

Dallas Appeals Court Allows Libel Claim Against Columnist to Proceed

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PRACTICES Media and Entertainment Litigation

Public figure plaintiffs suing media entities for libel must prove, by clear and convincing evidence, that the defendant published a false and defamatory statement with “actual malice,” i.e., with knowledge of its falsity or with reckless disregard for its truth or falsity. Even plaintiffs who are not public figures must establish actual malice to recover exemplary damages.

The actual malice standard is a high bar for plaintiffs, and one not often met. But in the recent case of *Tatum v. The Dallas Morning News, Inc.*, the Fifth District Court of Appeals in Dallas found that a plaintiff had at least raised a fact issue as to a newspaper’s actual malice, and the detailed opinion contains important lessons for media organizations and attorneys who represent them.

In a column titled “Shrouding suicide leaves its dangers unaddressed,” veteran *Dallas Morning News* columnist Steve Blow criticized the paid newspaper obituary of a “popular high school student.” Blow wrote that the obituary attributed the teen’s death to “injuries sustained in an automobile accident,” but that in fact the teen’s death “turned out to have been a suicide.” Blow wrote that he was “troubled that we, as a society, allow suicide to remain cloaked in such secrecy, if not outright deception.” The column did not name the deceased teen or the author of the obituary, but evidence indicated that friends of John and Mary Ann Tatum recognized that the column referred to the obituary they wrote about their teenage son Paul.

The Tatums sued the newspaper for libel and for violations of the Texas Deceptive Trade Practices Act. *The Dallas Morning News* moved for summary judgment, which the trial court granted.

On appeal, the Tatums presented evidence that their son had no history of mental illness, that he started behaving erratically in the hours after the accident, and that they reasonably believed he took his life as a result of the injuries he sustained in the accident. The Tatums alleged that Blow’s column defamed them because ordinary readers could perceive it (i) to accuse them of using deception to “shroud” Paul’s suicide in secrecy, (ii) to suggest that Paul suffered from mental illness and the Tatums turned a blind eye to it, and (iii) to suggest that the Tatums prevented a timely intervention that might have saved Paul’s life. The Tatums alleged that Blow acted with actual malice in writing his critique of their son’s obituary – an allegation which, if true, could justify an award of exemplary damages.

As a threshold issue, the Court of Appeals held that a reasonable person could find that people who knew the Tatums would reasonably understand that the column referred to them, notwithstanding the absence of their names or their son’s name. But perhaps more surprising was the court’s finding on the issue of actual malice. The court noted that failure to investigate generally is not enough to demonstrate actual malice but that “evidence that a failure to investigate was contrary to a speaker’s usual practice and motivated by a desire to avoid the truth” may demonstrate the reckless disregard required for actual malice. The court found that in failing to contact the Tatums for comment before publishing his column, Blow appeared to have departed from his normal reporting practices. The court also found evidence that Blow “had a motive” to reject a more

innocent explanation for the language of the obituary because of his desire to advance the theme of his column, namely a call for honesty when discussing suicide, and that further investigation would have revealed facts that would have “undercut the whole thrust of his column.” Consequently, the court found a genuine issue of material fact as to actual malice, and unless the opinion is reversed or modified on further appeal, a jury will determine if Blow published his column with actual malice.

For the media, *Tatum* highlights the importance of reasonable investigation prior to publication – even for opinion columns – and of consistency in reporting from one story to the next. For legal practitioners, the opinion provides a competent summary of libel law in Texas, and flags pitfalls that can ensnare even seasoned media clients.