

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Bhavin Mehta, Ph.D.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-315
Ohio University,	:	(Ct. of Cl. No. 2006-06752)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 28, 2012

The Gittes Law Group, Frederick M. Gittes and Jeffrey P. Vardaro, for appellant.

Michael DeWine, Attorney General, Randall W. Knutti and Daniel R. Forsythe, for appellee.

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} This is the second appeal by Bhavin Mehta, Ph.D., from adverse rulings by the Court of Claims of Ohio. In the first appeal, we reversed the judgment of the trial court in part and remanded the case to that court for further appropriate proceedings. Following the remand, the Court of Claims reached the same result as before, leading to this appeal.

{¶ 2} Two assignments of error are presented for our consideration:

[I.] THE TRIAL COURT MADE FINDINGS OF FACT THAT WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE WITH RESPECT TO DR. MEHTA'S MONITORING OF HIS STUDENT'S WORK AND HIS ALLEGED FAILURE TO

DETECT PLAGIARISM, RESULTING IN THE COURT'S UNSUPPORTED CONCLUSION THAT THE DEFAMATORY STATEMENTS AT ISSUE WERE NOT FALSE.

[II.] THE TRIAL COURT'S FINDINGS OF FACT WERE MANIFESTLY AGAINST THE WEIGHT OF THE EVIDENCE WITH RESPECT TO DR. MEHTA'S MONITORING OF HIS STUDENT'S WORK AND HIS ALLEGED FAILURE TO DETECT PLAGIARISM, RESULTING IN THE COURT'S ERRONEOUS CONCLUSION THAT THE DEFAMATORY STATEMENTS AT ISSUE WERE NOT FALSE.

{¶ 3} Since the two assignments of error so heavily overlap, they will be addressed together.

{¶ 4} Many of the pertinent facts were outlined in our previous opinion, set forth in paragraphs 2 through 11 of that opinion:

The facts of this matter stem from a highly publicized plagiarism scandal that plagued the Russ College of Engineering and Technology at OU ("Russ College"). At the time, Mehta was employed as an Associate Professor of Russ College and was the Director of OU's Computer-Aided Design/Computer-Aided Manufacturing Laboratory. One of his responsibilities was to advise graduate students in their researching and writing of theses and dissertations.

In July 2004, a mechanical engineering graduate student raised issue with what he perceived as plagiarism in portions of theses from within the Department of Mechanical Engineering in the Russ College. The allegations eventually reached the Dean of the Russ College, Richard Dennis Irwin ("Dean Irwin"), and the Provost of OU, Kathy Krendl ("Provost Krendl"). The matters were referred to "judiciaries," the OU adjudicatory body responsible for adjudging allegations of academic misconduct of students. However, the judiciaries determined that the allegations primarily concerned former students who had long since left OU. Accordingly, the judiciaries believed they lacked the authority to adjudge such allegations and referred the matters back to Dean Irwin.

Dean Irwin approached Provost Krendl and recommended they establish an Academic Honesty Oversight Committee ("AHOC") to investigate the allegations. As a result, in November 2005, AHOC was established and was solely

comprised of department chairs from the various disciplines of engineering within the Russ College. AHOC was asked to determine if plagiarism had occurred and to provide recommendations regarding the accountability of the students and the faculty.

In the midst of AHOC's investigation, Provost Krendl sought a perspective from outside of the Russ College. Therefore, in February 2006, she created a two-person committee consisting of Gary Meyer ("Meyer") and Hugh Bloemer ("Bloemer"). Neither individual had any affiliation with the Russ College. Nor did either individual have a background in engineering. Provost Krendl chose Bloemer because she believed he had an expertise in faculty rights and responsibilities because he had previously served as the president of the faculty senate. He had also reviewed many theses over the course of his career, and the provost believed he would be an expert at detecting plagiarism. Meyer was picked because of his background in intellectual property and his likely ability to understand the technical language presented in the theses at issue.

On March 30, 2006, AHOC issued a report setting forth its recommendations. This report did not conclusively determine that plagiarism had, in fact, occurred. It did, however, establish a series of guidelines to categorize the type and relative degree of alleged plagiarism in the theses and dissertations. First, when the originality of the student's technical contribution was called into question, AHOC considered this to be the most serious allegation, which it classified as "Category I violations." With regard to faculty accountability, AHOC recommended that any faculty members who served as advisors on theses containing Category I violations should be referred to the Russ College's Ethics Committee for review. However, according to AHOC, no Category I violations had been alleged.

The AHOC report classified less serious allegations as "Category II violations," where the alleged plagiarism was limited to the introductory information that formed the foundation for the student's own research. Within AHOC's report was a spreadsheet listing 56 "offending documents" where Category II violations had been alleged. The spreadsheet listed the advisor associated with each offending document. Of the 56 offending documents listed in the spreadsheet, appellant was listed as the advisor for 11 different

theses. In fact, however, he served as the advisor for 12 of the 56 theses reviewed by AHOC. The AHOC report broke down the Category II violations into various subgroups based upon factors AHOC considered to be relevant. Specifically, AHOC considered whether the alleged plagiarism concerned published sources. It also considered the relative timing of theses and whether the students were at OU at the same time. It considered issues pertaining to self-plagiarism and student collaboration. Regardless of these factors, however, AHOC recommended that each student be provided with an opportunity to respond to the allegations before a determination on plagiarism could be made. AHOC did not recommend any action with regard to faculty accountability for Category II violations.

Meyer and Bloemer received a copy of the AHOC report and continued their investigation. In late May 2006, Meyer and Bloemer provided a draft of their report ("Meyer-Bloemer Report") to Provost Krendl and Dean Irwin. Upon receiving the draft, Dean Irwin approached Provost Krendl and expressed concerns over what he classified as inflammatory and inappropriate content. He indicated that he would not support her in the event she wished to release it to the media during a press conference that was scheduled for May 31, 2006. According to the provost, she approached Meyer and Bloemer and asked them to change the draft and tone down its content. They refused. Nevertheless, on May 31, 2006, Provost Krendl held the press conference during which she distributed the unaltered draft of the Meyer-Bloemer Report to the media. It provided in part:

To: Dr. Kathy Krendl, Provost, Ohio University

From: Gary D. Meyer * * * and H. Hugh L. Bloemer * * *

Subject: Plagiarism in the Department of Mechanical Engineering in the Russ College of Engineering at Ohio University

We have assessed the issue of plagiarism in the above department over the past four months and we conclude that rampant and flagrant plagiarism has occurred in the graduate program of the Department of Mechanical Engineering for over twenty years. All members of the academic community, students and faculty alike, are responsible for the integrity and originality of their work. According to the documents

that we read and investigated, there are seven faculty members in the department who supervised theses where plagiarism was found. However, the vast majority of the cases revolve around three faculty members who either failed to monitor the writing in their advisees theses or simply ignored academic honesty, integrity and basically supported academic fraudulence. We consider this most serious.

There can never be a time or reason at an academic institution, such as our Ohio University, when plagiarism can be justified. Equally, there can not be any tolerance of the individuals who participate in this serious misconduct. The ad hoc committee of the college established some guidelines to mitigate the obvious problems but we do not concur that the problems are caused by the graduate students and subsequently it is up to the graduate students to remedy the situation. When a faculty member becomes the advisor/mentor of a graduate student, she/he automatically assumes the responsibilities to monitor the progress of the students as they advance to become professionals. Supervision of theses is part of the process. We are appalled that three members of the faculty in mechanical engineering have so blatantly chosen to ignore their responsibilities by contributing to an atmosphere of negligence toward issues of academic misconduct in their own department. We are amazed to see that the internal ad hoc committee recommended no reprimand for those individuals.

We recommend the following:

- 1) A lack of faculty oversight on theses work is of particular concern in relation to two faculty members in the Department who served as advisors in many of the theses included in this investigation. These two members' involvement in these issues should be referred to the College of Engineering Professional Ethics Committee, consistent with the Ohio University Faculty Handbook, for their deliberation and recommendations to the Dean of the College. We recommend that, consistent with Ohio University policy, you initiate the dismissal of the current chair of the department immediately, start the process of rescinding the title of Moss Professor and dismiss the Group II faculty member, who had the second highest incidences of plagiarism, 11 theses under his direction.

* * *

10) We reviewed an additional 65 theses from 13 other disciplines across the campus based on similarities in titles (the same approach used to ascertain the problem in the Department of Mechanical Engineering.) From this cursory review we conclude that this plagiarism issue is unique to the Department of Mechanical Engineering at Ohio University.

* * *

13) Of the total 293 master theses completed in the department of Mechanical Engineering (according to the College's records), 106 or 36% were supervised by the two individuals who have been identified as the major contributors of the plagiarism problem in that department. All of these theses should be reviewed by the College to ascertain if additional theses contain plagiarism and, if so, they should be included and be subjected to the appropriate actions suggested by the college committee and the Provost.

14) Act swiftly to get this unacceptable conduct at Ohio University behind us and let us move forward with our noble mission of educating the future professional from poets to CEOs of the world.

"The highest courage is to dare to be yourself in the face of adversity. Choosing right over wrong, ethics over convenience, and truth over popularity... these are the choices that measure your life. Travel the path of integrity without looking back, for there is never a wrong time to do the right thing." (This quote came from a poster entitled: The Courage of Integrity.)

(Joint exhibit P.) Although not specifically named within the report, Mehta was the only "Group II faculty member" employed in the Department of Mechanical Engineering at that time.

After the Meyer-Bloemer Report was released, Dean Irwin provided a statement to a reporter for The Post, a publication in Athens, Ohio. He said that the faculty members referenced in the report were relieved of their advising responsibilities because they had contributed to a culture of academic dishonesty. In making this statement, Dean Irwin specifically named Mehta as one of the faculty members. Based upon Dean Irwin's statements, The Post released an article

indicating that members of the faculty had contributed to a "culture of plagiarism." (Plaintiff exhibit No. 33.)

In late June 2006, the Director of Legal Affairs at OU, John Burns ("Burns"), was interviewed by Kathy Lynn Gray ("Gray"), a reporter from The Columbus Dispatch. After the interview, the Dispatch published an article with the headline, "OU Professor Leaves Post in Plagiarism Investigation." The article indicated that Mehta's contract with OU had not been renewed "in part because Mehta supervised theses identified as containing plagiarism." (Plaintiff's exhibit No. 34.)

On October 24, 2006, Mehta filed the instant defamation action against OU based upon the Meyer-Bloemer Report and the statements allegedly made by Burns and Dean Irwin thereafter. The matter proceeded to a bench trial on the issue of OU's liability.

{¶ 5} The bench trial lasted four days. The trial court found that many of the negative statements published about plagiarism at Ohio University were not actionable because they were statements of opinion, not statements of fact. The panel of this court on the first appeal disagreed, finding that some of the statements published were statements of fact, especially statements indicating that Dr. Mehta had failed to perform his duties as a faculty advisor.

{¶ 6} Another issue from the first set of trial proceedings was the issue of whether or not documents released as a result of a public records request can form the basis for a defamation action. The first panel of this court found that no blanket immunity exists for documents released following a public records request.

{¶ 7} In the first appeal, the panel of this court overruled two assignments of error, which read:

Assignment of Error No. 3:

THE TRIAL COURT MADE FINDINGS OF FACT THAT WERE MANIFESTLY AGAINST THE WEIGHT OF THE EVIDENCE WITH RESPECT TO DR. MEHTA'S MONITORING OF HIS STUDENT'S WORK.

Assignment of Error No. 4:

THE TRIAL COURT MADE A FINDING OF FACT THAT WAS MANIFESTLY AGAINST THE WEIGHT OF THE EVIDENCE WITH RESPECT TO WHETHER OR NOT OU'S LEGAL COUNSEL MADE A DEFAMATORY STATEMENT TO A NEWSPAPER REPORTER ABOUT THE TERMINATION OF DR. MEHTA'S EMPLOYMENT.

{¶ 8} The assignment of error regarding a statement allegedly made by Ohio University's legal counsel was resolved in the first appeal. Legal counsel denied the statement. A newspaper reporter claimed the statement was made. The trial court weighed the evidence and found that the making of the statement had not been proven. We affirmed the trial court's ruling on that issue, so the issue is not before us on this appeal.

{¶ 9} The findings of fact regarding Dr. Mehta's mentoring of students attacked in the first appeal were found by the previous panel to be merely statements of the testimony presented and not actual findings of fact. Therefore, the findings could not be against the manifest weight of the evidence. We do not find the previous appeal to have disposed of the weight of the evidence and sufficiency of the evidence issues present in this second appeal.

{¶ 10} We note that no new evidentiary proceedings were conducted following the remand to the trial court. Instead, the Court of Claims permitted briefs to be filed by the parties and the court heard oral arguments. The trial court then issued its decision finding, once again, in favor of Ohio University.

{¶ 11} The trial court's second trial opinion turned upon a finding that the statements alleged to be defamatory were not proven to be false. The trial court considered the previous testimony indicating that no single definition of plagiarism exists. The trial court found that Dr. Mehta had not carefully mentored his students so as to avoid plagiarism, and his lack of care, in effect, allowed students in the College of Mechanical Engineering at Ohio University to believe, at the least, that they could get away with sloppiness in their attributions, and use the work of others while making it seem like it was their own work, at worst.

{¶ 12} In making these findings, the trial court turned what had been viewed by the first panel of this appellate court as merely summaries of testimony before the trial court into factual findings. We must therefore now analyze whether these summaries/factual findings correspond with the testimony before the trial court, especially the testimony of Dr. Mehta himself.

{¶ 13} Dr. Mehta did his own graduate work at Ohio University ("OU"), receiving a master's degree in 1988 and a Ph.D. in 1992. He began full-time employment with OU in 1988, working as a manager of the Computer Aided Design/Computer Aided Manufacturing system and part-time assistant professor in mechanical engineering. In those roles, he taught computer aided design and computer aided manufacturing ("CAD/CAM") courses and supervised the CAD/CAM lab at OU. Over time, his responsibilities with the lab increased and he was promoted to associate professor. He also began having advisees—graduate students interested in CAD/CAM.

{¶ 14} To obtain a master's degree at OU, a graduate student needed to complete approximately nine graduate level courses and write a thesis. The process generally lasted one to nine years.

{¶ 15} Dr. Mehta, on the subject of plagiarism, testified:

A. I discuss the plagiarism issues during one-on-one meetings, during group meetings that I used to have with my research students, also during classrooms, and I always told them that citations are very important. Crediting somebody else's work is very important. Copying verbatim material is not an acceptable type of thing unless there is some special circumstances.

(Tr. 777-78.)

{¶ 16} When his counsel inquired about what he considered "special circumstances," Dr. Mehta testified they would include:

[C]ollaborative type of work, unpublished, collaborative work.

* * *

Q. Can common knowledge include text words?

A. Could include text words.

Q. Equations?

A. Specifically equations, right.

Q. Figures?

A. Again, it depends on the nature.

Q. Formulas?

A. Formulas, right.

(Tr. 778-79.)

{¶ 17} Dr. Mehta described his system for supervising advisees:

Every quarter I would collect sort of the course schedule for the students that were going to work with me on their research, on their thesis. I would figure out then an open time slot during the week from Monday through Friday when there would be one-hour spot where no one was in any of the courses. And I would fix -- and that would be the time that I was not teaching any classes. And I would fix that hour for research meeting that we would have on regular basis every week with all my advisees.

(Tr. 779-80.)

{¶ 18} His system also included individual meetings with advisees:

The individual meetings I always had an open-door policy. So they wouldn't require any appointments. If I was not in a classroom or I was not out at a conference, they would just be able to come in and see me. And I tried to meet them on regular basis. Plus my CAD/CAM lab was right outside my office, so I would see them on regular basis.

(Tr. 780.)

{¶ 19} Dr. Mehta's advisees sometimes worked in groups, usually on funded projects. He viewed the results of such group work as common knowledge for the

members of the group and therefore apparently work which did not require citation in an individual student's master's thesis.

{¶ 20} Dr. Mehta's expansive definition of "common knowledge" may have contributed to the perception that he tolerated and/or did not aggressively pursue instances of what some other professors would have considered plagiarism.

{¶ 21} Dr. Mehta described his system of advising students through this thesis writing as follows:

A. Most of the cases the student would first come to me after majority of the research was done, and we would sit down and plan out the table of contents type of thing, the basic outline of the thesis.

Then student would go and write the introduction, literature review. Now, it varied from students to students. Some would bring the first chapter to me, some would bring couple of chapters to me for corrections, and they would go chapter by chapter. So it's not like the whole thesis would be brought to me after the whole thesis was written.

When they brought the chapter, I would start reading, reading the thesis chapter. And if I found that it was not well written, that it needed a lot of English editing type of thing, the language was not good at all, I would then call the student back and ask him to get some help in technical writing and go back and get it edited and then bring me the edited portion.

(Tr. 787-88.)

{¶ 22} Dr. Mehta viewed such theses as having a consistent structure:

Generally, the first two or three chapters are introduction chapters, and the first chapter sometimes is very basic introduction on the general area, which would be a very broad area like manufacturing, for example.

The second chapter most of the time would have literature review. The student would have read papers in this research area, and then they would summarize the papers and lead to the importance of why they are doing their particular research or how it relates to their research.

And sometimes the third chapter then would have a little more introduction on that subfield or the specific of that topic.

Then they would get into the chapter on simulation modeling which would involve generating the computer software or program, if that was the case, or analysis, results, and then conclusion and then bibliography or references at the end, the last section.

(Tr. 788-89.)

{¶ 23} He further testified as to his view that "[t]he background chapter, introduction chapter, literature review chapter, are understood to be background chapters where they are getting material of the work done in the past, or introduction to that area. So it's not their original [sic] original work." (Tr. 789-90.)

{¶ 24} Advisees at OU had to defend their theses to a faculty committee comprised of both faculty from the Mechanical Engineering area and from other areas. The focus of the faculty committee, in Dr. Mehta's view, seems to have been to determine if good research was done, not to evaluate if all conceivable attributions were provided in the thesis.

{¶ 25} Dr. Mehta claimed that on occasion he would inform one of his advisees that additional citations were needed. How often this occurred he did not say.

{¶ 26} Dr. Mehta acknowledged that four of his advisees turned in theses which included an identical chapter. Dr. Mehta did not feel attribution was necessary because all four had worked in a group project which was a funded project. In his view described above, the chapters represented "common knowledge" for the group members, requiring no attribution. Dr. Mehta was not aware at the time these four advisees turned in their theses that this common chapter had information from a software manual they used. At trial, he still viewed the information as common knowledge requiring no attribution.

{¶ 27} A different advisee turned in a thesis with a total of approximately 25 pages copied from text books without an indication that the 25 pages were quotations. Another student had 4 pages out of 113 pages copied.

{¶ 28} Given the above, we cannot say that the trial court's determination that Dr. Mehta failed to prove defamation was against the manifest weight of the evidence. A

number of his advisees turned in theses with major blocks of the document lacking attribution. The four students who turned in theses with an identical chapter which included no attribution to their group project or to the software manual used by one or more of the students is a clear example. The failure of Dr. Mehta to detect that almost 25 pages of another thesis was lifted from text is another. The allegation made on behalf of OU that he was less than diligent in preventing plagiarism was not proved to be false.

{¶ 29} The two assignments of error are overruled. The judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

BROWN, P.J., and SADLER, J., concur.
