A newspaper published an editorial in which an editor asserted that a candidate for high political office was a user of illegal drugs. The accusation was untrue. The editor acted unreasonably in not investigating the accusation before publishing it; however, the editor honestly believed that the accusation was true.

The candidate sued the editor for defamation.

Is the candidate entitled to recover?

- A. No, because the accusation appeared in an editorial and was therefore merely an opinion.
- B. No, because the editor honestly believed that the accusation was true.
- C. Yes, because calling someone an illegal drug user is defamatory per se.
- D. Yes, because the accusation was false and injurious to the candidate's reputation.

Explanation:

Defamation can be either slander (spoken statements) OR **libel** (written statements—as seen here). A defamation claim based on libel *ordinarily* requires proof that:

the defendant knowingly made a false statement about the plaintiff or negligently failed to determine its falsity

that type of statement would tend to harm the plaintiff's reputation and

the defendant intentionally or negligently communicated that statement to a third party.

But when the plaintiff is a **public figure or official** (eg, celebrity, governor), he/she must prove that the false statement was made with **actual malice**. Actual malice exists when the defendant **knew** that the statement was false or **recklessly disregarded** its falsity (ie, had serious doubts about its truthfulness). Therefore, proof of negligence—failure to use reasonable care to determine a statement's falsity—is not enough.

Here, the editor falsely accused the candidate of using illegal drugs in a published editorial. Since the candidate is a public figure, he can only recover for defamation if the editor acted with actual malice. And since the editor *honestly believed* that the accusation was true (no actual malice), the candidate cannot recover for defamation.

(Choice A) Defamation can stem from a statement alleging a fact *or* an opinion that appears to be based on specific facts. Here, the editorial asserted that the candidate used illegal drugs (factual allegation). But a stated belief about the candidate's drug use (opinion) would still be actionable if it implied knowledge of specific facts.

(Choice C) Statements that are presumptively harmful to the plaintiff's reputation are considered defamatory per se. Though accusing someone of a criminal act (illegal drug use) is defamatory per se, the candidate will not prevail because the editor believed that the accusation was true (no actual malice).

(Choice D) Although the editor's accusation was false and likely injurious to the candidate's reputation, the candidate will not prevail because the editor did not act with actual malice.

Educational objective:

A public figure or public official can only recover for defamation if he/she proves that the defendant made a false statement with actual malice—ie, with knowledge or reckless disregard of the statement's falsity.

References

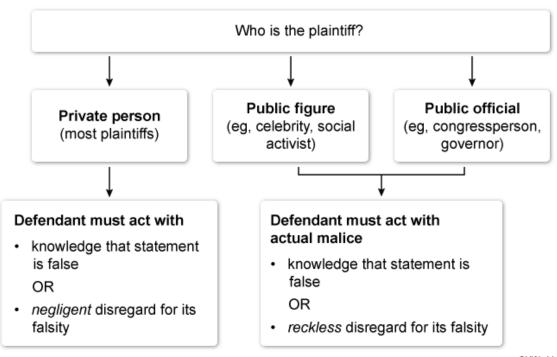
Restatement (Second) of Torts § 558 (Am. Law Inst. 1977) (elements of defamation).

Restatement (Second) of Torts § 568 (Am. Law Inst. 1977) (libel and slander distinguished).

Restatement (Second) of Torts § 580A (Am. Law Inst. 1977) (defamation of public official or public figure).

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Defamation (defendant's culpability when making a false statement)



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