Yeagle v. Collegiate Times

Facts: Sharon D. Yeagle is employed as an assistant to the Vice President of Student Affairs at Virginia Polytechnic Institute and State University. As part of her responsibilities, she facilitated the participation of students in the 1996 Governor's Fellows Program. The Collegiate Times, the University's student newspaper, published an article describing the University's successful placement of students in the program. The text of the article surrounded a block quotation in larger print attributed to Yeagle. Beneath the quotation, the phrase "Director of Butt Licking" was printed under Yeagle's name.

Yeagle filed a motion for judgment against the Collegiate Times, alleging that the phrase "Director of Butt Licking" constituted common law defamation, defamation per se, and use of insulting words under Code § 8.01-45. The trial court sustained the Collegiate Times' demurrer on all counts and dismissed the case. The trial court held that the phrase at issue was "void of any literal meaning," and that it would be unreasonable to interpret the phrase as conveying any factual information about Yeagle.

Issue: Whether the trial court erred in holding that, as a matter of law, the phrase "Director of Butt Licking" cannot convey a defamatory meaning?

Holding: We conclude that the trial court did not err in sustaining the demurrer because the offending phrase cannot support an action for defamation-an issue properly determined by the court as a matter of law.

Causes of action for defamation have their basis in state common law but are subject to principles of freedom of speech arising under the First Amendment to the United States Constitution and Article I, Section 12 of the Constitution of Virginia. The United States Supreme Court has identified constitutional limits on the type of speech that may be the subject of common law defamation actions. Thus, speech which does not contain a provably false factual connotation,[1] or statements which cannot reasonably be interpreted as stating actual facts about a person cannot form the basis of a common law defamation action.

The threshold issue, whether the complained of phrase including inferences fairly attributable to it could reasonably be interpreted as stating actual facts about Yeagle and, therefore, be actionable defamation, is a matter of law to be resolved by the trial court. In this case, the phrase "Director of Butt Licking" is no more than "rhetorical hyperbole." The phrase is disgusting, offensive, and in extremely bad taste, but it cannot reasonably be understood as stating an actual fact about Yeagle's job title or her conduct, or that she committed a crime of moral turpitude.

Accordingly, because the phrase at issue could not reasonably be considered as conveying factual information about Yeagle, and therefore could not support a cause of action for defamation, we will affirm the judgment of the trial court.

GEORGE GRUBBS ENTERPRISES, INC v. Mitchel L. BIEN

On December 14, 1987, Mitchel Bien, a deaf mute, walked into the teeth of Grubbs Nissan's APB System. Bien was returning from his grandmother's where he had been doing some repairs around her house. It was cold and drizzly outside, with a little bit of rain. Bien lived with his mother and needed to be home for dinner between 6:00 and 6:30 p.m. As a rule, if Bien is going to be late he calls to let his mother know so she will not worry.

Bien was in the market for a new automobile. He was driving his deceased father's pickup and had been considering trading in the pickup for another vehicle. Grubbs Nissan was on the way home, so Bien decided to stop at the dealership. Since it was only 3:45 p.m., he felt he had plenty of time to stop at Grubbs Nissan and still make it home by 6:30 p.m.

While Bien was looking at some Nissan Pathfinders, Maturelli walked up to introduce himself. Upon discovering Bien was deaf, Maturelli went back inside and informed Kielson, his sales manager, that a deaf man was outside looking at cars. Maturelli told Kielson he had never dealt with a deaf person before. Kielson told him to put Bien through the APB System the same as any other person. After further discussions, Maturelli and Kielson came up with the idea of communicating by pen and paper.

NOTE: In the late 1970's, the Grubbs dealerships implemented a sales system technique known as the Automotive Profit Builder Controlled Track Selling System ("APB System"). Grubbs trained its sales force in the use of the APB System and expected its salespeople to follow this system. This system was still being used by Grubbs throughout the trial of this case.

Appellants' expert, Remar Sutton, testified that the goal of a system sales technique, including the APB System, is "to excite the customer, confuse the customer, pressure the customer, and then take every last dime you can get regardless of the consequences to the customer."

After talking with Kielson, Maturelli went back outside and reintroduced himself via pen and paper. Maturelli then began using the APR System on Bien. He showed Bien the features on the Pathfinder and they took a test drive. After test driving the Pathfinder, Bien noticed a 300ZX and indicated he liked it. Maturelli and Bien then test drove a red 300ZX. After the test drive, pursuant to the APR System, Maturelli parked the car on the sold line even though it had not been sold.

Maturelli next took Bien on a tour of the dealership. Following the tour, Maturelli bought Bien a coke. This is also done pursuant to the APB System to detain the customer and obligate him to the salesperson. Under Grubbs' APR System, the salespeople were taught to put money in the coke machine before asking the customer what he is drinking. Thus, the customer cannot refuse the drink and becomes psychologically obligated to the salesperson. This is also done to make it difficult to leave since it is hard to drive with a drink in one's hands.

After Maturelli bought Bien a coke, they went into Maturelli's office where Maturelli began filling out a worksheet listing the various information about the 300ZX. This too is part of the APR System. It is done in an effort to impress the customer with the product, and in an attempt to obtain a bid on the vehicle from the customer.

After Maturelli filled out the worksheet and the price, he wrote the word "now" on a blank line for the delivery date. Bien responded that he did not want to buy the car at that time. Despite this, Maturelli wrote a note asking if Bien would be willing to do business that day if he could get an acceptable price. He then instructed Bien to put his initials beside this note and Bien complied. Maturelli next filled out a document on Bien's truck. He then went and pulled a computer price and equipment confirmation sheet on the 300ZX. It was at this point that the "negotiations" began.

Maturelli began by asking Bien what he would like to offer for the car. Bien offered to pay $18,500, less $4,775 trade-in for his truck. Maturelli asked Bien about a down payment and Bien said he could make a $4,000 down payment. Maturelli then feigned being Bien's friend and told Bien he needed some form of money to show his manager. Maturelli insisted that he needed Bien to write a $4,000 check so Maturelli could use it as leverage against his boss to get a good

deal.[*fn4] Contrary to his assertions, Maturelli knew his manager did not need to see a check to approve a deal. Rather, obtaining the check was simply another part of the APB System to prevent Bien from leaving and to exert psychological pressure on him.

Bien was hesitant to write the check, but Maturelli assured Bien he would return the check. However, according to the APB System under which Maturelli and the other Grubbs Nissan salespeople were trained, the check is only returned as an ultimate last resort because customers will not leave without it. In accordance with the system, Maturelli took the check to Kielson and instead of showing it to him and returning it to Bien, Maturelli left the check in Kielson's office.

During the discussions in Maturelli's office, they talked about Bien trading in his truck. Maturelli got Bien's keys to have the truck appraised. After it was appraised, pursuant to the APB System, the keys were not returned to Bien, but instead were placed in Kielson's office. Thus, pursuant to Grubbs Nissan's APB System, Bien was now effectively trapped. They had his check which would only be returned as an ultimate last resort, and they also had his keys. They knew Bien was deaf and could not use the phone to call for help, and they knew he could not walk home because of the dangers presented by his disabilities, together with the darkness and bad weather. Grubbs had achieved its goal of obtaining a captive audience.

When Maturelli got Bien to write the $4,000 check, he promised to return it. However, Maturelli did not fulfill this promise. Maturelli admitted Bien had the right to have his check returned immediately upon request, and there is no question Bien had the right to go home immediately upon request. However, pursuant to the APB System, Maturelli ignored Bien's repeated pleas for the return of his check and that he be allowed to go home. Despite these repeated requests, Maturelli continued in his attempt to obtain a sale, even mocking Bien at times. At one point in the so-called "negotiations" Bien explained that he would need to go home first and talk to his insurer. In response, despite the fact he knew Bien was deaf and could not use the phone, Maturelli told Bien that if he wanted to, he could call from the dealership. At another point in the negotiations, when Bien threatened to go to the police if they did not return his check, Maturelli responded: "The police want you to buy a new car and get a good deal!" After writing this note, Maturelli leaned back in his chair and started laughing.

Maturelli never did fulfill his promise to return Bien's check. Instead, when Maturelli left his office at one point during the "negotiations," Bien got up without Maturelli's knowledge and went looking for his check. However, before leaving the office, Bien retrieved all the written notes so he could explain to his mother where he had been and why he was late getting home. Bien then walked through the halls of the dealership until he saw his check lying on Kielson's desk. He went into the office to get his check, and when he turned around to leave Maturelli was standing in the door. When Bien started to walk out, Maturelli moved to block his path. Bien then stuck the check in the front of his pants and Maturelli stepped aside.

After retrieving his check, Bien walked outside to get in his truck and leave. However, the truck was not where Bien had parked it. When Bien finally located his truck, the keys were not in it. Thus, he was forced to go back inside to get his keys before he could leave. When Bien went back inside, he met Maturelli in the hall. Maturelli was smiling at Bien and he was dangling the keys in front of him.

According to Bien's mother, Bien finally arrived home between 8:30 and 9:00 p.m. As Bien had suspected, his mother was very worried about him. Bien's mother testified that when he came in the house, he was very upset and he was making a crying and yelling noise. She also testified Bien had torn the check into small pieces and he threw the pieces into the air.

Bien claimed that prior to the Grubbs incident he never had any difficulty in dealing with the hearing world, but that afterwards he became depressed and withdrew into himself. He also claimed the incident caused him to have headaches, recurring nightmares and flash-backs, to lose his self confidence, to lose his trust for the hearing world and his ability to obtain and keep a job, and to lose his sexual desire. In general, he became moody, irritable and unhappy.

As a result of the Grubbs incident, Bien sought psychiatric counseling. He saw Dr. Stahlecker, Dr. Swen Helge, and Dr. Ursula Palmer. In addition, at appellants' request, Bien was examined by Dr. Russell Brown. All of these experts, including Dr. Brown, concluded that Bien suffered from severe anxiety disorder that was directly attributable to the Grubbs incident.

Not surprisingly, appellants' explanation of the events on December 14, 1987, is somewhat different than Bien's. Appellants admitted at trial that each and every action they took with Bien was done in conformity with the policies and procedures of Grubbs. Appellants simply argue that Bien was a very good negotiator who sent out all the signals of a typical buyer. In fact, despite Bien's repeated requests for his check and his threats to go to the police, appellants contend the series of "negotiations" between Bien and Maturelli were typical of any barter-based sales transaction, and argue that Bien misperceived the entire exchange.

Appellants also claim Bien did not suffer any damages as a result of the Grubbs incident. Instead, they contend Bien was in a precariously unstable emotional state prior to walking into the dealership. According to appellants, any emotional problems Bien suffers from were caused by other events, such as the death of his father, or the break-up with his girlfriend. Appellants also assert that Bien's unemployability is self-imposed and was not caused by the incident at Grubbs. However, after hearing three weeks of evidence, the jury rejected appellants' arguments. Likewise, Bien and his attorneys have requested this court to dismiss appellants' version of the events of December 14, 1987, as being "well imagined, well written fiction."

Issue: Whether there is sufficient evidence to support a claim of intentional infliction of emotion distress?

Holding: Yes. To recover for intentional infliction of emotional distress, a claimant must establish the following elements: (1) the defendants acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the actions of the defendants caused the claimant's emotional distress; and (4) the emotional distress suffered by the claimant was severe.

Appellants contend Bien failed to prove these elements.

Appellants first argue there is no evidence, or alternatively insufficient evidence, that they acted with intent or recklessness designed to cause Bien emotional harm. In support of this argument, appellants rely on their own testimony that they did not intend to harm Bien, but instead only intended to sell him a car. However, the supreme court recognized … that "rarely will a defendant admit knowing of a substantial certainty that emotional harm would befall the victim. " The court went on to state that "juries, however, are free to discredit the defendant's protestations that no harm was intended and to draw necessary inferences to establish intent."

Appellants were aware the APB System was inflicting emotional pressure on Bien. Bien's requests for the return of his check and that he be allowed to go home became more urgent and frequent. He began underlining words and using capital letters and exclamation points, which one expert testified were the equivalent of a hearing person shouting. Bien told Maturelli that they were putting him through a lot of pressure, that they were making him crazy, that he was becoming sick and that he was confused and needed some rest. Maturelli did not think Bien was lying when Bien told him these things. Thus, since Grubbs' policy was that no customer could leave without the permission of management, Maturelli informed Kielson that Bien wanted his check back and that he wanted to go home. However, Kielson made the decision that the sale should go on, and pursuant to Kielson's instructions, Bien was subjected to a takeover by another salesman. Thus, in light of all the evidence discussed above, there is some evidence from which the jury could determine appellants acted intentionally or recklessly in their dealings with Bien.

Appellants next argue their conduct was not sufficiently extreme and outrageous to subject them to liability for intentional infliction of emotional distress. Instead, appellants maintain their conduct was "typical" of any barter-based business transaction between strangers.

Conduct is sufficiently extreme and outrageous where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Whether conduct satisfies this criteria is initially a question of law for the court. If the court determines that reasonable men may differ, then it is for the jury to decide whether the conduct is sufficiently extreme and outrageous to result in liability.

In support of their argument that their conduct was not extreme and outrageous, appellants argue that the actual negotiating process took only twenty minutes. This argument is based on the speculative testimony of appellants' expert, Remar Sutton, that beginning with the computer price and confirmation sheet, the actual negotiations all probably took place in the last twenty minutes. However, the written exchanges between Bien and Maturelli indicate that Maturelli got Bien's $4,000 check at approximately 4:45 p.m., and that Maturelli was still pressuring Bien to buy the car at approximately 6:45 p.m. Other written notes show appellants were still pressuring Bien and refusing *854 to let him leave approximately four hours after he had arrived at the dealership. Thus, the jury could have reasonably dismissed Sutton's testimony that the actual negotiations lasted only twenty minutes, and could have determined that appellants detained Bien against his will for close to four hours in their efforts to sell him a car. Furthermore, even when Sutton testified that the actual negotiations lasted only twenty minutes, he still testified that he did not doubt Bien was traumatized by the experience. Based on all of this, as well as other evidence presented at trial, we conclude appellants' conduct was sufficiently extreme and outrageous to support submission of the question concerning intentional infliction of emotional distress to the jury, and to support the jury's answer to this question.

Finally, appellants contend there is no evidence or insufficient evidence to support the finding that their actions caused Bien's emotional distress, or to support the finding that Bien suffered severe emotional distress. Appellants continue to argue that any emotional problems Bien suffers from are a result of his pre-existing hypersensitivity and other influences in his life such as his father's death. Appellants also argue Bien does not suffer from severe emotional distress, but instead continues to enjoy a busy social life, including playing sports, dining out, and interacting with friends. However, in making these arguments appellants ignore the contrary evidence that the Grubbs incident caused Bien to suffer severe emotional distress.

Bien was evaluated by four doctors, including one who examined Bien at appellants' request. All four doctors concluded Bien suffered from psychological injuries directly attributable to the activities at the Grubbs dealership on December 14, 1987. As a result of the incident at Grubbs, Bien was diagnosed as having an atypical anxiety disorder, a generalized anxiety disorder, and an adjustment disorder with mixed emotional features. An individual suffering from these injuries would experience a subjective feeling of discomfort, dread, anxiety, and nervousness. The individual might also experience some physiological problems such as sweating, insomnia, increase in blood pressure, and increase in heart rate. According to Dr. Brown, the doctor who examined Bien at appellants' request, the incident at Grubbs was so traumatic that Bien was still unable to return to work some three years after the incident. Dr. Brown also determined that the incident had long-lasting effects on Bien's confidence and self-image in relation to the rest of the world. Thus, there is evidence from which the jury could reasonably determine that the incident at Grubbs caused Bien to suffer severe emotional distress.

Having reviewed all the evidence, we hold that there is sufficient evidence to support the jury's finding that appellants acted intentionally or recklessly, that their conduct was extreme and outrageous, and that their conduct caused Bien to suffer severe emotional distress. Accordingly, appellants' eleventh point of error is overruled.