

Ex-Dolphins Offensive Line Coach Sues Attorney for Defamation In Relation to Jonathan Martin Investigation

By Shawn Schatzle, of Havkins
Rosenfeld, Ritzert & Varriale

Jim Turner, former offensive line coach for the Miami Dolphins, recently commenced a defamation action against attorney Ted Wells in the United States District Court, Southern District of Florida. The suit also names prominent law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, where Mr. Wells is a partner, as a defendant. Mr. Turner's claims stem from Mr. Wells' investigation of the Dolphins on behalf of the National Football League ("NFL") regarding bullying and harassment claims by former offensive tackle Jonathan Martin. Mr. Wells has been the subject of substantial media attention as of late based on another investigation that he performed on behalf of the NFL relat-

ing to the New England Patriots football deflation scandal, commonly referred to as "Deflategate."

Mr. Martin's claims made national headlines initially in October 2013 when he promptly left the Dolphins' team facilities, despite his position as a starting member of the offensive line. The Stanford graduate, who was then twenty-four years old and in his second year in the NFL, briefly checked himself into a hospital for emotional distress before flying to his parents' home in California. It was later reported that Mr. Martin had allegedly been the victim of prolonged bullying and harassment from other players, notably Richie Incognito. The veteran offensive guard had a track record of aggressive behavioral issues, which included numerous fights during his college years as a member

of the Nebraska Cornhuskers.

Thereafter, Mr. Wells, a prominent trial attorney, was hired by the NFL in order to conduct an investigation into the matter and prepare a report as to his findings.

The "Wells report," as it was commonly referred to in the media, was ultimately released to the public in February 2014. Mr. Wells, who oversaw an investigation that involved over 100 interviews with Dolphins' personnel, ultimately concluded that multiple Dolphins players, led by Mr. Incognito, engaged in a persistent campaign of harassment directed towards Mr. Martin, another unnamed offensive linemen and an unnamed assistant trainer.

Notably, the Wells report determined that the assistant trainer, an Asian-American, was repeatedly the target of racial

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slurs and other derogatory language. The unnamed offensive lineman — referred to as Player “A” in the report — was found to have been the victim of frequent homophobic name-calling. Mr. Martin, an African-American, was said to have been ridiculed with racial insults, as well as sexually explicit remarks about his mother and sister.

Mr. Turner was depicted in the report as enabling the harassment. The Dolphins’ offensive line coach, Mr. Wells concluded, had to have been aware of the harassment, especially in light of his participation in it on at least one occasion. Mr. Turner, for his part, denied any knowledge that would implicate him.

During the 2012 holiday season, Mr. Turner gave the offensive linemen Christmas stockings, all of which were stuffed with inflatable dolls. All of the players received female dolls, except Player “A,” who received a male doll. Up to that point, the young offensive lineman was often referred to as a homosexual by the other players, although he was a heterosexual. During his interview for the investigation, Mr. Turner stated that he “could not remember” whether he purchased a male doll for Player “A,” according to the report, despite corroboration from multiple players.

Additionally, the Wells report included statements from numerous players regarding the concept of “Judas fines” amongst the Dolphins offensive linemen. The concept involved a player imposing a monetary fine on another player who “snitched” on him, such as by accusing the player of being at fault for a botched play in order to avoid the repercussions of his own mistake. Multiple players who were interviewed during the investigation stated that Mr. Turner was aware of the concept and had discussed it with them, even explaining the Biblical betrayal of Jesus Christ by Judas

and its relevance to the idea of “snitching.” This seemingly created an environment that would discourage victimized players from speaking out. Mr. Turner denied ever hearing the term “Judas” or “Judas fine” in the offensive line locker room.

After the harassment allegations against Mr. Incognito became public, Mr. Turner advised Mr. Martin by way of text message to “[d]o the right thing” and make a public statement to “take the heat off [Mr. Incognito] and the locker room.”

Within days of the release of the Wells report, Mr. Turner was terminated by the Miami Dolphins, along with a head trainer. Mr. Turner has not held nor been offered a position on an NFL team since his termination.

Mr. Turner has now brought suit against Mr. Wells, seeking damages for defamation. In his complaint, Mr. Turner, through attorney Peter R. Ginsberg, asserts that Mr. Wells either negligently or intentionally left out key witness statements from his final report, which has directly caused damage to Mr. Turner’s reputation and resulted in his inability to obtain further coaching opportunities in the NFL. The complaint repeatedly asserts that Mr. Wells was not an “independent” investigator and instead crafted a report that would satisfy the NFL’s public relations needs in exchange for hefty legal fees.

Furthermore, Mr. Turner alleges that Mr. Wells “falsely accused [him] of helping to create [an] atmosphere that allowed bullying and harassment to happen.” Mr. Turner contends that he would be gainfully employed as an NFL coach had Mr. Wells actually “present[ed] a complete and accurate picture of the situation in the Dolphins’ locker room.”

Mr. Turner’s complaint contains numerous attempts to explain or clarify his uncontroverted actions. For instance, the complaint asserts that the inflatable doll

was given to Player “A” not because he was a homosexual but, “[r]ather, ... [because] he did not always have success dating women.” Therefore, Mr. Turner contends, the gift was merely a joke, albeit a “slightly juvenile” one, as opposed to a “cruel or homophobic” act. Notably, in attempting to provide a rationale for his behavior, Mr. Turner admits his involvement in the situation, as opposed to his prior statement that he “did not remember” it.

Mr. Turner asserts causes of action for defamation and defamation per se. He also claims that he is neither a public figure nor a limited purpose public figure, most certainly in an attempt to avoid the heightened standard applicable to such persons. He argues that Florida law applies, as it is the state with the most significant relationship to the events at issue.

“To successfully assert a claim for defamation under Florida law, a plaintiff must establish five elements: (1) the defendant published the statement; (2) the statement was false; (3) the statement was defamatory; (4) the defendant acted negligently; and (5) the plaintiff suffered damages as a result of defendant’s publication.” See *Suarez v. Sch. Bd.*, 2014 U.S. Dist. LEXIS 66342 (M.D. Fla. 2014). “When a statement facially degrades a plaintiff, brings her into ill repute, or causes similar injury with innuendo, the statement is defamatory per se.” *Carroll v. TheStreet.com, Inc.*, 2014 U.S. Dist. LEXIS 156499 (S.D. Fla. 2014).

When a claim of defamation is asserted by a public figure, it must be shown that the statement was made with “actual malice”; that is, “with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964). “Reckless disregard” requires that the defen-

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dant “in fact entertained serious doubts as to the truth of his publication.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

“[The public figure] designation may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 246 (1985).

Mr. Turner will therefore be facing an arduous task in proving defamation as against Mr. Wells. He was arguably a limited purpose public figure in light of

his involvement in what was a national story at the time. This would impose a requirement that he prove that Mr. Wells had “actual malice,” which does not appear to exist. Even if Mr. Turner were to avoid a public figure designation, there are strong indications that the statements and conclusions set forth in the Wells report were not false.

Furthermore, to the extent there were any false statements or conclusions set forth by Mr. Wells that could be deemed defamatory, there appears to be a serious question as to whether such falsehoods would have had any impact on the claimed damages. It is entirely possible that the Dolphins would have terminated Mr. Turner without having reviewed the entire Wells report and based simply on a review of the uncontroverted evidence, such as the inflatable doll situation and his text

message exchange with Mr. Martin.

With that said, defamation claims often involve prolonged legal battles, especially when there are an inordinate amount of potential witnesses that could be deposed, as is likely the case here. Mr. Turner may very well be keen to settle in light of the aforementioned legal issues and his alleged inability to obtain employment as a football coach. In the event that Wells and his legal team dig their heels into the ground, however, a motion for summary judgment could be successful.

As a practical matter, this case is an example of the changing environment in professional sports. Players and coaches alike should be mindful that conduct that may have been acceptable as recently as a decade or two ago will no longer be tolerated, whether by sports leagues, fans or the public at large.

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