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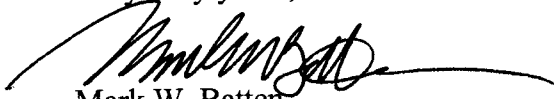
Re: ESTATE OF ROBERTA BECK, et al. v.
MASSACHUSETTS DEPARTMENT OF EDUCATION, et al.
Docket No. A.C. 03-P-1532

Dear Sir or Madam:

Enclosed for filing in the above-captioned case, please find Opposition to Appellants' Request for Direct Appellate Review of South Shore Charter School, Timothy Anderson, and Gregory L. Thornton.

Thank you for your attention to this matter.

Very truly yours,



Mark W. Batten

MWB/kb
Enclosure

cc: Rodney W. Young (pro se)
David L. Higgs (pro se)
Mark P. Sutliff, Esq.
Betsy Ehrenberg, Esq.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Appeals Court No. 03-P-1532

ESTATE OF ROBERTA BECK, DAVID L. HIGGS, and RODNEY W.
YOUNG,

Plaintiffs-Appellants

v.

MASSACHUSETTS DEPARTMENT OF EDUCATION, DAVID P. DRISCOLL,
as he is Commissioner of Education, SOUTH SHORE CHARTER
SCHOOL, TIMOTHY ANDERSON, SCOTT W. HAMILTON, EDWARD
KIRBY, DIANE E. MILES, and GREGORY L. THORNTON,

Defendants-Appellees.

**OPPOSITION TO APPELLANTS' REQUEST FOR DIRECT APPELLATE
REVIEW OF SOUTH SHORE CHARTER SCHOOL, TIMOTHY ANDERSON,
AND GREGORY L. THORNTON**

INTRODUCTION

Appellees South Shore Charter School, Timothy Anderson, and Gregory L. Thornton ("SSCS Appellees") respectfully request that appellants' petition for direct appellate review be denied.

The pro se appellants identify no questions of first impression, novel questions of law, nor any matters of substantial public interest in this simple defamation case that merit direct appellate review. See Mass. R. App. P. 11(a). They merely disagree with the outcome

below. It is a measure of the weakness of their argument that they resort to charges of "deliberate wrongdoing" by the Superior Court judge, who did no more than write a thorough, well-considered opinion rejecting plaintiffs' unfounded defamation claims. Petition at 5.

The Superior Court applied well-established common law and statutory principles in rejecting the appellants' claims, and there is no reason for this Court to bypass the normal course of appellate review. The petition should be denied.

STATEMENT OF FACTS

For purposes of this opposition, the SSCS Appellees respectfully refer the Court to the factual description in the Superior Court's opinion at pp. 1-10, appended to the Petition at pp. 22-31.

REASONS THAT THE PETITION SHOULD BE DENIED

Plaintiffs Fail to Meet the Legal Requirements for Direct Appellate Review.

Direct appellate review requires more than simple dissatisfaction with the result below, even where the appellants charge that the Superior Court misinterpreted documents in the summary judgment record. See Mass. R. App. P. 11(a). Instead, the appeal must present either a constitutional question or a novel issue of law, or

"questions of such public interest that justice requires a final determination by the full Supreme Judicial Court." Id. Appellants^{1/} meet none of these standards.

1. This Appeal Lacks Any Question of Such Public Interest That This Court Should Bypass the Appeals Court.

As to matters of "public interest," the principal ground on which appellants seek direct review, they contend that the Superior Court misinterpreted several documents in the summary judgment record. In an apparent attempt to justify direct review by this Court, they insist that the Superior Court intentionally misrepresented the record - "self-evident judicial fraud," as they label it. Petition at 16. Not a single sentence of the Petition offers any evidence to support such an extraordinary charge, and there is none.

Stripped of its insupportable claim of judicial misconduct, the Petition presents nothing more than a

^{1/} At the outset, plaintiff Roberta Beck apparently has died since judgment was entered in the Superior Court, and although appellants include Ms. Beck's estate as an appellant, her defamation claims do not survive her death. See, e.g., G.L. c. 228, §1; Connors v. Newton National Bank, 336 Mass. 649 (1958) (actions in tort do not survive unless specifically saved by statute). As it relates to Ms. Beck, therefore, the action is moot, and the only claims reviewable on appeal are those asserted by appellants Higgs and Young.

garden-variety defamation case. Appellants offer no reason for this Court to bypass the Appeals Court and review this matter directly. Although the catalog of allegedly defamatory statements is too lengthy to review each of them here, the Superior Court supportably found all of them to be either true or protected statements of opinion.

Appellants in any case would have had to bear the significant burden of proving "actual malice" - that is, proof not only that the statements were false and defamatory, and statements of fact rather than opinion, but also proof by clear and convincing evidence that the defendants actually entertained subjective doubts about the truth of their statements.^{2/} That standard applied here for a variety of reasons. First, appellants had to prove intentional, rather than negligent or reckless, conduct to avoid the bar of the Massachusetts Tort Claims Act on suits against public employees. See G.L. c. 258, §§2, 10(c). Second, the statements by public school officials and the Massachusetts Department of Education

^{2/}See, e.g., Milgroom v. News Group Boston, Inc., 412 Mass. 9, 11 (1992); Nat'l Assn. of Govt. Employees, Inc. v. Central Broadcasting Corp., 397 Mass. 220, 231 (1979); Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 866 (1975); see also St. Amant v. Thompson, 390 U.S. 727, 731 (1968).

were conditionally privileged.^{3/} Third, the record demonstrated unequivocally that appellants became limited-purpose public figures by injecting themselves into a public controversy. By their own admission they repeatedly sought out media attention, testified before the Legislature, and otherwise strove to gain public attention for their complaints against the South Shore Charter School. The Superior Court properly held the appellants to this higher standard, and the summary judgment record offered no prospect that they could clear this difficult obstacle. Summary judgment is especially favored in defamation cases, see Dulgarian v. Stone, 420 Mass. 843, 846-47 (1995), and the Superior Court properly entered it here. There is no unusual question presented here of such public interest that this Court should consider the appeal directly. The Petition should be denied.

2. As to questions of law, plaintiffs present only one that the Superior Court below did not reach. Specifically, though they concede that the Massachusetts

^{3/} Mulgrew v. City of Taunton, 410 Mass. 631, 635 (1991); Sheehan v. Tobin, 326 Mass. 185, 190-91 (1950). The privilege has been held specifically to extend to communications between school officials and the school community. Tynecki v. Tufts Univ. School of Dental Medicine, 875 F. Supp. 26, 35 (D. Mass. 1994).

Tort Claims Act prohibits claims against state agencies for intentional torts such as the defamation they charge in their complaint, see G.L. c. 258, §10(c), they contend that the statute nevertheless permits liability against the same agency if it does not take steps to "mitigate" the effects of the same intentional torts, citing G.L. c. 258, §10(j). Petition at 14. The Superior Court was not required to reach the issue because it found no actionable defamation in the first place. That decision was plainly correct. Even if the issue were reached, it presents no novel question that justifies this Court's removal of the case from the Appeals Court; it is a routine matter of statutory interpretation.

CONCLUSION

For all of the foregoing reasons, appellants' petition for direct appellate review should be denied.

Respectfully submitted,



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Attorneys for
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Charter School, Timothy Anderson,
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Dated: December 16, 2003

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

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KIRBY, DIANE E. MILES, and GREGORY L. THORNTON,

Defendants-Appellees.

CERTIFICATE OF SERVICE

I, Mark W. Batten, hereby certify that on December
16, 2003, I served the attached Opposition to Appellants'
Request for Direct Appellate Review of South Shore
Charter School, Timothy Anderson, and Gregory L.
Thornton, by mailing copies thereof, postage prepaid to:

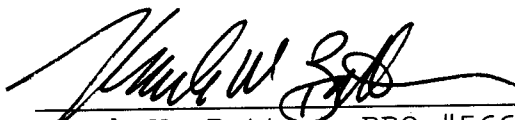
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A handwritten signature in black ink, appearing to read 'Mark W. Batten', is written over a horizontal line.

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