Milkovich v. Lorain Journal

497 U.S. 1 (1990)

Chief Justice Rehnquist delivered the opinion of the Court:

Respondent J. Theodore Diadiun authored an article in an Ohio newspaper implying that petitioner Michael Milkovich, a local high school wrestling coach, lied under oath in a judicial proceeding about an incident involving petitioner and his team which occurred at a wrestling match. Petitioner sued Diadiun and the newspaper for libel, and the Ohio Court of Appeals affirmed a lower court entry of summary judgment against petitioner. This judgment was based in part on the grounds that the article constituted an "opinion" protected from the reach of state defamation law by the First Amendment to the United States Constitution. We hold that the First Amendment does not prohibit the application of Ohio's libel laws to the alleged defamations contained in the article.

Milkovich, now retired, was the wrestling coach at Maple Heights High School in Maple Heights, Ohio. In 1974, his team was involved in an altercation at a home wrestling match with a team from Mentor High School. Several people were injured. In response to the incident, the Ohio High School Athletic Association (OHSAA) held a hearing at which Milkovich and H. Don Scott, the Superintendent of Maple Heights Public Schools, testified. Following the hearing, OHSAA placed the Maple Heights team on probation for a year and declared the team ineligible for the 1975 state tournament. OHSAA also censured Milkovich for his actions during the altercation. Thereafter, several parents and wrestlers sued OHSAA in the Court of Common Pleas of Franklin County, Ohio, seeking a restraining order against OHSAA's ruling on the grounds that they had been denied due process in the OHSAA proceeding. Both Milkovich and Scott testified in that proceeding. The court overturned OHSAA's probation and ineligibility

orders on due process grounds.

The day after the court rendered its decision, respondent Diadiun's column appeared in the *News-Herald*, a newspaper which circulates in Lake County, Ohio, and is owned by respondent Lorain Journal Co. The column bore the heading "Maple beat the law with the 'big lie,'" beneath which appeared Diadiun's photograph and the words "TD Says." The carryover page headline announced ". . . Diadiun says Maple told a lie." The column contained the following:

> *[A] lesson was learned (or relearned) yesterday by the student body of Maple Heights High School, and by anyone who attended the Maple-Mentor wrestling meet of last Feb. 8. A lesson which, sadly, in view of the events of the past year, is well they learned early. It is simply this: If you get in a jam, lie your way out. If you're successful enough, and powerful enough, and can sound sincere enough, you stand an excellent chance of making the lie stand up, regardless of what really happened. The teachers responsible were mainly head Maple wrestling coach, Mike Milkovich, and former superintendent of schools H. Donald Scott.*
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> *Anyone who attended the meet, whether he be from Maple Heights, Mentor, or impartial observer, knows in his heart that Milkovich and Scott lied at the hearing after each having given his solemn oath to tell the truth. Is that the kind of lesson we want our young people learning from their high school administrators and coaches?*

Respondents would have us recognize First-Amendment-based protection for defamatory

statements which are categorized as "opinion" as opposed to "fact." For this proposition they rely principally on the following dictum from our opinion in *Gertz v. Welch*: "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." Read in context, though, the fair meaning of the passage is to equate the word "opinion" in the second sentence with the word "idea" in the first sentence. We do not think this passage from *Gertz* was intended to create a wholesale defamation exemption for anything that might be labeled "opinion." Not only would such an interpretation be contrary to the tenor and context of the passage, but it would also ignore the fact that expressions of "opinion" may often imply an assertion of objective fact.

If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar."

Respondents contend that in every defamation case the First Amendment mandates an inquiry into whether a statement is "opinion" or "fact," and that only the latter statements may be actionable. But we [see no need to create] an artificial dichotomy between "opinion" and fact. Foremost, we think [*Philadelphia Newspapers v.*] *Hepps* stands for the proposition that a statement on matters of public concern must be provable as false before there can be liability under state defamation law, at least in situations, like the present, where a media defendant is

involved. Thus, unlike the statement, "In my opinion Mayor Jones is a liar," the statement, "In my opinion Mayor Jones shows his abysmal ignorance by accepting the teachings of Marx and Lenin," would not be actionable. *Hepps* ensures that a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection. [And later precedents] provide protection for statements that cannot reasonably be interpreted as stating actual facts about an individual. [Also], where a statement of "opinion" on a matter of public concern reasonably implies false and defamatory facts regarding public figures or officials, those individuals must show that such statements were made with knowledge of their false implications or with reckless disregard of their truth. Similarly, where such a statement involves a private figure on a matter of public concern, a plaintiff must show that the false connotations were made with some level of fault.

We are not persuaded that, in addition to these protections, an additional separate constitutional privilege for "opinion" is required to ensure the freedom of expression guaranteed by the First Amendment. The dispositive question in the present case then becomes whether a reasonable fact finder could conclude that the statements in the Diadiun column imply an assertion that petitioner Milkovich perjured himself in a judicial proceeding. We think this question must be answered in the affirmative. As the Ohio Supreme Court itself observed: "The clear impact in some nine sentences and a caption is that [Milkovich] 'lied at the hearing after . . . having given his solemn oath to tell the truth." This is not the sort of loose, figurative, or hyperbolic language which would negate the impression that the writer was seriously maintaining that petitioner committed the crime of perjury. Nor does the general tenor of the article negate this impression.

We also think the connotation that petitioner committed perjury is sufficiently factual to

be susceptible of being proved true or false. A determination whether petitioner lied in this instance can be made on a core of objective evidence by comparing, inter alia, petitioner's testimony before the OHSAA board with his subsequent testimony before the trial court.

The judgment of the Ohio Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Points for Discussion

1. A speaker who says, "In my opinion, Jones is a liar," Chief Justice Rehnquist says, implies that she has some factual basis (not disclosed to us) for this belief. What if that factual basis were disclosed? Suppose, for example, she said, "I think Jones just lied to me. He claims he is thirty-nine, but to me he looks well over fifty." Should such an utterance be protected opinion? Can it be, under the rules Rehnquist gives us in the *Milkovich* case?

2. When the Lorain Journal columnist surmised that Milkovich likely had perjured himself, is that conclusion based on any facts undisclosed to the column's readers? If not, and if the columnist is merely expressing a hunch, a conjecture, based on facts that he openly discloses to readers, should the accusation be an actionable libel? What if the columnist had simply reminded readers about the sanctions against the wrestling team (and that they were lifted soon after Milkovich's testimony), and then claimed only to "wonder what the coach said to the grand jury." Would this not at least imply that Milkovich had perjured himself? Should the subtlety of the accusation make a difference?
