HUSTLER MAGAZINE v. FALWELL[1]

SUPREME COURT OF THE UNITED STATES
485 U.S. 46
February 24, 1988
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OPINION: Chief Justice REHNQUIST…Hustler Magazine, Inc., is a magazine of nationwide circulation. Jerry Falwell, a nationally known minister who has been active as a commentator on politics and public affairs, sued Hustler and its publisher, Larry Flynt, to recover damages for invasion of privacy, libel, and intentional infliction of emotional distress…

The inside front cover of the November 1983 issue of Hustler Magazine featured a "parody" of an advertisement for Campari Liqueur that contained the name and picture of Falwell and was entitled "**Jerry Falwell talks about his first time**." This parody was modeled after actual Campari ads that included interviews with various celebrities about their "first times." Although it was apparent by the end of each interview that this meant the first time they sampled Campari, the ads clearly played on the sexual double entendre of the general subject of "first times." Copying the form and layout of these Campari ads, Hustler's editors chose Falwell as the featured celebrity and drafted an alleged "interview" with him in which he states that his "first time" was **during a drunken incestuous rendezvous with his mother in an outhouse**. The Hustler parody portrays Falwell and his mother as drunk and immoral, and suggests that respondent is a hypocrite who preaches only when he is drunk. In **small print** at the bottom of the page, the ad contains the disclaimer, "**ad parody—not to be taken seriously**." The magazine's table of contents also lists the ad as "Fiction; Ad and Personality Parody."

…The case proceeded to trial. At the close of the evidence, the District Court granted a directed verdict for petitioners on the invasion of privacy claim. The jury then found against Falwell on the libel claim, specifically finding that the ad parody could not "reasonably be understood as describing actual facts about Falwell or actual events in which he participated." The jury ruled for [him] on the intentional infliction of emotional distress claim, however, and stated that he should be awarded $100,000 in compensatory damages, as well as $50,000 each in punitive damages from petitioners…

[1] Justice Kennedy did not participate.

The Court of Appeals…affirmed the judgment against petitioners [and]…rejected petitioners' argument that the "actual malice" standard of *New York Times Co. v. Sullivan*[2] must be met before Falwell can recover for emotional distress. The court agreed that because Falwell is concededly a public figure, petitioners are "entitled to the same level of first amendment protection in the claim for intentional infliction of emotional distress that they received in Falwell's claim for libel." But this does not mean that a literal application of the actual malice rule is appropriate in the context of an emotional distress claim. In the court's view, the New York Times decision emphasized the constitutional importance not of the falsity of the statement or the defendant's disregard for the truth, but of the heightened level of culpability embodied in the requirement of "knowing…or reckless" conduct. Here, the New York Times standard is satisfied by the state-law requirement, and the jury's finding, that the defendants have acted intentionally or recklessly. The Court of Appeals then went on to reject the contention that because the jury found that the ad parody did not describe actual facts about respondent, the ad was an opinion that is protected by the First Amendment. As the court put it, this was "irrelevant," as the issue is "whether the ad's publication was sufficiently outrageous to constitute intentional infliction of emotional distress."

…This case presents us with a novel question involving First Amendment limitations upon a State's authority to protect its citizens from the intentional infliction of emotional distress. We must decide whether a public figure may recover damages for emotional harm caused by the publication of an ad parody offensive to him, and doubtless gross and repugnant in the eyes of most. Respondent would have us find that a State's interest in protecting public figures from emotional distress is sufficient to deny First Amendment protection to speech that is patently offensive and is intended to inflict emotional injury, even when that speech could not reasonably have been interpreted as stating actual facts about the public figure involved. This we decline to do.

At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern. "The freedom to speak one's mind is not only an aspect of individual liberty—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole." We have therefore been particularly vigilant to ensure that individual expressions of ideas remain free from governmentally imposed sanctions…The sort of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office or those public figures who are "intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large."…Such criticism, inevitably, will not always be reasoned or moderate; public figures as well as public officials will be subject to "vehement, caustic, and sometimes unpleasantly sharp attacks."…The candidate who vaunts his spotless record and sterling integrity cannot convincingly cry 'Foul!' when an opponent or an industrious reporter **attempts to demonstrate the contrary**." *Monitor Patriot Co. v. Roy* (1971).

[2] Case 1A-S-12 on this website.

Is anyone frustrated, here! No one is suggesting that a citizen or the press is not free to "attempt to demonstrate that a holier than thou candidate does not have a spotless record or sterling integrity." What, pray tell, does that have to do with using outrageous and defamatory lies as the methodology?

Of course, this does not mean that <u>any</u> speech about a public figure is immune from sanction in the form of damages. Since *New York Times Co. v. Sullivan*, we have consistently ruled that a public figure may hold a speaker liable for the damage to reputation caused by publication of a **<u>defamatory falsehood</u>**, but only if the statement was made "**with knowledge that it was false or with reckless disregard of whether it was false or not." <u>False statements of fact…interfere with the truth-seeking function of the marketplace of ideas and…cause damage to an individual's reputation that cannot easily be repaired by counter-speech, however persuasive or effective</u>.** But even though falsehoods have little value in and of themselves, they are "nevertheless inevitable in free debate" and a rule that would impose strict liability on a publisher for false factual assertions would have an undoubted "chilling" effect on speech relating to public figures that does have constitutional value…Respondent argues, however, that a different standard should apply in this case because here the State seeks to prevent not reputational damage, but the severe emotional distress suffered by the person who is the subject of an offensive publication…In respondent's view, and in the view of the Court of Appeals, so long as the utterance was intended to inflict emotional distress, was outrageous, and did in fact inflict serious emotional distress, it is of no constitutional import whether the statement was a **<u>fact</u>** or an **<u>opinion</u>**, or whether it was **<u>true</u>** or false. It is the intent to cause injury that is the gravamen of the tort, and the State's interest in preventing emotional harm simply outweighs whatever interest a speaker may have in speech of this type.

Hold on. Even I don't buy that argument. Look, if it is **true**, there is no limitation. By the way, this case does not discuss the most flagrant **defamatory** comment: "<u>Falwell only preaches when he is **drunk**</u>." No one would believe the crude remark about mom. But, is drinking on the job a different animal?

Generally speaking the law does not regard the intent to inflict emotional distress as one which should receive much solicitude, and it is quite understandable that most if not all jurisdictions have chosen to make it civilly culpable where the conduct in question is sufficiently "outrageous." But in the world of debate about public affairs, many things done with motives that are less than admirable are protected by the First Amendment…

Thus while such a bad motive may be deemed controlling for purposes of tort liability in other areas of the law, we think the First Amendment prohibits such a result in the area of public debate about public figures.

Were we to hold otherwise, there can be little doubt that political cartoonists and satirists would be subjected to damages awards without any showing that their work falsely defamed its subject…The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or politically embarrassing events—an exploitation often calculated to

injure the feelings of the subject of the portrayal. The art of the cartoonist is often not reasoned or evenhanded, but slashing and one-sided…

Despite their sometimes caustic nature, from the early cartoon portraying George Washington as an ass down to the present day, graphic depictions and satirical cartoons have played a prominent role in public and political debate. Nast's castigation of the Tweed Ring, Walt McDougall's characterization of Presidential candidate James G. Blaine's banquet with the millionaires at Delmonico's as "The Royal Feast of Belshazzar" and numerous other efforts have undoubtedly had an effect on the course and outcome of contemporaneous debate. Lincoln's tall, gangling posture, Teddy Roosevelt's glasses and teeth, and Franklin D. Roosevelt's jutting jaw and cigarette holder have been memorial-ized by political cartoons with an effect that could not have been obtained by the photographer or the portrait artist. From the viewpoint of history it is clear that our political discourse would have been considerably poorer without them.

Respondent contends, however, that the caricature in question here was so "outrageous" as to distinguish it from more traditional political cartoons. There is no doubt that the caricature of respondent and his mother published in Hustler is at best a distant cousin of the political cartoons described above, and a rather poor relation at that. If it were possible by laying down a principled standard to separate the one from the other, public discourse would probably suffer little or no harm. But we doubt that there is any such standard, and we are quite sure that the pejorative description "outrageous" does not supply one. "Outrageousness" in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression.

RWV! Who is kidding who? Every juror views all facts through the lens of their own “tastes or views” in literally every case.

An "outrageousness" standard thus runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience…And, as we stated in *FCC v. Pacifica Foundation* (1978)[3]:

> "The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection.”

For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas…

Admittedly, these oft-repeated First Amendment principles, like other principles, are subject to limitations. We recognized in *Pacifica Foundation,* that speech that is 'vulgar,' 'offensive,' and 'shocking' is "not entitled to absolute constitutional protection under all circumstances." In *Chaplinsky v. New Hampshire*[4], we held that a State could lawfully punish an individual for the use of insulting "fighting words—those which by their very utterance inflict injury or tend to

[3] Case 1A-S-30 on this website.
[4] Case 1A-S-8 on this website.

incite an immediate breach of the peace." These limitations are but recognition of the observation in *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* (1985), that this Court has "long recognized that not all speech is of equal First Amendment importance." But the sort of expression involved in this case does not seem to us to be governed by any exception to the general First Amendment principles stated above.

We conclude that public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publications such as the one here at issue without showing in addition that the publication contains a false statement of fact which was made with "actual malice," i.e., with knowledge that the statement was false or with reckless disregard as to whether or not it was true. This is not merely a "blind application" of the New York Times standard…it reflects our considered judgment that such a standard is necessary to give adequate "breathing space" to the freedoms protected by the First Amendment.

Here it is clear that respondent Falwell is a "public figure" for purposes of First Amend-ment law. The jury found against respondent on his libel claim when it decided that the Hustler ad parody could not "reasonably be understood as describing actual facts about Falwell or actual events in which he participated." The Court of Appeals interpreted the jury's finding to be that the ad parody "was not reasonably believable" and in accordance with our custom we accept this finding. Respondent is thus relegated to his claim for damages awarded by the jury for the intentional infliction of emotional distress by "outrageous" conduct. But for reasons heretofore stated this claim cannot, consistently with the First Amendment, form a basis for the award of damages when the conduct in question is the publication of a caricature such as the ad parody involved here. The judgment of the Court of Appeals is…Reversed…