Time, Inc. v. Firestone

424 U.S. 448
Supreme Court of the United States
March 2, 1976

TIME, INC. v. FIRESTONE No. 74-944. Argued October 14, 1975. Decided March 2, 1976. CERTIORARI TO THE SUPREME COURT OF FLORIDA. *John H. Pickering* argued the cause for petitioner. With him on the briefs were *Harold R. Medina, Jr.,* and *William S. Frates. Edna L. Caruso* argued the cause and filed a brief for respondent.

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is the publisher of Time, a weekly news magazine. The Supreme Court of Florida affirmed a $100,000 libel judgment against petitioner which was based on an item appearing in Time that purported to describe the result of domestic relations litigation between respondent and her husband. We granted certiorari, 421 U.S. 909 (1975), to review petitioner's claim that the judgment violates its rights under the First and Fourteenth Amendments to the United States Constitution.

I

Respondent, Mary Alice Firestone, married Russell Firestone, the scion of one of America's wealthier industrial families, in 1961. In 1964, they separated, and respondent filed a complaint for separate maintenance in the Circuit Court of Palm Beach Country, Fla. Her husband counterclaimed for divorce on grounds of extreme cruelty and adultery. After a lengthy trial the Circuit Court issued a judgment granting the divorce requested by respondent's husband. In relevant part the court's final judgment read:

> "This cause came on for final hearing before the court upon the plaintiff wife's second amended complaint for separate maintenance (alimony unconnected with the causes of divorce), the defendant husband's answer and counterclaim for divorce on grounds of extreme cruelty and adultery, and the wife's answer thereto setting up certain affirmative defenses. . . .
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> .....
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> "According to certain testimony in behalf of the defendant, extramarital escapades of the plaintiff were bizarre and of an amatory nature which would have made Dr. Freud's hair curl. Other testimony, in plaintiff's behalf, would indicate that defendant was guilty of bounding from one bedpartner to another with the erotic zest of a satyr. The court is inclined to discount much of this testimony as unreliable. Nevertheless, it is the conclusion and finding of the court that neither party is domesticated, within the meaning of that term as used by the Supreme Court of Florida . . . .

.....

"In the present case, it is abundantly clear from the evidence of marital discord that neither of the parties has shown the least susceptibility to domestication, and that the marriage should be dissolved.

.....

"The premises considered, it is thereupon "ORDERED AND ADJUDGED as follows:

"1. That the equities in this cause are with the defendant; that defendant's counterclaim for divorce be and the same is hereby granted, and the bonds of matrimony which have heretofore existed between the parties are hereby forever dissolved.

.....

"4. That the defendant shall pay unto the plaintiff the sum of $3,000 per month as alimony beginning January 1, 1968, and a like sum on the first day of each and every month thereafter until the death or remarriage of the plaintiff." App. 523-525, 528.

Time's editorial staff, headquartered in New York, was alerted by a wire service report and an account in a New York newspaper to the fact that a judgment had been rendered in the Firestone divorce proceeding. The staff subsequently received further information regarding the Florida decision from Time's Miami bureau chief and from a "stringer" working on a special assignment basis in the Palm Beach area. On the basis of these four sources, Time's staff composed the following item, which appeared in the magazine's "Milestones" section the following week:

"DIVORCED. By Russell A. Firestone Jr., 41, heir to the tire fortune: Mary Alice Sullivan Firestone, 32, his third wife; a onetime Palm Beach schoolteacher; on grounds of extreme cruelty and adultery; after six years of marriage, one son; in West Palm Beach, Fla. The 17-month intermittent trial produced enough testimony of extramarital adventures on both sides, said the judge, `to make Dr. Freud's hair curl.' "

Within a few weeks of the publication of this article respondent demanded in writing a retraction from petitioner, alleging that a portion of the article was "false, malicious and defamatory." Petitioner declined to issue the requested retraction.

Respondent then filed this libel action against petitioner in the Florida Circuit Court. Based on a jury verdict for respondent, that court entered judgment against petitioner for $100,000, and after review in both the Florida District Court of Appeal and the Supreme Court of Florida the judgment was ultimately affirmed. 305 So. 2d 172 (1974). Petitioner advances several contentions as to why the judgment is contrary to decisions of this Court holding that the First and Fourteenth Amendments of the United States Constitution limit the authority of state courts to impose liability for damages based on defamation.

II

Petitioner initially contends that it cannot be liable for publishing any falsehood defaming respondent unless it is established that the publication was made "with actual malice," as that term is defined in *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964). Petitioner advances two arguments in support of this contention: that respondent is a "public figure" within this Court's decisions extending *New York Times* to defamation suits brought by such individuals, see, *e.g., Curtis Publishing Co.* v. *Butts,* 388 U.S. 130 (1967); and that the Time item constituted a report of a judicial proceeding, a class of subject matter which petitioner claims deserves the protection of the "actual malice" standard even if the story is proved to be defamatory false or inaccurate. We reject both arguments.

In *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323, 345 (1974), we have recently further defined the meaning of "public figure" for the purposes of the First and Fourteenth Amendments:

> "For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."

Respondent did not assume any role of especial prominence in the affairs of society, other than perhaps Palm Beach society, and she did not thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it.

Petitioner contends that because the Firestone divorce was characterized by the Florida Supreme Court as a "cause celebre," it must have been a public controversy and respondent must be considered a public figure. But in so doing petitioner seeks to equate "public controversy" with all controversies of interest to the public. Were we to accept this reasoning, we would reinstate the doctrine advanced in the plurality opinion in *Rosenbloom* v. *Metromedia, Inc.,* 403 U.S. 29 (1971), which concluded that the *New York Times* privilege should be extended to falsehoods defamatory of private persons whenever the statements concern matters of general or public interest. In *Gertz,* however, the Court repudiated this position, stating that "extension of the *New York Times* test proposed by the *Rosenbloom* plurality would abridge [a] legitimate state interest to a degree that we find unacceptable." 418 U.S., at 346.

Dissolution of a marriage through judicial proceedings is not the sort of "public controversy" referred to in *Gertz,* even though the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public. Nor did respondent freely choose to publicize issues as to the propriety of her married life. She was compelled to go to court by the State in order to obtain legal release from the bonds of matrimony. We have said that in such an instance "[r]esort to the judicial process . . . is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court." *Boddie* v. *Connecticut,* 401 U.S. 371, 376-377 (1971). Her actions, both in instituting the

litigation and in its conduct, were quite different from those of General Walker in *Curtis Publishing Co., supra.* She assumed no "special prominence in the resolution of public questions." *Gertz, supra,* at 351. We hold respondent was not a "public figure" for the purpose of determining the constitutional protection afforded petitioner's report of the factual and legal basis for her divorce.

For similar reasons we likewise reject petitioners claim for automatic extension of the *New York Times* privilege to all reports of judicial proceedings. It is argued that information concerning proceedings in our Nation's courts may have such importance to all citizens as to justify extending special First Amendment protection to the press when reporting on such events. We have recently accepted a significantly more confined version of this argument by holding that the Constitution precludes States from imposing civil liability based upon the publication of truthful information contained in official court records open to public inspection. *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469 (1975).

Petitioner would have us extend the reasoning of *Cox Broadcasting* to safeguard even inaccurate and false statements, at least where "actual malice" has not been established. But its argument proves too much. It may be that all reports of judicial proceedings contain some informational value implicating the First Amendment, but recognizing this is little different from labelling all judicial proceedings matters of "public or general interest," as that phrase was used by the plurality in *Rosenbloom.* Whatever their general validity, use of such subject-matter classifications to determine the extent of constitutional protection afforded defamatory falsehoods may too often result in an improper balance between the competing interests in this area. It was our recognition and rejection of this weakness in the *Rosenbloom* test which led us in *Gertz* to eschew a subject-matter test for one focusing upon the character of the defamation plaintiff. See 418 U.S., at 344-346. By confining inquiry to whether a plaintiff is a public officer or a public figure who might be assumed to "have voluntarily exposed [himself] to increased risk of injury from defamatory falsehood," we sought a more appropriate accommodation between the public's interest in an uninhibited press and its equally compelling need for judicial redress of libelous utterances. Cf. *Chaplinsky* v. *New Hampshire,* 315 U.S. 568 (1942).

Presumptively erecting the *New York Times* barrier against all plaintiffs seeking to recover for injuries from defamatory falsehoods published in what are alleged to be reports of judicial proceedings would effect substantial depreciation of the individual's interest in protection from such harm, without any convincing assurance that such a sacrifice is required under the First Amendment. And in some instances such an undiscriminating approach might achieve results directly at odds with the constitutional balance intended. Indeed, the article upon which the *Gertz* libel action was based purported to be a report on the murder trial of a Chicago police officer. See 418 U.S., at 325-326. Our decision in that case should make it clear that no such blanket privilege for reports of judicial proceedings is to be found in the Constitution.

It may be argued that there is still room for application of the *New York Times* protections to more narrowly focused reports of what actually transpires in the courtroom. But even so narrowed, the suggested privilege is simply too broad. Imposing upon the law of private defamation the rather drastic limitations

worked by *New York Times* cannot be justified by generalized references to the public interest in reports of judicial proceedings. The details of many, if not most, courtroom battles would add almost nothing toward advancing the uninhibited debate on public issues thought to provide principal support for the decision in *New York Times.* See 376 U.S., at 270; cf. *Rosenblatt* v. *Baer,* 383 U.S. 75, 86 (1966). And while participants in some litigation may be legitimate "public figures," either generally or for the limited purpose of that litigation, the majority will more likely resemble respondent, drawn into a public forum largely against their will in order to attempt to obtain the only redress available to them or to defend themselves against actions brought by the State or by others. There appears little reason why these individuals should substantially forfeit that degree of protection which the law of defamation would otherwise afford them simply by virtue of their being drawn into a courtroom. The public interest in accurate reports of judicial proceedings is substantially protected by *Cox Broadcasting Co., supra.* As to inaccurate and defamatory reports of facts, matters deserving no First Amendment protection, see 418 U.S., at 340, we think *Gertz* provides an adequate safeguard for the constitutionally protected interests of the press and affords it a tolerable margin for error by requiring some type of fault.

III

Petitioner has urged throughout this litigation that it could not be held liable for publication of the "Milestones" item because its report of respondent's divorce was factually correct. In its view the Time article faithfully reproduced the precise meaning of the divorce judgment. But this issue was submitted to the jury under an instruction intended to implement Florida's limited privilege for accurate reports of judicial proceedings.~ By returning a verdict for respondent the jury necessarily found that the identity of meaning which petitioner claims does not exist even for laymen. The Supreme Court of Florida upheld this finding on appeal, rejecting petitioner's contention that its report was accurate as a matter of law.~

For petitioner's report to have been accurate, the divorce granted Russell Firestone must have been based on a finding by the divorce court that his wife had committed extreme cruelty toward him *and* that she had been guilty of adultery. This is indisputably what petitioner reported in its "Milestones" item, but it is equally indisputable that these were not the facts. Russell Firestone alleged in his counterclaim that respondent had been guilty of adultery, but the divorce court never made any such finding. Its judgment provided that Russell Firestone's "counterclaim for divorce be and the same is hereby granted," but did not specify that the basis for the judgment was either of the two grounds alleged in the counterclaim. The Supreme Court of Florida on appeal concluded that the ground actually relied upon by the divorce court was "lack of domestication of the parties," a ground not theretofore recognized by Florida law. The Supreme Court nonetheless affirmed the judgment dissolving the bonds of matrimony because the record contained sufficient evidence to establish the ground of extreme cruelty. *Firestone* v. *Firestone,* 263 So. 2d 223, 225 (1972).

Petitioner may well argue that the meaning of the trial court's decree was unclear, but this does not license it to choose from among several conceivable

interpretations the one most damaging to respondent. Having chosen to follow this tack, petitioner must be able to establish not merely that the item reported was a conceivable or plausible interpretation of the decree, but that the item was factually correct. We believe there is ample support for the jury's conclusion, affirmed by the Supreme Court of Florida, that this was not the case.~

IV

Gertz established, however, that not only must there be evidence to support an award of compensatory damages, there must also be evidence of some fault on the part of a defendant charged with publishing defamatory material. No question of fault was submitted to the jury in this case, because under Florida law the only findings required for determination of liability were whether the article was defamatory, whether it was true, and whether the defamation, if any, caused respondent harm.

The failure to submit the question of fault to the jury does not of itself establish noncompliance with the constitutional requirements established in *Gertz,* however. Nothing in the Constitution requires that assessment of fault in a civil case tried in a state court be made by a jury, nor is there any prohibition against such a finding being made in the first instance by an appellate, rather than a trial, court. The First and Fourteenth Amendments do not impose upon the States any limitations as to how, within their own judicial systems, factfinding tasks shall be allocated. If we were satisfied that one of the Florida courts which considered this case had supportably ascertained petitioner was at fault, we would be required to affirm the judgment below.

But the only alternative source of such a finding, given that the issue was not submitted to the jury, is the opinion of the Supreme Court of Florida. That opinion appears to proceed generally on the assumption that a showing of fault was not required, but then in the penultimate paragraph it recites:

> "Furthermore, this erroneous reporting is clear and convincing evidence of the negligence in certain segments of the news media in gathering the news. Gertz v. Welch, Inc., supra. Pursuant to Florida law in effect at the time of the divorce judgment (Section 61.08, Florida Statutes), a wife found guilty of adultery could not be awarded alimony. Since petitioner had been awarded alimony, she had not been found guilty of adultery nor had the divorce been granted on the ground of adultery. A careful examination of the final decree prior to publication would have clearly demonstrated that the divorce had been granted on the grounds of extreme cruelty, and thus the wife would have been saved the humiliation of being accused of adultery in a nationwide magazine. This is a flagrant example of `journalistic negligence.' " 305 So. 2d, at 178.

It may be argued that this is sufficient indication the court found petitioner at fault within the meaning of *Gertz.* Nothing in that decision or in the First or Fourteenth Amendment requires that in a libel action an appellate court treat in detail by written opinion all contentions of the parties, and if the jury or trial judge had found fault in fact, we would be quite willing to read the quoted passage as affirming that conclusion. But without some finding of fault by the

judge or jury in the Circuit Court, we would have to attribute to the Supreme Court of Florida from the quoted language not merely an intention to affirm the finding of the lower court, but an intention to find such a fact in the first instance.

Even where a question of fact may have constitutional significance, we normally accord findings of state courts deference in reviewing constitutional claims here. See, *e.g., Lyons* v. *Oklahoma,* 322 U.S. 596, 602-603 (1944); *Gallegos* v. *Nebraska,* 342 U.S. 55, 60-61 (1951) (opinion of Reed, J.). But that deference is predicated on our belief that at some point in the state proceedings some fact finder has made a conscious determination of the existence or nonexistence of the critical fact. Here the record before us affords no basis for such a conclusion.

It may well be that petitioner's account in its "Milestones" section was the product of some fault on its part, and that the libel judgment against it was, therefore, entirely consistent with *Gertz.* But in the absence of a finding in some element of the state-court system that there was fault, we are not inclined to canvass the record to make such a determination in the first instance. Cf. *Rosenblatt* v. *Baer,* 383 U.S., at 87-88. Accordingly, the judgment of the Supreme Court of Florida is vacated and the case remanded for further proceedings not inconsistent with this opinion.

So ordered.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, concurring.

A clear majority of the Court adheres to the principles of *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323 (1974). But it is evident from the variety of views expressed that perceptions differ as to the proper application of such principles to this bizarre case. In order to avoid the appearance of fragmentation of the Court on the basic principles involved, I join the opinion of the Court. I add this concurrence to state my reaction to the record presented for our review.~

In one paragraph near the end of its opinion, the Supreme Court of Florida cited *Gertz* in concluding that Time was guilty of "journalistic negligence." But, as the opinion of the Court recognizes, *ante,* at 462 n. 7, and 463, it is not evident from this single paragraph that any type of fault standard was in fact applied. Assuming that Florida now will apply a negligence standard in cases of this kind, the ultimate question here is whether Time exercised due care under the circumstances: Did Time exercise the reasonably prudent care that a State may constitutionally demand of a publisher or broadcaster prior to a publication whose content reveals its defamatory potential?~ There was substantial evidence, much of it uncontradicted, that the editors of Time exercised considerable care in checking the accuracy of the story prior to its publication.

~My point in writing is to emphasize that, against the background of a notorious divorce case, see *Curtis Publishing Co.,* 388 U.S., at 158-159, and a decree that invited misunderstanding, there *was* substantial evidence supportive of Time's defense that it was not guilty of actionable negligence. At the very least the jury or court assessing liability in this case should have weighed these

factors and this evidence before reaching a judgment. There is no indication in the record before us that this was done in accordance with *Gertz.*

MR. JUSTICE BRENNAN, dissenting.

In my view, the question presented by this case is the degree of protection commanded by the First Amendment's free expression guarantee where it is sought to hold a publisher liable under state defamation laws for erroneously reporting the results of a public judicial proceeding.˜ {W}e have held that the contempt power may not be used to punish the reporting of judicial proceedings merely because a reporter "missed the essential point in a trial or failed to summarize the issues to accord with the views of the judge who sat on the case."^ And "[w]hat a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel."^ The First Amendment insulates from defamation liability a margin for error sufficient to ensure the avoidance of crippling press self-censorship in the field of reporting public judicial affairs. To be adequate, that margin must be both of sufficient breadth and predictable in its application. In my view, therefore, the actual-malice standard of *New York Times* must be met in order to justify the imposition of liability in these circumstances.

MR. JUSTICE WHITE, dissenting.

I would affirm the judgment of the Florida Supreme Court because First Amendment values will not be furthered in any way by application to this case of the fault standards newly drafted and imposed by *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323 (1974), upon which my Brother REHNQUIST relies, or the fault standards required by *Rosenbloom* v. *Metromedia, Inc.,* 403 U.S. 29 (1971), upon which my Brother BRENNAN relies; and because, in any event, any requisite fault was properly found below.˜

MR. JUSTICE MARSHALL, dissenting.

The Court agrees with the Supreme Court of Florida that the "actual malice" standard of *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964), does not apply to this case. Because I consider the respondent, Mary Alice Firestone, to be a "public figure" within the meaning of our prior decisions, *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323 (1974); *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130 (1967), I respectfully dissent.˜