

A chef wrote a cookbook that contained the recipes for the most requested dishes that she cooked at her popular restaurant. After the chef died, a sous chef who worked at the restaurant began telling the restaurant's customers that the chef was a fraud and that a dishwasher at the restaurant had actually created all of the recipes that were contained in the cookbook. However, when asked by a customer, the dishwasher denied having written any of the recipes in the cookbook and said that the sous chef probably lied because he and the chef had hated each other.

The chef's estate learned of the sous chef's statements to the restaurant's customers. Concerned about the effect the statements might have had on the cookbook's sales, the chef's estate filed a defamation suit against the sous chef.

Will the chef's estate prevail?

- A. No, because the chef is deceased.
- B. No, because there was no publication.
- C. Yes, because the statements damaged the chef's reputation.
- D. Yes, because the statements likely impacted cookbook sales.

Explanation:

Defamation can be either libel (written statements) OR **slander (spoken statements—**as seen here). A plaintiff has an action for defamation based on slander if all of the following elements are met:

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

The statement was defamatory, meaning that the type of statement would tend to harm the plaintiff's reputation.

The defendant intentionally or negligently communicated the statement to a third party who understood it.

The statement caused the plaintiff special damage (usually monetary loss) or was **slandorous per se**.

However, defamation of a **deceased person is not actionable**.* Therefore, the chef's estate will *not* prevail in a defamation suit against the sous chef.

*A statement about a dead person may amount to defamation of a living person. Additionally, whether an action for defamation of a living person survives the person's death depends on the state's survival statute.

(Choice B) The publication (ie, communication) element for defamation was met when the sous chef intentionally told the restaurant's customers that the chef was a fraud and that a dishwasher had created the recipes.

(Choices C & D) Calling the chef a fraud was harmful to her reputation and may have impacted cookbook sales (special damage). But defamation of a deceased person is not actionable.

Educational objective:

A defamation claim based on libel (written statements) or slander (spoken statements) of a deceased person is not actionable.

References

Restatement (Second) of Torts § 560 (Am. Law Inst. 1981) (defamation of deceased persons).

Defamation liability

