

If my picture has been attributed to someone else's bad conduct incorrectly, do I have a defamation claim/case?

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It is quite likely and depends on the context, content, and presentation of the statement(s)/publication.

In the case of *Stanton v. Metro Corporation*, it was about a plaintiff's picture being displayed in association with an article published by *Boston Magazine*. *Stanton v. Metro Corp.*, 438 F. 3d 119 (1st Cir. 2006). The article was about teen sexuality and generally reported that promiscuity was increasing. It prominently posted a picture of the plaintiff and other teenagers at the beginning of the article. The plaintiff had nothing to do with the subject matter of the article and *Boston Magazine* included a disclaimer stating this fact. After suit was brought, the defendant moved to dismiss the case. The trial court allowed the motion and dismissed the case largely on the basis of the disclaimer and ruled it was "forced to conclude that the disclaimer adequately negates the negative connotations about [the] plaintiff."

However, on appeal, the United States Court of Appeals for the First Circuit reversed. It assessed the presentation of the article and its pictures as a whole and decided that as a matter of law it was quite possible that a reader could believe that the plaintiff was the subject matter of the article, despite the disclaimer. The court reasoned that a reader may skip the disclaimer. It clarified the test is whether a reasonable reader could believe that the plaintiff that appeared in the picture is one of the people that is the subject of the article, even if it would be incorrect. So in this case the plaintiff was able to pursue the claim.

Defamation is generally a showing that the defendant published a false statement of and concerning the plaintiff that could damage the plaintiff's reputation in the community, with either economic loss occurring or under the law it is actionable without proof of economic loss. *White v. Blue Cross & Blue Shield of Mass, Inc.*, 442 Mass. 64, 66 (2004). If you believe that you may have been defamed, whether it be by a picture or otherwise, feel free to give the author a call.

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