

# 'Gottwald v. Sebert' Sheds Light on 'Public Figure' Claim for Defamation Suit Purposes

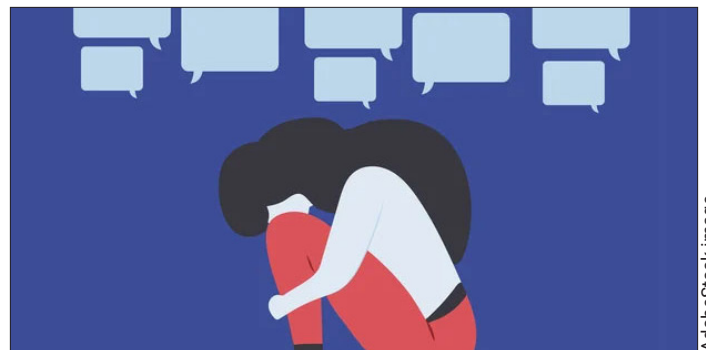
By James P. Chou and Marshall O. Dworkin

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Like most other jurisdictions, New York imposes a higher standard for establishing a defamation claim when the purported victim is a public figure. Specifically, public figures and celebrities must prove by clear and convincing evidence that the alleged offender made the defamatory statements with “actual malice”—that is, with knowledge that the statement at issue was false or with reckless disregard for whether it was true or false. By contrast, private figures must not only establish that the defamatory statements were made negligently. In this modern age of social media, however, where once-obscure individuals can become viral sensations, what constitutes a “public figure” is not always clear.

The Court of Appeals’ recent decision in *Gottwald v. Sebert*, which took a broader approach to determining who qualifies as a “public figure” for defamation purposes may shed some light on the issue.

*Gottwald* involves famed music producer Lukasz Gottwald, known as “Dr. Luke,” and Kesha Rose Sebert, whose stage name is “Kesha.” In 2014, Kesha, who had been under contract to release certain recordings with Gottwald and his production company, sued Gottwald in California, seeking to void her contract with him because he had sexually assaulted her. Gottwald then immediately countersued Kesha in New York, alleging that she and her attorneys had defamed him by, among other things, filing the California suit. During the course of discovery, Gottwald and his attorneys learned that Kesha and her counsel attempted to



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disseminate the allegations contained in her California complaint to various industry executives and media outlets.

The Appellate Division below ruled that Dr. Luke was not a general-purpose public figure because his success in the music industry did not necessarily make him a celebrity, as his efforts to garner publicity as a producer were generally for the benefit of the artists he represented, rather than for himself. The Appellate Division also determined that he was not a limited-purpose public figure because he had not injected himself into the public debate about sexual assault.

General-purpose public figures are individuals “who have ‘assumed a role of especial prominence in the affairs of society.’” They can also be considered a “celebrity.” By contrast, a limited-purpose public figures are individuals who “voluntarily inject themselves or are drawn into a particular public controversy and thereby become a public figures for a limited range of issues.” The Appellate Division has stated that to qualify as a public controversy, the subject matter

must be more than newsworthy; there must be a real dispute whose outcome affects the general public or some segment of it in an appreciable way.

While the Appellate Division held that Dr. Luke was neither a general-purpose nor a limited-purpose public figure for purposes of defamation claims, Justice Saliann Scarpulla dissented and opined that Dr. Luke qualified as both a general-purpose and limited-purpose public figure. Justice Scarpulla reasoned that Dr. Luke was at a minimum a limited-purpose public figure because of “the dynamics of his relationship to the artists with whom he works and upon which he has built his well-known professional reputation.” Justice Scarpulla proceeded to state that the definition of a limited-purpose public figure is not so narrow as to “only include individuals and entities that purposefully speak about the specific, narrow topic ... upon which the defamation claim is based.”

The Court of Appeals agreed with Justice Scarpulla and found that Dr. Luke was a limited-purpose public figure. The Court of Appeals reasoned that Dr. Luke engaged with the media to project his name and personality before a wide audience to establish his reputation in this field and continue to attract new talent for his record label. Further, the high court noted that Dr. Luke has spent years seeking “media attention for himself, his businesses, and for the artists he represented, including [Kesha], to advance those business interests.” Therefore, the Court of Appeals considered Dr. Luke a limited-purpose public figure, and must therefore prove Kesha’s allegedly defamatory statements were made with actual malice.

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The Court of Appeals’ ruling in *Gottwald*—particularly its reasoning concerning Dr. Luke’s efforts at self-promotion for himself, his business and his artists—will likely have a significant impact on defamation cases involving both voluntary and involuntary social media participants. Since determining whether an individual is a public figure is a “matter of degree” there are no definitive

lines. Indeed, the internet has freed self-promoting individuals from the need for public relations firms and media consultants. Such individuals can produce content, including music and other artistic endeavors, that has the potential to catapult them into the public eye and transform them into overnight sensations without the traditional confines or limits of the entertainment industry. Conversely, self-promoting individuals may produce voluminous content but never find an audience. The internet can also cast other individuals into the national or international spotlight involuntarily through posts that are in turn repeatedly reposted across the internet.

Casual social media participants who go viral, either by choice or not, can potentially fall into a public figure category, as can regular, though casual and banal, social media participants.

Individuals with unique, unusual or disturbing content can suddenly be thrust into the spotlight as others circulate their content to thousands, if not millions, of users across the world. Others who are recorded without their knowledge, or in defiance of their objections, have also become nationally and internationally recognized based on a viral social media post. Sometimes, viral posts will be picked up and rebroadcasted by traditional media.

Accordingly, *Gottwald* serves as a cautionary reminder that individuals who avail themselves of social media and subject themselves to potentially defamatory statements could face a higher evidentiary burden should they decide bring defamation claims arising from such statements. Thus, social media participants should be cautious in the type of content they voluntarily post, as courts may consider such posts and content as “voluntarily injecting” themselves or being “drawn into” a particular set of issues.

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