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First Amendment Law Comment



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DEFAMATION

No defamation, just opinions about disabled ironman

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The Court of Appeals in Wisconsin held Megyn Kelly, previously of Fox News, and other commentators did not defame a firefighter by expressing their opinions that the firefighter's receipt of disability benefits was "not right," "disgusting," and a "fraud," among other comments.

Ironman yes, firefighter no

The firefighter worked for approximately five years before he sustained nerve damage in his right arm and underwent surgery to attempt to restore function. Unfortunately, the surgery was unsuccessful and he was unable to perform the necessary duties of a

firefighter, such as lift a ladder. He applied for and was granted disability benefits. Despite his nerve damage, the firefighter was able to engage in strenuous activities, such as multiple marathons and an iron man competition, which requires running, biking and swimming.

The fire department chief was interviewed and he made statements concerning the firefighter and his receipt of disability benefits in a television broadcast. A few days after the chief's comments aired, a Fox News show hosted by Megyn Kelly discussed the "'disabled' firefighter" and the fact that he collects disability benefits.

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The firefighter sued Fox News, Kelly, and others for defamation. The lower court dismissed his complaint but the firefighter appealed.

In order to be successful in a defamation claim, a claimant must prove a false statement was made, either spoken or written to a third person, and that communication is unprivileged and defamatory so that it tends to harm one's reputation so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her. Both truth and opinion are defenses to defamation claims.

Story must be viewed as a whole

The appellate court held the lower court correctly found that both broadcasts gave a full factual

background about the firefighter's injury and his receipt of disability benefits. The court analyzed the details of both broadcasts, and explained individual statements should not be parsed out, but the broadcast should be viewed as a whole. The court determined that it was clear that both broadcasts were simply a collection of opinion statements, which were based on fully disclosed facts, deeming the opinions non-actionable.

The court went on to explain that simply because commentary may be sarcastic, belittling or impolite, does not make it defamatory. It is an American privilege to be able to speak one's mind. The broadcasts clearly contained opinions based on accurate facts, and therefore, do not constitute defamation. ♦



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