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Ruling shows anonymous posting isn't so anonymous anymore

You may want to think twice before posting that snide comment on your favorite Internet message board. This is because under an Illinois appellate case handed down in May, your identity under a fake screen name may not be as anonymous as you think.

The 2nd District case of *Hadley v. Doe*, 2014 IL App (2d) 130489, provides a stark reminder that in this age of real-time messaging on platforms such as Twitter, Facebook, Yelp and the like, your right to engage in spontaneous anonymous speech has its limits.

In *Hadley*, a local newspaper in Stephenson County published an online article about Bill Hadley, a candidate for the Stephenson County Board in 2012. Like many online forums, members of the public were able to anonymously post comments to this online content.

As it happened, a reader under the username Fuboy posted the following comment: "Hadley is a Sandusky waiting to be exposed. Check out the view he has of Empire from his front door." Hadley promptly sued Fuboy for defamation and, in connection with that suit, subpoenaed Comcast Cable Communications under Supreme Court Rule 224 for Fuboy's real identity and last known address.

Fuboy retained counsel and moved to quash the Comcast subpoena to prevent the release of his identity. Because Hadley's underlying complaint sufficiently pleaded a claim of defamation per se, the trial court denied the motion to quash and ordered Comcast to release the records for the Fuboy username.

On appeal, the *Hadley* court affirmed, holding that Fuboy's post calling Hadley "a Sandusky" (as in Jerry Sandusky, the onetime Penn State football coach) imputed the commission of a crime, namely child molestation, and therefore qualified as per se defamation. According to the court, the poster's reference to Empire, a local grade school, further buttressed the defamatory nature of the comment.

The court also held that Fuboy's post qualified as an actionable assertion of fact and not hyperbole and exaggeration that enjoy First Amendment protection. Although the defendant argued that the forum of an Internet message board lowers the intended seriousness of a statement and that no reasonable reader would interpret his statement as an assertion of fact, the court explained that because people consult message boards for information, message boards are not automatically exempt from defamation claims.

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With so much online posting in myriad forums, the line between innocent hyperbole and defamatory assertions will no doubt be blurry. Like Justice Potter Stewart's I-know-it-when-I-see-it observation about the threshold test for obscenity, whether a salacious online post will be seen by the courts as protected hyperbole or defamatory assertions of fact may ultimately come down to a legal determination by the courts infused with a dose of subjectivity.

As demonstrated by the *Hadley* decision itself, the outcome of cases involving salacious online anonymous commentary will be difficult to predict, with both the content and context of the message affecting a court's determination.

For example, in concluding that Fuboy's Sandusky post was a defamatory assertion of fact and not innocent opinion, the court relied on another Illinois case, *Maxon v. Ottawa Publishing Co.*, 402 Ill.App.3d 704 (3d Dist. 2010), which found controversial comments posted to an online newspaper to be defamatory and not protected hyperbole.

In *Maxon*, an anonymous poster to a news article's message board accused owners of a bed-and-breakfast of bribery in pursuing an ordinance allowing their business to operate in a residential area. Among other comments, the anonymous poster wrote: "How much is Don and Janet from another Planet paying you for your betrayal???? Must be a pretty penny to rollover and play dead for that holy roller. ... IF this gets anywhere NEAR being passed in favor for the Maxon CULT, you can bet your BRIBED BEHINDS there will be a mass exodus of homeowners from this town."

The *Maxon* court explained that a false assertion of fact can be defamatory even when couched with apparent opinion or hyperbole. It held that even though the rambling message was surrounded by hyperbole, the allegation that the Maxons could have gotten the ordinance passed only by bribery could reasonably be interpreted as stating an actual fact.

By contrast, the *Hadley* court distinguished Fuboy's statement from a comment in a 9th U.S. Circuit Court of Appeals case, *Gilbrook v. City of Westminster*, 177 F. 3d 839 (9th Cir. 1999), where the court, in setting aside a jury verdict, held that calling someone a "Jimmy Hoffa" was not defamatory.

Although Jimmy Hoffa was convicted of jury tampering, attempted bribery and fraud in 1964, the *Gilbrook* court nonetheless concluded that because the plaintiff was a colorful union leader in the middle of a heated political debate, the allusion to Hoffa was a natural, non-defamatory association.

The Internet provides fast, immediate communication among tens of millions of users, many of whom likely spend little time editing and contemplating the consequences of their posts.

Going forward, anonymous posters may lose their anonymity and face exposure to a defamation lawsuit if they fail to check the content and style of strongly worded, farfetched comments.

TULLY'S LAW

TERI L. TULLY

Teri L. Tully is a partner at Scandaglia & Ryan. She represents clients in a broad range of complex commercial litigation. Prior to joining Scandaglia & Ryan, Tully was an attorney at the Federal Trade Commission; an associate at Jenner & Block LLP; and a law clerk to the late U.S. District Judge Martin C. Ashman.