

Trial Briefs

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A defamation action under Rule 224 is not afforded First Amendment protections so long as the 'necessity' requirement is met

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***Hadley v. Doe*, 2015 IL 118000**

The following two comments were posted on the Internet by "Fuboy" in response to an article published by Freeport Journal Standard discussing Plaintiff Bill Hadley's run for election to the county board: "Hadley is a Sandusky waiting to be exposed. Check out the view he has of Empire¹ from his front door." "Anybody know the tale of Hadley's suicide attempt? It is kinda 'It's a Wonderful Life' with Potterville win[n]ing out. We can just be happy that Stephenson County is fortunate enough to have this guy want to be of 'service' again." Online readers of the journal are required to complete a registration process before being allowed to post comments on an article.

Hadley decided to take action against Fuboy and filed a defamation suit against the parent company of Freeport, Gatehouse Media. In order to obtain Fuboy's identity, Hadley first needed to obtain the Internet Protocol (IP) address from Fuboy's Internet service provider. After identifying that Comcast was Fuboy's Internet service provider, Hadley then issued a subpoena to Comcast seeking the identity of the IP address. After being court ordered, Comcast disclosed the subscriber

as "Fuboy." Using this information, Hadley filed a defamation *per se* action against "Fuboy" on the basis that the comment that Hadley was a "Sandusky waiting to be exposed" inputed the commission of a crime to Hadley.

Comcast contested the court's order directing it to provide the identity of Fuboy. In response, the circuit court advised the parties that Illinois Supreme Court Rule 224 should be utilized to discover the identity of Fuboy. Rule 224 can be used to identify potential defendants prior to the commencement of a lawsuit. However, under Rule 224, a party has to show that relief is "necessary." In a defamation action such as Hadley's, the necessity must be carefully considered in order to protect the online commentator's first amendment rights to engage in free speech. The circuit court correctly applied the standard of dismissal under a 2-615 motion to dismiss in order to determine whether relief under Rule 224 was necessary. The appellate court affirmed.

On appeal, the Court determined that an alias was sufficient for identifying a known defendant, in this case Fuboy, and the general rule set forth in *Bogseth*, that

suits brought against fictitious parties are legally invalid or without legal effect, is inapplicable because the typical concerns of adequate notice and preventing fraud on the courts were not present in this case as Fuboy was represented by counsel and was not disputing his identity as Fuboy. *Bogseth v. Emanuel*, 166 Ill.2d 507 (1995). The Court found *Bogseth* distinguishable from the instant case because Plaintiff had filed his cause against a real person using an adopted alias as opposed to filing suit against an unknown John Doe.

It was further determined that Rule 224's necessity requirement can be satisfied by applying the section 2-615 motion to dismiss standard when a defamation action has been alleged. In applying the standard for stating a cause of action for defamation, that a plaintiff must plead facts showing the defendant (1) made a false statement about the plaintiff; (2) the defendant made an unprivileged publication of that statement to a third party; and (3) the publication caused damages, the Court found that Fuboy's comments were indeed defamatory *per se*. The Supreme Court noted that typically Rule 224 must be utilized *before* an action is commenced. However, in the instant matter, because

the circuit court had instructed the parties to utilize Rule 224 after the action had been commenced, the Court would not invalidate Hadley's request for relief under Rule 224.

In sum, Rule 224 should be utilized to obtain the identity of an online user for defamation claims. However, the action will only survive if the allegations pass muster under the standard for section 2-615. ■

1. Empire refers to an elementary school in Freeport, Illinois.

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