



NJ Court Declines to Extend Newsperson's Shield Law To Internet Writer Devoid of Journalism Credentials

Client Advisories

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Too Much Media, LLC, John Albright and Charles Berrebbi v Shellee Hale,
Docket No. A-0964-09T3 (APP. DIV. APR. 22, 2010)

This case examined whether the protections of New Jersey's Shield law, N.J.S.A. 2A:84A-21, extended to an operator of a website to bar the disclosure of her sources into the investigation of the online adult entertainment industry, which she later posted on Internet bulletin boards.

The Defendant, Shellee Hale, started a website in October 2007 called "Pornaphia" to inform the public of scams, fraud, and technological issues in the adult entertainment industry. Although the website was never fully launched, Defendant claimed to have begun investigating certain companies in the adult entertainment industry and ultimately focused on Plaintiffs. As a result, Defendant posted several entries on other sites' message boards alleging that Plaintiffs had committed instances of criminal behavior by threatening certain individuals, committing fraud, and by improperly redirecting spam over the Internet. Plaintiffs subsequently filed suit against Defendant alleging defamation, false light and trade libel. Plaintiff asked Defendant during discovery about the sources of information for her defamatory statements, which Defendant refused to provide, claiming to be a "journalist" entitled to the newspaper's privilege. The motion judge denied her application for a protective order, determining that she was not entitled to the statutory protection of the Shield Law.

On appeal, the Appellate Division agreed with the motion judge that Defendant's Internet messages were not entitled to protection under the New Jersey Shield Law. Finding that New Jersey's Shield Law focused "on the news process rather than the medium or mode through which the news is disseminated to the public," the Court determined that Defendant could not be considered a "journalist" under the statute because the only evidence supporting her claim that she was a "newsperson" was her own self-serving characterization, which the trial court found not credible. The Defendant failed to produce any credentials or proof of affiliation with a recognized news entity nor demonstrated any adherence to standards of professional responsibility concerning

journalism, such as editing, fact checking or disclosure of conflicts of interest. Moreover, there was no evidence that Defendant pursued any personal “investigations” into the online porn industry, such as notes of conversations, meetings or interviews or any investigation independent of the writings of others. Defendant also never identified herself to any of her sources as a reporter or journalist who would maintain their confidentiality, which the Court found was a key factor in the application of the newsperson’s privilege.

The Appellate Division also found that Defendant’s posting of opinions on the message boards did not constitute the reporting of news but was simply an expression of opinion, which any individual outside of a news organization could also provide. “We perceive a significant distinction, for present purposes, between an operator of a news-oriented website or ‘blog’ and those who simply and randomly comment on the public forums provided by the site.” Accordingly, the Court found Defendant was not entitled to protection under the Shield Law. In a similar vein, the Court rejected Defendant’s argument that she was entitled to protection under the First Amendment, finding “no distinction between the privilege afforded newsmen under N.J.S.A. 2A:84A-21 and the First Amendment.”

This decision marks a significant limitation on a statutory privilege which had heretofore been expansively interpreted. While on the one hand this interpretation is consistent with the literal language of the statute, it arguably fails to appreciate the changing landscape of the information gathered and disseminated electronically via alternative or non-traditional Internet media. Based on its facts, the decision may not directly affect traditional media entities engaged in electronic means of disseminating news. But to the extent that these entities interface with non-traditional media, it remains unclear whether the privilege continues to apply.

Please direct questions about this and other media-related legal issues to John C. Connell, Chair of Archer’s Media and Communication Practice, at (856) 354-3074 or jconnell@archerlaw.com.

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