

Update: Illinois Appellate Court Affirms Dismissal of Professor's Libel and Privacy Claims

Professor Sued Over News Coverage of Student's Sexual Harassment Lawsuit

By Steven Mandell, Natalie Harris, Catherine Gibbons and Tina Salvato

The Illinois Appellate Court affirmed dismissal of Northwestern University philosophy professor Peter Ludlow's defamation and false light invasion of privacy complaint against the *Chicago Sun-Times*, Fox Television Stations, Inc., and Cumulus Broadcasting LLC over a report about a federal lawsuit filed by Ludlow's former student claiming the professor sexually assaulted her. The Court held that because the report did not name the professor, it could be innocently construed as "of and concerning" someone other than Ludlow. [Ludlow v. Sun-Times Media, LLC, et al.](#), No. 1-14-2370, 2015 IL App (1st) 142370-U (Ill. App. Ct. 1st Dist. April 17, 2015). See also [MediaLawLetter July 2014](#) reporting on the trial court's dismissal of the complaint.

Background

On February 10, 2014, Ludlow's former student, Ms. Yoona Ha, filed a Title IX lawsuit in federal court against Northwestern University alleging discrimination and retaliation in response to her reports that Ludlow had sexually harassed and sexually assaulted her. The same day, the *Chicago Sun-Times* published an article about the lawsuit featuring the headline: "Student allegedly raped by professor suing Northwestern University" on its media wire service. Chicago-based television station WFLD Fox 32 and talk radio station WLS AM 890 picked up the story and re-published the wire service article verbatim.

The article did not identify Ludlow by name, referring only to a "tenured professor" at Northwestern who taught a philosophy class. The article recounted several allegations from Ms. Ha's complaint, including her claims that the professor plied her with alcohol until she became intoxicated and blacked out; that she regained consciousness in an elevator to the professor's apartment where he was "furiously" making out with her; that she

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begged him to stop and he told her it was “inevitable” they would have sex and that she lost consciousness and later woke up in his bed with his arms around her. The article did not link to the federal complaint or reference the party names or case number.

Ludlow sued all three media companies, citing their use of the word “rape” in the article headline despite the absence of any allegation of sexual intercourse in Ms. Ha’s federal complaint. The circuit court dismissed Ludlow’s complaint based on the innocent construction rule, finding the article could be reasonably interpreted as referring to someone other than Ludlow. In addition, the court also held that the article was a fair report of Ms. Ha’s federal complaint because “the terms ‘rape’ and ‘sexual assault’ are synonymous,” and therefore the word “raped” in the article headline was a fair abridgement Ms. Ha’s sexual assault allegations in the complaint.

Ludlow appealed and the appellate court affirmed solely on innocent construction grounds. The court held that “[t]he ‘of and concerning’ requirement is basically the same as the innocent construction rule; if the statement can reasonably be construed as referring to someone other than plaintiff, then it is not ‘of and concerning’ him and not actionable.”

Ludlow was not identified by name anywhere in the article, and only extrinsic facts (i.e. Ms. Ha’s federal complaint) could tie the article statements to him. The court held that because a reader would have had to discover Ha’s complaint on his or her own in order to identify Ludlow as the subject, the article was reasonably capable of an innocent construction. The appellate court did not address the circuit court’s conclusion that “rape” was a fair abridgment of the sexual assault allegations in Ms. Ha’s complaint. Neither the circuit court nor the appellate court addressed the wire service defense raised by the re-publisher defendants, which has not yet been recognized in Illinois.

Sun-Times Media, LLC was represented by Damon E. Dunn and Seth A. Stern of Funkhouser Vegosen Liebman & Dunn Ltd., Chicago. Cumulus Broadcasting, LLC was represented by Floyd A. Mandell, Carolyn M. Passen, and Eugene E. Endress of Katten Muchin Rosenman LLP, Chicago. Fox Television Stations, Inc. was represented by Steven P. Mandell, Natalie A. Harris and Catherine L. Gibbons of Mandell Menkes LLC, Chicago. Peter Ludlow was represented by Kristin M. Case, Kathleen O. Sedey, and Kendra L. Kutko of The Case Law Firm, Chicago.