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Abstract
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Resolving the Paradox of the Innocent Construction Rule

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The application of the innocent construction rule in defamation cases has led to illogical and questionable holdings. This article will explain the nature of that rule and illustrate its use by focusing on cases arising in Illinois. It will review the recent case of *Chapski v. Copley Press*,[1] where the Illinois Supreme Court rejected the innocent construction rule, and raise the possibility that additional reform may be necessary in Illinois. Finally, other jurisdictions relying upon similar rules of interpretation will be identified and discussed.

The Innocent Construction Rule

The innocent construction rule is a rule of interpretation applied in defamation cases. It requires that allegedly libelous or slanderous statements be rendered nonactionable if it is possible to understand those statements in a harmless manner.[2] "That rule holds that the article is to be read as a whole and the words given their natural and obvious meanings, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law."[3]

As will be noted later, the Illinois Supreme Court's preceding description of the rule suggests something of a paradox. One may ask how a statement can be given its natural and obvious meaning when at the same time it must be innocently read whenever possible. Although Illinois courts occasionally struggled with that

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1. 92 Ill. 2d 344, 442 N.E.2d 195 (1982).

2. John v. Tribune Co., 24 Ill. 2d 437, 443-44, 181 N.E.2d 105, 108 (1962), *cert. denied*, 371 U.S. 877 (1962).

3. *Id.* at 442, 181 N.E.2d at 108.

inconsistency, the rule evolved so that statements came to be read in the latter sense, as nondefamatory whenever possible.

The impact of such a rule is obvious. By the careful use of terms with multiple meanings a speaker can aggressively attack a given target and, when subsequently challenged, that speaker can rely upon the ambiguities to construct a much less offensive meaning.

John v. Tribune Co.

While Illinois state courts and federal courts applying Illinois law had utilized the rule previously,[4] the Illinois Supreme Court clearly embraced the innocent construction rule in 1962.[5]

Facts

The police arrested the female owner of an apartment building as well as several of her companions on charges of prostitution. Learning of the arrests, the *Chicago Tribune* newspaper printed a story declaring that Dorothy Clark had been arrested for being a "keeper of a disorderly house and selling liquor without a license."[6] Dorothy Clark was identified additionally as using the names Dolores Reising, Eve Spiro and Eve John.[7] A woman who had no connection with the alleged activities lived in the basement of the building. Her maiden name had been Eve Spiro and her current name was Eve John. As one might anticipate, Eve John initiated a libel action shortly thereafter.

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4. *E.g.*, Crosby v. Time, Inc., 254 F.2d 927, 929-30 (7th Cir. 1958); Latimer v. Chicago Daily News, 330 Ill. App. 295, 71 N.E.2d 553 (1947); Michael J. Polelle argues that the adoption of the innocent construction rule in Illinois was a historical accident and a clear error. He maintains that the appellate court cases cited by the Illinois Supreme Court in *John v. Tribune Co.* did not rest upon nearly so broad a rule as that adopted by the Supreme Court. Rather, he suggests that there was some confusion as to the issues before the court in *John.* Consequently, the inherent shortcomings as well as some well-reasoned precedent supporting rejection of the rule were not adequately presented to the court. As a result, it was an uninformed court that chose to adopt the innocent construction rule. Polelle, *The Guilt of the "Innocent Construction Rule" in Illinois Defamation Law*, 1 N. ILL. U.L. REV. 181, 195-211 (1981).

5. John v. Tribune Co., 24 Ill. 2d 437, 181 N.E.2d 105 (1962).

6. *Id.* at 440, 181 N.E.2d at 106.

7. *Id.* at 439-40, 181 N.E.2d at 106.

Decision

The court focused on the exact language used by the Tribune Company and pointed out that the suspect had been identified as Dorothy Clark, also known as Dorothy Reising, "alias Eve Spiro and Eve John."[8] The court determined that the word "alias" implies that the proper name of an individual is the name preceding,[9] and reasoned:

> words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law [cites omitted]. Since both of the publications here are capable of being construed as referring only to Dorothy Clark-Dorothy Reising as the keeper of the disorderly house, they are innocent publications as to the plaintiff.[10]

John v. Tribune Co., created an extremely liberal rule in favor of defamation defendants. It mandated that statements must be given an innocent construction whenever possible. Additionally, it established that one should not only attempt to determine whether the meaning of the words could be viewed in an acceptable light but also whether the statement could possibly be considered as addressing someone other than the plaintiff. In other words, the innocent construction rule was also to be applied to the issue of colloquium.

Application in Illinois

The innocent construction rule creates a threshold concern. A preliminary question is raised as to whether a particular statement can be innocently construed. The question is to be answered by the court as a matter of law.[11] Given the scope of the rule, Illinois courts predictably have issued opinions that on one level are rather amusing but on a second more serious level are quite disturbing. The following cases serve as illustrations:

Robert Heilgeist, a Wisconsin attorney, owned land in Illinois. The County Zoning Board contacted Heilgeist and received per-

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8. *Id.* at 439, 181 N.E.2d at 106.
9. *Id.* at 441-43, 181 N.E.2d at 107-08.
10. *Id.* at 442-43, 181 N.E.2d at 108.
11. Valentine v. North American Co., 60 Ill. 2d 168, 171, 328 N.E.2d 265, 267 (1974); Zeinfeld v. Hayes Freight Lines, Inc., 41 Ill. 2d 345, 347, 243 N.E.2d 217, 220 (1968).

mission to go onto the land and remove all the rubbish. The Board, however, did not intend to collect a fee from Heilgeist for performing the work.

A local publication reported on the arrangement and inquired as to the reason the Board did not plan to pursue recovery. It then printed the response that, while it was rather unusual that the county would spend public funds to clean up land and not try to collect those costs, "Heilgeist has so many lawsuits against him now that it would be more trouble trying to collect than it's worth."[12]

Heilgeist v. Lakeland Publishers, Inc.[13] arose out of Heilgeist's claim that the statement implied legal malpractice suits were pending against him, suggested he was judgment proof, and injured him in his professional standing. The federal court which heard the case disagreed and declared that this statement merely indicated that Heilgeist was not going to have to pay for the work and, "[q]uite the contrary of plaintiff's claim that he appears in a derogatory light, such a comment can be construed to indicate he is a shrewd bargainer."[14]

Benjamin Rasky was also a property owner in Illinois. Rasky was involved in defending charges that, if proven, would have led to the revocation of his real estate license. His reaction to the news report regarding his circumstances developed into *Rasky v. Columbia Broadcasting System, Inc.*[15] Rasky particularly objected to the repeated charge that he was a "slumlord."[16] The appellate court pursued a matter-of-fact analysis:

> *Black's Law Dictionary* defines a "landlord" as one who, "being the owner of an estate in land, or rental property, has leased it to another person ***." (BLACK'S LAW DICTIONARY 790 (5th ed. 1979).) It defines "slum" as a "squalid, rundown section of a city, town or village, ordinarily inhabited by the very poor and destitute classes ***." (BLACK'S LAW DICTIONARY 1245 (5th ed. 1979).) Based on these definitions and applying the innocent construction rule, the terms "slum landlord" and "slumlord" can be construed to mean that the plaintiff owned buildings in a poor and dirty neighborhood or, simply stated, that the plaintiff was a landlord in a slum.[17]

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12. Heilgeist v. Lakeland Publishers, Inc., No. 78 C 274, slip op. at ___ (N.D. Ill. July 10, 1978).
13. *Id.*
14. *Id.*
15. 103 Ill. App. 3d 577, 431 N.E.2d 1055 (1981).
16. *Id.* at 579-81, 431 N.E.2d at 1057-58.
17. *Id.* at 581-82, 431 N.E.2d at 1058.

Determining that there was nothing wrong with merely owning property in a run-down neighborhood, the court ignored the obvious intent of the defendant's charge and dismissed the lawsuit. Illinois courts found it necessary to rely upon this form of simplistic literal analysis in order to apply the innocent construction rule.

In *Delis v. Sepsis*,[18] George Delis was the target of an emotional letter alleging that, as to the activities surrounding the placement of statuary in a public square, Delis had acted in a manner that was "dishonorable," "deluded," and that he was a "liar."[19] The appellate court rejected plaintiff's complaint stating that the negative impact of these statements would be strictly limited to the context of the placement of the statuary and would not affect the plaintiff generally. The court stated:

> In the case at bar, the words "liar," "dishonorable," and the other allegedly disparaging remarks used by defendant in his letter of November 23, 1970, are capable of being read innocently. They did not imply that the plaintiff was generally a dishonest person or one who could not be believed under oath. It would not seem reasonable to conclude that the words complained of posed any serious threat to plaintiff's reputation.[20]

Finally, the extent to which Illinois courts have reached to find an innocent construction is reflected in *Watson v. Southwest Messenger Press, Inc.*[21] Mayor Thomas Watson was alleged by a local paper to have ordered a "ticket writing spree."[22] However, the article stated, none of the tickets were paid because the Mayor visited the recipients and promised to void the tickets. The paper reported that several persons stated that, "Mayor Watson will fix them"[23] and that residents were protesting the "Watson game of Winning Votes."[24] Plaintiff Watson alleged that he had brought the matter of parking tickets before the city council and the council had agreed that the first tickets should be considered merely warnings. He stated that he had ordered the ticket writing to continue and that after a lapse of time the tickets would be considered valid. Among the several independent

18. 9 Ill. App. 3d 217, 292 N.E.2d 138 (1972).
19. *Id.* at 220, 292 N.E.2d at 141.
20. *Id.* at 221-22, 292 N.E.2d at 142.
21. 12 Ill. App. 3d 968, 299 N.E.2d 409 (1973).
22. *Id.* at 970, 299 N.E.2d at 411.
23. *Id.* at 971, 299 N.E.2d at 411.
24. *Id.*

reasons provided as a basis for affirming the summary judgment granted in favor of the defendant was the following:

> The first of these articles speaks about "a ticket scandal of sorts"; speaks about the alleged promise of plaintiff to "void" the tickets and then uses the word "fix" with reference to the traffic tickets. As defendants urge, the word "fix" has many dictionary meanings. It could mean the process of repairing, mending or putting in order....[25]

Because an innocent construction was possible, the Illinois appellate court affirmed the judgment awarded the defendant. Yet it taxes the imagination to suggest that the newspaper was actually reporting that Mayor Watson was repairing his distraught constituents' torn parking tickets. While the preceding examples are certainly not exhaustive, they do indicate the nature of the opinions that were being issued.

Illinois courts recognized the strained nature of their holdings and the rule created a good deal of confusion. Alternative grounds were utilized whenever possible. In *American Pet Motels, Inc. v. Chicago Veterinary Medical Association*[26] the defendant asserted that the plaintiff's claim was barred by the innocent construction rule. The plaintiff responded that the rule did not apply to libel per quod actions. The appellate court could not identify any cases focusing upon that issue. While some Illinois state and federal court decisions indirectly supported the plaintiff's position, the *American Pet Motels, Inc.* court stated:

> This view, however, is difficult to reconcile with the sweeping language used by the Supreme Court to usher in the innocent construction rule.... The rule says "nonactionable as a matter of law," not "nonactionable without proof of special damages." We also note that some Illinois opinions discuss the innocent construction rule as it applies to libel per quod (citations omitted). We conclude the law is unsettled.... We therefore elect to decide the instant appeal on an alternate ground.[27]

The *Chapski* Decision

Recently the Illinois Supreme Court chose to abandon the innocent construction rule. In *Chapski v. Copley Press*[28] the court

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25. *Id.* at 973, 299 N.E.2d at 413.
26. 106 Ill. App. 3d 626, 435 N.E.2d 1297 (1982).
27. *Id.* at 630-31, 435 N.E.2d at 1301.
28. 92 Ill. 2d 344, 442 N.E.2d 195 (1982).

instead adopted a rule of reasonable construction. The importance of the case is apparent after a review of the precedent cited above.

Facts

A series of thirteen newspaper articles were published on eleven different dates. They purported to summarize the judicial proceedings occurring prior to the death of a child-abuse victim. Plaintiff represented the child's mother in juvenile and divorce proceedings. During the trial a question was raised as to the plaintiff's conduct. A panel of the Attorney Registration and Disciplinary Commission conducted hearings and concluded there was insufficient evidence to warrant any finding that the plaintiff had engaged in conduct that tended to defeat the administration of justice or to bring the courts and the legal profession into disrepute. It further concluded that Chapski's actions had "absolutely nothing to do with the child's death."[29]

Plaintiff alleged that his reputation and legal practice were injured by the defendant's articles, particularly an article entitled "Who's to blame? Many questions in baby's death."[30] Chapski focused on the fact that his name appeared in that particular article twenty times in bold black type.

Decision

The Illinois Supreme Court directly addressed the issue of whether the innocent construction rule should be retained as a controlling principle in Illinois defamation law. The court began by reviewing the history of the rule, noting that it had been applied in "something less than a uniform fashion."[31] It focused upon the unresolved contradiction with in the rule by stating, "[t]o construe a publication in an unreasonable manner in order to give it an innocent interpretation is itself incompatible with the rule's requirement that words be given their 'natural and obvious meanings'."[32]

The court recalled that prior to *Gertz v. Welch, Inc.*[33] and *New York Times Co. v. Sullivan*[34] there may have been a greater need to protect defendants from the harshness of defamation law but

29. *Id.* at 346, 442 N.E.2d at 196.
30. *Id.*
31. *Id.* at 348, 442 N.E.2d at 197.
32. *Id.* at 351, 442 N.E.2d at 198.
33. 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974).
34. 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

that this need was now diminished. The court concluded that "given the inconsistencies, inequities and confusion"[35] caused by the rule, the greater protections offered by *Gertz* and *Welch*, and the recognition of various privileges in Illinois, a modification of the innocent construction rule was appropriate.

Illinois courts are no longer forced to grasp at any conceivable interpretation in order to find an expression nonactionable. Rather, as stated in *Chapski*, they are now in a position to consider statements in context and to give natural and obvious meanings to words and their implications.[36]

Additional Reform

While *Chapski* provides a desirable revision of Illinois law, other reform may be necessary as a consequence of that decision. Although Illinois utilized the innocent construction rule, several protections ordinarily afforded defamation defendants have not been adopted in Illinois. Illinois does not consider truth to be an absolute defense in libel cases.[37] Rather, its state constitution dictates that, "[i]n trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense."[38]

Additionally, Illinois has chosen to retain punitive damages in defamation actions.[39] Finally, subsequent to *John v. Tribune Co.*, Illinois courts have recognized a constitutional guarantee against publicity placing one in a false light before the public.[40] This constitutional protection provides an alternative approach for defamation defendants.

Although the innocent construction rule was overly extreme, one should not completely lose sight of the concerns that led to its adoption:

> The rule of innocent construction has the desirable benefits of encouraging the robust discussion of daily affairs [citation], as well as of reducing litigation. 'The law of libel does not provide redress for every expression of opinion touching on a person's capabilities or qualifications *** no matter how much the complained of statement may injure the subject

35. Chapski v. Copley Press, 92 Ill. 2d at 351, 442 N.E.2d at 198.
36. *Id.* at 352, 442 N.E. 2d at 199.
37. Polelle, *supra* note, at 216 n. 144.
38. ILL. CONST. art. I, § 4.
39. Polelle, *supra* note 4, at 216 n. 148.
40. *Id.* at 217 n. 150.

> person in his own conception.' [citation]. The innocent construction rule also comports with constitutional concerns about encouraging free expression.[41]

If one presumes that by virtue of the provisions described above Illinois had achieved a balance with the extreme position established by *John v. Tribune Co.*, it would now appear in light of *Chapski* that the pendulum has swung too far in favor of defamation plaintiffs. Illinois should reconsider such generally accepted positions as "truth is an absolute defense." *Chapski* represents a significant and dramatic reversal in Illinois and requires that defamation law in general be re-examined.

Other Jurisdictions Recognizing the Innocent Construction Rule

A small minority of states still have case law indicating that the innocent construction rule retains some vitality. In *Becker v. Toulmin*[42] the Ohio Supreme Court stated that when offending language is capable of both innocent and libelous interpretations, that language will not be actionable per se.[43] Obviously, that holding standing alone does not reach as far as the rule in *John v. Tribune Co.* Additionally, the court in *Becker* relied upon the California case of *Peabody v. Barham*[44] as a basis for its conclusion. *Peabody* was rejected by the California Supreme Court in 1959 in the case of *MacLeod v. Tribune Publishing Co.*[45] It has been argued that *Becker* would appear to be questionable authority.[46]

Yet these facts did not prevent a federal court applying Ohio law from relying upon the innocent construction rule. The Court of Appeals for the Sixth Circuit quoted from *John v. Tribune Co.* and applied the rule in a somewhat modified sense while holding for the defendant in *England v. Automatic Canteen Co. of America.*[47] Whereas the rejection of *Peabody* had no apparent impact in *England*, one cannot be certain as to whether the *Chapski* decision will be viewed with great importance in Ohio.

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41. Dauw v. Field Enterprises, Inc., 78 Ill. App. 3d 67, 7, 397 N.E.2d 41, 44 (1979).

42. 165 Ohio St. 549, 138 N.E.2d 391 (1956).

43. *Id.* at 557, 138 N.E.2d at 398.

44. 52 Cal. App. 2d 581, 126 P.2d 668 (1942).

45. 52 Cal. 2d 536, 343 P.2d 36 (1959).

46. Comment, *The Illinois Doctrine of Innocent Construction: A Minority of One*, 30 U. CHI. L. REV. 524, 538 (1963).

47. 349 F.2d 989 (6th Cir. 1965).

Walker v. Kansas City Star Co.,[48] reveals the Missouri Supreme Court taking the position that "...in considering whether a publication is libelous per se, words to be considered actionable should be unequivocally so (citation), and should be construed in their most innocent sense."[49]

Hoog v. Strauss[50] was a more recent slander action citing *Walker* which indicates the innocent construction rule still has some effect in Missouri. The appellate court stated that while the accusation of a crime may be slander per se and that such accusation need not be direct, "if it is not direct, it must be the only inference that could be reasonably drawn from the language used."[51]

New Mexico recognized a less rigid version of the rule. Relatively strong language was used in *Monnin v. Wood.*[52] In *Monnin*, the court held that, "the language must be susceptible of but a single meaning, and a defamatory meaning must be the only one of which the writing is susceptible."[53] A later decision of the appellate court, however, appears to have adopted a more relaxed standard. The court in *Marchiondo v. New Mexico State Tribune Co.*[54] reviewed *Monnin* and several other precedents and concluded, "[t]his is but another way of saying that, where a per se slanderous character is sought to be impressed upon the claimed defamatory words, they will not be given such meaning unless this is their fair and obvious import."[55]

If the plain and obvious meaning of a particular expression was defamatory, although there was also a rather obscure non-defamatory interpretation, it appears New Mexico would find the expression defamatory.

Approximately the same time as *John v. Tribune Co.* was decided, the Montana Supreme Court in *Steffes v. Crawford*[56] held that statements would be actionable per se on the condition that "the language used therein must be susceptible of but one meaning and that an opprobrious one."[57] The recent case of *Wainman*

48. 406 S.W.2d 44 (Mo. 1966).
49. *Id.* at 51.
50. 567 S.W.2d 353 (Mo. Ct. App. 1978).
51. *Id.* at 357.
52. 86 N.M. 460, 525 P.2d 387 (Ct. App. 1974).
53. *Id.* at 462, 525 P.2d at 389.
54. 98 N.M. 282, 648 P.2d 321 (Ct. App. 1981), *cert. denied*, 98 N.M. 394, 649 P.2d 462 (1982).
55. *Id.* at 288, 648 P.2d at 327, *citing* Dillard v. Shattuck, 36 N.M. 202, 11 P.2d 543 (1932).
56. 143 Mont. 43, 386 P.2d at 842 (1963).
57. *Id.* at 48, 386 P.2d at 844 *citing* Burr v. Winnett Times Publishing Co., 80 Mont. 70, 258 P.2d 242 (1927).

v. Bowler[58] expressed a similar position in that "the language must be susceptible of but one meaning to constitute libel per se."[59]

The *Chapski* decision identified Oklahoma as one of the states continuing to rely upon the innocent construction rule,[60] citing *Tulsa Tribune Co. v. Knight.*[61] Yet *Tulsa Tribune* is approximately fifty years old and, although it did state that "a publication would be actionable per se when it was susceptible of but one meaning, and that an opprobrious one,"[62] to the extent it has been cited in later cases it has generally been used to support other points of law.[63] It certainly has not developed a body of precedent comparable to *John* and it progeny.

Conclusion

Chapski v. Copley Press represents a significant change in Illinois defamation law. The innocent construction rule led to results that were strained and tenuous. It remains for Illinois to re-examine the current balance between defamation plaintiffs and defendants. While Illinois produced the greatest amount of recent case law adhering to the rule, the doctrine still exists as authority in a few jurisdictions. The jurisdictions that do continue to refer to the rule, however, do so in a more limited manner. They generally limit the application to per se cases and avoid the uncertainty Illinois experienced as to whether the doctrine should also be applied in per quod cases.[64]

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58. 176 Mont. 92, 576 P.2d 268 (1978).

59. *Id.* at 95, 576 P.2d at 270.

60. Chapski v. Copley Press, 92 Ill. 2d at 349, 442 N.E.2d at 197.

61. 174 Okla. 359, 50 P.2d 350 (1935).

62. *Id.* at 362, 50 P.2d at 353 *citing* Lindley v. Delman, 166 Okla. 165, 26 P.2d 751 (1933).

63. *See generally*, Nichols v. Bristow Publishing Co., 330 P.2d 1044 (Okla. 1956); Baker v. Ellis, 292 P.2d 1037 (Okla. 1957).

64. *But cf.* England v. Automatic Canteen Company, 349 F.2d 989 (6th Cir. 1965) (where the court does not distinguish between per se and per quod actions).

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