

Lenny Dykstra: His Reputation Precedes Him

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In the 1980s and early 1990s, thousands of posters of former Major League star Lenny Dykstra undoubtedly decorated the bedroom walls of New York Mets and Philadelphia Phillies fans. Following [a recent decision](#) by Justice Robert Kalish of the New York Supreme Court (the trial-level court in New York), Dykstra now may be a poster child of a different sort: the libel-proof plaintiff. The [notorious Dykstra](#) had his libel suit against his former teammate Ron

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Darling dismissed in *Dykstra v. St. Martin's Press LLC, et al.* Dykstra—who [most recently has been making a meal out of celebrating his second straight year without an arrest](#)—could not pursue his libel claim because he is the rare libel-proof plaintiff, incapable of being damaged by the allegedly defamatory statements in Darling's latest book, *108 Stitches: Loose Threads, Ripping Yarns, and the Darndest Characters from My Time in the Game*.

Dykstra sued Darling, his ghost writer and his publisher for defamation and intentional infliction of emotional distress arising out of a story in Darling's book describing a racist tirade by Dykstra aimed at Dennis "Oil Can" Boyd, an African American pitcher for the Boston Red Sox, right before the opening pitch of Game 3 of the infamous 1986 World Series—the pivotal game won by the Mets in which they began to turn the Series in their favor, aided in large part by Dykstra's lead-off home run off of Boyd.

As described by Darling, "Oil Can was on the receiving end of the ugliest piece of vitriol

I've ever heard – in a bar, on a baseball diamond . . . anywhere . . . [A]s Oil Can was taking his final warmups on the mound, Lenny was in the on-deck circle shouting every imaginable and unimaginable insult and expletive in his direction – foul, racist, hateful, hurtful stuff.” Although Darling avoided repeating the specific taunts from Dykstra, he suggested that the taunting was “worse . . . than anything Jackie Robinson might have heard, his first couple of times around the league.”

Dykstra claimed that Darling's story was libelous and (a) tarnished the Mets' 1986 World Championship, (b) branded Dykstra as a racist; (c) was maliciously intended to attack Dykstra, his prowess as a professional athlete, and his ability to earn a living going forward, and (d) caused Dykstra emotional distress and irreparably harmed his reputation. The defendants sought dismissal based in part on the rarely used libel-proof plaintiff doctrine, which bars a defamation claim as a matter of law where false statements on a particular subject cannot further harm the plaintiff's reputation on that subject. As the court put it, this defense is not based upon “whether the statements were defamatory in nature but rather whether Dykstra's reputation precludes this action.”

The defendants argued that Dykstra's reputation as a racist, bullying bigot meant that he could not be damaged further by Darling's story. In a pointed opinion, the court agreed, ultimately reaching the damning conclusion that “[P]rior to the publication of [Darling's latest] book, Dykstra was infamous for being, among other things, racist, misogynist, and anti-gay, as well as a sexual predator, a drug-abuser, a thief, and an embezzler. Further, Dykstra had a reputation—largely due to his autobiography—of being willing to do anything to benefit himself and his team, including using steroids and blackmailing umpires.”

Besides the headline-grabbing nature of the court's recounting of Dykstra's exploits—and Darling's story about one specific and particularly shameful episode of the Dykstra experience—this case is notable because the court applied the libel-proof plaintiff doctrine at the motion-to-dismiss stage. New York has a procedural rule (CPLR 3211(a) (1)) that permits early dismissal based on documentary evidence, when those documents conclusively establish an affirmative defense as a matter of law. Often such evidence includes prior judicial proceedings, deeds, wills, contracts and other legal documents. Here, however, the court dismissed Dykstra's libel claim based primarily upon the “litany” of public stories about Dykstra's poor reputation, including Dykstra's autobiography, magazine articles, newspaper and online news reports, a book by the former editor of a magazine run by Dykstra, a 2017 book by Darling, Dykstra's robust litigation history, including being the subject of 24 legal actions, and Dykstra's prior criminal convictions and the publicity they received.

Unlike the documentary evidence often relied upon at the dismissal stage, much of this evidence was not offered for the truth of its contents (avoiding a hearsay objection), but instead to demonstrate the widespread availability of negative information about Dykstra's character—particularly as it pertained to the subject of Darling's story: racist, unsportsmanlike, and abusive behavior. So the news stories or the anecdotes from Dykstra's former colleagues did not have to be truthful to support the libel-proof plaintiff

defense; their mere existence was sufficient as a matter of law to establish that Dykstra's reputation could not be further harmed by Darling's story.

In reaching this conclusion, the court found an absence of any basis for using its limited resources to determine whether "Dykstra engaged in yet another example of bigoted behavior over thirty-years ago" Instead, the court noted that Dykstra could tell his side of the story to the public. Dykstra claimed to have enlisted Boyd and Mets legends Doc Gooden and Daryl Strawberry to dispute Darling's story, and the court urged him to further those efforts to address any perceived harm to his reputation.

Although it is unclear whether Dykstra has taken the court up on its suggestion to use his public platform to tell his side of the story, he has used that platform to accuse Justice Kalish of having "a very flexible interpretation of the law," and to call him a "hack judge," to question why Darling would pick him as an enemy because, according to Dykstra, he's "the last (bleeping) guy you'd want to pick," to threaten Darling with "pending doom" based on some unspecified "ugly truth" about Darling's baseball career, and to threaten to reveal dirt on Darling and Mets ownership (this last threat was part of a video posted to Twitter taken on the side of the road following a car crash in which Dykstra claims "a bunch of hillbillies" rear-ended his Uber). Who knows, if Dykstra follows through on these threats, he and Darling may find themselves on opposite sides of a libel lawsuit in the future.

On Dykstra's lawsuit, unless he succeeds on appeal, he at least got one thing right: the case is "never going to (bleeping) trial."