

**Bell v. Eagle Mt. Saginaw Indep. Sch. Distr.**  
**27 F.4th 313 (5th Cir. 2022)**

Year	2022
Court	United States Court of Appeals for the Fifth Circuit
Key Facts	Plaintiff Dr. Keith Bell, a sports psychologist, wrote and published <i>Winning Isn't Normal</i> , a book that provides strategies for success in athletics. Bell separately registered the copyright for a 230-word excerpt from the book (the "WIN Passage"). Bell sells merchandise that displays the WIN Passage online and licenses its use. In December 2017, Chisholm Trail High School's softball team and color guard posted the WIN Passage to their Twitter accounts, crediting Bell as the author. In November 2018, Bell notified Defendant Eagle Mountain Saginaw Independent School District that the Twitter posts infringed his copyright. In response, Defendant removed both posts, told Bell that the mistake was a "teachable moment," and announced a training program to avoid similar incidents. After settlement negotiations failed, Bell brought an action for copyright infringement. Defendant moved to dismiss, asserting that the school's use was fair. The district court granted Defendant's motion and awarded it attorney's fees. Bell appealed.
Issue	Whether use of a motivational passage excerpted from a book in social media posts by public school athletics programs constitutes fair use.
Holding	Although Defendant conceded that the school's use was not transformative, the court nonetheless concluded that the first factor, the purpose and character of the use, favored fair use because the use was noncommercial and in good faith. Despite construing the pleadings in Bell's favor, the court found the use noncommercial because "[t]here is no logical theory for how tweeting Bell's motivational message to inspire students would enhance the reputations of [the school's athletics] programs" or provide Defendant a "tangible benefit." The court held that the school acted in good faith because Bell was credited in the posts and the school immediately removed the posts after Bell complained. The second factor, the nature of the work, disfavored fair use because, although comprised of "well-worn truisms," when viewed in the light most favorable to Bell, the WIN Passage is "somewhat creative." The court found that the third factor, the amount and substantiality of the portion of the work used, was neutral because, even if the WIN passage is the "essence of Bell's book," Bell himself makes the WIN passage "freely accessible" to the public and the passage constitutes only a "small excerpt" of the entire book. The fourth factor, the effect of the use upon the potential market for or value of the work, favored fair use, as the court held that a short excerpt from the book was not a competing substitute for the original. In fact, quoting a short passage "might bolster interest in the book" and related merchandise. The court found implausible the allegation that the school's use could impact Bell's ability to license his work, noting that Bell failed to "allege that anyone has ever purchased a license before posting the WIN Passage on social media" and that his "sole authority" for the existence of a licensing market was his own litigation efforts. Weighing the factors, the court held that the school's use of the WIN Passage was fair and affirmed the district court's dismissal. It also affirmed the award of attorney's fees to deter Bell and other copyright holders from "suing public institutions and nonprofit organizations over <i>de minimis</i> uses."
Tags	Educational/Scholarship/Research; Internet/Digitization; Textual Work
Outcome	Fair use found