. v. Butts,* 388 U.S. 130, 155 (1967). Our Supreme Court last used a variation of one of them in *Lewis v. Kei,* 281 Va. 715, 708 S.E.2d 884 (2011).

U.S. District Judge Mark Davis, while a circuit court judge, held "... all defamation in Virginia is either *per se* (by itself) or *per quod* (whereby) ..." *Jarrett v. Goldman,* 67 Va. Cir. 361, 365 (Portsmouth 2005). Our Supreme Court has held that the threshold determination a trial court is to make in determining whether substantial danger to reputation is apparent from the statement resembles the determination to be made on whether a statement is defamatory *per se. The Gazette, supra,* 229 Va. at 15, 325 S.E.2d at 725. By negative inference from that holding and Blackstone's description of words defamatory *per quod,* I conclude that "substantial danger to reputation not apparent" and defamation *per quod* resemble one another, if they are not the same.

In recent years, if a statement is factual, our Supreme Court has focused on whether the statement has or lacks defamatory "sting," but it has never abjured the classifications *per se* and *per quod.*

> Whenever special damages are claimed, in order to prevent a surprise on the defendant, which might otherwise ensue at the trial, the law requires the plaintiff to state the particular damage which he has sustained, or he will not be permitted to give evidence of it at the trial.

*M. Rosenblum & Sons v. Craft,* 182 Va. 512, 521, 29 S.E.2d 375, 379 (1944), quoting from Newell, *supra,* at § 556. The Court in *Rosenblum* held an allegation that "he has been greatly injured in his said employment" was not a sufficient allegation of special damage. Wadnola did not plead any particular damage she sustained from the statement.

The question thus becomes: can the verdict be sustained based upon a claim the plaintiff did not plead when the defendant did not object to the instructions given for the unpled claim?

Our Supreme Court has held on several occasions that "instructions given without objection become the law of the case and thereby bind the parties in the trial court and in this Court on review." *Wintergreen Partners v. McGuire Woods,* 280 Va. 374, 379, 698 S.E.2d 913, 916 (2010). There, in the underlying personal injury case the jury found in favor of the plaintiff and against Wintergreen, but exonerated Wintergreen's employees. As the jury was instructed on both *respondeat superior* and premises liability – a direct liability claim – the exoneration of the employees did not necessitate a defense verdict. The opinion does not so state, but I assume the plaintiff pled both claims.

Even though instructions given without objection bind *the parties* in a trial court, there is authority they do not bind the trial court. The plaintiff, the recipient of a favorable jury verdict based upon agreed instructions, argued the instructions bound the trial court in *Smith v. Combined Ins. Co.,* 202 Va. 758, 120 S.E.2d 267 (1961). The Supreme Court rejected the argument:

> There is no merit in this contention. Although the instructions given without objection, like all instructions, were binding on the jury, this does not mean that the court was powerless while the case was under its control to correct errors in its rulings on them .... Here the motion to set aside the verdict involved the right of the plaintiff to maintain her action ... and the propriety of granting any instructions in her favor. The trial court, after mature consideration, concluded that despite its former rulings the action could not be maintained. In this situation, it was its plain duty to set aside the verdict and enter a final judgment for the defendant.

202 Va. at 762, 120 S.E.2d at 269-70. Having concluded the plaintiff pleaded only defamation *per se* and that the statement was not defamatory *per se*, I should have granted the City's motions to strike as the plaintiff could not maintain her action.

Furthermore, to enter judgment on the verdict based on instruction Nos. 9 and 10 would be to render judgment on a claim not pled, and thus void. *Ted Lansing Supply Co. v. Royal*

*Aluminum,* 221 Va. 1139, 277 S.E.2d 228 (1981) (judgment entered on a jury verdict for breach of implied warranty was void when plaintiff pleaded only breach of express warranty).

*Was Judge Atkins Wrong?*

The City filed a post-trial interlocutory appeal[14] under *Code* § 8.01-675.5(B), on this issue but the Supreme Court refused the petition by order of May 15 and held the issues may be raised on direct appeal to the Court of Appeals. *City of Norfolk v. Stephanie Ann Wadnola,* Record No. 230310.

The issue was briefed and argued and given mature consideration by Judge Atkins. Should Wadnola appeal, the City may assign cross-error to Judge Atkins's ruling. I will not disturb it.

I attach an order setting aside the jury verdict and entering final judgment for the City.[15]

Sincerely yours,

Everett A. Martin, Jr.
Judge

EAMJr/arc

[14] This unusual phenomenon occurred because Judge Atkins ruled on the special plea on April 17, the trial concluded on April 25, and the City filed the appeal on May 2.

[15] Not raised by the City, and thus not decided, is whether the statement had defamatory "sting." See *Schaecher, supra,* 290 Va. at 94-5, 772 S.E.2d at 595-96 (holding statements that plaintiff's activities on land breached an easement, a restrictive covenant, and a county ordinance regarding single-family detached dwellings lacked defamatory "sting").