

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DEVIN G. NUNES)
)
 Appellant,)
)
 v.) Appeal No. 20-2710
)
)
 RYAN LIZZA)
 et al)
)
 Appellees.)
 _____)

DESIGNATION AND STATEMENT OF THE ISSUES

Appellant, Devin G. Nunes (“Nunes”), by counsel, intends to present the following issues on this Appeal:

1. Did the District Court follow the proper standard in evaluating Nunes’s amended complaint or did the District Court view the amended complaint in a light most favorable to the Defendants?
2. Is *New York Times v. Sullivan*, 376 U.S. 254 (1964) good law? Does the United States Constitution require public figures to satisfy an actual-malice standard in state-law defamation suits? Should *Sullivan* be reconsidered and overturned?
3. Did the District Court err in applying *Sullivan* in this case?
4. Did Nunes plausibly allege that the Defendants published the Article with actual malice?

5. Properly construing the Defendants’ statements “as a whole”, in context and in light of the surrounding circumstances, *see, e.g., Lundell Mfg. Co., Inc. v. American Broadcasting Companies, Inc.*, 98 F.3d 351, 359 (8th Cir. 1996) (quoting *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 14 (1990)) and *Toney v. WCCO Television, Midwest Cable and Satellite, Inc.*, 85 F.3d 383, 396 (8th Cir. 1996), does the Article contain actionable statements of and concerning Nunes? Does the Article impute to Nunes acts that are dishonest and unethical and that prejudice him in his profession as a United States Congressman?

6. Do the Defendants’ rhetorical questions in the Article imply the existence of defamatory facts?

7. Where, as here, a defendant’s words are fairly capable of two meanings – one harmless and the other defamatory – is it a question for the jury whether the words convey the defamatory meaning? Did the District Court err in deciding the issue as a matter of law?

8. Could a reasonable reader draw from the Article the defamatory implications alleged by Nunes?

9. Does the Article negate the implication that Nunes conspired with his family and Rep. Steve King to conceal a “Politically Explosive Secret”; to wit, that NuStar “runs[] on undocumented labor”?

10. Considering all the facts and circumstances attending publication of the Article on September 30, 2018, did the District Court err when it determined that the Article was not capable of the defamatory meaning alleged by Nunes?

11. Does the First Amendment require proof in a public-figure defamation case that the defendant subjectively intended to convey or endorsed the defamatory implication?

12. Did Nunes plausibly allege that the Defendants subjectively intended to convey or endorsed the defamatory implication in the Article?

13. Is Defendants’ subjective intent an issue that can be resolved on a motion to dismiss under Rule 12(b)(6)?

14. Because Nunes plausibly alleges a claim of defamation, did the District Court err in dismissing his conspiracy claim?

DATED: August 31, 2020

DEVIN G. NUNES

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the Defendants and all interested parties receiving notices via CM/ECF.

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