

Discussion on the Conflict and Balance between Freedom of the Press and Privacy Right-- A Case Study of Cantrell V. Forest City Publishing Co

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Abstract: Proceeding from the case of Cantrell V. Forest City Publishing Co, this paper discusses the application of the principle of actual malice as the principle of liability. Based on the theory of "false light" and the previous cases, this paper tries to balance the freedom of the press and the right to public privacy through the transfer of the burden of proof. The principle of actual malice takes into account the fluidity and capricious situation of journalists who report current affairs, which makes the media escape from jury examination and a large number of lawsuits for damages, and thus it was more inclined to realize the right of media supervision to a greater extent.

The malicious standard of the common law system, namely, the tort law supports punitive damages on the basis of "false light". The case should focus on the infringer's attitude towards the victim's privacy, not on the truthfulness of the published content, nor on the plaintiff's failure to prove that the defendant knew the report contained false content or recklessly ignored the truth.

1. Case Analysis

In 1967, the Plain Dealer dispatched Eszterhas and Conway to report on the death of the plaintiff's husband in the collapse of the Silvero Bridge. In the follow-up report, the article focuses on the unfortunate and poor life of the Cantrell family, which contains many false facts and mistakes. The story of the plaintiff to express his opinion at home is fabricated, which makes the plaintiff's family members become the object to laugh at, which lead to mental damage. The plaintiff, Margaret Cantrell, argued that an article published in the Plain Dealer magazine contained numerous inaccuracies and inaccuracies, as a result, they have the right to claim compensation and punitive compensations based on the "false light" theory on invasion of privacy. Plaintiff Margaret Cantrel filed suit in district court against Forest City Publishing Co., Eszterhas, a former reporter for Plain Dealer, and Conway, a photographer for the Plain Dealer.

2. Reasons for Judgement

In the first trial, the judges of local court rejected a claim for punitive damages brought by a family and three other children of the plaintiff, only allowing a jury to decide the case brought by Cantrell and his eldest son, William. The jury then ruled against all the appellants, the three defendants in the initial trial, and ordered the three defendants to pay \$60,000 for compensatory damages to Cantrell and William. The Court of Appeals for the sixth circuit overturned the verdict of the court. In its judgment, the Court held that the District Court should grant the petitioner's motion for a direct judgment on all of the plaintiff's claims, and that there was no evidence that Forest City knew the misrepresentation of Easterheart's article. In the final judgment, Stewart wrote verdict opinion on behalf of the United States Supreme Court, and the verdict of appeal court should be overturned. This Court remand the case to the court of appeal for retrial and the appeal court should uphold the new verdict of local court to the Appellee Forest City Publishing Company and Joseph.Easterheart [1].

The case was judged by the jury on the false light theory of an alleged invasion of privacy.[2] False light is an important concept in American tort law. Section 652E of the Second Tort Restatement treats disclosure and exposure as essential elements of false light, constituting a double

offence and the defendants should subjectively get to know it or total disregard. This infringement and defamation are characterized with great repeatability, but the amount of publicity is different. The Sullivan case was the first one under the supervision of the "DE facto malice" principle for censorship of news media responsibility and it was applied in the untruthful report for government officials. Besides, the principle was applied in the Hill case, and journalists were under the supervision of the principle. In this case, in contrast to two similar cases, the district court judge had explicitly instructed the jury to apply the "DE facto malice" principle. Therefore, there is no need to consider the flexibility of the liability standard in this case. The evidence at the first trial was sufficient for the jury to determine that the defendant's account of the plaintiff's family constituted a false light of knowledge or disregard of the facts.

3. The Dispute Focus and Theoretical Analysis of the Case

3.1 Whether the Court of Appeal Wrongly Quashed the Jury's Verdict at the First Trial

In this case, the evidence at the first trial was sufficient for the jury to find that the defendant's account of the plaintiff's family constituted false with knowledge or disregard of the facts, and that no objection was raised. The district judge found that Cantrell had failed to produce any evidence to support the allegation of "common law malice". The court of Appeal confused the common law standard of malice applicable to the district court with the standard of "DE facto malice". The case can only be deemed to have "DE facto malice". [3] Punitive damages can only be awarded if there is common law malice, whereas "DE facto malice" corresponds to compensatory damages. And the jury had enough evidence to decide that Eszterhas, who worked at *Candide* at the time of the story, should be held legally liable under the traditional principle of "vicariousness of the employer." To sum up, the judgment of the court of Appeal should be reversed.

3.2 The Essence of "DE Facto Malice"

"DE facto malice" includes "knowing that what is said is not true" and "ignoring its truth", both of which are similar to the direct and indirect intent in criminal law, and the proof requirements are higher than the negligence and gross negligence using the rational objective standard. It is a subjective state of mind, and its emphasis is the actor's subjective cognition of the falsity of speech. According to the shifting of responsibility rule in Carmel's framework, it realizes the shifting of burden of proof and risk of proof compared with the principle of "malice in common law". In common law, the defendant is required to prove that his or her "statement is true", which is strictly responsible. The actor's subjective perception of the truth of the statement is not taken as the object of proof, while the plaintiff is required to prove the "factual malice" of the defendant, which increases the burden of proof for the plaintiff.

3.3 The Value Game between Press Freedom and Privacy Right

Newspapers is a media to discover current affairs, and there is no explicit regulation on to what extent it should make in protection of personal privacy in the process of pursuit of timeliness, freshness. Slight exaggerated description to attract the attention of others is also the methods frequently used based on the basic facts, but the fiction for some nonexistent facts can basically be equated to fabrication.[5] Even if there is no deliberate fabricating of facts to malign others, the fabricated facts have a negative impact on the life and psychology of the parties concerned, which can be regarded as a kind of tort.[4] On the other hand, when personal privacy of deeds of the people with newsworthiness is to be exaggeratedly described or for fiction, the person to be reported should be asked for permission and an expected assessment of the possible consequences should be made. Any behavior of subjectivially indulging or malicious fiction should not be allowed. [5]

In "DE facto malice", the transfer of the burden of proof is the gaming result of the freedom of the press and privacy. Different standards for responsibilities reflect different priorities, that is, the news media should have enough space for information dissemination and making comments and the

privacy right of citizens should be properly protected. Public figures should be restricted by the standards of public interests while pursuing private interests [6].

4. Personal Views

First of all, the defendant committed a infringement, the defendant published the report containing false contents, which made false report on the plaintiff and his family members in a exaggerated manner with violation of their privacy. [7]

Secondly, the defendant's behavior has caused some damage to the plaintiff. A news based special manuscript has brought the plaintiffs' family members back into the eyes of the public and revealed a disgraceful facts that they do not want others to know. [8] And the report made them objects to be laughed at by the public, which is not the scenario they would like to see and their privacy was exposed and their self-esteem was hurt.

In conclusion, the accused Eszterhas did have the intention for malice, but it was a slight malice. Eszterhas intentionally created the false appearance of Margaret Cantrell's presence in his news feature, and fabricated the condition of the Cantrell family, which is itself irresponsible. But the aim of the report was to show the public the impact of the bridge collapse on the families of the victims, rather than to maliciously expose the privacy of the plaintiff's family for deliberate smear and malicious attack. Thus, the malice that Eszterhas harbors is a relatively minor DE facto malice. [9]

I support the view of the trial court and, based on the instructions given to the jury by the former and trial judges, the "DE facto malice" principle should be applied in this case to determine liability.[10] However, the news figures in this case enjoy certain particularity, actually, they are accidental and temporary involuntary public figures. Compared to public figures, ordinary people who are plaintiffs in such cases, are difficult to have self-defense platform and an opportunity to voice their opinions, thus they are the more vulnerable ones. Therefore, they should be evaluated with government officials, voluntary public figures with extensive influence in proof on the equal footing. More preferences should be given to them in protection of their interests [11].

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