

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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