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Court Rules ESPN Didn't Defame Evel Knievel

on Thursday, February 17, 2005 - 09:04 AM - 7818 Reads



Defamation

SPEAK NO EVEL: FEDERAL APPEALS COURT RULES ESPN DID NOT DEFAME EVEL KNieVEL

By David R. Ellis, Attorney at Law
Largo, Florida

Who steals my purse steals trash . . .
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.
Shakespeare's Othello, Act III, Scene 3.

A federal appeals court has ruled that ESPN did not libel the motorcycle stunt rider Evel Knievel when it published a photograph and accompanying caption on its website referring to him as a "pimp." The court said that in evaluating whether the photograph and caption referring to him as a pimp were capable of defamatory meaning, the context of the entire website on which the photograph and caption appeared must be considered. Knievel v. ESPN, No. 02-36120 (9th Cir. Jan. 4, 2005).

In the case, Evel and his wife Krystal were photographed when they attended ESPN's Action Sports and Music Awards in 2001. The photograph depicted Evel, who was wearing a motorcycle jacket and rose-tinted sunglasses, with his right arm around Krystal and his left arm around another young woman. ESPN published the photograph on its "extreme sports" website with a caption that read "Evel Knievel proves that you're never too old to be a pimp."

The Knievels sued ESPN, contending that the photograph and caption were defamatory because they accused Evel of soliciting prostitution and implied that Krystal was a prostitute. After the federal district court granted ESPN's motion to dismiss on the ground that the photograph and caption were not defamatory as a matter of law, the U.S. District Court of Appeals for the Ninth Circuit (aka the "Court of Appeals for the Hollywood Circuit"), affirmed the lower court ruling by a split decision of 2-1.

Evel Knievel has been a public daredevil since 1965, when he toured the United States performing motorcycle stunts such as riding through fire walls, jumping over live rattlesnakes and mountain lions, and being towed at 200 miles an hour behind race cars holding on to a parachute. In 1968, he spent 30 days in a coma after an unsuccessful attempt to jump 151 feet across the fountains in front of Caesar's Palace in Las Vegas. In the early 1970s, he jumped over 19 Dodge cars, launched himself from a ski jump over 50 stacked cars in front of 35,000 people in the Los Angeles Coliseum, unsuccessfully attempted to jump over the Snake River Canyon in Idaho on his rocket powered "Skycycle," and attempted to jump over 14 Greyhound buses on ABC's Wide World of Sports.

As a result of these exploits, the court found that Evel had become one of the world's most recognized names in sports. The Smithsonian Institution honored his achievements with an exhibit, and at least seven books and four motion pictures were produced about him. Significantly for a libel suit, the court found that Evel enjoyed an excellent reputation in his community as a humanitarian and an advocate for young people, and had used his fame and notoriety to promote anti-drug programs and motorcycle safety. He also served as a spokesperson for several corporations, including prominent clothing and tire manufacturers.

In April 2001, ESPN held its Action Sports and Music Awards ceremony, at which celebrities in the fields of extreme sports and popular music such as rap and heavy metal converged. In one photograph, Evel is flanked on his right by his wife and on his left by an unidentified young woman. He has one arm around each woman and he wears rose-tinted sunglasses and a motorcycle jacket. ESPN published the photograph of the Knievels on its "EXPN.com" website, which features information and photographs relating to "extreme" sports such as skateboarding, surfing, and motorcycle racing. Evel's photograph appeared in a series of photos featuring celebrities at the event. Its caption read "Evel Knievel proves that you're never too old to be a pimp."

The Knievels alleged that in publishing the photograph and caption on its website, ESPN intended to charge Evel with "immoral and improper behavior" and bring him and his wife into "public disgrace and scandal." They alleged that the photograph and caption "exposed [them] to hatred, contempt, ridicule and obloquy that caused [them] to be shunned and avoided and maliciously injured the reputation of Evel Knievel." They also said that, as a result, several of Evel's former clients did not want him associated with their products.

ESPN moved to dismiss the Knievels' complaint on the ground that it was not liable for defamation under the First Amendment because no reasonable person would have interpreted the caption as an allegation that Evel was a "pimp" in the criminal sense. The district court agreed and granted the motion, reasoning that "the website was obviously directed at a younger audience and contained loose, figurative, slang language such that a reasonable person would not believe ESPN was actually accusing Plaintiffs of being involved in criminal activity."

The Ninth Circuit also agreed, saying that the reasonable interpretation of a word can change depending on the context in which it appears. Therefore, not all statements that could be interpreted in the abstract as criminal accusations are defamatory. Citing the U.S. Supreme Court's opinion in Greenbelt Coop. Publ'g Ass'n v. Bresler, 398 U.S. 6 (1970), the court said that some statements are protected as First Amendment speech because no reader could think that the publisher of the statement was charging the plaintiff with the commission of a criminal offense. On the contrary, even the most careless reader would perceive that the words were no more than rhetorical hyperbole or a vigorous epithet. A speaker's use of "loose, figurative" language can also determine whether his or her statement can reasonably be interpreted as a factual allegation,

The court noted that the content of the EXPN.com website is lighthearted, jocular, and intended for a youthful audience. It is clear that the subject matter of the website is not merely extreme sports themselves, but the youth culture and style associated with extreme sports. The site features a variety of youth-oriented slang phrases which are not susceptible to a literal interpretation, and which one would not expect to hear uttered by anyone but a teenager or young adult.

A reasonable viewer exposed to the website would expect to find that type of youthful, non-literal language throughout the site. Even if a viewer had interpreted the word "pimp" literally, he or she would have interpreted the photograph and caption, in the context in which they were published, as an attempt at humor and not as a serious allegation of criminal wrongdoing. Because the caption could not reasonably be interpreted literally in the context in which it was used, the fact that its literal interpretation could be proven true or false was immaterial.

The court concluded by saying that, read in the context of the satirical, risque, and sophomoric slang found on the rest of the site, the word "pimp" could not be reasonably interpreted as a criminal accusation. Accordingly, it affirmed the district court's dismissal of the case, in a split decision. Judge Bie, in dissent, quoted Iago's speech from Othello, above, and said that he thought the word "pimp" as used by ESPN was reasonably susceptible to a defamatory meaning. In his view, it was not for judges to say that the publication did not harm the plaintiffs, but that they should have the right to have their case decided by a jury as to whether the false words did, in fact, defame them.

*"For better or worse, we are the Court of Appeals for the Hollywood Circuit." Judge Kozinski, dissenting in Vanna White v. Samsung Electronics America, Inc., 989 F. 2d 1512 (9th Cir. 1993).

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