State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Tuesday, September 9, 2014

No. 145 Davis v Boeheim

Robert Davis and his stepbrother, Michael Lang, both former ball boys for the Syracuse University basketball team, are asking the Court to reinstate their defamation suit against head coach James Boeheim and the University. The case arose in November 2011, when Davis and Lang accused Boeheim's longtime assistant coach and friend Bernie Fine of sexually abusing them in the 1980s and 1990s, and Boeheim responded in a public statement and media interviews that they were lying in an attempt to obtain a financial settlement. Among other statements, Boeheim said in an ESPN interview, "It is a bunch of a thousand lies that [Davis] has told.... He supplied four names to the university that would corroborate his story. None of them did.... [T]here is only one side to this story. He is lying." In an interview with a local newspaper, Boeheim alluded to the recent child sexual abuse scandal at Penn State University, which led to the criminal conviction of assistant football coach Jerry Sandusky and the firing of head coach Joe Paterno. "The Penn State thing came out and the kid behind this is trying to get money. He's tried before. And now he's trying again...," Boeheim said. "That's what this is about. Money."

Supreme Court dismissed the suit, finding Boeheim's statements were non-actionable expressions of opinion, not defamatory assertions of fact. "[T]he broader social context, the immediate context and the actual plain language of Defendant Boeheim's statements, all demonstrate that Boeheim's remarks were merely his opinion," the court said.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, saying, "We conclude that defendant's statements demonstrate his support for Fine ... and also constitute his reaction to plaintiff's implied allegation, made days after Penn State University fired its long-term football coach, that defendant knew or should have known of Fine's alleged improprieties. We therefore conclude that the content of the statements, together with the surrounding circumstances, "'are such as to signal ... readers or listeners that what is being read or heard is likely to be opinion, not fact'" (Mann, 10 NY3d at 276)."

The dissenters argued that Boeheim's statements "constitute 'mixed opinion,' i.e., 'statement[s] of opinion that impl[y] a basis in facts which are not disclosed to the reader or listener'...." They said the libel complaint "sufficiently alleges false, defamatory representations of fact about plaintiffs, i.e., that Davis was lying about Bernie Fine, that Davis had previously tried to obtain money through similar allegations, and that Davis and plaintiff Michael Lang ... were doing so again through the instant allegations...."

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For respondents Boeheim and Syracuse Univ.: Helen V. Cantwell, Manhattan (212) 909-6000

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To be argued Tuesday, September 9, 2014

No. 146 Nguyen v Holder

Huyen N. Nguyen, a citizen of Vietnam, was admitted to this country as a conditional permanent resident in 2000 based on her marriage to a United States citizen, Vu Truong, in Rochester. Nguyen and her husband filed a petition to remove the conditions of her residency two years later. In 2007, the U.S. Customs and Immigration Service denied the petition after finding that Nguyen is Truong's half-niece and concluding that their marriage was incestuous and therefore void. The Department of Homeland Security then terminated Nguyen's conditional resident status and began a removal proceeding.

An Immigration Judge ordered Nguyen removed to Vietnam. The judge determined that Nguyen's maternal grandmother is the mother of Truong, making them half-blooded niece and uncle. The judge held that such a marriage is void under New York's Domestic Relations Law § 5, which states, "A Marriage is incestuous and void whether the relatives are legitimate or illegitimate between either: 1. An ancestor and a descendant; 2. A brother and sister of either the whole or the half blood; 3. An uncle and niece or an aunt and nephew." The Board of Immigration Appeals affirmed.

The U.S. Court of Appeals for the Second Circuit is asking this Court to determine whether Nguyen's marriage was void ab initio under Domestic Relations Law § 5(3), saying it had found no reported decisions of the New York Court of Appeals squarely holding that the statute "prohibits marriages between half-blooded nieces and uncles." The Second Circuit said, "Curiously, subsection (2), which regulates marriages between brothers and sisters, expressly applies to 'half blood' relationships, whereas subsection (3), which is the provision applied to the petitioner and her husband, omits the relevant language. The question presented, therefore, is whether subsection (3) should be read, like subsection (2), to also reach an uncle and niece 'of either the whole or the half blood.'"

For petitioner Nguyen: Michael E. Marszalkowski, Buffalo (716) 856-3023
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To be argued Tuesday, September 9, 2014

No. 147 People v John Rossi
No. 148 People v Benjamin Jenkins

The primary issue raised by these appeals is whether exigent circumstances permit the police to search a suspect's home without a warrant after he is taken into custody, when members of his family are present and officers have reason to believe there is a gun at the home.

Nassau County police officers went to John Rossi's home in Wantagh in 2009, responding to his wife's report that he had shot himself in the hand. They frisked Rossi, but did not find the gun, and he said he did not know where it was. The last officer to arrive, Nicholas Alvarado, was told the weapon was missing and there were three children in the house. Other officers were searching the house, so Alvarado searched the backyard and found the gun in a plastic bag beside a shed. Supreme Court refused to suppress the gun. Rossi was convicted of second-degree weapon possession and sentenced to four years in prison.

The Appellate Division, Second Department affirmed on a 3-2 vote based on the emergency exception to the warrant requirement. It said "information available to the officers who initially responded, including the defendant's incoherence and evasive answers about the location of the gun and the presence of children on the premises, established an ongoing emergency and danger to life, justifying the search for and seizure of the gun...." At the time Alvarado began searching the backyard, "he was not aware that the children were secure and out of danger."

The dissenters said, "[O]nce the police frisked the defendant and knew that the children did not have the gun, the emergency abated. The actions of the police in checking the children for weapons and then keeping them under their watch effectively neutralized the emergency.... [T]he record established that prior to [Alvarado's] search, the children did not possess the gun and were being supervised by the police. The children, thus, were not in danger."

Benjamin Jenkins was charged with weapon possession in 2010 after police heard gunfire on a Brooklyn rooftop, then saw him with a gun in a hallway before he ran into his apartment with another man. The officers entered the apartment, encountered Jenkins' mother and sister in the living room, and found and handcuffed Jenkins and his friend in a bedroom. Then they began searching for the gun, which they found in a closed metal box in another bedroom.

Supreme Court granted Jenkins' motion to suppress the gun, saying, "While the warrantless entry was proper, once the defendant was secured and handcuffed, the exigency ceased to exist and the subsequent search of the closed box required a warrant and was thus improper...."

The Appellate Division, Second Department reversed. It said the warrantless search, as well as the entry, were justified by evidence "that the police saw and heard gunfire on the roof of an apartment building... and observed the defendant, holding a gun, run into the subject apartment with a second man." Regarding the search, it said, "The police knew that the gun was inside the apartment, which had occupants other than the defendant...."

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For respondent: Nassau County Asst. District Attorney Kevin C. King (516) 571-3800
No. 148 For appellant Jenkins: Allen Fallek, Manhattan (212) 577-3566
For respondent: Brooklyn Asst. District Attorney Sholom J. Twersky (718) 250-2537

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To be argued Tuesday, September 9, 2014

No. 149 Lawrence v Graubard Miller
Matter of Estate of Sylvan Lawrence

This dispute over the enforceability of a 40 percent contingent fee agreement arose after more than 20 years of litigation over the estate of New York City developer Sylvan Lawrence, who died in 1981 and left his estate to his wife, Alice Lawrence, and their three children. Sylvan's brother, Seymour Cohn, served as executor of the estate until his death in 2003.

In 1983, Alice Lawrence retained the Graubard Miller law firm on an hourly fee basis to represent her in litigation against Cohn concerning his administration of the estate, and over the next 21 years she paid Graubard about $22 million in legal fees. In 1998, she also paid bonuses or gifts totaling $5.05 million to three Graubard partners -- C. Daniel Chill, Elaine Reich and Steven Mallis -- and $400,000 to the firm.

In January 2005, hoping to reduce her legal costs, Lawrence entered into a revised retainer agreement with Graubard that capped her hourly fees at $1.2 million per year and provided for a contingency fee of 40 percent for any settlement of her claims. Less than five months later, in May 2005, Graubard obtained a settlement of more than $111 million from Cohen's estate and sought a $44 million contingency fee under the revised retainer. Lawrence refused to pay, Graubard sought to compel payment, and Lawrence sought to rescind the revised agreement as unconscionable. She also sought the return of the gifts she made in 1998.

Referee Howard A. Levine found the revised agreement was not procedurally unconscionable, but found the amount of the contingency fee was unreasonable and recommended that it be reduced to $15.8 million. He also found the 1998 gifts were valid. Surrogate's Court confirmed his report regarding the contingency fee and awarded Graubard $15.8 million. However, it ordered the individual partners to return the gifts they received in 1998 to Alice Lawrence's estate (she died in 2008), saying there was "a combination of dubious circumstances that emit an odor of overreaching too potent to be ignored."

The Appellate Division, First Department modified by reducing Graubard's award to the hourly fees due under the original retainer (which the Surrogate later determined to be $1.6 million plus interest of $1.3 million). Finding the revised agreement was "procedurally and substantively unconscionable," the Appellate Division said Graubard "failed to show that the widow fully knew and understood the terms of the retainer agreement -- an agreement she entered into in an effort to reduce her legal fees...." The court said "it seems highly unlikely that the firm undertook a significant risk of losing a substantial amount of fees as a result of the revised retainer agreement's contingency provision.... The amount the law firm seeks ($44 million) is also disproportionate to the value of the services rendered (approximately $1.7 million...." The claims for return of the gifts were timely because the limitations period was tolled under the doctrine of continuous representation, it said, and on the merits, the individual partners failed to show the gifts were made "willingly and knowingly."

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Mark C. Zauderer, Manhattan (212) 412-9500
For respondent executors of Alice Lawrence: Daniel J. Kornstein, Manhattan (212) 418-8600
For intervenor-respondent residuary legatees: Robert L. Berchem, Milford, CT (203) 783-1200
For intervenor-respondent Richard S. Lawrence: Norman A. Senior, Manhattan (212) 818-9600