

False report of prison time satisfies Spokeo's requirement of injury in fact

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In *Landry v. Thomson Reuters Corp.*, 2018 U.S. Dist. LEXIS 162741 (D. N.H. Sept. 24, 2018), a putative class action, a key issue was whether the Plaintiff's amended complaint—which alleged Thomson Reuters Corporation (“TRC”) wrongly reported that Plaintiff served time in prison—adequately alleged a particularized, concrete harm sufficient to vest Plaintiff with Article III standing. Spoiler alert: it did.

Plaintiff alleged that when applying for a job at Time Warner in New Hampshire, he authorized Time Warner to conduct a background check. The check revealed no criminal history, and he was hired at the Time Warner call center. After working there for five months, he was hauled into a meeting and accused of failing to disclose that he had served time in a Texas prison. He was then suspended without pay. Plaintiff cleared up the case of mistaken identity with the Texas prison system and Time Warner ultimately acknowledged the mix-up, but Time Warner terminated him anyway. (His dispute with Time Warner is the subject of a separate arbitration.) Plaintiff sued TRC, the company which allegedly performed the errant background check, alleging it violated the FCRA in four separate ways, including that TRC failed to follow reasonable procedures to assure the maximum possible accuracy of the information provided in the reports it prepared, as required by 15 U.S.C. § 1681e(b).

In *Spokeo*, the Supreme Court found that, in the context of an FCRA claim, to have Article III standing, a plaintiff must have suffered some actual harm, or “injury in fact.” As the *Landry* Court reminded us, though, sometimes an alleged procedural violation is enough to satisfy this burden:

[S]ome violations of the FCRA may be so trivial that they cause no quantifiable injury. The Supreme Court gave two examples of such inconsequential violations of the FCRA: the inclusion in a credit report of an inaccurate zip code; and, despite violations of FCRA procedural requirements, the dissemination of an entirely accurate credit report. *Other violations of the FCRA, however, may be sufficiently severe that those statutory violations alone constitute a concrete and particularized injury.*

Landry, 2018 U.S. Dist. LEXIS 162741, *14 (internal citations omitted).

In other words, there were two separate ways which the Plaintiff could demonstrate standing: he could show that he suffered actual “concrete harm” as a result of TRC's alleged FCRA violations, *OR* he could demonstrate that the alleged procedural violations were sufficiently

severe to constitute an injury in fact.

The Court held that TRC's alleged violations of the FCRA created exactly the kind of harm which Congress was attempting to prevent when it enacted the FCRA. Therefore, even if Plaintiff was unable to demonstrate a concrete harm (*i.e.*, that he was fired as result of the allegedly incorrect credit report), the severity of the alleged statutory violations was sufficient to convey Article III standing.

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