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NewsWatch

Fox News, Megyn Kelly prevail in ex-firefighter's defamation lawsuit

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Milwaukee Journal Sentinel
Megyn Kelly.

Fox News and on-air personality [Megyn Kelly](#) have prevailed in a defamation lawsuit filed by a retired Milwaukee area firefighter who came under scrutiny for running in marathons despite receiving duty disability pay for an arm injury he suffered on the job.

A Milwaukee County judge's conclusion: The Fox program "[Kelly's Court](#)" isn't an actual news show but rather a mock judicial debate afforded more flexibility to express its opinion.

Aaron Marjala of the North Shore Fire Department was found [permanently disabled](#) in 2008 by the State of Wisconsin and independent physicians after suffering nerve damage to his ulnar nerve in his right elbow, commonly referred to as the funny bone, that persisted despite two surgeries.

While collecting the disability payments Marjala of Waukesha maintained an active lifestyle that included running in marathons.

In September 2011, Fox's Milwaukee affiliate, Fox 6, reported a story on Marjala, including an interview with [North Shore Fire Chief Robert Whitaker](#) in which he questioned the conclusion of medical examiners who reviewed Marjala's injury.

A few days later, Kelly picked up on the Fox 6 story, commenting: "The ironman too injured to fight fires, Aaron Marjala, was one of Wisconsin's bravest until he banged his funny bone on a kitchen counter at a Milwaukee firehouse. Oh, the horror."

[New York lawyer Lee Armstrong](#), appearing as a guest commentator on Kelly's show, added: "He's exploited this supposed injury. ... There has to be an investigation here — something needs to be done — this guy should no longer get this money. ... It's disgusting."

Marjala also named Fox 6, Whitaker and Armstrong [in his lawsuit](#), which contended facts presented on the show were untrue and that Kelly's exchange with Armstrong "falsely communicated to viewers that Marjala was not really injured at all, that Marjala deserved scorn and ridicule for even applying for disability status, and that Marjala had committed a crime."

The commentators also suggested Marjala was claiming 100% disability and to be unable to "push paper," the suit contends, noting that Marjala was determined to be 15% disabled, and that he requested a light duty assignment at North Shore Fire but was denied.

But Milwaukee County Civil Court Judge Jeffrey Conen ruled the "Kelly's Court" audience would recognize the show isn't a straight news program.

"The viewers could independently judge whether the defendant's opinions and comments were reasonable and make up their own mind about the duty disability system and Mr. Marjala's receipt of the benefits," Conen said.

Conen also said Fox News was trying to "illustrate a weakness in Wisconsin's duty disability system" in which Marjala could complete 26.2 mile runs while collecting state payments to help aid his nerve damage.

Defense attorneys Steven Mandell and Natalie Harris of Chicago called Conen's ruling "a victory for free speech."

"Under the First Amendment, the press must be allowed to freely criticize the government for doling out disability benefits to able-bodied athletes," Harris said.

Craig Powell and Michael S. Hart, the attorneys representing Marjala, countered that ruling amounted to "a victory for dishonest speech."

"Any fair minded person who watched that broadcast can see it was not a criticism for the government, as Fox now claims. It was a cheap shot at Mr. Marjala that left out key facts," they said in a joint statement. "It is our strong belief that this case should be heard by a jury, and Mr. Marjala is weighing his options."

The verdict could be appealed.

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