

SUPREME COURT OF CALIFORNIA

Winter v. DC Comics

30 Cal. 4th 881, 134 Cal. Rptr. 2d 634, 69 P.3d 473 (Cal. 2003) · No. S108751 · Decided June 2, 2003

SUMMARY

The Supreme Court of California held that comic books featuring fictional characters that evoked musicians Johnny and Edgar Winter contained significant transformative creative elements. Applying the transformative-use test from Comedy III Productions, Inc. v. Gary Saderup, Inc., the court concluded that the comic books were protected by the First Amendment against the plaintiffs' right-of-publicity claim. The court reversed the Court of Appeal's judgment and remanded for further proceedings concerning any advertising-based claims.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Chin, J.; George, C.J.; Kennard, J.; Baxter, J.; Werdegarr, J.; Brown, J.; Moreno, J.
JURISDICTION	California
DECIDED	June 2, 2003
DOCKET	S108751
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from summary judgment for defendants on claims including statutory misappropriation of likeness. The Court of Appeal initially affirmed, but after remand for reconsideration under Comedy III, it affirmed summary adjudication on all claims except misappropriation of likeness, on which it found triable issues. The California Supreme Court granted review.
STANDARD OF REVIEW	Summary judgment and summary adjudication are reviewed de novo. Whether a challenged expressive work is sufficiently transformative to receive First Amendment protection may often be resolved as a matter of law by viewing the work.
PRECEDENTIAL VALUE	Published California Supreme Court opinion; precedential
PARTIES	Edgar Winter et al. v. DC Comics et al.

TOPICS

free speech

first amendment

constitutional law

civil rights

PRACTICE AREAS

constitutional law

intellectual property

right of publicity

civil rights

torts

QUESTIONS PRESENTED

1. Whether the comic books' depictions of fictional characters evoking Johnny and Edgar Winter contained sufficient transformative creative elements to receive First Amendment protection against the plaintiffs' statutory right-of-publicity claim under California Civil Code section 3344.
2. Whether evidence that defendants marketed the comic books by trading on plaintiffs' likenesses and reputations created a triable issue or otherwise made the comic books nontransformative.
3. Whether the Court of Appeal should address any claim based solely on the comic books' advertising on remand.

HOLDINGS

1. Comic books containing fictional characters that evoke celebrities are entitled to First Amendment protection when significant creative elements transform the celebrity likeness into an expressive work rather than a mere conventional depiction or imitation. The Johnny and Edgar Autumn characters were sufficiently transformative because they were distorted, fanciful half-human, half-worm characters within a larger expressive story.
2. Evidence that defendants marketed the comic books by trading on the plaintiffs' likenesses and reputations does not make an otherwise transformative work nontransformative. The relevant inquiry is the nature of the work, not how it is marketed.

KEY QUOTATIONS

“The ‘inquiry is whether the celebrity likeness is one of the ‘raw materials’ from which an original work is synthesized, or whether the depiction or imitation of the celebrity is the very sum and substance of the work in question.” (at 639-640)

“The necessary implication of this observation is that the right of publicity is essentially an economic right.” (at 640)

“What matters is whether the work is transformative, not whether it is parody or satire or caricature or serious social commentary or any other specific form of expression.” (at 642)

“The comic books here are entitled to First Amendment protection.” (at 643)

FACTUAL BACKGROUND

DC Comics published a five-volume comic-book miniseries featuring the fictional antihero Jonah Hex. The series introduced villainous characters Johnny and Edgar Autumn, whose names, long white hair, albino features, top hat, and title reference allegedly evoked musicians Johnny and Edgar Winter. The Winter brothers sued

under California Civil Code section 3344, alleging unauthorized appropriation of their names and likenesses and portraying them as depraved and violent. The comic books depicted the Autumn brothers as fanciful half-human, half-worm characters in an elaborate fictional narrative.

PROCEDURAL HISTORY

The trial court granted defendants summary judgment on all causes of action. The Court of Appeal initially affirmed. After the Supreme Court remanded for reconsideration in light of *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, the Court of Appeal affirmed the judgment on all claims except the misappropriation-of-likeness claim and reversed for further proceedings on that claim. The Supreme Court reversed the Court of Appeal's judgment and remanded for further proceedings consistent with its opinion, including consideration of any preserved claim based solely on advertising.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion. The Court of Appeal was also directed to determine whether plaintiffs preserved a cause of action based solely on the advertising and, if so, whether that cause of action is susceptible to summary adjudication.

CASES CITED

- *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, 25 Cal. 4th 387, 106 Cal. Rptr. 2d 126, 21 P.3d 797 (2001)
- *Guglielmi v. Spelling-Goldberg Productions*, 25 Cal. 3d 860, 160 Cal. Rptr. 352, 603 P.2d 454 (1979)
- *Cardtoons v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996)
- *Dr. Seuss Enterprises, L.P. v. Penguin Books*, 109 F.3d 1394 (9th Cir. 1997)
- *Good Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal. 3d 672, 150 Cal. Rptr. 258, 586 P.2d 572 (1978)
- *Baker v. Los Angeles Herald Examiner*, 42 Cal. 3d 254, 228 Cal. Rptr. 206, 721 P.2d 87 (1986)
- *Aisenson v. American Broadcasting Co.*, 220 Cal. App. 3d 146, 269 Cal. Rptr. 379 (1990)