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2023 Judicial Court Case Documents

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2023 State YMCA of New Mexico Judicial Program Case File

I. Introduction to *Partridge v. Foreman*

Earlier this year, the Virginia defamation case of *Depp v. Heard* received national attention. It was impossible to escape the round-the-clock news coverage and legal commentary surrounding the case.

Most defamation lawsuits do not have that kind of celebrity status, but they all boil down to the same core allegation: the defendant's false statement caused real, tangible harm to the plaintiff. And all defamation cases involve a core liberty protected by the federal and state constitutions—the freedom of speech.

For example, this year's case is *Partridge v. Foreman*, a civil lawsuit in which Carol-Ann Partridge claims Darius Foreman defamed her rental property business in Albuquerque. Foreman made several tweets that called out what he saw as problems with Partridge's rental practices. He specifically tweeted that one of her units had black mold and that a second had severe structural problems that caused the house to be unlevel.

Both of those tweets were false. And so Partridge alleges that Foreman's false tweets caused a dramatic drop in tenants renting her apartments, condos, and row houses.

Foreman raises the freedom of speech as a defense, and argues that even if his speech was false, he is not liable to Partridge because he did not publish his tweets with actual malice. He moved for summary judgment arguing that Partridge could not point to evidence showing he tweeted what he did with actual malice.

The Second Judicial District and Court of Appeals agreed with Foreman, and dismissed Partridge's defamation action. Partridge has now appealed to the Supreme Court of New Mexico.

II. Issues on Appeal

The two questions on appeal for this year's case problem are:

1. Was Partridge a private figure for purposes of defamation law?
2. Was there enough evidence in the record to conclude that Foreman published his tweets with actual malice?

If the answer to either question is "yes," then the lower courts were wrong, Partridge's case will be reinstated, and she will be able to present her case to a jury. If the answer to both questions is "no," then Partridge's case is at an end.

III. A Primer on Defamation Law

The courts frequently point to the tension between the law of defamation and the freedom of speech. Because speech about public figures—like elected officials—is so critical to the free exchange of ideas, we are suspicious of any efforts that may make people hesitate to speak their mind. And so the Supreme Court of the United States held in *New York Times v. Sullivan* that to succeed in a defamation action a public figure must prove the speech at issue was made with "actual malice."

At the other end of the spectrum are private figures: because speech about private figures is typically less important to society and private individuals might not be able to respond to false statements, they do not need to prove the defendant made their statements with actual malice. Instead, they need to only show that the defendant "negligently disregarded the truth." This is much easier to prove than actual malice.

However, the courts have recognized a third group of people for purposes of defamation law. They are called limited-purpose public figures. These are people who may not be a household name or celebrity, but are still involved in public discourse. If a person is a limited-purpose public figure, then they will be treated like a public figure for speech related to certain topics. For example, a teacher who frequently speaks at a school board meeting might be a limited-purpose public figure for speech about education policy.

At issue in our case is whether Partridge was a private figure or limited-purpose public figure for speech related to her rental units. This critical question determines what intent she has to prove Foreman had when he tweeted: either negligence or actual malice.

A person speaks with "actual malice" when they (1) make intentionally false statements; or (2) recklessly disregard the truth when speaking. For example, if a person ignores clear warning signs that their speech about a public figure is false then they have acted with actual malice.

In our legal system, though, you cannot simply say someone acted with actual malice to get your case to a jury. Instead, a defendant in a defamation case may argue in what is called a summary judgment motion that there is not enough evidence to conclude they acted with actual malice,

and so a trial would be pointless. If the judge agrees, they will grant the defendant summary judgment and dismiss the defamation case.

In New Mexico, summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." New Mexico courts generally disfavor summary judgment and would prefer trials. This means the courts will look at the facts in the light most favorable to the party who opposes the motion for summary judgement, but that party must show evidence that there is a genuine issue.

In our case, Partridge argues that there is evidence that Foreman recklessly disregarded the truth. If she's right, then the court incorrectly entered summary judgment against her, and she will be able to present her case to a jury. As such, this appeal is not about whether she *wins*, it is about whether she has enough evidence to justify getting to a jury.

IV. The Parties' Argument on Appeal

On appeal, Partridge complains that the lower courts applied the incorrect intent standard to her defamation claim. But even if actual malice was the correct standard, she argues that there was enough evidence in the record to survive summary judgment. Her arguments are explained in greater detail below.

First, she argues that it was inappropriate to apply the actual malice standard to her case. In defamation law, private individuals only need to prove that the defendant negligently disregarded the truth when they published their false statements. And Partridge maintains that she is a private individual. Therefore, she argues that the trial court applied the wrong intent requirement to her claim.

Foreman disagrees. Although he admits that Partridge is not a public figure like Johnny Depp or Amber Heard, he argues that she is a limited-purpose public figure for speech related to her rental units. As such, she must still prove he tweeted with actual malice.

Second, although she does not think she had to prove actual malice, Partridge appeals the lower courts' conclusion that there was not enough evidence of actual malice to survive summary judgment. To get to a jury, she had to show clear and convincing evidence that Foreman either tweeted with the knowledge that his tweets were false, or that he recklessly disregarded the truth when he tweeted. Partridge argues that the record clearly and convincingly supports that Foreman recklessly disregarded the

truth when he tweeted about her units.

Foreman again disagrees. He responds that the evidence is simply not enough to show he actually recklessly disregarded the truth of his tweets. It is now your turn to take these arguments and bring them to the next level. You will draft briefs that argue your position in writing. Then at Conference, you will make your case in person during several rounds of oral argument.

V. Facts

For about a decade now, Carol-Ann Partridge has rented out apartments, condos, and row houses in downtown Albuquerque. She started renting properties after she served on the Bernalillo County Board of Health where she witnessed firsthand the challenges that renters face.

Some of her units require more maintenance per month than others, but all of them require upkeep. After all, some of her properties are over 100 years old. Partridge attends to that maintenance personally. If she can, she tries to fix any issues on her own. If not, she'll find a contractor to remedy the problem. In the past year, she has spent roughly 50% of her revenue on maintenance and inspections. Partridge includes information about unit maintenance when she advertises her properties online.

Partridge was concerned about the maintenance cost of her properties, so she reached out online for help last February. She posted to a website called LandLordHelp! seeking advice. The parties agree that LandLordHelp! is not a public forum because you have to have special permission to join it. But people other than landlords and landladies can and do join. For example, Darius Foreman—a political activist—joined the website. He does not rent properties. Nor does he rent his own home.

Instead, Foreman joined LandLordHelp! in order to "keep intel on the enemy." You see, Foreman is a political activist in the "war against greed just so people can have a decent place to live." In the past, Foreman has brought to light serious issues like apartment complexes ignoring HVAC maintenance or illegal evictions by landlords seeking to get out of current rental contracts. However, he never got much public attention for bringing those issues to light.

He came across Ms. Partridge's post to the LandLordHelp! seeking advice and decided to screenshot and tweet her post to the public at large. That first tweet received thousands of likes, and was retweeted or quoted hundreds of times as well. Mr. Foreman then made two additional tweets about Ms. Partridge in March 2021.

His second tweet stated that he knew "for a fact that at least one of Carol-Ann's properties is plagued by BLACK MOLD," and that she received "multiple complaints" but had "done NOTHING to fix" it. He based this tweet on a conversation with a former tenant, who accidentally gave him an incorrect address. It turns out, though, that that person was never actually a tenant of Partridge. In fact, the parties have not been able to track down this person's actual identity beyond confirming that they were not a former tenant.

Foreman's third tweet stated that one of Ms. Partridge's row houses definitely had "structural problems" and that he'd be "surprised if anything is level in that trash heap." He tweeted that information based on driving up to the row house and talking to a former tenant. The Defendant's tweets were reported on by the Evening News and the Albuquerque Journal. Foreman was interviewed for both the T.V. segment and the newspaper article. Ms. Partridge did not participate in either. But a few weeks later she was approached by a reporter on the street. When given the opportunity, she tried "to set the record straight" about her rental properties. Her response was broadcast on the Evening News. However, despite her efforts to correct the record, her business is still in "freefall."

In the end, Mr. Foreman's second and third tweets were false. There is no evidence that any of Ms. Partridge's units have black mold or structural problems.

VI. Procedural History

Even though his tweets were false, Defendant moved for summary judgment and asked this Court to dismiss the case against him. By way of his motion, he argues that his tweets about Partridge and her properties are protected speech under the New Mexico Constitution.

To start, he contends that Partridge is a limited-purpose public figure for speech related to her rental properties. As such, he argues that he can only be liable for false speech about her properties if she can prove he published his tweets with actual malice.

Then he argues that Ms. Partridge cannot prove he acted with actual malice when he tweeted about her properties. He maintains that there is no evidence he tweeted knowing that the information was false.

Partridge disagrees on both counts, and asks that this Court deny Foreman's motion and allow her case to proceed to a jury.

New York Times v. Sullivan

Supreme Court of the United States
January 7, 1964, Submitted | March 9, 1964, Decided

Reporter:
376 U.S. 254

JUSTICE BRENNAN

We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a State's power to award damages in a defamation action brought by a public official against critics of his official conduct.

Respondent L. B. Sullivan is one of the three elected Commissioners of the City of Montgomery, Alabama. He testified that he was 'Commissioner of Public Affairs and the duties are supervision of the Police Department, Fire Department, Department of Cemetery and Department of Scales.' He brought this civil libel action against the four individual petitioners, who are Alabama clergymen, and against petitioner the New York Times Company, a New York corporation which publishes the New York Times, a daily newspaper. A jury in the Circuit Court of Montgomery County awarded him damages of $500,000, the full amount claimed, against all the petitioners, and the Supreme Court of Alabama affirmed.

Respondent's complaint alleged that he had been libeled by statements in a fullpage advertisement that was carried in the New York Times on March 29, 1960. Entitled 'Heed Their Rising Voices,' the advertisement began by stating that 'As the whole world knows by now, thousands of Southern black students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live inhuman dignity as guaranteed by the U.S. Constitution and the Bill of Rights.' It went on to charge that 'in their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom. . . . ' Succeeding paragraphs purported to illustrate the 'wave of terror' by describing certain alleged events. The text concluded with an appeal for funds for three purposes: support of the student movement, 'the struggle for the right to vote,' and the legal defense of Dr. Martin Luther King, Jr., leader of the movement, against a perjury indictment then pending in Montgomery.

The text appeared over the names of 64 persons, many widely known for their activities in public affairs, religion, trade unions, and the performing arts. Below these names, and under a line reading ‘We in the south who are struggling daily for dignity and freedom warmly endorse this appeal,’ appeared the names of the four individual petitioners and of 16 other persons, all but two of whom were identified as clergymen in various Southern cities. The advertisement was signed at the bottom of the page by the ‘Committee to Defend Martin Luther King and the Struggle for Freedom in the South,’ and the officers of the Committee were listed.

Of the 10 paragraphs of text in the advertisement, the third and a portion of the sixth were the basis of respondent's claim of libel. They read as follows:
Third paragraph:

> ‘In Montgomery, Alabama, after students sang ‘My Country, ‘Tis of Thee’ on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.'

Sixth paragraph:

> ‘Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for ‘speeding,’ ‘loitering’ and similar ‘offenses.’ And now they have charged him with ‘perjury’— a felony under which they could imprison him for ten years.‘

It is uncontroverted that some of the statements contained in the two paragraphs were not accurate descriptions of events which occurred in Montgomery. Although black students staged a demonstration on the State Capital steps, they sang the National Anthem and not ‘My Country, ‘Tis of Thee.’ Although nine students were expelled by the State Board of Education, this was not for leading the demonstration at the Capitol, but for demanding service at a lunch counter in the Montgomery County Courthouse on another day. Not the entire student body, but most of it, had protested the expulsion, not by refusing to register, but by boycotting classes on a single day; virtually all the students did register for the ensuing semester.

The campus dining hall was not padlocked on any occasion, and the only students who may have been barred from eating there were the few who had neither signed a preregistration application nor requested temporary meal tickets. Although the police were deployed near the campus in large numbers on three occasions, they did not at any time 'ring' the campus, and they were not called to the campus in connection with the demonstration on the State Capitol steps, as the third paragraph implied. Dr. King had not been arrested seven times, but only four; and although he claimed to have been assaulted some years earlier in connection with his arrest for loitering outside a courtroom, one of the officers who made the arrest denied that there was such an assault.

On the premise that the charges in the sixth paragraph could be read as referring to him, respondent was allowed to prove that he had not participated in the events described. Although Dr. King's home had in fact been bombed twice when his wife and child were there, both of these occasions antedated respondent's tenure as Commissioner, and the police were not only not implicated in the bombings, but had made every effort to apprehend those who were. Three of Dr. King's four arrests took place before respondent became Commissioner. Although Dr. King had in fact been indicted (he was subsequently acquitted) on two counts of perjury, each of which carried a possible five-year sentence, respondent had nothing to do with procuring the indictment.

The trial judge submitted the case to the jury under instructions that the statements in the advertisement were 'libelous per se' and were not privileged, so that petitioners might be held liable if the jury found that they had published the advertisement and that the statements were made 'of and concerning' respondent. The jury was instructed that, because the statements were libelous per se, 'the law . . . implies legal injury from the bare fact of publication itself,' 'falsity and malice are presumed,' 'general damages need not be alleged or proved but are presumed,' and 'punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown.' The jury returned a $500,000 verdict for the respondent, which the trial court held was not excessive.

In affirming the judgment, the Supreme Court of Alabama sustained the trial judge's rulings and instructions in all respects. 273 Ala. 656, 144 So.2d 25. It held that '(w)here the words published tend to injure a person libeled by them in his reputation, profession, trade or business, or charge him with an indictable offense, or tends to bring the individual into public contempt,' they are 'libelous per se'; that 'the matter complained of is, under the above doctrine, libelous per se, if it was published of and concerning the plaintiff'; and that it was actionable without

'proof of pecuniary injury . . . , such injury being implied.' *Id.*, at 673, 676, 144 So.2d, at 37, 41.

In sustaining the trial court's determination that the verdict was not excessive, the court said that malice could be inferred from the Times' 'irresponsibility' in printing the advertisement while 'the Times in its own files had articles already published which would have demonstrated the falsity of the allegations in the advertisement'; from the Times' failure to retract for respondent while retracting for the Governor, whereas the falsity of some of the allegations was then known to the Times and 'the matter contained in the advertisement was equally false as to both parties'; and from the testimony of the Times' Secretary that, apart from the statement that the dining hall was padlocked, he thought the two paragraphs were 'substantially correct.' *Id.*, at 686—687, 144 So.2d, at 50—51. The court reaffirmed a statement in an earlier opinion that 'There is no legal measure of damages in cases of this character.' *Id.*, at 686, 144 So.2d, at 50. It rejected petitioners' constitutional contentions with the brief statements that 'The First Amendment of the U.S. Constitution does not protect libelous publications' and 'The Fourteenth Amendment is directed against State action and not private action.' *Id*., at 676, 144 So.2d, at 40.

Because of the importance of the constitutional issues involved, we granted the separate petitions for certiorari of the individual petitioners and of the Times. 371 U.S. 946, 83 S.Ct. 510, 9 L.Ed.2d 496. We reverse the judgment. We hold that the rule of law applied by the Alabama courts is constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action brought by a public official against critics of his official conduct. We further hold that under the proper safeguards the evidence presented in this case is constitutionally insufficient to support the judgment for respondent.

I.

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security

of the Republic, is a fundamental principle of our constitutional system." *Stromberg v. California*, 283 U.S. 359, 369, 51 S.Ct. 532, 536, 75 L.Ed. 1117. "(I)t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions," *Bridges v. California*, 314 U.S. 252, 270, 62 S.Ct. 190, 197, 86 L.Ed. 192, and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.' *N.A.A.C.P. v. Button*, 371 U.S. 415, 429, 83 S.Ct. 328, 9 L.Ed.2d 405. The First Amendment, said Judge Learned Hand, "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *United States v. Associated Press*, 52 F.Supp. 362, 372 (D.C.S.D.N.Y.1943). Mr. Justice Brandeis, in his concurring opinion in *Whitney v. California*, 274 U.S. 357, 375—376, 47 S.Ct. 641, 648, 71 L.Ed. 1095, gave the principle its classic formulation:

> Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.'

Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. See *Terminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131; *De Jonge v. Oregon*, 299 U.S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278. The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection. The question is whether it forfeits that protection by the falsity of some of its factual statements and by its alleged defamation of respondent.

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive,' *N.A.A.C.P. v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405, was also recognized by the Court of Appeals for the District of Columbia Circuit in *Sweeney v. Patterson*, 76 U.S.App.D.C. 23, 24, 128 F.2d 457, 458 (1942), cert. denied, 317 U.S. 678, 63 S.Ct. 160, 87 L.Ed. 544.
The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves 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.

An oft-cited statement of a like rule, which has been adopted by a number of state courts, is found in the Kansas case of *Coleman v. MacLennan*, 78 Kan. 711, 98 P. 281 (1908). The State Attorney General, a candidate for re-election and a member of the commission charged with the management and control of the state school fund, sued a newspaper publisher for alleged libel in an article purporting to state facts relating to his official conduct in connection with a school-fund transaction. The defendant pleaded privilege and the trial judge, over the plaintiff's objection, instructed the jury that:

> Where an article is published and circulated among voters for the sole purpose of giving what the defendant believes to be truthful information concerning a candidate for public office and for the purpose of enabling such voters to cast their ballot more intelligently, and the whole thing is done in good faith and without malice, the article is privileged, although the principal matters contained in the article may be untrue in fact and derogatory to the character of the plaintiff; and in such a case the burden is on the plaintiff to show actual malice in the publication of the article.

In answer to a special question, the jury found that the plaintiff had not proved actual malice, and a general verdict was returned for the defendant. On appeal the Supreme Court of Kansas, in an opinion by Justice Burch, reasoned as follows (78 Kan., at 724, 98 P., at 286):

> It is of the utmost consequence that the people should discuss the character and qualifications of candidates for their suffrages. The importance to the state and to society of such discussions is so vast, and the advantages derived are so great that they more than counterbalance the inconvenience of private persons whose conduct may be involved, and occasional injury to

> the reputations of individuals must yield to the public welfare, although at times such injury may be great. The public benefit from publicity is so great and the chance of injury to private character so small that such discussion must be privileged.

The court thus sustained the trial court's instruction as a correct statement of the law, saying:

> In such a case the occasion gives rise to a privilege qualified to this extent. Any one claiming to be defamed by the communication must show actual malice, or go remediless. This privilege extends to a great variety of subjects and includes matters of public concern, public men, and candidates for office.

78 Kan., at 723, 98 P., at 285.

We conclude that such a privilege is required by the First and Fourteenth Amendments. And, as such, we hold that the trial court erred by not requiring a showing of actual malice to support the judgement. We likewise reverse the Supreme Court of Alabama.

II.

Since respondent may seek a new trial, we deem that considerations of effective judicial administration require us to review the evidence in the present record to determine whether it could constitutionally support a judgment for respondent. This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. This is such a case, particularly since the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated.' *Speiser v. Randall*, 357 U.S. 513, 525, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460. In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' *Pennekamp v. Florida*, 328 U.S. 331, 335, 66 S.Ct. 1029, 1031, 90 L.Ed. 1295; see also *One, Inc., v. Olesen*, 355 U.S. 371, 78 S.Ct. 364, 2 L.Ed.2d 352; *Sunshine Book Co. v. Summerfield*, 355 U.S. 372, 78 S.Ct. 365, 2 L.Ed.2d 352. We must 'make an independent examination of the whole record,' *Edwards v. South Carolina*, 372 U.S. 229, 235, 83 S.Ct. 680, 683, 9 L.Ed.2d 697, so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression.

Applying these standards, we consider that the proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands, and hence that it would not constitutionally sustain the judgment for respondent under the proper rule of law. The case of the individual petitioners requires little discussion. Even assuming that they could constitutionally be found to have authorized the use of their names on the advertisement, there was no evidence whatever that they were aware of any erroneous statements or were in any way reckless in that regard. The judgment against them is thus without constitutional support.

As to the Times, we similarly conclude that the facts do not support a finding of actual malice. The statement by the Times' Secretary that, apart from the padlocking allegation, he thought the advertisement was 'substantially correct,' affords no constitutional warrant for the Alabama Supreme Court's conclusion that it was a 'cavalier ignoring of the falsity of the advertisement (from which), the jury could not have but been impressed with the bad faith of The Times, and its maliciousness inferable therefrom.'

The statement does not indicate malice at the time of the publication; even if the advertisement was not 'substantially correct'—although respondent's own proofs tend to show that it was—that opinion was at least a reasonable one, and there was no evidence to impeach the witness' good faith in holding it.

Finally, there is evidence that the Times published the advertisement without checking its accuracy against the news stories in the Times' own files. The mere presence of the stories in the files does not, of course, establish that the Times 'knew' the advertisement was false, since the state of mind required for actual malice would have to be brought home to the persons in the Times' organization having responsibility for the publication of the advertisement.

With respect to the failure of those persons to make the check, the record shows that they relied upon their knowledge of the good reputation of many of those whose names were listed as sponsors of the advertisement, and upon the letter from A. Philip Randolph, known to them as a responsible individual, certifying that the use of the names was authorized. There was testimony that the persons handling the advertisement saw nothing in it that would render it unacceptable under the Times' policy of rejecting advertisements containing 'attacks of a personal character'; their failure to reject it on this ground was not unreasonable. We think the evidence against the Times supports at most a finding of negligence in failing

to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice.

The judgment of the Supreme Court of Alabama is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Gertz v. Robert Welch, Inc.

Supreme Court of the United States
November 14, 1973, Submitted | June 25, 1974, Decided

Reporter:
418 U.S. 323

JUSTICE POWELL

This Court has struggled for nearly a decade to define the proper accommodation between the law of defamation and the freedoms of speech and press protected by the First Amendment. With this decision we return to that effort. We granted certiorari to reconsider the extent of a publisher's constitutional privilege against liability for defamation of a private citizen.

I.

In 1968 a Chicago policeman named Nuccio shot and killed a youth named Nelson. The state authorities prosecuted Nuccio for the homicide and ultimately obtained a conviction for murder in the second degree. The Nelson family retained petitioner Elmer Gertz, a reputable attorney, to represent them in civil litigation against Nuccio.

Respondent publishes American Opinion, a monthly outlet for the views of the John Birch Society. Early in the 1960's the magazine began to warn of a nationwide conspiracy to discredit local law enforcement agencies and create in their stead a national police force capable of supporting a Communist dictatorship. As part of the continuing effort to alert the public to this assumed danger, the managing editor of American Opinion commissioned an article on the murder trial of Officer Nuccio. For this purpose he engaged a regular contributor to the magazine. In March 1969 respondent published the resulting article under the title ‘FRAME-UP: Richard Nuccio And The War On Police.’ The article purports to demonstrate that the testimony against Nuccio at his criminal trial was false and that his prosecution was part of the Communist campaign against the police.

In his capacity as counsel for the Nelson family in the civil litigation, petitioner attended the coroner's inquest into the boy's death and initiated actions for damages, but he neither discussed Officer Nuccio with the press nor played any part in the criminal proceeding. Notwithstanding petitioner's remote connection with the prosecution of Nuccio, respondent's magazine portrayed him as an

architect of the ‘frame-up.’ According to the article, the police file on petitioner took ‘a big, Irish cop to lift.’ The article stated that petitioner had been an official of the ‘Marxist League for Industrial Democracy, originally known as the Intercollegiate Socialist Society, which has advocated the violent seizure of our government.’ It labeled Gertz a ‘Leninist’ and a ‘Communist-fronter.’ It also stated that Gertz had been an officer of the National Lawyers Guild, described as a Communist organization that ‘probably did more than any other outfit to plan the Communist attack on the Chicago police during the 1968 Democratic Convention.’

These statements contained serious inaccuracies. The implication that petitioner had a criminal record was false. Petitioner had been a member and officer of the National Lawyers Guild some 15 years earlier, but there was no evidence that he or that organization had taken any part in planning the 1968 demonstrations in Chicago. There was also no basis for the charge that petitioner was a ‘leninist’ or a ‘Communist-fronter.’ And he had never been a member of the ‘Marxist League for Industrial Democracy’ or the ‘Intercollegiate Socialist Society.’

The managing editor of American Opinion made no effort to verify or substantiate the charges against petitioner. Instead, he appended an editorial introduction stating that the author had ‘conducted extensive research into the Richard Nuccio Case.’ And he included in the article a photograph of petitioner and wrote the caption that appeared under it: ‘Elmer Gertz of Red Guild harasses Nuccio.’ Respondent placed the issue of American Opinion containing the article on sale at newsstands throughout the country and distributed reprints of the article on the streets of Chicago.

Petitioner filed a diversity action for libel in the United States District Court for the Northern District of Illinois. He claimed that the falsehoods published by respondent injured his reputation as a lawyer and a citizen.

After answering the complaint, respondent filed a pretrial motion for summary judgment, claiming a constitutional privilege against liability for defamation. It asserted that petitioner was a public official or a public figure and that the article concerned an issue of public interest and concern. For these reasons, respondent argued, it was entitled to invoke the privilege enunciated in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). Under this rule respondent would escape liability unless petitioner could prove publication of defamatory falsehood ‘with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' Id., at 279—280, 84

S.Ct., at 726. Respondent claimed that petitioner could not make such a showing and submitted a supporting affidavit by the magazine's managing editor. The editor denied any knowledge of the falsity of the statements concerning petitioner and stated that he had relied on the author's reputation and on his prior experience with the accuracy and authenticity of the author's contributions to American Opinion.

The District Court denied respondent's motion for summary judgment in a memorandum opinion of September 16, 1970. The court did not dispute respondent's claim to the protection of the New York Times standard. Rather, it concluded that petitioner might overcome the constitutional privilege by making a factual showing sufficient to prove publication of defamatory falsehood in reckless disregard of the truth. During the course of the trial, however, it became clear that the trial court had not accepted all of respondent's asserted grounds for applying the *New York Times* rule to this case. It thought that respondent's claim to the protection of the constitutional privilege depended on the contention that petitioner was either a public official under the New York Times decision or a public figure under *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967), apparently discounting the argument that a privilege would arise from the presence of a public issue. After all the evidence had been presented but before submission of the case to the jury, the court ruled in effect that petitioner was neither a public official nor a public figure. The jury awarded $50,000 to petitioner.

Following the jury verdict and on further reflection, the District Court concluded that the *New York Times* standard should govern this case even though petitioner was not a public official or public figure. It accepted respondent's contention that that privilege protected discussion of any public issue without regard to the status of a person defamed therein. Accordingly, the court entered judgment for respondent notwithstanding the jury's verdict.

Petitioner appealed to contest the applicability of the *New York Times* standard to this case.

II.

The principal issue in this case is whether a newspaper or broadcaster that publishes defamatory falsehoods about an individual who is neither a public official nor a public figure may claim a constitutional privilege against liability for the injury inflicted by those statements. The Court considered this question on the rather different set of facts presented in *Rosenbloom v. Metromedia, Inc*., 403 U.S.

29, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971). Rosenbloom, a distributor of magazines, was arrested for selling allegedly obscene material while making a delivery to a retail dealer. The police obtained a warrant and seized his entire inventory of 3,000 books and magazines. He sought and obtained an injunction prohibiting further police interference with his business. He then sued a local radio station for failing to note in two of its newscasts that the 3,000 items seized were only 'reportedly' or 'allegedly' obscene and for broadcasting references to 'the smut literature racket' and to 'girlie-book peddlers' in its coverage of the court proceeding for injunctive relief. He obtained a judgment against the radio station, but the Court of Appeals for the Third Circuit held the *New York Times* privilege applicable to the broadcast and reversed. 415 F.2d 892 (1969).

This Court affirmed the decision below, but no majority could agree on a controlling rationale. The eight Justices who participated in Rosenbloom announced their views in five separate opinions, none of which commanded more than three votes. The several statements not only reveal disagreement about the appropriate result in that case, they also reflect divergent traditions of thought about the general problem of reconciling the law of defamation with the First Amendment. One approach has been to extend the New York Times test to an expanding variety of situations. Another has been to vary the level of constitutional privilege for defamatory falsehood with the status of the person defamed. And a third view would grant to the press and broadcast media absolute immunity from liability for defamation. To place our holding in the proper context, we preface our discussion of this case with a brief review of Rosenbloom.

In affirming the trial court's judgment in the instant case, the Court of Appeals relied on Mr. Justice Brennan's conclusion for the Rosenbloom plurality that 'all discussion and communication involving matters of public or general concern,' 403 U.S., at 44, 91 S.Ct., at 1820, warrant the protection from liability for defamation accorded by the rule originally enunciated in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

In his opinion for the plurality in *Rosenbloom v. Metromedia, Inc*., 403 U.S. 29, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971), Mr. Justice Brennan took the *New York Times* privilege one step further. He concluded that its protection should extend to defamatory falsehoods relating to private persons if the statements concerned matters of general or public interest. He abjured the suggested distinction between public officials and public figures on the one hand and private individuals on the other. He focused instead on society's interest in learning about certain issues: 'If a matter is a subject of public or general interest, it cannot suddenly become less so

merely because a private individual is involved, or because in some sense the individual did not 'voluntarily' choose to become involved.' *Id.*, at 43, 91 S.Ct., at 1819. Thus, under the plurality opinion, a private citizen involuntarily associated with a matter of general interest has no recourse for injury to his reputation unless he can satisfy the demanding requirements of the *New York Times* test.

Two members of the Court concurred in the result in Rosenbloom but departed from the reasoning of the plurality. Mr. Justice Black restated his view, long shared by Mr. Justice Douglas, that the First Amendment cloaks the news media with an absolute and indefeasible immunity from liability for defamation. *Id*., at 57, 91 S.Ct., at 1826.

III.

We begin with the common ground. Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues. *New York Times Co. v. Sullivan*, 376 U.S., at 270, 84 S.Ct., at 721. They belong to that category of utterances which 'are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.' *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1031 (1942).

Although the erroneous statement of fact is not worthy of constitutional protection, it is nevertheless inevitable in free debate. As James Madison pointed out in the Report on the Virginia Resolutions of 1798: 'Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press.' 4 J. Elliot, Debates on the Federal Constitution of 1787, p. 571 (1876). And punishment of error runs the risk of inducing a cautious and restrictive exercise of the constitutionally guaranteed freedoms of speech and press. Our decisions recognize that a rule of strict liability that compels a publisher or broadcaster to guarantee the accuracy of his factual assertions may lead to intolerable selfcensorship. Allowing the media to avoid liability only by proving the truth of all injurious statements does not accord adequate protection to First Amendment liberties. As the Court stated in *New York Times Co. v. Sullivan*, supra, 376 U.S., at 279, 84 S.Ct., at 725: 'Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will

be deterred.' The First Amendment requires that we protect some falsehood in order to protect speech that matters.
The legitimate state interest underlying the law of defamation is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for, as Mr. Justice Stewart has reminded us, the individual's right to the protection of his own good name 'reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system.' *Rosenblatt v. Baer*, 383 U.S. 75, 92, 86 S.Ct. 669, 679, 15 L.Ed.2d 597 (1966) (concurring opinion).

Some tension necessarily exists between the need for a vigorous and uninhibited press and the legitimate interest in redressing wrongful injury. As Mr. Justice Harlan stated, 'some antithesis between freedom of speech and press and libel actions persists, for libel remains premised on the content of speech and limits the freedom of the publisher to express certain sentiments, at least without guaranteeing legal proof of their substantial accuracy.' *Curtis Publishing Co. v. Butts*, supra, 388 U.S., at 152, 87 S.Ct., at 1990.

The *New York Times* standard defines the level of constitutional protection appropriate to the context of defamation of a public person. Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures and those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth. This standard administers an extremely powerful antidote to the inducement to media self-censorship of the common-law rule of strict liability for libel and slander. And it exacts a correspondingly high price from the victims of defamatory falsehood. Plainly many deserving plaintiffs, including some intentionally subjected to injury, will be unable to surmount the barrier of the *New York Times* test.

We believe, however, that the New York Times rule states an accommodation between this concern and the limited state interest present in the context of libel actions brought by public persons. For the reasons stated below, we conclude that the state interest in compensating injury to the reputation of private individuals requires that a different rule should obtain with respect to them.

With that caveat we have no difficulty in distinguishing among defamation plaintiffs. The first remedy of any victim of defamation is self-help—using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater.[1]

More important than the likelihood that private individuals will lack effective opportunities for rebuttal, there is a compelling normative consideration underlying the distinction between public and private defamation plaintiffs. An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case. And society's interest in the officers of government is not strictly limited to the formal discharge of official duties.

Those classed as public figures stand in a similar position. Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private individual. He has not accepted public office or assumed an ‘influential role in ordering society.’ *Curtis Publishing Co. v. Butts*, 388 U.S., at 164, 87 S.Ct., at 1996 (Warren, C.J., concurring in result). He has relinquished no part of his interest in the protection of his own good name, and consequently he

[1] Of course, an opportunity for rebuttal seldom suffices to undo harm of defamatory falsehood. Indeed, the law of defamation is rooted in our experience that the truth rarely catches up with a lie. But the fact that the self-help remedy of rebuttal, standing alone, is inadequate to its task does not mean that it is irrelevant to our inquiry.

has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.

For these reasons we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual.

We hold that, so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual. This approach provides a more equitable boundary between the competing concerns involved here.

IV.

Notwithstanding our refusal to extend the New York Times privilege to defamation of private individuals, respondent contends that we should affirm the judgment below on the ground that petitioner is either a public official or a public figure. There is little basis for the former assertion. Several years prior to the present incident, petitioner had served briefly on housing committees appointed by the mayor of Chicago, but at the time of publication he had never held any remunerative governmental position. Respondent admits this but argues that petitioner's appearance at the coroner's inquest rendered him a ‘de facto public official.’ Our cases recognized no such concept. Respondent's suggestion would sweep all lawyers under the New York Times rule as officers of the court and distort the plain meaning of the ‘public official’ category beyond all recognition. We decline to follow it.

Respondent's characterization of petitioner as a public figure raises a different question. That 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.

Petitioner has long been active in community and professional affairs. He has served as an officer of local civic groups and of various professional organizations, and he has published several books and articles on legal subjects. Although petitioner was consequently well known in some circles, he had achieved no general fame or notoriety in the community. None of the prospective jurors called at the trial had ever heard of petitioner prior to this litigation, and respondent offered no proof that this response was atypical of the local population. We would not lightly assume that a citizen's participation in community and professional affairs rendered him a public figure for all purposes. Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life. It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation.

In this context it is plain that petitioner was not a public figure. He played a minimal role at the coroner's inquest, and his participation related solely to his representation of a private client.

We therefore conclude that the New York Times standard is inapplicable to this case and that the trial court erred in entering judgment for respondent. Because the jury was allowed to impose liability without fault and was permitted to presume damages without proof of injury, a new trial is necessary. We reverse and remand for further proceedings in accord with this opinion.

It is ordered.

Reversed and remanded.

WILLIAM C. MARCHIONDO, Petitioner, vs. ROBERT A. BROWN, et al., Respondents.

No. 13440
SUPREME COURT OF NEW MEXICO
1982-NMSC-076, 98 N.M. 394, 649 P.2d 462
June 29, 1982

{*395} FEDERICI, Justice.

{1} The action between plaintiff, William C. Marchiondo, (Marchiondo) and defendants, Robert A. Brown, et al, (collectively referred to as Journal), has been pending for several years and has been before this Court on numerous occasions. Marchiondo seeks damages by reason of publications by the Journal which he contends are libelous.

{2} Prior to January 28, 1980, and also during the interim between January 28, 1980 and October 27, 1980, Marchiondo had filed motions to compel answers to depositions of at least one defendant and one witness. These motions were denied by the trial court.

{3} On January 28, 1980, the Journal filed a motion to dismiss, or in the alternative, for summary judgment, in the district court, Bernalillo County No. CV 75-02838. This {*396} motion was joined in by other party defendants. The Journal also filed at that time a motion to postpone ruling on the previous motions which had been filed by Marchiondo to compel answers to depositions.

{4} On October 27, 1980, the trial court entered its order as set out below, on motions to dismiss and for summary judgment, prior to acting upon Marchiondo's motion to compel answers to depositions.

{5} On November 12, 1980, the trial court entered its order certifying interlocutory appeal to the Court of Appeals from the court's order on the motions to dismiss and for summary judgment. The order of certification contained the appropriate language for the certification.

{6} On November 24, 1980, Marchiondo filed an application for interlocutory appeal in the Court of Appeals, No. 4932, which was denied. Marchiondo filed with the Supreme Court a petition for writ of certiorari directed to the Court of Appeals. After a review of the record, this Court held that the trial court's order

dated October 27, 1980, entered on Journal's motions to dismiss and for summary judgment, involved controlling questions of law as to which there were substantial grounds for difference of opinion and an immediate appeal from said order could materially advance the ultimate termination of the litigation. This Court then ordered that the order of the Court of Appeals denying Marchiondo's application for an interlocutory appeal be reversed and in the interest of time and economy for all concerned, Marchiondo was granted an interlocutory appeal directly to the Supreme Court. 625 P.2d 580.

{7} The trial court's order on the Journal's motions to dismiss and for summary judgment, insofar as relevant to this appeal, reads:

ORDER ON MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT
The above motions having come on for hearing, the Court having heard the arguments of counsel, having considered all matters of record, and being otherwise fully advised in the premises,
Finds:

{*** part of opinion partially omitted***}

5. **Public Figure.** The defendants have failed to show by clear and convincing evidence or by a preponderance of the evidence that the plaintiff is a public figure for all purposes or for limited purposes. The Court, therefore, finds as a matter of law that the plaintiff is not a public figure.

6. **Actual Malice.** The defendants have shown in the record a complete lack of actual malice attendant to their publication of the articles in question, and plaintiff has failed to come forward with any evidence of actual malice. The Motion for Summary Judgment on this issue should be granted.

It is therefore ordered, adjudged and decreed that:
....
{*** part of opinion partially omitted***}

3. As a matter of law, the plaintiff William Marchiondo is not a public figure for all purposes or a public figure for limited purposes.

4. The defendants acted without actual malice in the publication herein, therefore, any and all claims for presumed or punitive damages are denied.

5. Any and all matters raised by the various motions to dismiss or for summary judgment not specifically ruled on herein are reserved for later decision or trial.

{*** part of opinion partially omitted***}

II.
PUBLIC FIGURE.

{23} In its order of October 27, 1980, the trial court found in its findings (No. 5), and concluded in its conclusions (No. 4), that as a matter of law, Marchiondo was not a public figure for any purpose. We agree.

{24} Whether or not a person is a public figure is relevant in determining the standard of proof for damages. Whether a person is a public figure is a question of law for the court. **Ammerman v. Hubbard Broadcasting, Inc., supra; Rosenblatt v. Baer,** 383 U.S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966); **Rebozo v. Washington Post Co.,** 637 F.2d 375 (5th Cir. 1981). **See Marchiondo v. Tribune,** 98 N.M. 282, 648 P.2d 321 (Ct. App. 1981). Generally, lawyers, in pursuing their profession, are not public figures unless they voluntarily inject themselves or are drawn into a particular public controversy and thereby become public figures for a limited range of issues. **Gertz v. Robert Welch, Inc.,** 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974); **see Marchiondo v. Tribune, supra.**

{25} Although Marchiondo is well known as an attorney and well known as a member of the Democratic Party, this is not sufficient to depict him as a public figure. His influence as a private attorney and as a person involved in politics cannot be said to be pervasive.

It is clear from the record in this case that he did not voluntary inject {*400} himself into the controversy on organized crime. He was involuntarily drawn into the controversy, a private controversy between Marchiondo and the Journal. The controversy arose at the time of the publication of the alleged libel. We agree with the trial court that as to the headlines, photograph and article regarding organized crime, Marchiondo was not a public figure.

{*** part of opinion partially omitted***}

Where the statements are unambiguously fact or opinion,... the court determines as a matter of law whether the statements are fact or opinion. However, where the alleged defamatory remarks could be determined either as fact or opinion, and the

court cannot say as a matter of law that the statements were not understood as fact, there is a triable issue of fact for the jury. [Citations and footnote omitted.]

{59} To the extent that Reed v. Melnick, supra; Del Rico v. New Mexican, supra; Marchiondo v. Tribune, supra, and all other opinions of this Court and the Court of Appeals are inconsistent with this opinion, such cases are hereby expressly overruled.

{60} The cause is remanded to the trial court for further proceedings consistent and in accord with this opinion.

{61} IT IS SO ORDERED.