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New Jersey court denies blogger shield protection

Terry Baynes

NEW YORK, June 7 (Reuters) - A blogger sued for defamation over comments posted on an Internet message board is not entitled to the same protections as a journalist, the New Jersey Supreme Court ruled on Tuesday.

The court said that blogger Shellee Hale's criticism of a software company on a porn industry bulletin board was not covered by the New Jersey press shield law, which protects members of the news media from revealing their confidential sources.

In an online reader forum, Hale had accused Too Much Media LLC, which provides software to adult entertainment sites, of profiting from a 2007 security breach that exposed customers' personal information. She wrote that the company's owners had threatened the lives of people who questioned their conduct. Her posts appeared on the message board of Oprano, the self-described "Wall Street Journal of the adult entertainment industry."

After the company sued Hale for defamation, Hale claimed that her posts were part of a broader expose of the online pornography industry that she intended to publish on her website, Pornafia, which never fully launched. Hale, a licensed private investigator and former Microsoft employee, said she created the site as an "information exchange" intended to expose criminal activity in the adult entertainment industry.

"(We) do not believe that the legislature intended to provide an absolute privilege in defamation cases to people who post comments on message boards," the court wrote. Otherwise anyone with a Facebook account could claim the journalist privilege, it said. Instead, the court concluded that online message boards are little more than unscreened reader comment pages or public forums for discussion.

The court "has taken a sharp turn against the nontraditional journalist and people writing on the web," said Hale's lawyer, Jeffrey Pollock. He said the decision relegates anyone writing for alternative media to a second class of protection. New Jersey can no longer pride itself on having the broadest shield law in the nation, he said.

Pollock had argued that the court should consider Hale's intent to later disseminate the news to the public. But the court rejected the so-called "intent test" used by some federal courts when applying the press shield.

Joel Kreizman, a lawyer for Too Much Media, said he was relieved the case could now resume before the trial court after a two-year hold caused by Hale's shield law claim. He said the shield issue was significant because it could have prevented him from asking Hale questions about the identity of her sources. "We believe she was put up to this by somebody else," he said.

The New Jersey Supreme Court's opinion affirmed the rulings of both the trial and appellate courts. However, unlike the appeals court, the high court said that the shield law does not require newsmen to identify themselves as reporters, carry certain credentials or follow professional standards like taking notes, fact-checking or disclosing conflicts of interest.

The case is Too Much Media LLC et al v. Hale, New Jersey Supreme Court, No. A-7-10.

For Too Much Media: Joel Kreizman of Evans, Osborne and Kreizman.

For Hale: Jeffrey Pollock of Fox Rothschild.

Decision: 2011 WL 2184348

--- Index References ---

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