

IS YOUR REPUTATION SO BAD YOU CANNOT BE DEFAMED?

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According to a new ruling from a New York court, a public figure's reputation can be so toxic that it is impossible to defame him.

The court in *Lenny Dykstra v. St. Martin Press, LLC, et al.*, 153676/2019 (New York County), was faced with this very question. The lawsuit was brought by Lenny Dykstra, a former major league baseball all-star, who went by the nickname "Nails" during his playing career. Dykstra sued his former teammate, Ron Darling (an all-star pitcher for the New York Mets during the 1980s), for defamation based on comments Darling made about Dykstra in a 2019 autobiography. In addition to Darling, Dykstra sued the publishing companies who published and distributed Darling's book.

The central dispute involved a particular passage in Darling's book, *108 Stitches: Loose Threads, Ripping Yarns, and the Darndest Characters from My Time in the Game*, about an interaction between Dykstra and Boston Red Sox pitcher Dennis "Oil Can" Boyd during Game 3 of the 1986 World Series. Darling's book describes an ugly, racist incident involving Dykstra and Boyd just before the first pitch, during which Darling accused Dykstra of directing racial epithets at Boyd. Darling also referred to Dykstra as a thug and criminal (in addition to being racist). The passage recounts how after his playing career was done, Dykstra was convicted of fraud, drug possession, and grand theft. Dykstra sued, claiming that the passage defamed him as it unfairly labeled him a racist.

In March 2020, Darling and the publishers moved to dismiss the complaint. They argued that Dykstra was a "classic libel-proof plaintiff, whose reputation is so bad that he simply cannot be defamed." They also claimed that "the [r]eference is substantially true, and any alleged incremental harm would be nominal and non-actionable." Darling relied on public record evidence to substantiate his defense that prior to publication of the book, Dykstra's reputation "was that of a 'convicted felon, a liar, a fraud . . . a drug abuser[,] . . . cheat and extortionist who has publicly bragged, in his 2016 autobiography and in interviews, that he used steroids and blackmail to enhance his baseball performance.'" Further, Darling argued that "Dykstra has also been repeatedly referred to in public as a violent person and a sexual predator . . . Dykstra has been publicly referred to for years as a homophobe, misogynist, and racist whose bigotry is undeniable." Much of the support for Darling's motion came from Dykstra's own autobiography, *Lenny Dykstra: A Memoir of Life on the Edge*:

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House of Nails, which was published three years earlier.

On June 2, 2020, the court issued a decision, dismissing the lawsuit. The court began its analysis by noting that, on a motion to dismiss a defamation claim, it could consider documentary evidence to put the alleged defamatory statements into context, even if they could not be considered for their truth. The court summarized the libel-proof plaintiff doctrine as applying to “a plaintiff whose ‘reputation with respect to a specific subject may be so badly tarnished that he cannot be further injured by allegedly false statements on that subject.’” (citation omitted). “The rationale behind the doctrine is that free speech interests should prevail over the interests of an individual who, due to an already soiled reputation, would not be entitled to recover anything other than nominal damages.” When a plaintiff is “libel-proof,” the court will dismiss his or her case, even if the defendant’s allegedly defamatory statements about the plaintiff are not true.

Applying that law to Dykstra, the court granted the motions to dismiss. The court specifically found that prior to the book, “Dykstra was infamous for being, among other things, racist, misogynist, and anti-gay, as well as a sexual predator, a drug-abuser, a thief, and an embezzler. Further, Dykstra had a reputation—largely due to his autobiography—of being willing to do anything to benefit himself and his team, including using steroids and blackmailing umpires.” “From a sportsmanship perspective, Dykstra hurling insults at an opposing pitcher to ultimately throw him off his game is hardly as disgraceful as his self-portrayal of abusing steroids or blackmailing umpires.” The court then recounted numerous occasions when others had written, reported, or commented on Dykstra’s racist comments, and he had not sued them for defamation. Finally, the court listed Dykstra’s past legal troubles, with 24 legal actions generally calling into question the reputation he was now seeking to protect. As such, the court held: “this Court finds that, as a matter of law, the reference cannot ‘induce an evil opinion of [Dykstra] in the minds of right-thinking persons’ or ‘deprive him of their friendly intercourse in society,’ as that ‘evil opinion’ has long existed.” (citations omitted).

The Takeaways

The takeaways from this case are twofold. First, a defamation plaintiff’s public past can come back to haunt them. So if their reputation is publicly impugned, he or she should take action to refute it publicly. Second, a defamation defendant should take advantage of the more liberal rules for consideration of documentary evidence on a motion to dismiss defamation claims, by conducting a thorough review of prior, public complaints about the plaintiff to determine if he or she may be “libel proof.”

If you have any questions about the issues touched upon in this article or other First Amendment issues, please reach out to Ryan Cummings (716.848.1665) or Aaron Saykin (716.848.1345) of Hodgson Russ’ Media and First Amendment Group.

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