

A Celebrity Standard for Defamation
Britney Spears v. US Weekly LLC

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I. Introduction

In today's world of entertainment communication, libel is a common and popular accusation, leading to costly and publicized lawsuits throughout Hollywood. While the journalism standards and practices are constantly changing, so are the norms for celebrities in the pop culture-obsessed United States. It is easy to see statements that could arguably be considered defamatory everywhere in the entertainment industry, with popular magazines constantly searching for the newest, interesting story and trying to promote and sell their product. Especially with media and journalism constantly changing, libel laws are often in question. However, in many cases, just because the celebrity rumors may be false, it does not mean that the person was libeled by the publication. According Katherine A. Freely, these changes should hold journalists to a higher standard.

In the age of New Media, the image – always central to celebrity journalism – only grows in importance as the digital realm has fueled and increasingly lucrative and competitive marketplace of celebrity imagery. As a result, the role of the paparazzi and contemporary celebrity journalism has grown and needs a closer accounting.¹

However, does the changing world instead hold libel laws to different standards rather than journalists themselves?

The case of *Britney Spears v. US Weekly LLC* (hereinafter referred to as *Spears v. US Weekly*) explored libel law in modern day Hollywood culture, and proves that it can be very difficult to prevail in a libel lawsuit. This case leads to many questions about libel law itself, what can be considered defamatory, and anti-

¹ Freely, Katherine A (2012). "Gossip as News: on Modern U.S. Celebrity Culture and Journalism." *History Compass*.

SLAPP laws, all of which are constantly changing and progressing, and all of which will be investigated in this report.

II. Case Background

The case *Spears v. US Weekly* was heard in 2006 at the California Superior Court. The lawsuit came in response to an article published in the popular celebrity magazine *US Weekly*. The case involved plaintiff Britney Spears, celebrity singer, dancer, actress and performer, who has become an American icon. The defendant was *US Weekly LLC*, a weekly celebrity and entertainment magazine based in California.

The article questioned, entitled, “Brit & Kev: Secret Sex Tape? New parents have a new worry: racy footage from 2004,” was published in the “HOTstuff” column of *US Weekly*. The article was published on page 37 of the October 17, 2005 issue. The story alleged that Spears and then husband Kevin Federline had created an “X-rated video.” According to the article, Spears and her husband watched the video at an “estate planning meeting at Katten Muchin Rosenman law firm in L.A.’s Century City.”² At this meeting, the article alleged Spears and Federline “fessed up to lawyers that a member of their entourage has threatened to release raunchy footage of the two” and they feared that the “X-rated tape starring the two may go public.”³ The article also states that Spears “gave a copy to their lawyers on September 30.”⁴ The article reported that “everyone either laughed or was

² Britney Spears v. US Weekly LLC., http://cdn.digitalcity.com/ch_Ibid_pg.tzmz/051219spears_sues_us_weekly.pdf, page 2.

³ Ibid, pg. 2.

⁴ Ibid, pg. 2.

disgusted by [the video]"... and that Spears and Federline were "acting goofy the whole time."⁵

Following the release of the article, Spears filed a lawsuit against *US Weekly LLC*. Spears' complaint was for (1) libel and (2) violation of common law right of publicity. Spears claimed that the article was untrue and fabricated, and that no such "X-rated video" exists. According to the court report, the plaintiff alleged, "The defamatory Article portrayed Spears in a false and outrageous light,"⁶ and that "The Article is a despicable work of fiction comprised of blatant lies from beginning to end."⁷

Spears claimed that there were five true facts that proved the celebrity magazine's story was fabricated. First, Spears stated that there was no such X-rated video. Because there is no such video, Spears claimed it was not possible to give a copy to their lawyers on September 30, so this was also false. According to Spears, the next lie was that no one viewed the video at an estate-planning meeting, because there was no video. Similarly, Spears claimed that no member of their entourage had threatened to release any such video, because there is no video. In addition, Spears stated that there was no estate planning meeting on September 30, and that the law firm named, Katten Muchin Rosenman, does not handle Spears' estate planning.⁸

⁵ Britney Spears v. US Weekly LLC., http://cdn.digitalcity.com/ch_Ibid_pg.tnz/051219spears_sues_us_weekly.pdf, pg. 2.

⁶ Ibid, pg. 4.

⁷ Ibid, pg. 4.

⁸ Ibid, pg. 2.

Spears claimed that the fabricated story defamed her, portraying her as “acting ‘goofy’ while watching a ‘raunchy’ ‘X-rated’ videotape of herself and her husband.”⁹ The plaintiff claimed that *US Weekly LLC* should be held responsible and accountable because the article defamed her. In court, Spears’ legal team claimed the “exploited the plaintiff’s name and photograph for the defendant’s pecuniary gain.”¹⁰ Spears demanded a retraction because of the allegedly false and defamatory statements in the article.

III. First Cause of Action: Libel

In order to prevail in a libel lawsuit, there are seven elements that must be considered. The plaintiff holds the burden of proof to explore these requirements, and because of this, libel cases can be difficult to win. The fundamental components that must be proven in a libel lawsuit are explored here:

1. Statement must be defamatory

In order to win a libel lawsuit, the information or statement must be defamatory, meaning it has damaged the plaintiff’s reputation. In Spears’ case, the plaintiffs found it difficult to prove that the statements in the *US Weekly* article defamed her.

2. Statement must be false

The plaintiff in a libel case must prove that the information released was false. If the plaintiff cannot prove the information was false, he/she will not prevail in a libel case. *US Weekly* published the article as a statement of

⁹ Britney Spears v. US Weekly LLC., http://cdn.digitalcity.com/ch_Ibid_pg.tnz/051219spears_sues_us_weekly.pdf, pg. 6.

¹⁰ Ibid, pg. 4.

fact, not of opinion, so this could be proven false if Spears could show that statements made were untrue. For example, Spears could easily prove that the statements made were untrue by showing record that there was no estate planning meeting on September 30.

3. *The statement must be a factual assertion*

A libel claim cannot be based on a joke, hyperbole or rhetoric, or opinion, and must instead be based on a factual assertion. Jokes cannot be the basis for libel claim unless it appears to assert a fact. Hyperbole and rhetoric cannot be considered libel if the statement is so unreasonable that it cannot be taken literally, and is not a factual assertion. Similarly, opinions cannot be a reason for libel claims, despite the fact that it is sometimes difficult to distinguish the difference between opinion and fact. However, in the *Spears v. US Weekly* case, the plaintiff alleged that the article reported a story that was not based in opinion, humor or hyperbole.

4. *Information must be published*

In addition, the information must be published. The false, defamatory statement or information must be distributed to two or more people in order for the plaintiff to be considered libeled. In the case of *Spears v. US Weekly*, the information was clearly published, as the magazine reaches large audiences across the United States each week. The plaintiff alleged, “Defendants printed, disseminated, published or circulated, or caused to be

printed, disseminated, published or circulated in California, and elsewhere throughout the world, the Article which is libelous of Plaintiff.”¹¹

5. *The plaintiff must be identifiable*

Identification is also a requirement for proving that a plaintiff was libeled. If a group of people can accurately recognize who is being portrayed in the publication, then the person is identifiable. In this case, the publication clearly stated Spears’ name and picture, and therefore, the plaintiff was identifiable.

6. *The plaintiff must be able to prove fault*

The plaintiff must also be able to prove fault of the defendant. There are two degrees of fault: negligence and actual malice. In the case of *Spears v. US Weekly*, Spears, as a popular performer and celebrity icon, is considered a public figure. In this case, because Spears was considered a public figure, she had to prove that US Weekly published the false information with actual malice. Actual malice is knowledge of falsity or reckless disregard for the truth. This is a higher standard than negligence, which any private figure would need to prove in a libel case. According to the court report, Spears and her legal team argued,

The conduct of the Defendants as alleged herein was undertaken in a malicious effort to profit from the outrageous publication of the sensationalized Article of and concerning Plaintiff, to cause damage to Plaintiff’s reputation and standing in the community as a result of the manner or context in which Defendants have commercially exploited her name, photograph and

¹¹ Britney Spears v. US Weekly LLC.
http://cdn.digitalcity.com/ch_tmz/051219spears_sues_us_weekly.pdf, page 5.

likeness, to cause damage to the value of Plaintiff's name, likeness and goodwill, and to cause shame, mortification, hurt feelings, embarrassment, and humiliation.¹²

The Plaintiff also alleged, "[The] Defendants, and each of them, failed to properly investigate the facts prior to publishing the Article, and nevertheless recklessly and maliciously published the false and defamatory Article."¹³

7. The plaintiff must be able to prove harm

Finally, in order to win a libel lawsuit, one of the most important elements that a plaintiff must prove is harm. The information or statement must be defamatory, meaning it damaged the plaintiff's reputation. In addition, the publication must actually have harmed the plaintiff in a clear way. For example, financial implications like a loss of a job due to a libelous the article is a clear way one can suffer damages. In the case of *Spears v. US Weekly*, Spears was unable to prove that she was harmed in any way. In the case, the Plaintiff alleged, "The Article clearly exposes Plaintiff to hatred, contempt, ridicule and obloquy, and/or causes Plaintiff to be shunned or avoided, and has a tendency to injure Plaintiff in her occupation."¹⁴ However, this argument was not enough to prove the plaintiff was harmed by the article.

¹² Britney Spears v. US Weekly LLC.

http://cdn.digitalcity.com/ch_tmz/051219spears_sues_us_weekly.pdf, page 5.

¹³ Ibid, pg. 4.

¹⁴ Ibid, page 6.

IV. Second Cause of Action: Common Law Misappropriation of Rights of Publicity

Spears' second cause of action was for Common Law Misappropriation of Rights of Publicity. According to the court report, at the time the article was published and distributed, "Plaintiff had valuable rights of publicity and property rights with substantial commercial value, which she did not agree to license or transfer, in whole or in part, to any of the Defendants to commercially exploit by means of selling, distributing, disseminating or publishing the article about her."¹⁵ The plaintiffs argued that using misappropriation for the defendant's advantage exploited Spears with the intention of increasing the defendant's profit and pecuniary gain from the article. The plaintiff also alleged that the defendant had profited from exploiting her, and that the amount of damages was "in excess of the jurisdictional limits of this court, the exact amount of which is subject to proof at the time or trial, but believed to be in excess of Ten Million Dollars (\$10,000,000)."¹⁶

V. Case Outcome

According to the report of the lawyers representing *US Weekly* from Davis Wright Tremaine LLP, Superior Court Judge Lisa Hart Cole dismissed the lawsuit because she ruled that the celebrity could not be defamed by the published rumors. Although information and rumors such as those of a sex tape would defame a private figure and some other public figures, the judge ruled that Spears had "put

¹⁵ Britney Spears v. US Weekly LLC.

http://cdn.digitalcity.com/ch_tmz/051219spears_sues_us_weekly.pdf, pg. 7.

¹⁶ Ibid, pg. 8.

her modern sexuality squarely, and profitably, before the public eye” and could not be defamed for behaving in a sexual manner, whether or not the article was false.¹⁷

Judge Lisa Hart Cole granted the magazine’s anti-SLAPP motion and dismissed Spears’ lawsuit. The court’s opinion, according to a research journal by Elizabeth Soja, “suggested that even if that fact would be defamatory to most people, it would not be defamatory if the wife involved was Spears since she had used her sexuality to market herself.”¹⁸ The court noted that Spears had spoken openly about sex, performed in sexually suggestive ways, and profited from her sexuality, so the idea of a sex tape with her husband would not defame this persona. Therefore, although the published information may have been defamatory to others, especially private persons, because Spears is a public figure who has marketed herself in a sexual manner, the article was ruled not to be defamatory.

VI. Precedents

Possibly the most famous libel case in the United States was *New York Times Co. v. Sullivan* in 1964, which changed the nature of libel law in the United States. The decision in this case ruled that public officials could only win a libel lawsuit if they could prove actual malice.

In *Curtis Publishing Co. v. Butts* (1967), this actual malice standard was extended to include public figures, like celebrities. *Curtis Publishing Co. v. Butts* was a case regarding an article published in the Saturday Evening Post accusing

¹⁷ "Experience." *SLAPP Litigation*. Davis Wright Tremaine LLP, n.d. Web. <<http://www.dwt.com/practices/slapplitigation/?op=experience>>.

¹⁸ Soja, E. (2007). *Unchaste no longer? The dismissal of Britney Spears’ libel lawsuit reflects the courts’ changing view of what can be considered defamatory.* Reporters Committee for Freedom of the Press. <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-winter-2007/unchaste-no-longer>.

the respondent of conspiring to “fix a football game between the University of Georgia and the University of Alabama, played in 1962.”¹⁹ According to the Supreme Court ruling, “At the time of the article, Butts was the athletic director of the University of Georgia and had overall responsibility for the administration of its athletic program... Butts had previously served as head football coach of the University and was a well-known and respected figure in coach ranks.”²⁰ Because Butts was well-known and respected in his position, he was regarded as a public figure.

Because of cases like these, Britney Spears was considered a public figure in *Spears v. US Weekly*. However, in today’s Hollywood and celebrity-obsessed culture, celebrities face different standards for defamation, as evidenced by this case. Because Spears had portrayed herself in a sexual manner, the judge ruled she could not be defamed by rumors of a sex tape in *US Weekly*.

VII. Anti-SLAPP Law

In the *Spears v. US Weekly* case, Judge Lisa Hart Cole granted *US Weekly* Anti-SLAPP motion. In order to understand the outcome of this case, Anti-SLAPP laws must be explored.

Anti-SLAPP laws vary by state, and are often associated with libel cases of this nature. SLAPP is an acronym for Strategic Lawsuit Against Public Participation. The state of California, where the lawsuit was filed, has very detailed anti-SLAPP statutes.

¹⁹ *Curtis Publishing Co. v. Butts*. Supreme Court of the United States. 12 June 1967,

²⁰ *Ibid*.

California's anti-SLAPP law (Code of Civil Procedure section 425.16) was enacted to protect the free speech rights of the people and publications of California. The California anti-SLAPP statute enacted in 1992 provides a motion to strike a complaint arising from the exercise of the rights of petition and free speech.²¹ Simply put, this first statute protected the rights of free speech and petition against senseless lawsuits.

This statute has been developed over the years since it was first enacted in 1992. Code of Civil Procedure section 425.17 was enacted to correct abuse of the anti-SLAPP statute, prohibiting anti-SLAPP motions in response to (1) public interest litigation with certain requirements, and (2) certain actions against a business that come from conduct of the business or commercial statements.²²

A SLAPPback is malicious prosecution action. Code of Civil Procedure section 425.18 concerns these SLAPPback actions. The statute was enacted to help SLAPP victims recover their damages through SLAPPback against the SLAPP filers and their attorneys. This occurs after the underlying SLAPP has been dismissed.²³

VIII. Case Implications and Conclusions

²¹ "Code of Civil Procedure – Section 425.16: California's Anti-SLAPP Law." *California Anti-SLAPP Project*. Accessed at: <http://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-section-425-16/>

²² "Code of Civil Procedure – Section 425.17: Exemptions to California's Anti-SLAPP Law." *California Anti-SLAPP Project*. Accessed at: <http://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-section-425-17/>

²³ Code of Civil Procedure – Section 425.18: SLAPPBACK Claims in California." *California Anti-SLAPP Project*. Accessed at: <http://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-section-425-18/>

The implications of the *Spears v. US Weekly* case reveal a trend in modern libel cases. The judge in *Spears v. US Weekly*, Judge Lisa Hart Cole explained, “The standard for defamatory statements is constantly changing.”²⁴

According to an article by Elizabeth Soja, Professor Lisa Pruitt of the University of California at Davis School of Law explored the ideas of feminism in such libel cases:

Professor Lisa Pruitt... said that although it might be more difficult for a women to sue today when she is defamed in a sexual manner, the change in the law is ‘a net gain for women because it signifies, through law’s expression function, that women’s most important attribute is no longer their sexual propriety.’²⁵

She also noted, “This does not mean that any statement that could impute sexual impropriety is not defamatory. But the norms certainly are changing.”²⁶

Freely agrees that the norms are constantly changing and credits celebrity journalism for this change:

In the modern American public sphere, mass-mediated gossip has helped to shape and reflect personal, group, and national identity and reinforce and challenge social norms and ideals... Celebrity gossip offers insights into contemporary attitudes and debates about courtship and marriage rituals; divorce; women in the workplace; sexual practices, identity and orientation.²⁷

²⁴ Soja, E. (2007). *Unchaste no longer? The dismissal of Britney Spears’ libel lawsuit reflects the courts’ changing view of what can be considered defamatory.* Reporters Committee for Freedom of the Press. <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-winter-2007/unchaste-no-longer>.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Freely, Katherine A (2012). “Gossip as News: on Modern U.S. Celebrity Culture and Journalism.” *History Compass*.

Obviously, the norms of libel cases and celebrities are constantly changing. Of course, the norms of society are changing as well. Years ago, for any woman to portray herself in a sexually explicit manner would be inappropriate and disapproved, but does Britney Spears' sexual persona mean a step in the right direction for feminism, or does it simply show a change in the way libel law applies to the celebrity culture in the United States? While some may argue this represents strides in feminism, it is much clearer that it instead simply portrays the popular trend in celebrity lawsuits.

With gossip magazines and publications everywhere, it has become common for celebrities to file lawsuits. Celebrities like Katie Holmes, Bette Middler, Dustin Hoffman, David Schwimmer, Robin Williams, and Cameron Diaz have filed lawsuits against publications they alleged have libeled them.²⁸ Each of these celebrities faces a standard of actual malice because of their status in Hollywood as public figures.

In twenty-first century United States, Hollywood culture is also now influenced greatly by social and digital media. With the ability to Tweet out a defamatory statement so simply, libel laws and celebrities become even more intertwined. Freely explores modern celebrity gossip journalism in her journal, "Modern U.S. Celebrity Culture and Journalism":

Scholars have begun to explore the world of online celebrity gossip and culture and the new possibilities for community-building and audience participation and production through blogs, readers' comments and

²⁸ "Celebrity Lawsuits." *Celebrity Lawsuits*. <http://www.majorinjurylaw.com/celebrity-lawsuits.htm>

posts, links to other relevant celebrity gossip sites, and the creation of fan club and fan fiction sites.²⁹

This shows an even greater progression of law and celebrities in the changing society.

Ultimately, twenty-first century libel lawsuits are more widespread than ever before. With celebrities like Britney Spears setting new standards and portraying themselves in more provocative ways than celebrities of the past, and these actions being much more easily publicized and available than ever before, it has become much more difficult for one to be defamed.

²⁹ Freely, Katherine A (2012). "Gossip as News: on Modern U.S. Celebrity Culture and Journalism." *History Compass*.

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