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## *Time, Inc. v. Firestone*

424 U.S. 448 (1976)

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 9, 1975

DISCUSS

No. 74-944 TIME, INC. v. FIRESTONE

MEMORANDUM TO THE CONFERENCE:

This case has been relisted at my suggestion pending arrival of the record from the Florida Supreme Court. The record has arrived, and based on my study thereof, I recommend that we reverse the judgment and remand for a new trial under Gertz v. Robert Welch, Inc., 418 U.S. 323.

Respondent, Mary Firestone, was involved in a well-publicized divorce proceeding in which she sued her husband and he counterclaimed on grounds of adultery and extreme cruelty. The divorce proceedings dragged on for over 17 months, during which time there was significant press coverage detailing some of the trial testimony, particularly that which pertained to the "interesting" sex lives of the parties. Late in the afternoon of December 15, 1967, the divorce court issued a judgment for respondent's husband. In relevant part the decree stated:

"This cause came on for final hearing before the court upon the plaintiff wife's second amended complaint for separate maintenance (alimony unconnected with the causes of divorce), the defendant husband's answer and counterclaim for divorce on grounds of extreme cruelty and adultery, and the wife's answer thereto setting up certain affirmative defenses . . . ."

I do not think the bootstrapping by the Florida Supreme Court's opinion cured this defect. I therefore propose the following summary disposition:

Respondent sued petitioner for libel and recovered a judgment of \$100,000. The case was submitted to the jury under instructions that allowed a finding of liability in the absence of any fault on the part of petitioner. In Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), we made clear that the Constitution forbids state libel laws which impose upon a publisher or broadcaster "liability without fault". Accordingly, the judgment below is reversed, and the case is remanded for a new trial consistent with the principles announced in Gertz.

L.F.P.

L.F.P., Jr.

LFP/ss