

COMMONWEALTH OF MASSACHUSETTS

Appeals Court

SUFFOLK COUNTY

A.C.-03-P-1532

Roberta Beck,)
David L. Higgs and)
Rodney W. Young,)
Plaintiffs-Appellants,)
v.)
)
Massachusetts Department of Education [DOE], and)
¹ South Shore Charter School [SSCS], and)
David P. Driscoll, Commissioner of Education, and)
Scott W. Hamilton, (former) DOE Associate Commissioner of Education, and)
Edward Kirby, (former) Acting DOE Associate Commissioner of Education, and)
Timothy Anderson, (former) SSCS Chief Executive Officer, and)
Diane Ellis Miles, (former) SSCS Headmaster, and)
Gregory L. Thornton, (former) Chairman, SSCS Board of Trustees,)
Defendants-Appellees.)

**Suggestion of the Death of Plaintiff Roberta Beck and
Motion to Substitute David M. Beck in Roberta's Stead**

1. Per Rule of Appellate Procedure 30(a), the undersigned plaintiffs-appellants in the above action and David M. Beck, legal representative of Plaintiff Roberta Beck, hereby suggest that Roberta passed away in Weymouth, Massachusetts at the South Shore Hospital, on February 19, 2003.
2. Furthermore, the undersigned respectfully move this honorable Court to allow substitution of Roberta Beck as a party in this action by David M. Beck, the designated executor of Roberta's estate and her loving husband up to the time of her passing.

¹ All claims against South Shore Charter School, an original defendant in the above named action, were dismissed on February 12, 2001, per Plymouth Superior Court's MEMORANDUM OF DECISION AND ORDER ON MOTION OF DEFENDANTS GREGORY L. THORNTON AND SOUTH SHORE CHARTER SCHOOL FOR JUDGMENT ON THE PLEADINGS. However, the Court denied a subsequent MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT ON DISMISSAL OF CLAIMS AGAINST DEFENDANT SOUTH SHORE CHARTER SCHOOL, PURSUANT TO RULE OF CIVIL PROCEDURE 54(b).

3. While under common law defamation, which is the principal charge in each of the ten counts of the Complaint, in most circumstances does not survive the death of the alleged defamed, a civil conspiracy, as charged in Count One of the Complaint – and by reference in each of the succeeding nine counts – is not similarly proscribed.
4. Plaintiffs contend that such a civil conspiracy, to defame Roberta and her two co-plaintiffs, practiced variously among the six individual defendants, broadened during summary judgment to include collusion by one or more of the defendants, or by persons acting on their behalf, with Plymouth Superior Court Justice Richard J. Chin, or with court employee(s) involved in drafting his decision and order, to distort the record in favor of the defendants. The plaintiffs say that thirteen conspicuous falsifications of the record – not to mention twenty-three additional errors in Judge Chin’s decision and order – assured dismissal of their action.
5. With specific regard to the late Plaintiff Roberta Beck, the Court in its decision reverses a 1998 internal school report by Trustee John Pollets, Esq., which is sharply critical of School CEO Timothy Anderson, a principal defendant in the case, for submitting unwarranted tuition claims to the state. Justice Chin’s shameless adaptation of the so-called ‘Pollets Report’ suggests that Beck – not Anderson – was the fiscal culprit, thereby invalidating Beck’s claim that Anderson defamed her for committing fiscal “errors” – estimated in a state audit to exceed \$1 million.
 - A. Justice Chin wrote, “... [T]he board of trustees of the SSCS appointed two trustees of the school to investigate and compare the *allegations raised by the defendants*.”

The Pollets Report confirms, to the contrary, that *plaintiffs* Beck and Young filed a formal complaint with the Trustees, “... to investigate statements *made by ... Anderson ...* blam[ing] [Beck and Young] for enrollment errors...” Indeed, Beck and Young filed their written complaint, later before the Superior Court as a prominent exhibit, specifying as their authority “Massachusetts General Laws chapter 71, §89(jj) and 63 CMR 1.08: Complaint Procedure.”

The same Court in November 2000 refused to take action on a petition of the plaintiffs, who, citing Rules 34 and 37 of Civil Procedure, presented compelling documents to show that the defendants had misrepresented the existence of the Pollets Report in discovery. Only an order of the Secretary of State on a *public-records request* filed by the plaintiffs – outside of discovery – would eventually force release of the important evidentiary document.

- B. Justice Chin wrote, “**According to the preliminary draft of the resulting report, Beck did make a number of errors in the reports prepared for DOE.**”

On the contrary, John Pollets and his co-investigator Miriam Brownwall offered only their *observation* that “*Anderson felt* that Beck had made a large number of errors ... and Beck believed that the errors were *simple typos ...*”

Furthermore, the Pollets Report *concludes* that Anderson – not Beck – “be-lie[ved] that a student was enrolled when an application was accepted and a space was reserved ...,” *regardless of any attendance*. Thus the Pollets Report distinguishes a *rationale* – albeit absurd – for *Anderson’s* submitting to the state unsupported “tuition claims,” the same discovered in abundance by the State Auditor.

The Court irrefutably reverses the syntax and findings of an official report of investigation of wrongdoing alleged *of a defendant*. The Court misrepresents instead an “... investigation ... [of] ... allegations raised *by the defendants*.” Absent such judicial li-

cense, Roberta would surely have had her day in court. Remarkably there are five additional grievous falsifications in the Court's decision, which can only have been intended to diminish Plaintiff Beck's credibility and thereby enhance the *reasonableness* of else arguably malicious and defamatory statements made against her – and against co-plaintiff Young.

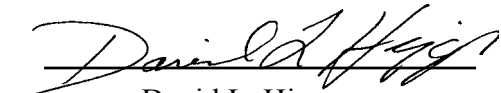
6. The Court's decision of February 25, 2002 is irreparably flawed by its misrepresentation of the Pollets Report alone. Certainly with regard to Counts One and Two, to which the Pollets Report pertains in particular, the defense motions for summary judgment might have been denied. Then, inasmuch as the summary-judgment hearing occurred on November 29, 2001, Beck v. DOE should have been decided *in an evidentiary hearing* during 2002, well prior to Roberta's passing in February of 2003. Roberta could have bequeathed to her spouse and two adolescent children any award made.


Curiously, despite the Court's prior action in April 2001 to "accelerate" the case due to Roberta's terminal illness, Justice Chin's decision was issued fully four months following the hearing. The transcript was produced, notwithstanding plaintiffs' numerous inquiries, more than a year from that untimely decision – finally right after Roberta's last breath. As appears, today's fiscal restraints and hence the typical burdensome case load of a Superior Court provide opportunity to deny justice to one who cannot outlive the process long delayed, whether sullied or not.

WHEREFORE the undersigned co-plaintiffs and spouse of the late Roberta Beck respectfully suggest that the members of Roberta's immediate family have an abiding interest in the outcome of the current appeal, most especially if judicial fraud, as alleged, and/or *ex parte* materials are found to have substantially influenced the Superior Court's decision and protracted its issuance and appeal. Under such exceptional circumstance, David M. Beck should be allowed to carry on in his wife Roberta's absence.

The plaintiffs and David Beck recommend that the Court consider convening a hearing on the matter.

Respectfully submitted,


David L. Higgs, pro se


Rodney W. Young, pro se

David L. Beck

Date: December 24, 2003

Attached: Illustration of distortion of 'Pollets Report' in decision.

CERTIFICATE OF SERVICE

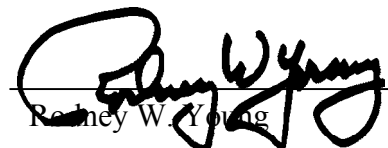
I hereby certify that a true copy of the above document was served upon the attorneys of record, Mark P. Sutliff, Esq., Mark W. Batten, Esq., and Betsy Ehrenberg, Esq., representing, respectively, each other party, by mail on December 24, 2003.

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Rodney W. Young

Pollets Report

(internal School inquiry)

excerpts from summary judgment

(emphases supplied; **distortions red**)

"On June 16, 1999, the board of trustees of the SSCS appointed two trustees of the school to **investigate and compare** the allegations **raised by the defendants.**"

"According to the preliminary draft of the resulting report, **Beck did make a number of errors** in the reports prepared for DOE. The only thing that was **under dispute was the significance of the mistakes.**"

"The committee concluded that even if the mistakes were significant, Anderson was **ultimately ... responsible** for the accuracy of the reports and therefore Anderson **inappropriately blamed** Beck and Young for the resulting enrollment errors.... "

verbatim Pollets Report

(emphases supplied; **comparisons red**)

"On June 16, 1999 the South Shore Charter School Board of Trustees appointed Miriam Brownwall and John Pollets to **investigate** allegations **raised by Mrs. Roberta Beck and Mr. Rodney Young** relative to statements made by the then CEO of the Charter School, Tim Anderson.

"As part of the investigation Rodney Young, Roberta Beck, Timothy Anderson, Robin Coyne, Alice Hollingshead, and Jose Alphonso (sic) were contacted and interviewed. In addition, various memorandum, letters, facsimiles and reports were reviewed and examined.

"**Beck and Young alleged that Anderson improperly blamed them** for enrollment errors in the October 1996 enrollment report to the DOE **in letters to the State Auditor and in newspaper interviews.** Specifically Beck and Young claim that Anderson stated they 'mistakenly included certain names on the October 2, 1996 submission to the DOE.'

"As a result of the investigation the following was found:

"1. Anderson, as CEO of the South Shore Charter School had ultimate authority and responsibility for the enrollment submissions.

"2. **Anderson required Beck to check with him** before making any changes to the student lists and he made various enrollment decisions that Beck may have objected to.

"3. Anderson's enrollment decisions regarding the April and October reports in 1996 and 1997 were based on **his belief that a student was enrolled when an application was accepted** and a space was reserved for that student.

"4. There may not have been a clear policy regarding enrollment criteria during 1996 and 1997 from the DOE. The School later adopted more stringent guidelines and criteria for enrollment and termination of enrollment.

"5. The investigators did not find any evidence that the school obtained additional funds as a result of the enrollment reports and that payments made based on earlier reports were either refunded or adjusted based on the February report.

"6. **Anderson felt that Beck had made a large number of errors** on the reports causing him great frustration and **Beck believed that the errors were simple typos** of little consequence.

"7. Anderson's **blame** of Young and Beck for the enrollment errors [was] **misplaced and inappropriate** since [Anderson] **retained ultimate authority for the [FY Claim] reports and directed which students were added or deleted from the report.**"

** Plaintiffs Roberta Beck and Rod Young – *not defendants* – "raised ... the allegations," as the initial paragraphs of the Pollets Report clearly indicate. The Court reverses the report's findings, falsely posturing Beck as the subject of the school investigation.

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