

A female quarterback was the only female on an otherwise all-male college football team. During training one day, one of the team's offensive linemen saw the female quarterback hidden behind the bleachers, injecting herself with a needle. The lineman immediately told the football team's coach that he had just seen the female quarterback injecting herself with steroids. The female quarterback was diabetic and had actually been injecting insulin into her arm when the lineman saw her behind the bleachers. However, not knowing this, the coach suspended the female quarterback from the team.

If the female quarterback files a defamation suit against the lineman, who is likely to prevail?

- A. The female quarterback, because she is a private person and this is not a matter of public concern.
- B. The female quarterback, because the statement was false and the lineman was negligent in making it.
- C. The lineman, because he was not acting with actual malice.
- D. The lineman, because there was no publication.

Explanation:

Because defamation consists of speech, the Supreme Court has decided that the First Amendment imposes a fault requirement in cases involving public officials, public figures, and matters of public concern. But if the plaintiff is a private person and the defamatory statement involves a matter of private concern (as seen here), the constitutional requirements do not apply **(Choice A)**.

However, most states require at least negligence by the defendant for all defamation actions. Accordingly, the following elements must generally be proved in all actions for **defamation of a private person**:

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 published the statement by intentionally or negligently communicating it to a third party.

The statement caused the plaintiff special damage* OR amounted to libel or **slander per se**.

Here, the lineman falsely told the coach (publication) that the female quarterback was injecting herself with steroids (defamatory statement), and she was suspended from the team as a result (special damage). Since the lineman made no effort to check the accuracy of his statement first, he was likely negligent in making it. Therefore, the female quarterback is likely to prevail in her defamation suit.

*Special damage requires proof that a third party heard the defendant's defamatory comment and then acted adversely to the plaintiff. Most often, special damage involves an economic loss to the plaintiff, but it would also include such things as the coach suspending the female quarterback from the team.

(Choice C) In defamation actions by public officials or public figures (not seen here), the plaintiff is constitutionally required to prove that the defendant acted with actual malice. Actual malice is the knowledge of, or reckless disregard for, the falsity of the defamatory statement.

(Choice D) Publication can be *any* form of communication to a third party. Therefore, publication occurred here when the lineman told the coach that he had seen the female quarterback injecting herself with steroids.

Educational objective:

In defamation actions by private persons, the level of fault required is that the defendant knowingly made a false statement about the plaintiff or negligently failed to determine its falsity.

References

New York Times v. Sullivan, 376 U.S. 254, 283–84 (1964) (holding that the First Amendment affects the plaintiff's right to recover under the common law tort of defamation).

Restatement (Second) of Torts §§ 580A, 580B (Am. Law Inst. 1981) (explaining the fault requirement for defamation of public or private person).

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