

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

ASSIGNED TO SECTION 4

WILLIAM L. McCALLISTER,)

Plaintiff,)

vs.)

Case No. GC-G-87-3098

ARGENBRIGHT & ASSOCIATES,)
INC., a Florida corporation,)
and WADE B. MOSS,)

Defendants.)

FILED
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CLERK OF COURT
POLK COUNTY FLORIDA

COMPLAINT

Plaintiff, WILLIAM L. McCALLISTER ("McCallister"), sues
Defendants, ARGENBRIGHT & ASSOCIATES, INC., a Florida corporation
("Argenbright"), and WADE B. MOSS ("Moss"), and alleges:

(Allegations Common To All Counts)

1. This is an action for damages that exceed
\$5,000.00.

2. McCallister was and is a resident of Polk County,
Florida, and all times material hereto, was employed by the Polk
County Sheriff's Department ("the Sheriff's Department") as a
polygraph examiner, which included conducting pre-employment
polygraph examinations for persons seeking employment with the
Sheriff's Department. McCallister also performed polygraph
services for private firms and individuals outside of his
employment relationship with the Sheriff's Department.
Defendants' defamatory statements were published in Polk County,
Florida.

3. Argenbright owns and operates a business which
employs polygraph examiners. At the time of this incident,
Argenbright had agreed to provide polygraph testing services to
McCallister.

4. Moss at all times material hereto was a polygraph
examiner employed by Argenbright.

5. On or about February 7, 1985, McCallister con-
ducted a pre-employment polygraph examination of Rose Giannotti
for the Sheriff's Department. Subsequent to the pre-employment

polygraph examination of Rose Giannotti, McCallister was accused of asking her explicit sexual questions relating to heterosexual activity.

6. As part of his efforts to prove his innocence in the Sheriff's Department internal affairs investigation of the allegations that McCallister had asked Rose Giannotti explicit sexual questions relating to heterosexual activity, McCallister retained Argenbright to administer a polygraph test to him. At all times mentioned herein, Moss, the polygraph examiner referred to in this complaint was operating within the course and scope of his employment with Argenbright, and as an agent of Argenbright.

7. Before putting McCallister on the polygraph instrument Moss conducted a "pre-test interview" with McCallister. McCallister attempted to explain to Moss that he had not asked Rose Giannotti any improper sexual questions during the pre-employment polygraph examination.

8. McCallister is a licensed polygraph examiner and Argenbright's examiner, Moss, had less experience and expertise in performing a polygraph examination than did McCallister. Moss hooked up the polygraph instrument to McCallister and commenced an interrogation. McCallister was upset and aggravated at being falsely accused of a major crime which threatened his livelihood and being tested by an inexperienced examiner asking improperly structured relevant questions and using control questions that were inadequate to protect McCallister if he was telling the truth under the circumstances.

9. At the conclusion of the test, Moss informed McCallister that the test was inconclusive.

10. Subsequent to advising McCallister that the test was inconclusive and without McCallister's knowledge, consent or authorization, and without disclosure to McCallister, Argenbright's officials or agents reported to the Sheriff's Department and others that McCallister had attempted deception in his answers to the pertinent questions on the polygraph examination, and said officials or agents otherwise furnished to

the Sheriff's Department and others inaccurate information regarding McCallister's polygraph examination and the circumstances surrounding it.

11. Without McCallister's knowledge, consent or authorization, and without disclosure to McCallister, Argenbright's officials or agents, discussed the matter with the Department of State, Division of Licensing and others, and furnished false, misleading and incomplete information to the Division of Licensing and others. By doing so, Argenbright's officials or agents revealed information relating to the polygraph examination of its client, McCallister, without McCallister's knowledge, consent or authorization, and without disclosure to McCallister and said disclosure was not in McCallister's best interest and was contrary to McCallister's specific instructions that information concerning the polygraph examination not be disclosed to others without his knowledge, consent and authorization. By doing so Argenbright and Moss were serving their own particular interests which had an adverse effect on McCallister.

COUNT I

(Negligence)

12. Plaintiff realleges paragraphs 1 through 11.

13. Argenbright and Moss had a duty to McCallister to fairly and adequately administer the polygraph examination and Argenbright and Moss breached that duty by negligently preparing, administering or interpreting the polygraph examination administered to McCallister and thus Argenbright and Moss failed to exercise reasonable care and competence in obtaining conclusions as to McCallister's guilt or deceptiveness on the polygraph examination.

14. Argenbright and its agents and employees, while in the course of their employment with Argenbright, inaccurately reported that McCallister had been deceptive on the polygraph examination and supplied false information to others for guidance

without the knowledge, consent or authorization of McCallister, and without disclosure to McCallister.

15. Argenbright and Moss knew, or should have known, that if the conclusions of the polygraph examination were transmitted to the Sheriff's Department and others for the purpose of influencing evaluation of McCallister, an adverse finding on the polygraph examination would result in harm and damage to McCallister.

16. Argenbright and Moss were negligent in releasing the conclusions of the polygraph examination to the Sheriff's Department and others without McCallister's knowledge, consent or authorization and without disclosure to McCallister.

17. As a direct and proximate result of the above alleged tortious acts of Argenbright and Moss, McCallister has experienced loss, injury and damages including, but not limited to, the following:

a. Lost earnings and earning capacity. Since Argenbright and Moss disclosed the results of the polygraph examination to the Sheriff's Department and others, McCallister was fired by individuals and firms for whom he provided polygraph services, due to the adverse publicity caused by the findings of the polygraph examination being released to others, which is directly attributable to the false, misleading and incomplete information furnished to others by Argenbright and Moss without the knowledge, consent or authorization of McCallister and without disclosure to him. Potential employers have routinely inquired as to the reason for McCallister's separation from previous employment, and he has had difficulty in obtaining employment at the same salary and producing income at the same level as before being fired from the individuals and firms as alleged above, and his ability to obtain work and earn money in the future has been substantially reduced.

b. Injury to reputation or health, shame, humiliation, mental anguish. McCallister's reputation as an honest and reliable employee has been destroyed. His fruitless

efforts to clear his name have produced frustration, tension, anxiety and a sense of helplessness. The resulting shame, humiliation and mental anguish have adversely affected his dealing with the public and his relationship with family and friends.

c. McCallister was forced to retain counsel to defend against actions of the Department of State, Division of Licensing, State of Florida, from revoking his Class "p" Detection of Deception Examiner License as a result of Argenbright and Moss's actions in furnishing their conclusions as to McCallister's guilt or deceptiveness to the Sheriff's Department and others.

WHEREFORE, McCallister requests a judgment for damages against Argenbright and Moss, plus interest, costs and such other relief as the Court deems appropriate, and demands a trial by jury.

COUNT II

(Outrageous Conduct Causing Severe Emotional Distress)

18. Plaintiff realleges paragraphs 1 through 11 and 13 through 17.

19. At the time of McCallister's polygraph examination by Moss, Moss and Argenbright had control and authority over the structure of the examination which would materially affect McCallister's interests.

20. The extreme and outrageous character of Argenbright and Moss arises from abuse of their position. McCallister tried to explain the circumstances around the incident, adamantly professed his innocence and explained why the polygraph examination would not accurately reflect his responses to pertinent questions, and prior to Argenbright and Moss releasing the results of the polygraph to the Sheriff's Department and others without McCallister's knowledge, consent or authorization, and without disclosure to him, Moss indicated to McCallister that the results of the test were inconclusive. Argenbright and Moss's actions were committed with wantonness,

committed in bad faith and with malicious purposes or in a manner exhibiting a willful, wanton and reckless disregard for McCallister's rights, safety and property and without concern for the truth or falsity of the accusations against him.

21. As a direct and proximate result of the above-alleged tortious acts of Argenbright and Moss, McCallister has experienced loss, injury and damages.

22. Argenbright and Moss knew that proof of commission of the acts of which its client, McCallister, was accused would bring disgrace upon him and injure his business or occupation, and Argenbright and Moss falsely and maliciously verified accusations against McCallister and falsely and maliciously accused its client, McCallister, of asking improper sexual questions relating to heterosexual activity during his pre-employment polygraph examination of Rose Giannotti.

WHEREFORE, McCallister demands judgment against Argenbright and Moss for compensatory and punitive damages, interest, cost, such other relief as the Court deems appropriate, and demands a trial by jury.

COUNT III

(Defamation)

23. Plaintiff realleges paragraphs 1 through 11, 13 through 17 and 19 through 22.

24. As a result of Argenbright and Moss's combined acts, oral and written statements were published to the Sheriff's Department and to third parties including, but not limited to, third parties in Polk County, Florida, that falsely and maliciously accused McCallister of asking improper questions of Rose Giannotti during a pre-employment polygraph examination.

25. Proof of commission of the acts of which McCallister was accused would subject him to public ridicule and loss of his job. The statements are actionable per se.

WHEREFORE, McCallister demands judgment against Argenbright and Moss for both compensatory and punitive damages,

interest, costs and such other relief as the Court deems appropriate, and demands a trial by jury.

COUNT IV

(Breach of Fiduciary Duty)

26. Plaintiff realleges paragraphs 1 through 11, 13 through 17, 19 through 22, and 24 through 25.


36. McCallister retained Argenbright to perform a polygraph examination on him and requested that the results be kept confidential.

37. Argenbright and Moss recognized and accepted the trust and confidence reposed in them by their client, McCallister.

38. By virtue of the breach of its fiduciary relationship with McCallister, Argenbright, its employees and agents have violated the trust, confidence and duty between them and McCallister, to the detriment of McCallister

39. The aforesaid acts of Argenbright, its employees and agents, were committed maliciously, intentionally, willfully, wantonly, and in a reckless and unlawful disregard for the rights of McCallister. As a result of said actions McCallister has suffered damages.

WHEREFORE, McCallister demands judgment against Argenbright and Moss for compensatory and punitive damages, interest and costs of this action, and for such other relief as the Court deems appropriate, and demands a trial by jury.


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