

SUPREME COURT OF FLORIDA

Tyne v. Time Warner Entertainment Co., L.P.

901 So. 2d 802 (Fla. 2005) · No. SC03-1251 · Decided April 21, 2005

SUMMARY

The Supreme Court of Florida answered a certified question concerning whether Florida Statutes section 540.08 applies to a motion picture that uses a person's name or likeness without directly promoting a product or service. The court approved the construction in Loft v. Fuller and held that the statute's commercial-purpose language does not apply to publications, including motion pictures, that do not directly promote a product or service. The court affirmed the First Amendment considerations underlying that interpretation while limiting its decision to the certified question.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Wells, J.; Pariente, C.J.; Anstead, J.; Quince, J.; Cantero, J.; Bell, J.; Lewis, J.
JURISDICTION	Florida
DECIDED	April 21, 2005
DOCKET	SC03-1251
DISPOSITION	other
PROCEDURAL POSTURE	The Eleventh Circuit Court of Appeals certified a determinative question of Florida law concerning the scope of Florida's commercial misappropriation statute, section 540.08, Florida Statutes. The Supreme Court of Florida rephrased and answered the question.
STANDARD OF REVIEW	The court reviewed and answered a certified question of state law de novo.
PRECEDENTIAL VALUE	Published and precedential decision of the Supreme Court of Florida; answers a certified question and approves the governing statutory construction.
PARTIES	Erica Tyne, Billie-Jo Francis Tyne, Debra J. Tigue, Dale R. Murphy, Jr., Douglas Edward Kosko v. Time Warner Entertainment Company, L.P., d/b/a Warner Bros. Pictures, Baltimore/Spring Creek Pictures, L.L.C., Radiant Productions, Inc.

TOPICS

statutory interpretation

first amendment

appellate jurisdiction

appellate procedure

standard of review

PRACTICE AREAS

constitutional law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the phrase "for purposes of trade or for any commercial or advertising purpose" in section 540.08(1), Florida Statutes, includes publications that do not directly promote a product or service.
2. Whether a motion picture that uses a person's name or likeness as part of an expressive work, rather than to endorse or directly promote an unrelated product or service, falls within section 540.08's prohibition.

HOLDINGS

1. The term "commercial purpose" in section 540.08(1), Florida Statutes, does not apply to publications, including motion pictures, that do not directly promote a product or service.

KEY QUOTATIONS

"For the foregoing reasons, we answer the rephrased certified question in the negative and hold that the term "commercial purpose" as used in section 540.08(1) does not apply to publications, including motion pictures, which do not directly promote a product or service." (810)

"DOES THE PHRASE "FOR PURPOSES OF TRADE OR FOR ANY COMMERCIAL OR ADVERTISING PURPOSE" IN SECTION 540.08(1), FLORIDA STATUTES, INCLUDE PUBLICATIONS WHICH DO NOT DIRECTLY PROMOTE A PRODUCT OR SERVICE?" (806)

FACTUAL BACKGROUND

The Andrea Gail fishing vessel was lost during a 1991 storm, and all six crew members, including Billy Tyne and Dale Murphy, Sr., were presumed dead. Sebastian Junger later wrote *The Perfect Storm*, and Warner Bros. acquired rights to produce a motion picture based on the book. The film dramatized the storm and portrayed the lives and deaths of the crew members, including the appellants' relatives, without obtaining permission or providing compensation. The appellants claimed that the film violated Florida's commercial misappropriation statute and constituted common-law false-light invasion of privacy.

PROCEDURAL HISTORY

The appellants sued Warner Bros. and related entities in the United States District Court for the Middle District of Florida under section 540.08, Florida Statutes, and for common-law false-light invasion of privacy, based on the use of their names and likenesses in the motion picture *The Perfect Storm*. The district court granted summary judgment for the defendants on all claims, concluding that the motion picture and its promotion did not constitute a commercial purpose under section 540.08. On appeal, the Eleventh Circuit certified the statutory question to the Supreme Court of Florida.

DISPOSITION

other

CASES CITED

- Tyne v. Time Warner Entertainment Co., L.P., 336 F.3d 1286, 1288-91 (11th Cir. 2003)
- Tyne v. Time Warner Entertainment Co., L.P., 204 F. Supp. 2d 1338, 1341-42 (M.D. Fla. 2002)
- Loft v. Fuller, 408 So. 2d 619, 622-23 (Fla. 4th DCA 1981)
- Valentine v. C.B.S., Inc., 698 F.2d 430, 431, 433 (11th Cir. 1983)
- Lane v. MRA Holdings, LLC, 242 F. Supp. 2d 1205, 1212-14 (M.D. Fla. 2002)
- Ewing v. A-1 Management, Inc., 481 So. 2d 99 (Fla. 3d DCA 1986)
- Epic Metals Corp. v. CONDEC, Inc., 867 F. Supp. 1009 (M.D. Fla. 1994)
- National Football League v. The Alley, Inc., 624 F. Supp. 6 (S.D. Fla. 1983)
- Goldenberg v. Sawczak, 791 So. 2d 1078, 1083 (Fla. 2001)
- Seale v. Gramercy Pictures, 949 F. Supp. 331, 337 (E.D. Pa. 1996)
- Cartoons L.C. v. Major League Baseball Players Ass'n, 95 F.3d 959, 970 (10th Cir. 1996)
- Comedy III Productions, Inc. v. Gary Saderup, Inc., 25 Cal. 4th 387, 402, 21 P.3d 797 (2001)
- Partington v. Bugliosi, 56 F.3d 1147 (9th Cir. 1995)
- Matthews v. Wozencraft, 15 F.3d 432 (5th Cir. 1994)
- Ruffin-Steinback v. dePasse, 82 F. Supp. 2d 723 (E.D. Mich. 2000)
- Guglielmi v. Spelling-Goldberg Productions, 25 Cal. 3d 860, 873-74, 603 P.2d 454 (1979) (Bird, C.J., concurring)
- United States v. Clark, 445 U.S. 23 (1980)
- Sandlin v. Criminal Justice Standards & Training Commission, 531 So. 2d 1344, 1346 (Fla. 1988)
- Industrial Fire & Casualty Insurance Co. v. Kwechin, 447 So. 2d 1337 (Fla. 1983)
- Department of Insurance v. Southeast Volusia Hospital District, 438 So. 2d 815 (Fla. 1983)