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Toll v. Dist. Ct. (Gilman), 135 Nev., Advanced Opinion 58 (December 5, 2019)

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Toll v. Dist. Ct. (Gilman), 135 Nev., Advanced Opinion 58 (December 5, 2019)[1]

Summary

A blogger claimed that his sources are protected under NRS 49.275. The court held that digital media is protected, but did not address whether a blogger is protected. The district court did not err in allowing discovery to determine whether the blogger acted with actual malice.

Background

Petitioner Toll blogs on current events from Virginia City, Nevada via thestoryteller.online. In addition to covering other current events, Toll also criticized Storey County Commissioner Lance Gilman—specifically alleging that Gilman did not live in Storey County. Gilman sued Toll for defamation per se.

Toll filed a special motion to dismiss Gilman's action under NRS 41.660, the anti-SLAPP statute, claiming that he was exercising his right to free speech in good faith. Gilman opposed the motion, arguing that even if the statements were good faith communications, Gilman could provide prima facie evidence to show his probability of prevailing on his defamation claim.

The district court held that Gilman did make a prima facie case for probability of success as to the falsity of Toll's claims and the claims' damaging nature, but he failed to make a prima facie case for actual malice—required for winning a defamation claim against a public figure.

The district court granted Gilman's motion for limited discovery on whether Toll had actual malice so Gilman could discern whether Toll knew his statements were false or whether he acted with a high degree of awareness that they were likely false.

In discovery, Gilman deposed Toll, asking why Toll believed Gilman did not live in Storey County. First, Toll said that if Gilman lived where he claimed, he would be violating zoning laws. Second, Toll said that it was illogical for Gilman to live in a trailer, given Gilman's wealth. Third, Toll said he asked people who said Gilman did not live where he claimed, and that his sources said Gilman would leave for Reno every night or keep possessions at a different property. Toll invoked the news shield statute, NRS 49.275 which protects news journalists from mandatory disclosure of confidential sources, to protect the identity of his sources.

The district court granted Gilman's motion to compel Toll to reveal his sources because Toll did not belong to a press association at the time that he made his claims against Gilman, and further that Toll's blog did not qualify as a newspaper under the statute because it was not in print.

[1] By Gabrielle Boliou

Discussion

The first issue is of statutory interpretation. The higher court will intervene when the district court issues an order requiring disclosure of privileged information.[2] The court considers this petition because it presents a narrow legal issue concerning an issue of significant public policy, and which will promote judicial economy.[3] This court reviews questions of statutory construction de novo[4] with a reasonableness standard of avoiding absurdity[5] and under the restriction that the court should not go beyond the language of the statute of its meaning is clear on its face.[6]

In granting Gilman's motion to compel, the district court mistakenly relied on the idea that Toll's blog is not a newspaper because it is not physically printed. However, the relevant terms in NRs 49.275 are "reporter" and "newspaper." The district court agreed that Toll was a reporter because he reports on various public events and current news, but held that Toll's blog was not a newspaper because the definition of newspaper requires that the media source is "printed."[7] Yet one dictionaries disagree as to the definition of print, and one dictionary includes displaying on a surface as part of the definition of "print." [8] The district court mistakenly used only one definition. Moreover, courts should reasonably account for advances in technology, such as the expansion of the Fourth Amendment to protect against thermal imaging.[9]

Similarly, to hold that a newspaper ceases to be a newspaper once it exists online is absurd and defies the canons of statutory interpretation.

The second issue is whether the district court erred in granting Gilman's motion for limited discovery because Gilman failed to make a prima facie showing when he opposed Toll's motion to dismiss. However, the court will allow limited discovery when a party needs access to the opposing party's information to meet the plaintiff's burden under the second prong of the anti-SLAPP statute. The court will not disturb a district court's discovery ruling unless the court clearly abused its discretion.[10]

In this case, the court needed to know what evidence Toll relied on when making his claims to determine whether Toll acted with actual malice. Therefore, the court did not act arbitrarily and capriciously when allowing Gilman's discovery.

Conclusion

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[2] Las Vegas Sands Corp. v. Eighth Judicial Dist. Court, 130 Nev. 118, 122, 319 P.3d 618, 621 (2014).
[3] *See, e.g.*, Corp. of the Presiding Bishop, LDS v. Seventh Judicial Dist. Court, 132 Nev. 67, 70, 366 P.3d 1117, 1119 (2016).
[4] Tam v. Eighth Judicial Dist. Court, 131 Nev. 792, 799, 358 P.3d 234, 240 (2015).
[5] Desert Valley Water Co. v. State, 104 Nev. 718, 720, 766 P.2d 866, 866 (1988).
[6] Beazer Homes Nev., Inc. v. Eighth Judicial dist. Court, 120 Nev. 575, 579-90, 97 P.3d 1132, 1135 (2004).
[7] NEV. REV. STAT. § 238.020.
[8] Print, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2020).
[9] Kyllo v. United States, 533 U.S. 27, 31 (2001).
[10] Club Vista Fin. Servs., LCC v. Eighth Judicial dist. Court, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012).

The court grants the petition in part and denies in part. NRS 49.275 does indeed protect digital media, but the district court must decide whether Sam Toll qualifies for such protection as a blogger. The district court did not act arbitrarily or capriciously when it granted the motion for limited discovery.