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Third Circuit Dismisses “Trump Mini-Me’s” Defamation and False Light Case Against Newsweek

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“Political discourse can be bruising. People often express opinions that offend others. But the First Amendment protects virtually all of those opinions, even offensive and hurtful ones, to promote a greater good: robust political discourse. The price of free speech is putting up with all sorts of name-calling and hurtful rhetoric.”

In a case involving free speech and political discourse, *McCafferty v. Newsweek Media Grp., Ltd.*, 955 F.3d 352, 360 (3d Cir. 2020), the Third Circuit Court of Appeals affirmed dismissal of a minor plaintiff’s defamation and false light claims against *Newsweek*. Plaintiff claimed that a *Newsweek* article wrongfully accused him of “defending raw racism and sexual abuse.” *Id.* at 355. However, the article’s derogatory opinions were based on disclosed facts, which negated his defamation and false light claims. The Third Circuit further ruled that, even if the article’s opinions were not based on disclosed facts, plaintiff failed to plead actual malice, which was required under governing Pennsylvania law and the First Amendment.

Background

In *McCafferty*, minor plaintiff, C.M., received international attention for his alt-right politics and support of President Trump. By age eleven, C.M. had multiple viral videos, including a popular clip calling Hilary Clinton “deplorable,” and was interviewed by international media outlets. In 2018, *Newsweek* published an article entitled, “Trump’s Mini-ME’s,” which included a large photograph of C.M. holding a Trump campaign sign. The article discussed multiple minor children with viral videos touting Trump. The article cited interviews given by Trump-supporting children, including C.M., and expressed general disgust with “weaponizing” and “recruiting children as spokespeople.” *Id.* at 356. Columbia professor, Todd Gitlin was quoted in the *Newsweek* article. He described the child interviews as “feel good

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sweetness and light when, in fact, they are defending raw racism and sexual abuse.” *Id.*

After the article appeared in print, C.M.’s parents sued *Newsweek* alleging defamation and that their son was cast in a false light. The District Court granted *Newsweek*’s Motion to Dismiss on the basis that the article did not defame C.M., but instead, “faulted adults on the hard right.” *Id.* In addition, the Court dismissed the claims because C.M. failed to plead facts suggesting actual malice. C.M. appealed.

Third Circuit Opinion

On appeal, the Third Circuit affirmed the decision of the lower court, finding that (1) statements that plaintiff was being weaponized and his interviews were being used to camouflage “raw racism and sexual abuse” were nonactionable opinions; (2) statements that plaintiff may be a spokesperson for the hard right was not an actionable opinion; (3) plaintiff was a limited-purpose public figure required to plead actual malice to state a defamation claim; and (4) plaintiff failed to plead facts suggesting actual malice.

The Court found that *Newsweek*’s statements were not defamatory. Since Pennsylvania law governed, plaintiff was required to prove “(1) that the statement was defamatory; (2) that *Newsweek* published it; (3) that the statement was about C.M.; (4) that readers would understand the statement as defamatory; (5) that readers would understand that the defamatory statement was about C.M.; (6) that the publication harmed him; and (7) that *Newsweek* lacked a ‘conditional privilege’ to make that statement.” *Id.* at 307 (citing 42 Pa. Cons. Stat. § 8343(a)).

The parties only contested the first and third elements, but the Court stated it only need to resolve the first element: whether the statements were defamatory. Ultimately, the Court held that each statement in the *Newsweek* article was an opinion, label, or speculation based on disclosed facts. As such, plaintiff failed to establish that the statements were defamatory, causing his defamation claim to fail.

More specifically, after setting forth a factual description of C.M.’s interview with Alex Jones from *Infowars*, the article offered Prof. Gitlin’s opinion that “these kids are being weaponized” and that the “hard right” is using the interviews to “camouflage ... defending raw racism and sexual abuse.” *Id.* At 357. The Court held that these opinions related to disclosed facts regarding C.M.’s interviews and, as a result, were not defamatory.

The Court further found that the article’s political characterizations were protected speech and non-actionable. C.M. alleged that Prof. Gitlin defamed him by claiming he may be a “spokesperson for the hard right... reading chapter and verse a text written by someone else,” and that he is being “seduced with the promise of being a celebrity.” *Id.* These statements did not specifically name C.M., but even if they did, the Court found the statements to be non-actionable because they were Prof. Gitlin’s speculations based on disclosed facts. The Court classified these statements as protected political characterizations.

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The Court further held that, even if some of *Newsweek's* statements were defamatory, plaintiff's defamation claims fail because he did not plead actual malice. In so ruling, the Court considered C.M. a "limited purpose" public figure because he "voluntarily injected himself" into the political controversies surrounding President Trump and the President's critics and enjoys "significantly greater access to the channels of effective communication" than his peers. *Id.* at 359 (citing *Am. Future Sys., Inc.*, 923 A. 2d at 401 (quoting *Gertz*, 418 U.S. at 344, 351, 94 S. Ct. 2997)). Indeed, C.M.'s videos had thousands of views and international news outlets sought to interview him on his political stances.

Since C.M. was a limited public figure, he had to plead actual malice. *Newsweek* did not admit that it "seriously doubted" the truth of its article or knew that it likely contained false statements. *Id.* (Citing 3d Restatement (Second) of Torts, § 580A). Thus, to show actual malice, C.M. had to present circumstantial evidence. First, C.M. argued that *Newsweek* "grossly departed from professional journalistic standards" by failing to ask C.M. or his parents to comment for the article. Second, he alleged that *Newsweek* must have defamed him to improve its "declining and anemic sales and online hits." *Id.* Third, he contends that placing a large photo of him at the top of their article constitutes actual malice. The Court held that the circumstantial evidence, even when viewed together, fell short of actual malice. Indeed, "even an extreme departure from professional standards, without more, will not support a finding of actual malice." *Id.* at 360 (citing *Tucker v. Fischbein*, 237 F.3d 275, 286 (3d Cir. 2001)).

Since plaintiff failed to plead actual malice, his false light claims failed as well. Even if C.M. pled actual malice, opinions based on true, disclosed facts cannot support a false-light claim unless they create a false impression. *Id.* C.M. did not demonstrate that Professor Gitlin's opinions referred to or implied facts that could be proven false. As such, his false light claims failed.

In its ruling, the Court noted that "the First Amendment protects even the most derogatory opinions, because suppressing them would chill robust political discourse." *Id.* Public figures, even limited public figures such as C.M., "must endure offensive opinions" if they launch themselves into the political spotlight. *Id.*

The *McCafferty* case upholds longstanding principles of free speech in political discourse may be of particular value in this election year.

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