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Appeals panel denies lawyer's defamation suit

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A Hazel Crest sole practitioner on lost his bid to revive his defamation lawsuit against his 2016 Democratic primary opponent, following a state appeals panel's ruling.

The 1st District Appellate Court last week found that plaintiff McStephen O.A. "Max" Solomon presented no evidence showing that state Sen. Michael E. Hastings and his campaign committee, Citizens for Michael E. Hastings, made defamatory statements about him with actual malice.

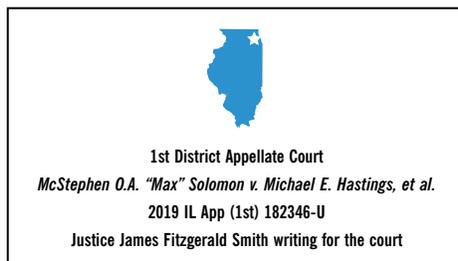
"The plaintiff presented no evidence whatsoever that the defendants entertained 'serious doubts' as to the truth of the two allegedly defamatory statements but went ahead and published them in their campaign literature anyway," Justice James Fitzgerald Smith wrote. "The plaintiff did not even attempt to meet this burden here."

Hastings and Solomon squared off against each other during the Democratic primary for the 19th State Senate District in 2016. Hastings won, collecting 80.04% votes cast in that race, according to the Cook County Clerk's Office.

During the campaign, Hastings and his committee released a campaign flyer that accused Solomon missed multiple meetings while serving as a trustee on the Grande Prairie Library Board. Solomon was elected to the position in April 2015. The flyer also said Solomon cost "taxpayers hundreds of thousands of dollars in legal expenses because of lawsuits which courts call 'mere fishing expeditions.'"

Solomon sued Hastings and his campaign committee in March 2016, two weeks after Solomon lost the primary to Hastings. His amended complaint alleged defamation per se and false-light invasion of privacy.

The appellate court noted that Cook County Circuit Judge Christopher E.



Lawler closed discovery in the case in May 2018 after Solomon failed to appear at a status hearing where he and Hastings were supposed to agree on the "scope of party depositions." Five months later, Lawler granted summary judgment to Hastings.

In order to beat Hastings' motion for summary judgment, Solomon had to show the statements contained in Hastings' flyer weren't substantially true and were published with actual malice.

The 1st District panel noted that, based on Solomon's claims, there were potential questions over whether the statements in Hastings' flyer were true. Solomon argued the library board meetings weren't mandatory, and he had been ousted from the board of June 1, 2015, because he never showed up for the inauguration ceremony.

According to Solomon, this led to him suing the library board and being reinstated by a Cook County judge later. Hastings, however, pointed out that Solomon portrayed himself as being a library trustee on his website and to the Chicago Sun-Times.

Solomon also disputed being the cause of taxpayers losing out on "hundreds of thousands of dollars in legal expense because of lawsuits which courts call 'mere fishing expeditions.'" He said he could not be blamed for the library board spending \$21,204.90 in attorney fees to defend their "own illegal conduct" when it ousted him from the board.

He also argued that he was an attorney representing a client, and not a party, to

the "fishing expeditions" mentioned in the flyer.

With this in mind, the 1st District panel held "there remains a genuine issue of material fact as to whether the allegedly defamatory statements were substantially true." But the panel upheld the summary judgment Lawler granted to Hastings because Solomon "provided not a single iota of evidence to suggest that the defendants published those statements with actual malice."

Smith added that Solomon tried to fault Lawler's decision to close discovery as why he couldn't prove actual malice on Hastings' part. But Smith noted that Solomon "does not expound on this argument, not cite to any authority in support thereof." Under the Illinois Supreme Court's rules, Solomon was required to reinforce his arguments with legal citations, Smith continued.

Even if it chose to ignore Solomon's failure to cite his argument, the panel found that Lawler did not abuse his discretion to close discovery after Solomon failed to show up for a status hearing.

Hastings and his committee were represented by Michael L. Resis and Ryan B. Jacobson of SmithAmundsen LLC.

"As a state [S]enate candidate, Solomon should have expected his fitness and qualifications for public office would be placed under a microscope," Jacobson said in a statement. "Despite more than two and a half years of litigation before appeal, Solomon took no depositions or produced any admissible document, testimony or affidavit to show that the Hastings campaign did anything unlawful."

Solomon represented himself. He did not return requests for comment.

Justices Nathaniel R. Howse Jr. and David W. Ellis concurred with the order.

The case is *McStephen O.A. "Max" Solomon v. Michael E. Hastings, et al.*, 2019 IL App (1st) 182346-U.