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## **Court Tosses Golfer's Defamation Action *Truth, Opinion and Lack of Malice Protect Newspaper***

**By Timothy J. Conner**

A Florida Court has thrown out a lawsuit brought by professional golfer, John P. Daly ("Daly"), over an unflattering sports column published in March 2005. [\*John P. Daly v. Morris Publishing Group, LLC d/b/a The Florida Times-Union, et al.\*](#), Circuit Court, Duval County, Florida.

On March 17, 2009, the Court entered an order granting final summary judgment (the "Order") in favor of the newspaper and the author, Mike Freeman, who now writes sports related columns for [cbssportsline.com](#). The Court based its ruling on findings that the facts stated in the column were true, that comparisons made to other sports figures were non-actionable expressions of opinion, and secondarily that there was no evidence of actual malice.

Other claims that were included in Daly's complaint, e.g., false light invasion of privacy, intentional infliction of emotional distress, and negligent hiring and supervision, were thrown out as well.

### ***The Column***

Daly is a well known professional golfer and public sports figure who promotes his image as the bad-boy of his sport. Daly was participating in the Players' Championship golf tournament put on by the PGA Tour in Ponte Vedra Beach, Florida (just outside Jacksonville) in 2005. Mike Freeman, at the time a sports columnist for *The Florida Times-Union*, wrote an opinion piece entitled "Daly, Duval Star in Golf's Surreal Life." Duval is David Duval, former British Open and Players' Championship winner. In the column, Freeman expressed opinions about the long-standing public controversy surrounding Daly's notorious career and personal life.

In relevant part the column stated (the underlined portions show the specific statements about which Daly complained):

A question. When will normally smart and skeptical sports fans stop making excuses for Daly and Duval and apply that same critical fan eye and sarcastic tongue they normally do to other pro athletes to these two men?

Particularly in terms of Daly. How does Daly not fail the scoundrel sniff test with fans despite possessing definite Thug Life qualifications? Look at the Daly blog. Domestic violence accusations? Yup. Substance abuse issues? Unfortunately. Three different kids from three different moms, making him the Shawn Kemp of golf? Yes. A former wife indicted for laundering illegal drug profits? Roger that.

He still received endorsement deals from TrimSpa and Dunkin Donuts despite a rap sheet that would make R.J. Soward look like a Backstreet Boy.

It is always interesting to observe what behavior fans and the media will tolerate from athletes. A hard-working Jaguars safety asks for more money and a trade and it's Armageddon. Daly hasn't played but one or two decent rounds of golf lately, abuses his body, is accused of smacking women around and fans are lined up five rows deep outside the ropes to get his autograph. Remarkable.

### ***The Claims***

Daly filed suit in 2005 alleging a series of defamation claims which can be grouped under the general headings of (1) the "Domestic Abuse" Counts, (2) the "Three Children/Three Moms" Counts and (3) the "Thug Life" Counts.

He advanced several arguments regarding the domestic abuse counts, including that he had never been accused of domestic abuse, and had in fact never hit a

woman, that the use of the word “is” in the column meant that he was currently accused as opposed to having been accused at one time in the distant past, and that the use of the word “women” indicated that there were multiple victims.

With respect to the three children/three moms counts, Daly alleged that the comparison made to Shawn Kemp, a one time star in the NBA who was reportedly notorious for having illegitimate children, meant that Daly’s children were illegitimate when in fact they were all born in wedlock.

As to the thug life counts, Daly complained that the comparison to R.J. Soward, a Jacksonville Jaguar football player who had been suspended by the NFL for substance abuse, implied that Daly had used illegal drugs such as cocaine, which, Daly contended, everyone knew had been the basis for R.J. Soward’s suspension from the NFL. Daly also complained that he did not have a “rap sheet” that would make R.J. Soward look like a Backstreet Boy.

In addition, as noted above, Daly also included claims for false light invasion of privacy, intentional infliction of emotional distress, and negligent hiring and supervision.

### ***The Court’s Ruling***

In the early stages of the case defendants filed a motion for summary judgment based on a number of publicly available documents about Daly, including court and police records, other columns and publications, books, and even Daly’s autobiography which he published shortly after the suit was filed. The Court denied the motion in 2006 in a one page order that did not discuss or analyze the merits of the case. Accordingly, the suit proceeded through extensive discovery, including numerous depositions of the parties.

Following that discovery, a renewed motion for summary judgment was filed in early 2009. This time, the Court found that the motion should be granted, determining that the facts stated in the column were true; domestic violence accusations, substance abuse, and three different kids by three different moms. The Court further ruled that

the comparisons were protected opinion, whether one agreed with the opinions or not.

First, the Court found that there was no genuine dispute that Daly is someone “accused” of domestic abuse. Daly had even admitted under oath at his deposition that he had been accused stemming from an incident in Castle Rock, Colorado by his then wife.

Q: You were accused of domestic abuse? ...

A: ... [Y]es, I was accused of it. ...

Daly also admitted that thereafter the words “John Daly” and “domestic abuse” were “locked together.” As a consequence of that incident, Daly had pled guilty to harassment under Colorado law which meant he was convicted of having “struck, shoved, kicked, or otherwise subjected [his wife] to an unlawful physical contact.” As part of his sentence, Daly was required to participate in domestic violence evaluation and treatment.

Daly attempted to argue that his wife had publicly recanted her accusation. The Court found this to be irrelevant because it did not change the fact that she had accused Daly, that the State of Colorado repeated the accusation in a criminal proceeding, and that Daly pleaded guilty to a crime based upon it.

Daly further attempted to argue that the use of the word “women” necessarily implied that he had been accused of domestic violence by multiple women, and that use of the word “is” suggested that the accusations were of more recent vintage. The Court rejected these efforts to so closely parse the language, and held:

Given the context of the Column, a sports-related opinion piece, Daly is incorrect that the phrase “smacking women around” should be read in such a literal fashion. ... Moreover, even if a reader interpreted the phrase as referring to more than one woman, it would not make a difference because the “sting” of the Column would be the same - that Daly has been accused of committing domestic abuse.

In addition, the Court found that even if Daly's interpretation were accepted, the evidence established that the statement was substantially true. The Court noted that it need not decide if in fact domestic abuse had actually occurred; the analysis stopped with a finding that Daly had been "accused."

Secondly, the Court addressed the three kids/three moms counts. With respect to these claims the Court found that the comparison to Shawn Kemp was pure opinion and therefore not actionable. In addressing the issue that the implication of the comparison was to suggest that Daly's children were illegitimate, the Court stated that

***... interpersonal comparisons based upon stated facts are not actionable, even when a plaintiff contends they are poorly considered or otherwise offensive.***

[t]he problem with this argument is that Daly could come up with any number of reasons why the analogy to Kemp is invalid and it would not matter. Under established First Amendment law, the question of whether an opinion is well thought out or not is legally irrelevant. ... In short, interpersonal comparisons based upon stated facts are not actionable, even when a plaintiff contends they are poorly considered or otherwise offensive.

(emphasis supplied).

The Court then turned to the Thug Life counts. Again, the Court concluded that the comparison to R.J. Soward, and the reference to "Thug Life", were protected opinion. The Court stated:

Conclusions are the opinions of the author. ... The key, however, is that Freeman does not make the factual bases for his conclusion a secret. ... Because the supporting facts are identified, the Column's conclusions (that he has thug-life qualifications and makes R.J. Soward look like a Backstreet Boy) are afforded complete immunity

under the First Amendment and cannot be the subject of a defamation action.

The Court further found that there was no evidence of actual malice, much less the required "clear and convincing" level of such evidence. The Court stated that it would dismiss Daly's claims on this basis as well.

With respect to false light invasion of privacy the Court found that no such cause of action exist under Florida law in light of a decision made by the Florida Supreme Court last year in *Jews for Jesus, Inc., v. Rapp*, a decision reported on in these pages previously. The other counts were all dismissed under the single publication/single action rule as they were all based on the Column.

### **Conclusion**

As this is being written, Daly's time for filing a notice of appeal is still open. Nevertheless, the Court's opinion in this matter is precedent for opinion columnists, particularly sports columnists. It reinforces the hard fought for right of Americans to express their opinion about public figures, and what public figures get talked about more than professional athletes? Perhaps the next time a sports figure files a defamation action the suit can be dismissed earlier, rather than later, with this helpful precedent.

*Defendants were represented in the case by George D. Gabel, Jr., and Timothy J. Conner, partners, and Zachary Potter and Erin Allen, associates, Holland & Knight LLP, in Jacksonville, FL. Plaintiff was represented by Steven Brust, Smith Gambrell & Russell, LLP, in Jacksonville, FL; and Lydia A. Jones, Rogers & Theobald, LLP, Phoenix, AZ.*