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## Matthews v. Wozencraft, 15 F.3D 423 (5th Cir. 1994)

Zorka Ristanovic

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## CASE SUMMARIES

### **Matthews v. Wozencraft,**

15 F.3D 423 (5TH CIR. 1994).

#### *INTRODUCTION*

Creig Matthews, a former undercover narcotics officer, sued Kim Wozencraft, his former wife and partner, for misappropriation of his likeness and invasion of privacy when she authored a book about their undercover investigations and based one of the characters on Matthews. The United States District Court for the Eastern District of Texas held that appropriation of one's "likeness" did not include appropriation of one's life story, and therefore granted summary judgment for the defendants. The United States Court of Appeals for the Fifth Circuit affirmed.

#### *FACTS*

The Plaintiff, Creig Matthews, was an undercover narcotics officer working for the Tyler, Texas police department where he used the aliases "Jim" and "Jim Meyers." The Defendant, Kim Wozencraft, was also an undercover narcotics officer who worked with Matthews in making undercover drug purchases. Together they conducted a major drug investigation in the spring of 1979.

The primary target in the Tyler investigation was Ken Bora, for whom Matthews worked undercover as a bartender. After several unsuccessful attempts to purchase drugs from Bora, Matthews and Wozencraft were instructed by the Tyler police chief to make a phony "stash" case on him.

During the investigation, both Matthews and Wozencraft used drugs to make drug purchases and for personal use, and eventually became addicted. During this time they also became romantically involved and eventually they married. By the end of the investigation, they had assembled over 200 drug cases and arrested 100 defendants.

Matthews and Wozencraft soon began testifying at the trials of some of the drug defendants. They falsely denied using drugs during the investigation and falsely testified that they had bought cocaine from Bora. Evidence of their misconduct arose, and Matthews and Wozencraft eventually plead guilty and were sentenced to terms in federal prison.

While in prison, Wozencraft and Matthews signed a contract with a fellow inmate, John Rubien, whereupon they agreed Wozencraft and Rubien would co-author a book based upon Matthews and Wozencraft's undercover investigations. In the spring of 1983, Wozencraft was released from prison, she divorced

Matthews, and began writing the book entitled "RUSH." She sold her manuscript to Random House and sold the movie rights for one million dollars. Matthews received no compensation for the portrayal of his likeness in the book and movie.

The book "RUSH" was labeled a novel and stated on its copyright page that "it is a work of fiction" and that "any resemblance its characters may have to persons living or dead is purely coincidental." Nevertheless, there was substantial evidence that the character Jim Rayner was based upon Matthews and that the public recognized him as that character. Matthews filed suit against Wozencraft, Random House, the Zanuck Company, and MGM alleging misappropriation of his likeness and invasion of privacy. The defendants filed motions of summary judgment which the district court granted. The plaintiff appealed.

#### LEGAL ANALYSIS

The issue before the Court of Appeals was whether Wozencraft appropriated Matthews' name or likeness for commercial benefit. According to the Restatement, "one who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy."<sup>1</sup> In order to state a claim of misappropriation under Texas law, three elements must be shown: (1) that the defendant appropriated the plaintiff's name or likeness for the value associated with it, and not in an incidental manner or for a newsworthy purpose; (2) that the plaintiff can be identified from the publication; and (3) that there was some advantage or benefit to the defendant.<sup>2</sup>

The tort of misappropriation of name or likeness is intended to protect the value of an individual's notoriety or skill from excessive exploitation.<sup>3</sup> In order for there to be any such liability, the defendant must have appropriated "the reputation, prestige, social or commercial standing, public interest or other values of the plaintiff's name or likeness" for a commercial benefit.<sup>4</sup> The Court of Appeals in the present case found that the term "likeness" does not include general incidents from a person's life, especially when fictionalized, since the narrative of an individual's life possesses no intrinsic value that would be reduced by repeated use. Furthermore, the court found that Matthews' name or likeness had no independent value for Wozencraft to appropriate, and the use of his name would not add value to her book. Wozencraft created fiction from factual events that happened to include Matthews, and was not benefitting in any way from his identification with the Jim Raynor character in the book. The court held that since Matthews was unable to prove all three elements of misappropriation, he failed to state a claim under Texas law.

The court went on to say that even if Texas courts recognized a cause of

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1. RESTATEMENT SECOND OF TORTS, § 652C (1977).

2. See J. Hadley Edgar & James B. Sales, TEXAS TORTS AND REMEDIES, § 53.06[2]; Faloona v. Hustler Magazine, 799 F.2d 1000 (5th Cir. 1986).

3. RESTATEMENT (SECOND) OF TORTS, § 652C, cmt. c (1977).

4. *Id.*

action for misappropriation of one's life story, they would likely recognize an exception for biographies. This is due to the fact that "only the use of an individual's identity in advertising infringes on the persona."<sup>5</sup>

Even assuming Matthews had created a genuine issue of material fact on his misappropriation claim, the court felt Wozencraft would have been entitled to summary judgment as a matter of law because of free speech and public domain defenses. Matthews was converted into a public figure by the book "RUSH" and the publicity it received.<sup>6</sup> Since the same constitutional standards apply to invasion of privacy as to libel actions,<sup>7</sup> the book "RUSH" would be protected by the First Amendment, absent a showing of a reckless disregard for the truth.<sup>8</sup> Since neither the book nor the movie held Matthews in a false light or embarrassing way, the court held the book was protected by the First Amendment.

Likewise, "liability for misappropriation will not arise when the information in question is in the public domain, for the public figure no longer has the right to control the dissemination of the information."<sup>9</sup> Since his participation in the Tyler drug investigation and incarceration for illegal conduct, Matthews has been interviewed several times by the national media. Furthermore, he cooperated in the publication of *Smith County Justice*, a non-fiction book detailing his life and the events surrounding the drug investigation. He also testified as to his activities at the trials of some of the drug defendants, and conceded that corruption of law enforcement officers is a matter of public concern. Therefore, due to the fact that all the material facts underlying "RUSH" were a matter of public record and were in the public domain, the court found the defendants were entitled to fair use of the information.<sup>10</sup>

#### CONCLUSION

The Court of Appeals for the Fifth Circuit affirmed the lower court's grant of summary judgment to the defendants and thereby refused to recognize a cause of action for the appropriation of one's life story. The court's reasoning was that a person's life story does not possess any intrinsic value that would be reduced by repeated use, as does a celebrity's name or likeness. The court further held that even if the courts recognized a cause of action for appropriation of one's life

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5. George M. Armstrong, Jr., *The Reification of Celebrity: Persona as Property*, 51 LA. L. REV. 443, 467 (1991) (citing *Rogers v. Grumedy*, 695 F. Supp. 112, 121 (S.D.N.Y. 1988)).

6. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

7. *Meeropol v. Nizer*, 560 F.2d 1061, 1067 (2d Cir. 1977).

8. See *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

9. See *Douglass v. Hustler Magazine*, 769 F.2d 1128, 1139 (7th Cir. 1985).

10. *Id.*

story, there would be an exception for biographies because only the use of a person's identity for advertising purposes infringes on the persona. Finally, the court found that liability for misappropriation does not arise where the information at issue is in the public domain.

*Zorka Ristanovic*