

Identity Crisis

By Reg P. Wydeven
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When I was a kid, The National Enquirer was a big deal. I remember looking at the tabloid's bizarre headlines while waiting in line at the grocery store. Stories about Bigfoot, aliens or Elvis sightings were common.

As a result of these outrageous stories, The National Enquirer ended up in court a lot for defamation, specifically libel, which is written, versus slander, which is verbal. For example, in 1981 Carol Burnett successfully sued the magazine for running a story claiming she was drunk in public. Her parents both suffered from alcoholism, so this was a particularly sensitive issue for her.

In 2006, Kate Hudson successfully settled a case with the National Enquirer after suing them for running a story claiming she was "looking like skin and bones," and implying she suffered from an eating disorder.

Most recently, The National Enquirer was sued by Richard Simmons. In June of 2016, the Enquirer ran a story explaining the fitness guru's absence from the public eye for two years, asserting "RICHARD SIMMONS: HE'S NOW A *WOMAN!*" in a huge headline on its front page.

The story inside alleged that the then-67-year-old celebrity "has undergone shocking sex swap surgery" that included breast implants, and was "living as a gal named Fiona." There were also photos of Simmons dressed as a woman.

To prevail in a defamation suit, the plaintiff must prove the defendant made a defamatory statement about the plaintiff, that the statement was untrue, and that the statement negatively impacted the plaintiff's character or reputation.

While maintaining his support for transgender rights, in May Simmons filed a libel suit in Los Angeles County Superior Court against the newspaper's owner, American Media, Inc. claiming the story was completely fabricated.

It turns out that Simmons may have been more supportive of transgender rights than he intended.

Instead of a typical defamation case where Simmons would have to prove the Enquirer's story was untrue and hurt his reputation, Judge Gregory Keosian didn't care whether the story was true or not. His landmark decision, though tentative, is that it is simply not libelous or defamatory to call someone transgender.

While his final ruling has yet to be issued, Keosian's 15-page opinion dismissing Simmons' lawsuit elevates sexual identity to the same legal status as race or homosexuality, which is not inherently defamatory.

Keosian said, "This court finds that because courts have long held that a misidentification of certain immutable characteristics do not naturally tend to injure one's reputation, even if there is a sizable portion of the population who hold prejudices against those characteristics, misidentification of a person as transgender is not actionable defamation absent special damages."

In response to the suit, American Media filed an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion, claiming Simmons' lawsuit impeded their Constitutional right of free speech. The motion argued, "Statements that someone is transgender, or undergoing a gender transition, do not impute the kind of inherently shameful or odious characteristic that can support a defamation claim in modern times."

Simmons countered, saying the article was designed to "humiliate and embarrass" him for allegedly transitioning gender. Keosian, however, explained that if he were to decide that being called transgender was defamatory, he would essentially relegate being transgender as second-class status.

But again, this was only a tentative decision. Until a final ruling is issued, Simmons will purportedly be sweating. To the Oldies.

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