

NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW
SPRING 2011 LEGAL RESEARCH AND PERSUASION
MEMORANDUM PROBLEM

Barry Wright is an IT specialist with Sullivan Computers. He has been with the company for over five years and has a good work record. Recently, Barry started having back trouble and sought medical attention from his physician. Physicians informed Barry that he would need surgery on his back to alleviate a bulging disc. Barry came through the surgery with flying colors; however, he continued to be in a lot of pain after the surgery. Barry took the recommended medical leave and returned to work approximately six weeks after the surgery. When he returned to work, Barry continued to be in an excessive amount of pain, so he continued to take his prescribed pain medications.

Six months after his return to work, Sullivan Computers performed random drug testing on its employees. Barry, who was still taking some of the pain medications from his back surgery, failed the drug test. Pursuant to company policy, Barry was subsequently terminated for failing the drug test.

The day after Barry was fired was “take your son or daughter to work” day and Sullivan Computers was swarming with kids. Everyone was in place to view a demonstration of Sullivan’s new computer pad line. All the kids had their cameras and flip recorders ready for the big demonstration. Susan Taylor, one of Barry’s co-workers, was attending with her daughter and asked Barry’s manager, Terrance Knowles, why Barry was not at work. Terrance responded, “He seemed like such a nice guy; who knew the guy was a ‘druggie’? We had to fire him.”

Later that evening, Susan’s daughter replayed the events of the day she had recorded on her i-Pod touch for the family. It was then that Susan noticed her daughter had recorded Terrance’s comments about Barry. Unbeknownst to Susan or Terrance, Susan’s daughter had already posted the video to her Facebook page.

Barry’s son saw the video on Susan’s daughter’s Facebook page and showed it to his dad. Barry now wants to bring a civil defamation action against Terrance based on Terrance’s comments.

FOR PURPOSES OF THIS MEMO ASSIGNMENT:

Your firm has been hired by Barry to initiate a civil defamation action against Terrance based on Terrance’s comments. Your firm has engaged in limited discovery and found the following additional facts: Barry was an employee in the same division of Sullivan Computers as Susan and reported directly to her until a company re-organization four months ago. Although Barry and Susan no longer worked together on any projects, they had developed a close friendship and their respective work assignments continued to bring them in daily contact with each other. Barry did not like his reassignment to Terrance’s division and the two of them had a couple of heated exchanges over Terrance’s management style. Although they later agreed to disagree and did not revisit the subject after that time, Terrance continued to resent Barry’s criticism of his managerial skills.

After discovery, Terrance Knowles has filed a motion for summary judgment contending that there is no genuine issue as to any material fact and he is entitled to judgment as a matter of law. In response, our firm also filed a motion for summary judgment, similarly contending that there is no genuine issue as to any material fact and that Barry is entitled to judgment as a matter of law.

The trial court has granted partial summary judgment for Barry, (1) concluding that there is no genuine issue as to the “publication” of the information in question and (2) refusing to recognize the intracorporate publication exception on these facts. The court, however, has left the following two issues open for consideration: (1) whether Terrance’s statement was privileged; and (2) whether there are any applicable defenses to Barry’s action for civil defamation remaining, when looking at the manner in which Terrance discussed Barry’s termination with others. The court has directed you to draft a memorandum in opposition to Terrance Knowles’ motion for summary judgment in regards to these two remaining issues.