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Las Vegas Review-Journal v. Eighth Judicial Dist. Court, 134 Nev. Adv. Op. 7 (Feb. 27, 2018)[1]

FIRST AMENDMENT: PRIOR RESTRAINT

Summary

The Court determined that the First Amendment does not allow a court to prevent the press from reporting on a redacted autopsy report already released to the public.

Background

On October 1, 2017, a gunman opened fire on the concert goers of the Route 91 Music Festival, killing 58 people and injuring hundreds more. The press, including the Las Vegas Review-Journal and the Associated Press (collectively, the Review-Journal), requested access to the shooter's and his victim's autopsy reports from the Clark County Coroner pursuant to the Nevada Public Records Act (NPRA).[2] The Coroner denied the requests, and in response, the Review-Journal initiated a suit against the Coroner pursuant to NRS 239.011.[3]

The district judge in the NPRA case ruled in favor of the Review-Journal but directed the Coroner to redact the victims' names and personal identifying information. The Coroner released the victims' autopsy reports with the names, Coroner's case number, age, and race redacted, and the Review-Journal reported on the redacted autopsy reports immediately.

Charles Hartfield, an off-duty Las Vegas Metropolitan Police Officer, was one of the murder victims who attended the music festival with his wife, real party in interest Veronica Hartfield. After the autopsy reports were publicly released, Mrs. Hartfield and the Estate of Charleston Hartfield (collectively, the Hartfield Parties) filed a complaint, seeking a temporary restraining order barring the Review-Journal from reporting on the redacted autopsy reports, which was coupled with a motion for a preliminary injunction.

The Review-Journal opposed the complaint, arguing that the reports were redacted and therefore anonymized; that the report was already in the public domain pursuant to the order in the NPRA case; and that granting the motion would abridge its First Amendment freedoms. The district judge placed the burden on the Review-Journal to demonstrate a "legitimate basis for why the public would need to have access to the redacted Hartfield autopsy report." Balancing the Hartfield Parties' privacy interests against what it declared to be a lack of newsworthiness, the district judge found the privacy interests outweighed the Review-Journal's First Amendment freedoms. The district judge granted the Hartfield Parties' motion for a preliminary injunction, and in response, the Review-Journal filed an emergency petition with the Nevada Supreme Court, challenging the district court's injunction as an invalid prior restraint.

Discussion

The Court found the district court's order enjoining the Review-Journal from reporting on the redacted autopsy reports constituted an invalid prior restraint in violation of the First Amendment. The proponent of a prior restraint order "carries a heavy burden of showing a

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[1] By Matthew J. McKissick.

[2] Nevada Public Records Act of 2007, NEV. REV. STAT. ch. 239 (2015).

[3] NEV. REV. STAT. § 239.011 (2017).

justification for the imposition of such a restraint."[4] To justify a prior restraint, the interest the prohibition protects must be of the "highest order."[5] Also, "[t]he restraint must be the narrowest available to protect that interest; and the restraint must be necessary to protect against an evil that is great and certain, would result from the reportage, and cannot be mitigated by less intrusive measures."[6]

The district court based its injunction order on the need to protect the privacy interests of the Hartfield Parties; however, the redacted autopsy reports did not include any personal identifying information. Also, the case upon which the injunction order relied—*Katz v. National Archives & Records Administrations*—turned on whether autopsy documents of former President John F. Kennedy were "agency records" subject to disclosure, or personal presidential papers subject to restrictions on disclosure.[7] This case, in contrast, dealt with an order restraining the media from reporting on redacted autopsy reports already obtained from the state pursuant to court order.

The prior publication of the redacted autopsy reports diminished the Hartfield Parties' privacy interests beyond the point of after-the-fact injunctive relief. Thus, the injunction did not, and could not as a matter of law, promote a state interest of the "highest order."[8] Moreover, the district court's order only restrained the Review-Journal and the Associated Press from reporting on it. Leaving other news organizations free to report on Mr. Hartfield's redacted autopsy report did not accomplish the stated goal of protecting the Hartfield Parties' privacy interests.

The district court improperly placed the burden on the Review-Journal to defend the newsworthiness of the redacted autopsy reports. It is the proponent of the prior restraint who bears the heavy burden of justifying it.[9] Because the anonymized and redacted autopsy reports were already in the public domain, "[t]he harm that could have been prevented by the prior restraint has already occurred, and, because this harm has occurred, the heavy presumption against constitutionality of a prior restraint has not been overcome."[10] Simply put, any damage to the Hartfield Parties' privacy interests had already been done, and the district court's subsequent order could not remedy that damage. Consequently, the real parties in interest failed to demonstrate a serious and imminent threat to a protected competing interest that would warrant the prior restraint imposed in this case.[11]

Conclusion

Applying Supreme Court precedent, the Hartfield Parties failed to demonstrate a serious and imminent threat to a protected competing interest that would warrant the prior restraint because the information they sought to protect was already in the public domain. Consequently, the district court's injunction enjoining the Review-Journal from reporting on the redacted autopsy reports amounted to an unconstitutional prior restraint in violation of the First Amendment. The district

[4] N.Y. Times Co. v. U.S., 403 U.S. 713, 714 (1971).
[5] The Fla. Star v. B.J.F., 491 U.S. 524, 541 (1989).
[6] Colorado v. Bryant, 94 P.3d 624, 628 (Colo. 2004).
[7] Katz v. Nat. Archives & Records Admin., 862 F. Supp. 476 (D.D.C. 1994).
[8] The Fla. Star, 491 U.S. at 541.
[9] N.Y. Times Co., 403 U.S. at 714.
[10] Bryant, 94 P.3d at 624 (Bender, J., dissenting).
[11] The Fla. Star, 491 U.S. at 533–34.

court’s order did not pass constitutional muster, and therefore, the Court granted the emergency petition to vacate the preliminary injunction.