1998

Robert Treff v. Kearns-Tribune Corp, et al. : Reply Brief

Utah Court of Appeals

ORIGINAL

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IN THE UTAH COURT OF APPEALS
FOR THE STATE OF UTAH

ROBERT TREFF, Plaintiff-Appellant, v. KEARNS-TRIBUNE CORP. et al., Defendants-Appellees	Plaintiff-Appellant's Response to Appellee's Brief case no. 980053-CA

COMES NOW, the plaintiff-appellant Robert Treff who respectfully submits this response to Appellee's brief, (hereinafter refered to as "Appl brf. at pg.___")
Appellant will attempt to provide the proper parenthetical references.

ARGUMENT

Appellant believes he has presented the issues which quite A provide sufficient explanation and in detail. (at Apple brf. at pgs.4-5). However, it is interesting how the appellees have now muddied the waters with a new approach as to the defense for their actions, and the district court's ruling. Appellant maintains he has supplied the proper brief as outlined in the Utah Rules of Appellate Procedure as a pro se layman, and as was sent him by this Court. Wherefore, appellant asks that appellee's presentation of the issues be striken and the issues presented by the appellant be deemed as those solely fit for review by this Court.

The appellant has repeatedly and clearly explained the attempts to have service upon all defendants named and cannot in no measure, be held responsible for the returning of funds for said additional service, by the clerk of the Third District Court (Apple brf. at pg.7). If discovery had been allowed to proceed in this matter, it is unquestioned that all defendants material to this action would have

been eventually served.

The statute of limitations as cited in Eratus v. Deland, and Arnold v. Duchesne County, (already cited in Plaintiff's Memo in Opposition to Summary Judgment and his opening appeal brief) states that when a person "knows or should have known". Plaintiff appellant in a correctional facility did not know nor could he have. He clearly supplied the Court with information of when he did first become aware of said articles, purely per chance on a college class project. (the letter of response from Salt Lake City Librarian Lois Archuleta states such). Appellant is certainly a "reasonable" person. However, he was and is an incarcerated person which poses certain restrictions on his access to media, and publications, and the ensuing knowledge derived thereof.

The articles of March 31, 1996, July 1, 1996, and those others raised in district court and this court are certainly actionable and inaccurate. Appellant has clearly shown the inaccuracies in those articles. Appellant agrees with appellees statement on (Apple brf. at pg.8) when they state as part of Allen v. Cortez, "whether plaintiffs knew or should have known of the...is a question of fact to be determined on remand." Questions of fact. "Summary judgement is appropriate only where there are no genuine issues of material fact..."

The appellees also miss the point. That being that their law cites refer to people who are not incarcerated. "if only in his role as a member of the public, has had access to such published information." (Apple brf. at pg. 9) It is not appellant's decision not to read the newspaper that is at issue, it is his inability to read, to have access, to said articles before this time.

Additionally, 120,000 people (as stated by appellees at pg. 10) read the libelous and slanderous statements about appellant. Appellant is not from Utah. He has no relatives, friends, within Utah's boundaries. So how as appellees state would he be apprise of articles about him, if he did not see them firsthand, WHEN THEY WERE PRINTED? Is there a newspaper reading service that scans newspapers for people? Not to appellant's knowledge. No, only through a per chance school project and inquiries by appellant did he know about these articles.

The appellee's true intent as to why they printed the untruths finally begins to emerge on pg.10 of their brief. First, the plaintiff's litigations are "gripes". Religious worship, medical treatment, fair review by a parole board, are "gripes". This newspaper founded on the principles of the First Amendment shows its hypocracy by saying A) we didn't tie you in to the characterization as a frivolous litigator, and B) even if we did, we're not going to retract or correct such a portrayal because the same First Amendment that we use to wield such character defining power, will not be used by you to correct various constitutional violations under your conditions of confinement. That Your Honors, is a press gone awry. Who is the proper check and balance to such? Appellant might be wrong, but isn't it the legal system?

It is irrefutable Appellant was placed on a "special" restricted list. It is equally undeniable that the very exhibit (Judge Winder's Order) makes no mention of any "frivolousness" regarding the litigations of the members on that list. More important, the articles of McCann/Ciliwick and Moulton Do state the term "frivolousness" in direct connection with appellant.

Because Judge Noel couldn't find it, in a space of 5 minutes (apparently he did not read the exhibits before the hearing...?) that does not preclude the evidence of the exhibits and the articles themselves.

Finally, the final new slant offered by the appellees. Is it because the appellant is a murderer he himself, has lost another freedom? That Legal protect. from being the focus of libelous stories. WHERE IS THAT WRITTEN IN THE CONSTITUTION OF THE STATE OF UTAH, THE UTAH ANNOTATED CODE, OR THE CONSTITUTION OF THE UNITED STATES OF AMERICA? Appellant is not (at pg. 13 apple brf.) a "criminal serving a life sentence for murder...). He is on a manslaughter conviction and will be released at the latest on December 22, 2006. Thus, the appellate authority referred to by appellees is absolutely nonsense in this case.

Are we to believe then that a murderer, should have no chance to have a reputation in the future which society would deem proper? Surely, sticking up for oneself in a positive, proper manner is not at odds with the dogmatic, puritanical thinking (of the appellees) about

reputation?

Appellant believes that he has a good name to protect. The defendant's counsel might want to take a refresher course in humility before making such bold statements. Of course, that entails upholding a policy of retraction and correction FOR ALL PEOPLE, not just the ones the Tribune chooses to defer to.

CONCLUSION

Judge Noel erred in dismissing the complaint for the reasons given in the Appellant's brief and this response. Judge Noel's decision should be overturned and the case remanded to district court for further proceedings.

DATED this 25th day of February 1998.

RESPECTFULLY SUBMITTED,

ROBERT S. TREFF

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 1998 I sent via the U.S. Mail a copy of the foregoing to:

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ROBERT S. TREFF