

Bell v. Worthington City Sch. Dist.
No. 2:18-cv-961, 2020 U.S. Dist. LEXIS 96464 (S.D. Ohio June 2, 2020)

Year	2020
Court	United States District Court for the Southern District of Ohio
Key Facts	Plaintiff Dr. Keith Bell, a sports psychologist, author, professional speaker, and athletic consultant, wrote the book <i>Winning Isn't Normal</i> ("WIN"). WIN contains a motivational sports passage that begins "Winning isn't normal." In addition to WIN book sales, Bell sells WIN-related products and licenses WIN to others to use, display, and perform. Defendant, the Worthington City School District's Board of Education, employs two basketball coaches, Coach Souder and Coach Luzador, who publicly displayed the "Winning isn't normal" passage from WIN. Coach Souder read the passage aloud to the basketball team, attributing it to Bell, and hung a verbatim copy in the team's locker room. Coach Luzador retweeted a near identical copy of the passage on his personal Twitter feed without attribution to Bell. Bell sued the school district (later amending the complaint to name the Board of Education as the defendant instead), as well as a photography service (that quickly settled), and the parties filed cross motions for summary judgment.
Issue	Whether a school employee publicly displaying a passage from a work in a school locker room and on the employee's personal social media account are fair uses.
Holding	With three fair use factors weighing in favor of fair use and one factor neutral, the court found the coaches' uses of WIN were fair use. The first factor, the purpose and character of the use, favored fair use because while the verbatim copying was not transformative, the coaches' uses were educational because they aimed to teach athletic "lessons in good sportsmanship and fair play." Additionally, the coaches' uses were noncommercial because neither the coaches nor the Board of Education profited from displaying the passage. The second factor, the nature of the work, also favored fair use because WIN had been published and the passage had been widely distributed online prior to the coaches' uses, so Bell's right to control WIN's first publication was not affected. Further, WIN was a mix of fact and fiction, which "d[id] not persuade the Court in either direction." The third factor, the amount and substantiality of the work used, was neutral. Defendant's copying was minimal in quantity, as the passage is a small portion of the WIN book, but substantial in quality, as the passage is the heart of the WIN book. The fourth factor, the effect of the use upon the potential market for or value of the work, favored fair use. The court explained that when a use is noncommercial, the burden of demonstrating market harm rests with the copyright holder. At the time of Defendant's uses, Bell did not hold a separate copyright registration for the passage alone, so the court considered the market harm for the WIN book as a whole. Beyond "conclusory statements" that Defendant's uses, if widespread, would adversely impact the market for WIN, Bell was unable to present evidence demonstrating a connection between Defendant's uses and harm to the market for WIN's book sales or speaking engagements. The court observed Defendant's uses may actually help the market for Bell's work by enhancing his reputation.
Tags	Textual Work; Educational/Scholarship/Research; Internet/Digitization
Outcome	Fair use found

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