

Tyne v. Time Warner Entertainment

336 F.3d 1286 (11th Cir. 2003)

Authored by Stephanie Fuqua

Erica Tyne, Billie-Jo Francis Tyne and other representatives of the decedents of the Andrea Gail fishing boat ("Tynes") sued Time Warner Entertainment ("Warner Brothers") for damages in the 11th Circuit ("Court") under Florida's commercial misappropriation statute and common law false light invasion of privacy. Warner Brothers created a movie based on the Andrea Gail fishing boat, which was first a book by the same name: The Perfect Storm.

Florida statute §540.8 ("Rule"), that governs commercial misappropriation, generally states that no person shall use another's name, likeness, etc., without the consent of that individual or their representatives for commercial or advertising purposes. The Rule further states that if a person's name or likeness is used without their consent, they may recover damages. The Rule does allow an exception for use of names when the situation is a newsworthy event that is covered by the news media.

Warner Brothers argued that the court should rely on their past interpretation of the statute as they adopted in *Loft v. Fuller* (408 So.2d 619). The Court in *Loft* held that the term "commercial" was not meant to be used as a blanket term to prevent the use of individual's names. In other words, just because an individual's name is used commercially does not mean there was a statutory violation by those who profited.

Tynes argued that *Loft* was distinguishable from their case, because in *Loft*, the accounts in the movie were first published in newspaper reports, which in turn entitled *Fuller* to 1st Amendment Constitutional protection. However, Tynes asserted that Warner Brothers took liberties in the movie that were never published in the press, going as far as to say Warner Brothers had intentionally fabricated certain elements of the story, which did not entitle them to 1st Amendment protection.

Tynes further argued that the adoption of the holding in *Loft* conflicts with the language in the statute, making two "plain language" arguments. First, that if the statute was meant only to cover promotion of the product, then the word "commercial" is redundant to the term "advertising" in the statute. Second, the language in the statute would conflict because one of the exceptions for the statute reads identical to the initial purpose and would therefore be useless. The Court chose to defer these arguments to the Florida Supreme Court because they were a question of state law.

The Florida Supreme Court confirmed the *Loft* holding and stated that the term "commercial purpose" as used in the Rule does not apply to publications, including motion pictures, which do not promote a product or service directly. The Florida Supreme Court, therefore, denied Tynes' claims and found that Warner Brothers did not violate the Rule. (see *Tyne v. Time Warner Entm't Co.*, 901 So.2d 802 (Fla. 2005)).

The 11th Circuit Court, however, addressed Tynes' common law invasion of privacy claim and damages separately for Erica and Billie-Jo Francis Tyne. They asserted that the movie portrayed their father as a nasty fanatical boat captain and that the depiction was "egregiously painful and injurious". In most cases the Florida courts have declined to recognize that families of decedents have a false light claim, the

one exception being when the family member had an 'independent violation' versus an indirect violation of their personal privacy rights. If there is an independent violation of privacy rights, the violation must be extremely egregious.

The Court held that because the film depiction of the Tynes' father was not so egregious to have independently violated their personal privacy rights, their claim must fail.

The Court's decision re-affirms the *Loft* holding and reiterates that families of decedents will have an uphill battle bringing a false light claim against a publisher in the state of Florida.