



Anatomy of an Internet Defamation Case

Social Media & The Law



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welcome



Christopher Hopkins is a trial and appellate lawyer at McDonald Hopkins, LLC.

His practice frequently involves:

- Data breach
- Defamation
- E-discovery and retention
- Internet crimes
- Privacy
- Social media discovery
- Software / website EULA, terms & conditions, policies

Christopher Hopkins

McDonald Hopkins LLC

Elonis v. United States



SCOTUS 2015

Quick comments

Flood v. Taylor



Pending in Florida

Are these Twitter statements defamation
and/or defamation per se?

Q&A

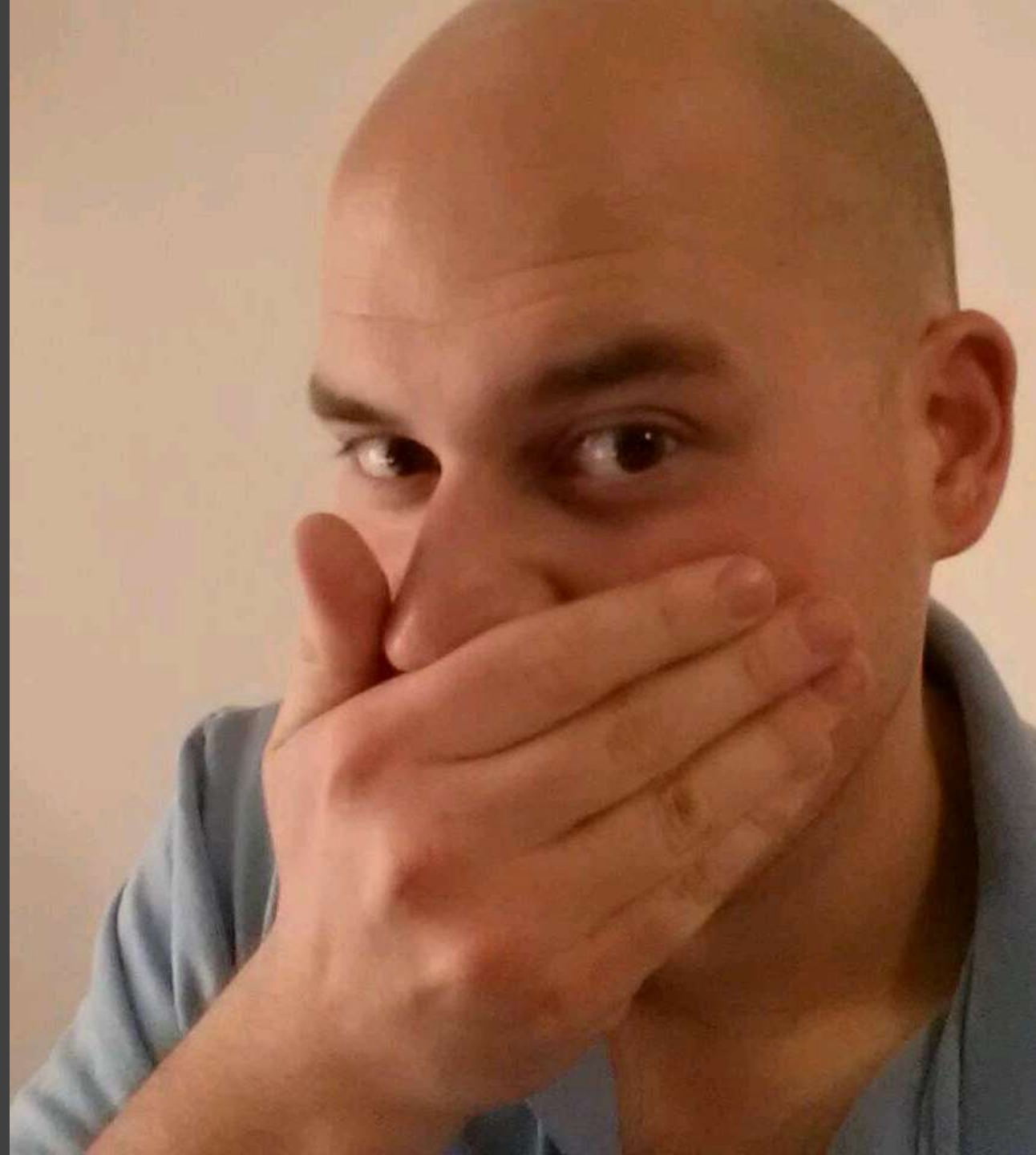


Agenda

U.S. Supreme Court 2015

Elonis v. United States

Defendant must (a) intend to issue threat or
(b) know that communication would be viewed as a threat





Blake Taylor

@MsBlakeTaylor · FOLLOWS YOU

Life's 10% what happens to us & 90% how we react 2 it. PRISONER in divorce from narcissist surgeon earns 200K a MONTH me ZERO. What FREE speech?

📍 St Petersburg, FL

📅 Joined July 2011

[Tweet to](#) [Message](#)

📷 781 Photos and videos



TWEETS
2,253

FOLLOWING
3,945

FOLLOWERS
4,038

LIKES
2,418

Tweets

[Tweets & replies](#)

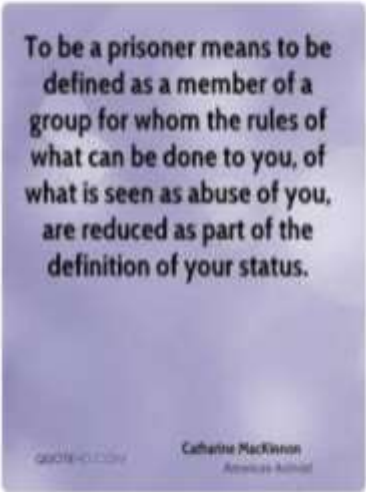
[Photos & videos](#)

📌 Pinned Tweet



Blake Taylor @MsBlakeTaylor · 25 Oct 2015

I'm absolutely a prisoner
Mark Flood D.O. runs up
attorney publicly abuses



🔄 39 ❤️ 97



Blake Taylor @MsBlakeTaylor · Mar 25

Please read the amended defamation law
husband Mark Flood D.O: [markflooddivo](#)

Flood v. Taylor

Do certain Twitter posts meet the Florida standard for
defamation per se and/or defamation?



Blake Taylor @MsBlakeTaylor · Mar 12

SILENT for 2 yrs of abuse during divorce. Found the courage2 speak out, Please read my story: markdooddivorce.com



19 19 29

Narcissist Personality Disorder

One of the few conditions where the patient is left alone and everyone else is treated.

<http://www.facebook.com/PierceTheDarkness>



Blake Taylor @MsBlakeTaylor · Jan 28

[#freespeech](#) [#truthprevails](#) [#SLAPPsuit](#) [#legalabuse](#) [#lawsuitabuse](#)



19 19 29



Blake Taylor @MsBlakeTaylor · Feb 8

[#narcabuse](#) [#legalabuse](#) [#financialabuse](#) [#waronwomen](#)



Blake Taylor @MsBlakeTaylor · 14 Nov 2015



13

5. Plaintiff is a surgeon practicing his profession in the Tampa Bay region in the State of Florida and enjoys an excellent professional reputation.

6. Plaintiff is also the Petitioner in a certain dissolution of marriage proceeding now pending in Pinellas County, Florida, more particularly described as Case No. 13-011816-FD-14, which was commenced on or about the 30th day of October, 2013.

Flood v Taylor

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY
CIVIL DIVISION

MARK FLOOD,

Plaintiff,

v.

Case No.:

BLAKE TAYLOR a/k/a
BLAKE TAYLOR FLOOD,

Defendant.

The Allegations In the Complaint

7. Defendant has at all times relevant to these proceedings maintained a website on the World Wide Web through Twitter, more specifically identified as Blake Taylor (@MsBlakeTaylor) Twitter.

Flood v Taylor

10. The Website contains false and malicious statements attributing conduct and characteristics to Plaintiff which are per se harmful to his professional reputation and bring his character into disrepute, inconsistent with and harmful per se to the reputation of a physician practicing in the Tampa Bay area.

Flood v Taylor

12. Each of the false and defamatory statements made by Defendant impugn Plaintiff's professional reputation, argue that Plaintiff is a professional without morals, state that he would harm his own family, assert that Plaintiff is under the influence of weight loss drugs while performing his professional duties, and that Plaintiff is incompetent in the performance of his professional duties.

Flood v Taylor

- Defamation Per Se
- Wantonness
- Intentional Infliction of Emotional Distress

Flood v Taylor

The Hateful Eight (Tweets)



	Statements
1.	“Would U want a surgeon 2 operate on U who began a whistle blower suit on surgeons 4 bad deeds and then went 2 work for them 4 big \$\$\$.
2.	“How would U fee if U found out the spine surgeon that permanently injured U in surgery was on a lot of weight loss drugs?”
3.	“How would U feel if U learned that surgery was done on ur spine at the wrong level and U were not told? Facility knew and didn’t report it?”
4.	“Lawsuit against #DrMarkFlood & #LaserSpine Institute that I” subpoenaed to give testimony. I have career ending info . . .”

Flood v Taylor

5.	“ . . . I agree that surgeon’s behavior outside the O.R. is important in showing his morals and integrity.”
6.	“ . . . I agree surgeon’s behavior outside the O.R. is important in showing his morals & integrity. Stayed quiet for 2 years. Thanks 4 all the tweets.”
7.	“I agree surgeon’s behavior outside the OR important 2 show his morals & integrity. If he’d harm his own family what would he do2 others?”
8.	“I have career ending information that I’m subpoenaed to testify about. This is Laser Spine Institute.”

Flood v Taylor

Jews for Jesus, Inc. v. Rapp (Fla. 2008)

Elements of Defamation



Publication

Statement must be communicated to third parties.



False & Defamatory

In Jews for Jesus, these elements are separated. In the Restatements, they are combined.



Act Negligently

Actor must act with knowledge or reckless disregard as to falsity on a matter concerning a public figure... or at least negligently on a matter concerning a private person.



Actual Damages

Actual injury or harm.

Why Defamation per se?

Defamation can be broken down into the “per se” or “per quod” varieties. *Per se* defamation exists where the statements “are so obviously defamatory, that is damaging to reputation, that the mere publication of them gives rise to an absolute presumption both of malice and damage.” *Wolfson v. Kirk*, 273 So.2d 774, 776 (Fla. 4th DCA 1973). In cases of *per se* defamation, a plaintiff need not allege or prove general or special damages because such damages are presumed from the words in the statement itself and the “court consequently takes judicial notice” of the harm resulting from such statements. *Campbell v. Jacksonville Kennel Club*, 68 So. 2d 495, 497 (Fla. 1953).

Is this defamation per se?

Flood v Taylor

Florida courts have enumerated specific circumstances under which a publication is libelous *per se* (not requiring proof of special damages):

A publication is libelous per se, or actionable per se, if, when considered alone without innuendo: (1) it charges that a person has committed an infamous crime; (2) it charges a person with having an infectious disease; (3) tends to subject one to hatred, distrust, ridicule, contempt, or disgrace; or (4) tends to injure one in his trade or profession.

Richard v. Gray, 62 So.2d 597, 598 (Fla. 1953).

Is this defamation per se?

Flood v Taylor

Defenses & Let's Analyze the Claims

not actionable defamation).⁴ Pure opinions are protected as free speech under the United States Constitution. *See e.g. Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-340 (1974) (“Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”).

-- Defenses --
Pure Opinion
Truth
Not Defamatory

Flood v Taylor

	Statements
1.	“Would U want a surgeon 2 operate on U who began a whistle blower suit on surgeons 4 bad deeds and then went 2 work for them 4 big \$\$\$.
2.	“How would U fee if U found out the spine surgeon that permanently injured U in surgery was on a lot of weight loss drugs?”
3.	“How would U feel if U learned that surgery was done on ur spine at the wrong level and U were not told? Facility knew and didn’t report it?”
4.	“Lawsuit against #DrMarkFlood & #LaserSpine Institute that I” subpoenaed to give testimony. I have career ending info . . .”

Flood v Taylor

5.	“... I agree that surgeon’s behavior outside the O.R. is important in showing his morals and integrity.”
6.	“... I agree surgeon’s behavior outside the O.R. is important in showing his morals & integrity. Stayed quiet for 2 years. Thanks 4 all the tweets.”
7.	“I agree surgeon’s behavior outside the OR important 2 show his morals & integrity. If he’d harm his own family what would he do2 others?”
8.	“I have career ending information that I’m subpoenaed to testify about. This is Laser Spine Institute.”

Flood v Taylor

**DEFENDANT BLAKE TAYLOR's
MOTION TO DISMISS THE COMPLAINT WITH PREJUDICE and
MOTION TO STRIKE CLAIM FOR PUNITIVE DAMAGES**

Defendant Blake Taylor (“Taylor” or “Defendant”), by and through undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.140 (b) and (f), moves to dismiss the Complaint **with prejudice** and alternatively moves to strike punitive damages claims:

Plaintiff and Defendant are already parties to a divorce being heard by Judge Keith Meyer. This side-show defamation suit is Plaintiff's improper attempt to muzzle his soon-to-be ex-wife over eight (8) posts on Twitter. Defendant's statements are *protected speech* – candidly, fairly tame comments involving divorcing spouses!

Flood v Taylor

In his Complaint, Plaintiff appears to be attempting to state a claim under the fourth form of defamation *per se*, to wit: the postings on Twitter caused injury to his trade or profession as a surgeon. On its face, a reasonable, ordinary person would not see these Tweets as “so obviously defamatory... [to give rise to] an absolute presumption both of malice and damage.” Stated more simply, the subject Tweets are not defamation *per se*.

As explained below, Plaintiff is unable to state a valid cause of action because (1) the Constitution of the United States and the state of Florida grant Defendant a First Amendment right to express pure opinions; (2) the statements are not defamatory; (3) only one of eight Tweets mentions Plaintiff (other Tweets refer to an entity); and (4) the rhetorical questions posed in the Tweets are not actionable.

Flood v Taylor

In two of the Tweets that serve as the basis for the defamation *per se* claim, Taylor allegedly stated that she possesses “career ending information.” Such statement is nothing more than an innocuous, nebulous, constitutionally-protected opinion of Taylor.

Similarly, in three of her Tweets, Taylor expressed her opinion that a surgeon’s behavior outside the operating room is important to show his morals and integrity.⁵ In strict legal terms:

so what? Again, these are nothing more than personal opinions, which are constitutionally-protected and are not actionable. These statements are incapable of being proven true or untrue because it is an expression of an idea and not a fact. Plaintiff is not even identified in those three Tweets and those statements do not contain any derogatory, disparaging, or defaming comments about the Plaintiff.

Flood v Taylor

Three of the Tweets at issue are nothing more than rhetoric questions... about no one in particular. In fact, the last one refers to a “Facility” and not an individual.

“Would U want a surgeon 2 operate on U who began a whistle blower suit on surgeons 4 bad deeds and then went 2 work for them 4 big \$\$\$ Ethical doc?”

“How would U feel if U found out that the spine surgeon that permanently injured U in surgery was on a lot of weight loss drugs?”

“How would U feel if U learned that surgery was done on ur spine at the wrong level and U were not told? Facility knew and didn’t report it?”

See Complaint, ¶ 11.a. – 11.c. In the foregoing Tweets, Taylor simply posed questions – not statements – about how someone would feel under certain conditions.⁶ Plaintiff was not identified in those three Tweets. Finally, the last Tweet refers to a “facility” and not a person (much less the Plaintiff). Questions like these do not give rise to defamation *per se*. See e.g.

Flood v Taylor

Who Won the
Motion to Dismiss?

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY
CIVIL DIVISION

MARK FLOOD,

Plaintiff,

v.

Case No.: 15-007645-CI

BLAKE TAYLOR a/k/a
BLAKE TAYLOR FLOOD,

Defendant.

HUSBAND'S NOTICE OF FILING AMENDED COMPLAINT

COMES NOW, the Petitioner/Husband, MARK A. FLOOD, by and through his undersigned counsel and certifies that he filed his Amended Complaint in this cause on February 22, 2016, with the Florida Courts E-Filing Portal in accordance with Florida Rule of Judicial Administration 2.516, Filing Number: 38106842.

Flood v Taylor

- Defamation
- Invasion of Privacy: Public Disclosure of Private Facts

(gone are the *per se* and IIED claims... as well as the allegations re: the Eight Tweets)

Flood v Taylor

Jews for Jesus, Inc. v. Rapp (Fla.
2008)

Elements of Defamation



Publication

Statement must be communicated to third parties.



False & Defamatory

In Jews for Jesus, these elements are separated. In the Restatements, they are combined.



Act Negligently

Actor must act with knowledge or reckless disregard as to falsity on a matter concerning a public figure... or at least negligently on a matter concerning a private person.



Actual Damages

Actual injury or harm.

(a) On or about Sept. 14, 2015, Oct. 1, 2015, and Nov. 21, 2015: “DrMarkFlood after the weight loss bf his face lift, fake teeth, removal of excess skin, liposuction, abdominoplasty.” With the post from Oct. 1, 2015, Plaintiff included a pre-operative photograph of Plaintiff in his briefs, taken in his physician’s private medical office.

Flood v Taylor

(b) On or about Sept. 15, 19, and 23, 2015 and Oct. 11, 2015: “Narc Mark Flood abandoned Grandson after being his father figure for 18 years. Then tried getting him kicked out of his home.”

Flood v Taylor

(c) On Sept. 18, 2015 and Oct. 11, 2015: “Narc tells grandson divorce is bcuz of him Child falls apart is in counseling. Narc won’t retract. Asking him 2 yrs as child still not ok.”

Flood v Taylor

(d) On or about Oct. 3, 2015: “Court Ordered temporary support check paid 1st of each month. Hasn’t happened once. No one not even judge can tell #Narcissist what to do!”

Flood v Taylor

12. The aforementioned statements and photograph were read or seen, respectively, by numerous third parties, and some were commented upon and/or retweeted.

13. As of February 22, 2016, Plaintiff had 3,032 Twitter followers, of which 2,944 were following her.

Flood v Taylor

MARK FLOOD,

Plaintiff,

v.

BLAKE TAYLOR, a/k/a BLAKE TAYLOR
FLOOD,

Defendant.

DEFENDANT BLAKE TAYLOR'S
ANSWER AND AFFIRMATIVE DEFENSES TO THE AMENDED COMPLAINT

Defendant Blake Taylor ("Taylor" or "Defendant"), by and through undersigned counsel,
and pursuant to Rule 1.140 of the Florida Rules of Civil Procedure hereby answers the Amended
Complaint and asserts various affirmative defenses:

Flood v Taylor

First Affirmative Defense
Failure to State Cause of Action – The Statements are True

Plaintiff cannot state a valid cause of action against the Defendant for defamation because the alleged defamatory statements are true. To state a cause of action for defamation under Florida law, a plaintiff must allege “(1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory.” *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008).

Defenses: Truth

Second Affirmative Defense
Failure to State a Cause of Action – Failure to Demonstrate that the Statements are
Defamatory to a Reasonable Person

Plaintiff cannot state a valid cause of action for defamation because the statements are not defamatory under a reasonable person standard. When determining whether a particular publication is libelous, it must be examined from the perspective of a reasonable, ordinary person, not the subjective feelings of the plaintiff. *McIver v. Tallahassee Democrat, Inc.*, 489 So. 2d 793, 794 (Fla. 1st DCA 1986) (“The language in an allegedly libelous publication should be construed as the common mind would naturally understand it.”).

³ Plaintiff resorts to legal remedies apparently without taking the simple step of requesting that Twitter remove these “offending” posts. Unfortunately for the Plaintiff, *and as an illustration of the subdued nature of Defendant’s Tweets*, her tame posts would not even be a violation of Twitter’s terms of service. See <http://bit.ly/TwitterViolations>

Defenses: Not Defamatory

Third Affirmative Defense
Failure to State a Cause of Action – Statements of Pure Opinion are Not Actionable and
are Constitutionally Protected Free Speech

Plaintiff cannot state a valid cause of action for defamation because statements of pure opinion are not actionable. *White v. Fletcher*, 90 So.2d 129, 131 (Fla. 1956) (noting that opinion or inference from facts assumed to be true are immune from liability for defamation); *Demby v. English*, 667 So.2d 350, 355 (Fla. 1st DCA 1996) (finding that an expression of pure opinion is not actionable defamation). Pure opinions are protected as free speech under the United States Constitution. *See e.g. Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-340 (1974) (“Under the

Defenses: Opinion

Why Did Defendant Not Just
File Another
Motion to Dismiss?

You're the Plaintiff

Strategy? Next Steps?

You're the Defendant

Strategy? Next Steps?

Thank you

Christopher Hopkins



McDonald Hopkins LLC

McDonald **Hopkins** LLC
Attorneys at Law



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