

## **Fortson v. Colangelo**

434 F. Supp. 2d 1369 (So. Dist. Fla. 2006)

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Plaintiff Danny Fortson filed a complaint asserting a slander claim against Defendant, Colangelo, and libel claims against Defendants, the New York Post ("the Post") and Peter Vecsey, in the 17<sup>th</sup> Circuit Court in Broward County, Florida on October 25, 2004. Defendants removed the action to the United States District Court for the Southern District of Florida. Plaintiff, a professional basketball player for the Dallas Mavericks, pushed Phoenix Suns player Zarko Cabarkapa in an attempt to defend a basket. The push resulted in Cabarkapa falling and breaking his wrist. Immediately following the game, Phoenix Suns CEO Colangelo made statements about Fortson, bringing about the slander claim. Statements written by sports columnist Vecsey in a column published by the Post regarding the events are the subject of the libel claims. In their context, because the oral and written statements were expressions of the authors' opinions, used rhetorical hyperbole, and were not defamatory, the Court entered judgment in favor of defendants.

Under Florida law, to recover for slander or libel, a plaintiff must demonstrate that (1) the defendant published a false statement; (2) about the plaintiff; (3) to a third party; and (4) the plaintiff suffered damages as a result of the publication. Colangelo's statements included calling Fortson a "thug" and a "ruffian." However, based on Fortson's well-publicized history of playing over-aggressively, the Court held that no reasonable listener could conclude that Colangelo's comments were anything but hyperbolic. Additionally, the Court considered Colangelo's statements to be opinions predicated on forty years of experience in professional basketball.

The context in which Vecsey's statements were made is crucial in this situation. His column "Hoop de Jour," which contains his thoughts and opinions on the NBA, appears regularly in the Post. A reasonable reader would interpret its content as opinion and rhetorical hyperbole rather than fact. Vecsey's commentary falls within the definition of pure opinion, in that it was predicated on facts that were known or available to the basketball community. Vecsey's statements were not defamatory because he had sufficient facts upon which to base his opinion that Fortson had acted "maliciously" and "shoved" Cabarkapa.

Plaintiff did not succeed in his libel and slander claims against Defendants. Colangelo's oral statements and Vecsey's statements published in the Post were illustrative of their opinions, employed rhetorical hyperbole, and were not defamatory.