

Allison v. Vintage Sports Plaques

136 F.3d 1443 (11th Cir. 1998)

Authored by Mia Fiedler

Plaintiff Elisa Allison (“Allison”), the widow of race car driver Clifford Allison, initiated a suit against defendant Vintage Sports Plaques (“Vintage”) in an Alabama state court alleging infringement of licensure rights, violation of the right of publicity, and conspiracy. Clifford Allison had a licensing agreement with a trading cards manufacturer. Vintage purchased such trading cards from licensed card manufacturers and distributors and mounted them in acrylic and wooden frames bearing labels with the names of the player or team displayed. Vintage did not have any licensing agreements with Clifford Allison and had never paid any royalties for the use of such images. The suit was instigated by Allison in order to stop Vintage from profiting off of the trading cards bearing Clifford Allison’s image without royalties being paid to his estate, whereas Vintage asserts that the first-sale doctrine permits such use.

After the initiation of the suit by Allison, Vintage subsequently removed the suit to the U.S. District Court for the Northern District of Alabama based on diversity jurisdiction. Allison filed an amended claim alleging violation of the right of publicity and conspiracy. She requested both injunctive and declarative relief. Vintage moved for summary judgment, which the district court granted, stating that though a prima facie case had been established the first-sale doctrine was a defense to such allegations.

At the time the suit was brought, the State of Alabama did not explicitly recognize a right to privacy. It did recognize a commercial appropriation invasion of privacy tort, though the cause of action had not been thoroughly developed at that time. The court determined that Alabama’s commercial appropriation privacy right represented the same interests and addressed the same harms as the right to publicity and stated that the differences were largely semantic, thereafter choosing to use the two interchangeably throughout the opinion.

The court determined that the law in Alabama permitted a cause of action for invasion of privacy when the defendant appropriates without consent the “plaintiff’s name or likeness to advertise the defendant’s business or product, or for some other similar commercial purpose.” The burden is on the plaintiff to demonstrate that there is a unique quality or value in the likeness to result in commercial loss if appropriated by the defendant. The court also agreed with the lower court that the first-sale doctrine acts as a defense to allegations of invasions of privacy. The first-sale doctrine is a limitation on intellectual property rights that allows a person who acquired a lawful copy of a protected work to thereafter transfer that work to another without the permission of the original author of the work.

The court held that the district court was correct in granting summary judgment to Vintage. As the plaintiff did receive royalties from the use of her husband’s image on trading cards, the application of the first-sale doctrine strikes an appropriate balance between the right of publicity of celebrities and the rights of the public to enjoy those identities.

The court thus affirmed the grant of summary judgment by the district court, where the district court had properly determined that Vintage lawfully obtained and resold the trading cards under the doctrine of first-sale as a matter of law.