

The governor of State A signed a death warrant for a convicted murderer. At a demonstration protesting the execution of the murderer, two opponents of the death penalty carried large signs that stated, "The governor is a murderer!" A television station broadcasted news coverage of the demonstration, including pictures of the signs carried by the two protestors. The broadcast caused the governor severe emotional distress.

If the governor asserts a defamation claim against the television station, will he prevail?

- A. No, if the only reasonable interpretation of the signs was that the term "murderer" was intended as a characterization of one who would sign a death warrant.
- B. No, unless the governor proves he suffered pecuniary loss resulting from harm to his reputation proximately caused by the protestors' signs.
- C. Yes, because the signs would cause persons to hold the governor in lower esteem.
- D. Yes, if the governor proves that the television station showed the signs with knowledge of falsity or reckless disregard of the truth that the governor had not committed homicide.

## **Explanation:**

### **Defamatory statements**

Statements that would tend to harm plaintiff's reputation by either:

lowering plaintiff's standing in community (eg, allegations challenging plaintiff's integrity or financial reputation) *or*

detering third parties from associating or dealing with plaintiff (eg, allegations that plaintiff is insane or diseased)

**Defamation** can be either slander (spoken statements) OR **libel** (statements made in physical form or that appear on radio or **television**—as seen here). When a defamation claim based on libel is brought by a public official or public figure, he/she must prove all of the following:

The defendant made a false statement about the plaintiff with actual malice—knowledge or reckless disregard of the statement's falsity.

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

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

A statement would only tend to harm the plaintiff's reputation if a third party's **reasonable interpretation** of that statement would tend to do so.

Here, the television station broadcasted pictures of protestors' signs that stated, "The governor is a murderer!" But those signs would *not* tend to harm the governor's reputation if they could only be reasonably interpreted to mean that a person who signs a death warrant should be characterized as a murderer—not that the governor actually committed murder. In that case, the governor's defamation claim would fail.

**(Choice B)** Libel does not require proof of pecuniary loss (ie, financial harm). Instead, the governor's claim would fail if a reasonable interpretation of the protestors' signs would not harm his reputation.

**(Choice C)** Even if the signs would cause persons to hold the governor in lower esteem (ie, harm his reputation), the governor (public official) can only prevail if he also proves that the television station acted with actual malice.

**(Choice D)** Assuming that the governor proves that the television station knew that the signs were false or recklessly disregarded their falsity (actual malice), he would still have to prove that a third party's reasonable interpretation of those signs would tend to harm his reputation.

## **Educational objective:**

A plaintiff can only recover for libel (defamation in physical form or that appears on radio or television) if a third party's reasonable interpretation of the defendant's statement would tend to harm the plaintiff's reputation.

### **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).

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.