

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 1st day of July, two thousand nine.

PRESENT:

HON. DENNIS JACOBS,
Chief Judge,

HON. AMALYA L. KEARSE,
HON. ROBERT D. SACK,
Circuit Judges.

DENNIS J. WALSH,

Plaintiff-Appellant,

- v -

No. 08-2624-cv

SUFFOLK COUNTY POLICE DEPARTMENT,
RICHARD DORMER, COMMISSIONER, SGT.
PATRICK D. MAHER, P.O. MICHAEL
VACCARO,

Defendants-Appellees.

Appearing for Appellant: Stephen Bergstein, Bergstein & Ullrich, LLP, Chester, NY.

Brendan Chao, of counsel, Great Neck, NY.

1 Appearing for Appellee: Chris P. Termini, Assistant County
2 Attorney, for Christine Malafi,
3 Suffolk County Attorney, Hauppauge,
4 NY.

5 Appeal from the United States District Court for the Eastern
6 District of New York (Joseph F. Bianco, Judge).

7 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
8 DECREED that the judgment of the district court be, and it hereby
9 is, AFFIRMED.

10 Plaintiff-Appellant Dennis J. Walsh appeals from the
11 district court's May 5, 2008 judgment granting the defendants'
12 motion for summary judgment and dismissing Walsh's complaint
13 pursuant to Federal Rule of Civil Procedure 56. We assume the
14 parties' familiarity with the facts of the case and the issues on
15 appeal.

16 "We review de novo a district court's grant of summary
17 judgment." Coan v. Kaufman, 457 F.3d 250, 254 (2d Cir. 2006).
18 "[C]onstruing the evidence in the light most favorable to the
19 nonmoving party," Mitchell v. Shane, 350 F.3d 39, 47 (2d Cir.
20 2003), we may affirm only "if the pleadings, the discovery and
21 disclosure materials on file, and any affidavits show that there
22 is no genuine issue as to any material fact and that the movant
23 is entitled to judgment as a matter of law," Fed. R. Civ. P.
24 56(c). We may affirm a district court's judgment "on any basis
25 for which there is a record sufficient to permit conclusions of
26 law, including grounds upon which the district court did not
27 rely." Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A.,
28 30 F.3d 339, 343 (2d Cir. 1994) (internal quotation marks and
29 citation omitted).

30 Walsh cannot establish that he is entitled to relief under
31 42 U.S.C. § 1983 for his "stigma-plus" claim. See generally
32 Segal v. City of New York, 459 F.3d 207, 212-13 (2d Cir. 2006)
33 (describing elements of a "stigma-plus" claim). He alleges two
34 relevant publications of allegedly stigmatizing statements: (1)
35 reports contained in the files of the Suffolk County Police
36 Department ("SCPD"), and (2) his own statements during a job
37 interview with the Central Intelligence Agency ("CIA") regarding
38 why he was terminated from his job with the SCPD.

39 An employee's liberty interest is not ordinarily implicated
40 by statements in connection with his termination of employment if
41 there has been no public disclosure of the reasons for the
42 discharge. "Since the . . . communication was not made public,
43 it cannot properly form the basis for a claim that petitioner's

1 interest in his 'good name, reputation, honor, or integrity' was
2 thereby impaired." Bishop v. Wood, 426 U.S. 341, 348 (1976)
3 (footnote omitted). In Brandt v. Board of Coop. Educ. Servs.,
4 845 F.2d 416 (2d Cir. 1988), we concluded that when a "plaintiff
5 can show neither actual disclosure nor a likelihood of any future
6 disclosure of the stigmatizing allegations subsequently removed
7 from his personnel file, he has failed to establish a violation
8 of his protected liberty interest in his good name, reputation,
9 honor, or integrity." Id. at 418 (internal quotation marks and
10 citation omitted); see also McPherson v. New York City Dep't of
11 Educ., 457 F.3d 211, 216-17 (2d Cir. 2006); McCullough v.
12 Wyandanch Union Free Sch. Dist., 187 F.3d 272, 280-81 (2d Cir.
13 1999). Indeed, counsel for defendants has stipulated that no
14 document in Walsh's file or any other document concerning him at
15 the SCPD will ever be made available to any third party.

16 Walsh has not referred to any evidence in the record that
17 suggests that any information in his personnel file has been or
18 will be released by the defendants. The district court properly
19 noted that it is "insufficient for a party opposing summary
20 judgment 'merely to assert a conclusion without supplying
21 supporting arguments or facts.'" Walsh v. Suffolk County Police
22 Dep't, No. 06-CV-2237, 2008 WL 1991118, at *6, 2008 U.S. Dist.
23 LEXIS 36465, at *18 (E.D.N.Y. May 5, 2008) (quoting BellSouth
24 Telecomms., Inc. v. W.R. Grace & Co., 77 F.3d 603, 615 (2d Cir.
25 1996)). None of the statements included in Walsh's personnel
26 files can be considered "published" for these purposes. Walsh
27 can only proceed, then, under a theory of "compelled
28 self-publication" related to his own disclosure to the CIA of the
29 reasons given by the SCPD for his termination.

30 That leaves the question of whether Walsh's own statements
31 to the CIA are actionable. We have never decided whether, as a
32 matter of law, so-called "compelled self-publication" can provide
33 the basis for relief in the "stigma-plus" context. We need not
34 reach that issue in this case, however, because Walsh does not
35 challenge the substantial truth of the allegedly stigmatizing
36 statements he made to the CIA. Walsh admits that he was
37 questioned by the police regarding an incident with a woman with
38 whom he had a relationship, that the police searched his home in
39 conjunction with the investigation, that he failed to disclose
40 this incident when he applied to the SCPD, and that this is why
41 he was fired by the SCPD.

42 A name-clearing hearing is sufficient to protect the liberty
43 interests implicated in a "stigma-plus" claim. Segal, 459 F.3d
44 at 214. But there is no entitlement to such a hearing when the
45 "substantial accuracy" of the allegedly defamatory statements is
46 not challenged. Codd v. Velger, 429 U.S. 624, 628 (1977).

1 Suggesting that an individual engaged in factually undisputed
2 conduct by mistake "is not enough to raise an issue about the
3 substantial accuracy of [a] report." Id.; see also Smith v.
4 Lehman, 689 F.2d 342, 345-46 (2d Cir. 1982), cert. denied, 459
5 U.S. 1173 (1983). Because Walsh admits the substantial truth of
6 what he published to the CIA, he has not established that he was
7 harmed by not having a name-clearing hearing, and his stigma-plus
8 claim, therefore, fails. See Codd, 429 U.S. at 628-29.

9 For the foregoing reasons, the judgment of the District
10 Court is hereby AFFIRMED.

11 FOR THE COURT:
12 Catherine O'Hagan Wolfe, Clerk of the Court

13 By: _____
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