

Sided with Hugo Zacchini: Arguing that it is not OK to broadcast act

FACTS

- Hugo Zacchini performs a human cannonball act at the fair and he asked the cameraperson from WEWS Channel 5 not to film his act at the Geauga County Fair, but they did so anyway.
- The entire act was broadcast on Channel 5's news broadcast without his permission.
- Zacchini's act is his livelihood, and he relies on people paying to see him perform as income.

ISSUE: Does the First Amendment's protection of freedom of speech and of the press extend to the unauthorized broadcasting of a performer's act without their consent when it significantly impacts their ability to control the commercial use of their performance?

RULE of LAW: The right of publicity, derived from tort law, protects an individual's right to control the commercial use of their name, likeness, or performance. Also while the First Amendment protects the media's right to report news, it does not immunize them from liability for broadcasting an entire act without the performer's consent when it substantially impairs the performer's ability to earn a livelihood.

APPLICATION:

- 1) Milkovich v. Lorain Journal Co.
 - a) Supreme Court ruled that statements of opinion can be actionable as defamation if they imply false assertions of fact and could reasonably be interpreted as such by the average reader. During the broadcast on the news, the reporters could very easily add statements of opinion that could be portrayed as hurtful to Zacchini encouraging people not to go see it.
- 2) Clark v. Community for Creative Nonviolence
 - a) This case highlights the tension between an individual's right to publicity and the media's First Amendment rights in the context of artistic expression and social commentary.
- 3) Scarlett Johansson v. Disney in 2021
 - a) Johansson sued Disney because they decided to release her movie, "Black Widow" simultaneously in theaters and Disney + breached her contract and deprived her of potential earnings. This broadcast did not accept Zacchini's request and deprived him of potential earnings.

CONCLUSION: Request the Court to hold Scripps-Howard Broadcasting Company liable for violating Hugo Zacchini's right to publicity and misappropriating his performance for commercial gain without his consent. Additionally, we seek compensation for the unauthorized use of Mr. Zacchini's performance and the damages incurred as a result of the infringement upon his rights.