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The landmark case to be discussed is *Time, Inc. v. Firestone*. There will also be a discussion of four subsequent cases that have cited this case as precedent. These cases are: *Philadelphia Newspapers, Inc. v. Hepps*, *Wolston v. Reader's Digest Ass'n, Inc.*, *Herbert v. Lando*, and *Johnson v. Freborg*. First, *Time, Inc. v. Firestone* will be explained and then the role of this case will be discussed in the field of public relations and advertising in three recent cases involving Philadelphia Newspapers, Inc., The Columbia Broadcasting System (CBS), and Reader's Digest Ass'n, Inc. Specifically, each of these cases have dealt with the question of how to define a public figure and matters of public concern.

First, the case to be discussed is the landmark case: *Time, Inc. v. Firestone*. The facts are that Mary Alice Firestone filed for divorce from her husband, Russell Firestone, who was the heir to the Firestone tires fortune. Her husband subsequently filed a counterclaim for divorce alleging "extreme cruelty and adultery" (*Time, Inc. v. Firestone*). The divorce was granted, but the details were ambiguous so they did not specify the grounds for divorce. Therefore, Time Magazine published an article claiming that Firestone's "extreme cruelty and adultery" caused the divorce (*Time, Inc. v. Firestone*). Mary Firestone then requested a retraction, but Time Magazine refused. After they refused, Firestone sued Time, Inc. for libel in the Florida state court. This court decided in favor of Firestone, granting her compensation of \$100,000, and then the case was appealed to the Supreme Court of Florida.

The issue of the case is: "Did the Florida state court's judgment violate Time, Inc.'s First Amendment rights?" ("Herbert v. Lando"). The holding is no, the Supreme Court affirmed the lower court's ruling in a decision of 6-2. This is because there is nothing in the First Amendment that states a party cannot receive compensation after proof of experiencing injury. It was found that the defamatory statements substantially harmed Firestone's reputation. It was also proven that Firestone was not a public figure, therefore the actual malice standards for public figures does not apply to this case. At the same time, the Supreme Court affirms that there is a legitimate state interest in compensating individuals for wrongful injury from defamatory falsehoods. Overall, this case clarified the parameters of 'public figures' when being sued for libel.

The next case to be discussed is *Philadelphia Newspapers, Inc. v. Hepps*, which used *Time, Inc. v. Firestone* as a precedent to help decide this subsequent case. The facts are that the Philadelphia Inquirer accused Hepps of links to organized crime and capitalizing on that connection to influence the state legislature. Maurice S. Hepps was the principal stockholder of 'Thrifty' Corporation, which franchises a chain of stores selling beer, soft drinks, and snacks. The Philadelphia Inquirer accused Hepps and his franchises of links to organized crime through a series of published articles. Hepps then brought a defamation suit in a Pennsylvania state court against the newspaper owner and the authors of the articles in question. The statute provided in the state court was deemed unconstitutional so the case was appealed to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court ruled in favor of Hepps.

The issue of the case is: Did the state supreme court's ruling violate the First Amendment? The holding is yes, the Supreme Court then reversed the ruling of the state court with a decision of 5-4 on the basis that "the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages" as the precedent set by *Gertz v. Robert Welch Inc. (1974)* (*Philadelphia Newspapers, Inc. v. Hepps*). The trial court concluded that Pennsylvania's statute giving the defendant the burden of proving the truth of the statements violated the Federal Constitution. Therefore, the trial court instructed the jury that the plaintiffs were required to prove falsity. During the trial, the Philadelphia Inquirer took advantage of Pennsylvania's 'shield law' which allowed them to not reveal their sources for the published articles.

The landmark case, *Time, Inc. v. Firestone*, was used to help decide this case by providing a precedent for establishing a balance between the public's right to a free press, due to the First Amendment, and the need for action in response to false statements. Also, this case introduced the concept that when a publisher is found at fault, this decreases the public's free press and increases the need for legal action against libelous statements.

The next case to be discussed is *Wolston v. Reader's Digest Ass'n, Inc.*, which also used *Time, Inc. v. Firestone* as a precedent to deciding the case. The facts are that in 1957 and 1958, Ilya Wolston's aunt and uncle (Jack and Myra Soble) were subjects in an investigation to find Soviet intelligence agents in the U.S. Shortly after, Wolston failed to respond to a subpoena and pleaded guilty to a contempt

charge. This was published in newspapers, but Wolston was able to return to being a private citizen. In 1974, Reader's Digest Association published a book written by John Barron about Soviet agents in the United States, and Ilya Wolston was identified as one of these agents. Wolston then sued Barron and his publishers for libel in District court. The District court's ruling was that Wolston was a 'public figure' and therefore had to prove that the Reader's Digest Association acted with actual malice to win the libel suit. The case was then appealed to the Supreme Court after being reaffirmed in the District of Columbia Circuit Court of Appeals.

The issue of the case is: Can Wolston be considered a public figure and therefore, be required to prove actual malice in order to win his libel suit? The holding is no, in an opinion of 8-1 majority, the Supreme Court decided that Wolston did not meet the requirements of a 'public figure.' Therefore, Wolston was not required by the First Amendment to meet the standards of actual malice. The Supreme Court concluded that a public figure must contribute to a controversy to influence its outcome, and in this case, the petitioner did not do this. Also, as expressed by Mr. Justice Harry Blackmun, the 16 year gap between Wolston's subpoena and the defamatory comment in the published book means he lost any 'public figure' status he may have had at the time and has been clearly a private individual since 1974. Therefore, there was no question of whether or not he was a 'public figure' when Barron published his book.

The landmark case, *Time, Inc. v. Firestone*, was used to help decide this case by providing a precedent for outlining the parameters of what considers someone a 'public figure.' Also, the landmark case established that just because a person commits a crime, this does not mean that they are automatically considered a 'public figure' for discussing their conviction. Additionally, Wolston achieved no fame, recognition, or special role in society as a result of his involvement in the investigation of Soviet agents. Therefore, this is further evidence supporting that Wolston was a private individual.

The next case to be discussed is *Herbert v. Lando*, which also used *Time, Inc. v. Firestone* as a precedent to deciding the case. The facts are that Anthony Herbert was a retired Army officer who served in Vietnam. While he was in Vietnam, he accused officers of covering up atrocities that American troops

had committed. CBS (Columbia Broadcasting System) produced and broadcast a documentary of Herbert's story. Subsequently, Herbert sued for libel claiming that the "program falsely and maliciously portrayed his character," and caused him financial injury ("Herbert v. Lando"). To prove libel under the actual malice standard, because Herbert was considered a 'public figure,' his attorneys deposed Barry Lando who was the producer and editor of the documentary. Lando also published a related article in Atlantic Monthly magazine. In Herbert's complaint, he alleged that the "program and article falsely and maliciously portrayed him as a liar and a person who had made war-crimes charges to explain his relief from command" (*Herbert v. Lando*). Herbert also requested substantial monetary relief for injury to his reputation and subsequent literary value of a book about his experiences that he had recently published.

The issue of this case is: In a libel case, does the First Amendment protect members of the press from questions about their thoughts and opinions that go into the editorial process? The holding is no, with a decision of 6-3 in favor of Herbert, because when the press is accused of spreading damaging falsehoods and sued for injury to a person's reputation, the First Amendment does not prevent the plaintiff from investigating the editorial processes. This is because the findings could be useful to winning the case. Mr. Justice Byron White stated that by shielding the editorial decision-making from questioning, this would greatly enhance the burden of proving actual malice and deemed it unconstitutional. Mr. Justice Byron White was also confident that investigations into this process would not threaten the constitutionally protected freedom of the press.

Similar to the previous cases, *Time, Inc. v. Firestone*, was used to help decide this case by providing a precedent for what constitutes a 'public figure.' Additionally, the precedent for when a defendant is aware that their defamatory statements are untrue, yet publishes them anyway, is a reckless disregard of the truth or falsity.

The last case to be discussed is *Johnson v. Freborg*, which cited *Time, Inc. v. Firestone* as a precedent to help decide this subsequent case. The facts are that Kaija Freborg wrote a series of posts on Facebook in 2020, in which she accused her dance instructor, Byron Johnson, of sexual assault in 2015. Johnson then sued Freborg for defamation, claiming her posts falsely portrayed him as a rapist and

harmed his reputation. Freborg defended her posts, arguing that they were truthful, were related to public concern about sexual assault in the dance community, and did not meet the legal standard for defamation. It is important to note that these were posted during the #MeToo movement. The district court ruled in favor of Freborg, finding her speech was truthful, related to public concern, and did not meet the actual malice standard for defamation. The court of appeals then reversed, ruling her posts were a private matter, not a public concern.

The issue of this case is: Was Freborg's speech a matter of public concern and therefore, protected by the First Amendment? The holding is yes, Freborg's speech was considered a matter of public concern. Although, Freborg's speech addressed Johnson directly and was similar to a personal dispute, the dominant theme of her posts speaks to the broader issue of sexual abuse when put into the context of the #MeToo movement, which was undoubtedly a matter of public concern. After seeing women share their own experiences all over the country, Freborg offered her story, hoping to add to the conversation and raise awareness about the prevalence of sexual assault. Not only this but, Freborg's posts were made on Facebook, which further supports that they were made on a matter of public concern because these were available to anyone and utilized #MeToo. Much of the Supreme Court's decision was based on the context of the #MeToo movement, which had a direct impact on society and how communities address sexual assault across industries. Therefore, it was decided that the context of Freborg's posts was of public concern, and therefore, Johnson would have to show that Freborg's posts were false and made with actual malice.

The landmark case, *Time, Inc. v. Firestone*, was used to help decide this case by providing a precedent of what is considered a public concern. Specifically, this landmark case was used to help determine the difference between matters of public interest and matters of public concern. In this landmark case, the Court made clear that all matters of interest to the public are matters of public concern when looking to apply the First Amendment (*Johnson v. Freborg*).

In conclusion, *Time, Inc. v. Firestone*, is a landmark case that will continue to be cited in many more cases to come. The precedents that were set about public figures, public concern, and how to

maintain a free press while also demanding action for falsifying the truth are issues that will never cease to exist. Therefore, the Supreme Court (and lower courts) will continue to reference this case indefinitely.

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