

A newspaper printed an article that stated: "The popular restaurant on the town square has closed its doors. The restaurant's employees have said that the closing resulted from the owner's belief that the restaurant's general manager has embezzled thousands of dollars from the restaurant over the last several years. A decision on reopening the restaurant will be made after the completion of an audit of the restaurant's books."

The restaurant's general manager brought a libel action against the newspaper based on the publication of this article. The parties stipulated that the general manager never embezzled any funds from the restaurant.

The case went to trial before a jury. The newspaper filed a motion for a directed verdict at the close of the evidence.

Why should the court grant the motion?

- A. The evidence is not clear and convincing that the newspaper published the article with "actual malice."
- B. The record contains no evidence that the general manager suffered special harm as a result of the publication.
- C. The record contains no evidence that the newspaper was negligent as to the truth or falsity of the charge of embezzlement.
- D. The record contains uncontradicted evidence that the article accurately reported what the employees told the newspaper.

Explanation:

Libel is defamation that appears in **written or other physical form**. To prevail in a suit for libel, the plaintiff must prove all of the following:

The defendant **knowingly made a false statement** about the plaintiff OR **negligently failed to determine its falsity** (ie, failed to use reasonable care).

That type of statement would tend to harm the plaintiff's reputation.

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

If the plaintiff fails to present **legally sufficient evidence** to support all of these elements at trial (ie, no reasonable jury could find in the plaintiff's favor), the court should grant the defendant's motion for a **directed verdict**.

Here, the newspaper falsely reported that the general manager had embezzled thousands of dollars in a published article. But there is no evidence that the newspaper knew or negligently failed to determine that the embezzlement charge was false since it used *reasonable care* by consulting with former restaurant employees about that charge. As a result, the court should grant the newspaper's motion for a directed verdict.

(Choice A) A libel claim brought by a public figure or official (eg, celebrity, politician) requires *clear and convincing evidence* that the defendant made a statement with actual malice—knowledge or reckless disregard of the statement's falsity. But a claim brought by a private person (eg, the general manager) only requires proof by a *preponderance of the evidence* that the defendant knew or negligently failed to determine the statement's truth.

(Choice B) Libel (written defamation) does not require proof of special harm (ie, monetary loss), so the fact that the general manager suffered no special harm does not defeat his libel claim. In contrast, special harm must be proven for slander (spoken defamation).

(Choice D) A defamation claim can be brought against *any person* who communicates a false statement to a third party (ie, a person who repeats a defamatory statement is just as liable as the original defamer). Therefore, the newspaper could be liable for defamation even if its article merely reported the employees' comments.

Educational objective:

Libel requires proof that the defendant (1) knowingly communicated a false statement about the plaintiff to a third party *or* (2) negligently failed to determine the statement's falsity (ie, no reasonable care used to determine its truth).

References

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

Restatement (Second) of Torts § 580B (Am. Law Inst. 1977) (knowing or negligent statement of falsity).

Fed. R. Civ. P. 50(a) (judgment as a matter of law).

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Defendant's motion for directed verdict in a libel claim

