

Do I have a defamation claim against someone that claims he was only expressing his opinion?

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Answer: It depends. Statements that are determined to strictly be the expression of an opinion after all underlying facts are presented are not actionable. However, someone simply couching a defamatory statement as an opinion does not make it an opinion and is actionable. It takes a legal analysis and legal opinions on the matter may differ.

An example of a case where the United States Court of Appeals for the First Circuit found a person was only expressing an opinion is *Piccone v. Bartels*. No. 14-1989 (1st Cir. decided May 7, 2015). In *Piccone v. Bartels*, the plaintiffs (Piccone and Quaglia) were seeking entry into a home to install a carbon dioxide detector so that the home would qualify to be a suitable place for children Piccone was seeking to take custody of. Those children's parents were Piccone's family members, who were wanted by the police and had fled the area.

When Piccone and Quaglia arrived at the house to install the CO detector, police were there, including one of the defendants, Officer Bartels. Initially, Bartels refused to let Piccone and Quaglia into the home, as he was looking for their family member who was wanted by the police. After a tense exchange, Bartels confirmed Piccone and Quaglia's story that they were there to install a CO detector and then let them enter the house. Long story short, Bartels was tiffed at the way Piccone and Quaglia treated him and handled themselves.

Bartels then did something that may not have been wise, he contacted Piccone and Quaglia's employer, but this was a special employer, the United States Department of Homeland Security ("DHS"). He relayed his frustration with Piccone and Quaglia to an agent with DHS's Office of Inspector General in a 45 minute recorded telephone call where he described Piccone and Quaglia's conduct as unprofessional. There was also some indication that Bartels believed that Piccone and Quaglia might know where Piccone's fugitive family members were. But he also pointed out that there was no official inquiry on that subject so Piccone and Quaglia had not misled authorities.

After analysis, the appeals court affirmed the trial court's order dismissing Piccone and Quaglia's claims. It ruled that Bartel was only expressing an opinion, and the important fact here is that the Court observed that Bartel provided all pertinent facts upon which he based his opinion. It observed:

defamation cannot arise where the speaker communicates the non-defamatory facts that undergird his opinion . . . thus, the speaker can immunize his statement from defamatory liability by fully disclosing the non-defamatory facts on which his opinion is based."

The court went on to observe and differentiate when a statement is reasonably understood "to declare or imply provable assertions of fact" which would be actionable.

The court stated this question can be made by a court as a matter of law and that “this task requires an examination of the totality of the circumstances in which the specific challenged statements were made, including the general tenor and context of the conversation and any cautionary terms used by the person publishing the statement.”

If you are trying to apply this case to one you are thinking of, keep in mind that the court had a transcript and tape recording of all of the allegedly defamatory statements in this case, so it was clear what and how the statements were made. In another case, there may not be such a recording. So, the facts may not be so clear and a court may not be so sure that the non-defamatory facts upon which the opinion were based were fully disclosed in a case without such a record.

Bartels won this case, legally at least. But he had to go through the ordeal of a significant legal suit against him and may not really feel like a winner after such a battle. One practical pointer that the author has observed here and in life is to know that any negative statements or complaints made to a person’s employer get a person very angry. Proverbs 30: 10 KJV. (Accuse not a servant unto his master, lest he curse thee, and thou be found guilty.)

If you are seeking to determine whether particular statements were defamatory or not or are involved in a situation where slander or libel is potentially at hand, feel free to contact us.

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