

Bill Cosby Wins 3rd Circ. Dismissal of Pa. Defamation Suit

By Suevon Lee

Law360, Los Angeles (December 14, 2016, 10:16 PM EST) -- The Third Circuit Wednesday affirmed a Pennsylvania federal judge's dismissal of a defamation suit against Bill Cosby by a woman who has accused the entertainer of sexual abuse, saying the statements in question did not rise to the level of actionable defamation.

Renita Hill, one of many women who have come forward in recent years claiming to have been sexually assaulted by the embattled comedian and actor, sued Cosby for defamation, false light and intentional infliction of emotional distress for three statements made to the media after her November 2014 interview with Pittsburgh radio station KDKA disclosing the alleged abuse.

Hill specifically referenced a Nov. 21, 2014, statement Cosby's attorney, Martin Singer, gave to The Washington Post, a statement Cosby provided to Florida Today that same day and a Dec. 15, 2014, letter published by The Washington Post by Cosby's wife Camille Cosby.

While Hill claimed the three statements relied on undisclosed, defamatory facts and implied she lied about being sexually assaulted, damaging her reputation, the Pennsylvania district court tossed the suit with prejudice in January, and the three-judge Third Circuit panel affirmed.

"Insofar as each statement was not capable of a defamatory meaning, the sum total of such statements did not rise to the level of actionable defamation," read the opinion by Circuit Judge Robert E. Cowan. "Likewise, the district court properly disposed of Hill's false light and [intentional infliction of emotional distress] claims."

Hill, a Pittsburgh resident, filed suit against Cosby in state court in October 2015. The suit was removed by Cosby to federal court.

According to her complaint, the abuse took place between 1983 and 1987, starting when Hill was a 16-year-old high school student recruited to co-host a children's television program called "Picture Pages." Cosby would regularly pay to have Hill flown to a city where he was conducting business, then invite her to his hotel room and offer a drink that rendered her semi-conscious or unconscious at which point she was sexually assaulted, she said.

Hill says the abuse continued through college, with Cosby offering to and paying for her tuition at Temple University and Spelman College and for an apartment during her second year at Spelman, at which point she cut off contact.

Hill claims she didn't come forward with her story at the time of abuse because she was too afraid and intimidated. She came forward when she did in 2014 because she was emboldened by other women's decisions to share their own tales of abuse by Cosby, according to her complaint.

After her interview with a KDKA reporter aired on Nov. 20, 2014, Hill claims Cosby retaliated with the alleged defamatory statements.

Singer gave a statement to the Post addressing multiple reports of sexual abuse allegations, that included the line, "The new, never-before-heard claims from women who have come forward in the past two weeks with unsubstantiated, fantastical stories about things they say occurred 30, 40 or even 50 years ago have escalated far past the point of absurdity."

Cosby's quote to Florida Today included the lines, "a guy doesn't have to answer to innuendos" and "People should fact-check."

Camille Cosby's letter said there was "no vetting of my husband's accusers before stories are published or aired."

Cosby's attorneys said none of the three statements are actionable as defamation. Hill said they share the common thread of relying on undisclosed, defamatory facts to support the assertions each statement makes.

In his Jan. 21 ruling, U.S. District Judge Arthur J. Schwab said Singer's statement was "pure opinion," which is protected speech and not actionable as defamatory speech, that the "Florida Today" quotes don't have the general tendency to cause harm to anyone's reputation and that Camille Cosby's words were directed to the media rather than Hill herself.

On appeal, Hill argued that the district judge erred by failing to consider that the statements as a whole created inferences that Cosby's accusers, including Hill, were "liars and extortionists."

She also argued the statements are defamatory because they imply Hill lied about being sexually assaulted.

The appellate judges in Wednesday's opinion said the lower court did not commit reversible error by dismissing the suit. The appellate court said a reasonable person could read the Singer statement to be proffering an opinion and that Singer, in any case, disclosed the factual basis for that opinion.

The court further said the Bill Cosby remarks to Florida Today "invited the recipient to conduct his or her own investigation," with the panel agreeing with the district judge that this was a "far cry" from labeling Hill and the other women as liars and extortionists.

Similarly, the court said Camille Cosby's letter may be understood to be a statement from a wife who is defending her spouse against "public accusations of wrongdoing without thereby implicating any specific facts regarding a particular accusation."

Hill's lawyer, George M. Kontos of Kontos Mengine Law Group, told Law360 Wednesday he is planning to appeal to the U.S. Supreme Court on the grounds the court "erred in its finding that Cosby and his representatives' statements are protected speech."

"The statements were defamatory statements and are not protected by the First Amendment," he said.

In a statement to Law360, Cosby attorney Angela C. Agrusa of Liner LLP said the Third Circuit arrived at the “correct outcome.”

“The defamation claims against Mr. Cosby are contrary to established law and to fundamental First Amendment rights,” she said, “It is essential in a free society to be able to proclaim one's innocence when accused of a crime, and today's decision affirms that basic concept.”

Cosby, who is facing sexual assault charges in Pennsylvania, faces a similar defamation suit in Massachusetts federal court by a group of women who also stepped forward.

The district judge in that case has allowed the suit to move forward.

Circuit Judges Patty Shwartz, Robert E. Cowen and Jane R. Roth sat on the panel.

Hill is represented by George M. Kontos and Claire McGee of Kontos Mengine Law Group.

Cosby is represented by Angela C. Agrusa of Liner LLP, Brian C. Bevan and Efrem M. Grail of The Grail Law Firm and Marshall M. Searey, Christopher Tayback and Emily M. Smith of Quinn Emanuel Urquhart & Sullivan.

The case is Renita Hill v. William Henry Cosby Jr., case number 16-1362 in the U.S. Court of Appeals for the Third Circuit.

—Editing by Joe Phalon.