

3)

Objective Memo re Neii v. Gosling and Hardy

Per your advisement I have excluded a statement of facts from my memo. Instead I focused this memo the follwing main issues and the relevant law governing each. The main issues are 1) whether the two statements mentioned in HH's complain could be considered defamatory; and 2) whether GG can be imputed liability for HH's allegedly defamatory statements.

In lieu of a statement of facts i have briefly summarized the two statements to provide context for the subsequent case illustrations distinguishing from the current facts. The main statements at issue in the complaint are that 1) JN is a crook and steals cable; and 2) JN is not faithful to his wife and regularly has extramarital affairs while she is away.

1) Defamatory Statements - Considerations of opinion v. fact.

There is one major case on point for determining liability for defamatory statements posted online anderson v walsh.

Anderson v. walsh

In anderson v. walsh the court held posting offensive statements under the heading "facts" where more factual than opinion, and thus defamatory.

The case extended the principle of law from Inksy, which states defamation suits must consider whether the statement posted is presented as opinion or as actual fact, using a totality of the circumstances standard as to what a reasonable person would conclude. The court also held that internet forums are a looser outlet than normal due to their fluid communication, and invitation to engage in continued conversations

Here, JN's statements are closer to being presented as fact rather than as opinion. JN first starts with argument that the cable company is overcharging, on a forum about the cable company overcharging, and as support he gives an example as to someone who is the cause of this. In creating an argument and citing someone he is appealing to this particular fact to back up his claim. This sways towards facts rather than opionn.

JN also explicitly states that JN uses several devicees to get free cable, this implies that it

is not just his suspicion but there is exists hardware that is the mechanism for this fraud. In addition, on the forum GG is prompted for more information, specifically askign to know more about JN's alleged fraud. This asking for more information, someone inquiring and advising to tel lteh cable company would go towards HH's statements being presumed as fact. Asking a uiestion to tell more an suggest report is enabling the discussion as factual not his opinion. The question could have been framed different, and HH's response explicilty statehis belief as being factual as to the stolen tv service. nowhere does he state this is his opinion.

the instant case would be almost analgous to the holding in anderson as HH's statements clonclusory and do not state his opinoin is being rpeented. HH also does not allege any issues of fact, he asserts his opinion is factual. Thus, it is likely under this statute that HH could be found liable for his defamatory statements.

2) liability of of GG for HH's Defamatory statements

There is one major case on point for determining whether GG could be liable for HH's defamatory statements, columbia v roommate.com.

columbia v roommate.com

In columbia v. roommate.com, the court held that a website that posts content may be liable for the content it actively creates, but not for actionable content posted by third parties. While not explicitly about defamation the way online content is examined actively vs passively could be relevant.

In columbia, the court cited section 230 of columbia general statues states that websites are not liable for actionable content posted by third parties, but examined the degree of the websties invovlement in the specific information being solicited, and the degree of the websites active involvement in creation of content or information provided by users. The court ultimately held that in part the website was not liable for content that was not edited or altertaed such as user inputed information. But there court distinguished that its specific form questions pertaining to illegal discrimination of roomates, such as gender adn sexual orientation could be considered as being active. The more narrow questions constituted more active involvement by the website. Thus it held the quetion it was using to merely collect information was more active than passive and was thus liable for discrimiantion.

Here, GG specifically elicits more information from parties in her blog specifically about the cable company and their overcharging and poor service. Initially this constitutes more passive information because it is merely providing a platform for people to discuss a certain topic, in this case their experience with the cable company. This is closer to passive content, but GG then elicits specific information from HH in her response asking for information about JN and his alleged theft. This is enabling as to HH's discussion, and as stated above, could be construed as enabling HH's defamatory statement. Given, GG's request for more information regarding JN he could be liable for HH's defamatory statements, as it would appear the second fact regarding his wife would not have even been brought up but for GG's request.

conclusion

Given the current caselaw it is likely there could be at least some merits as to JN's claim against HH and GG, and thus would likely require further research or discussing settlement options to better prepare for a trial.

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