1991

Christiansen v. Flexi-Lease Inc : Unknown

Utah Supreme Court

Robert L. Stevens; Richards, Brandt, Miller and Nelson; Attorneys for Respondents.
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November 28, 1986

Mr. Geoffrey J. Butler
Clerk of the Court
Utah Supreme Court
322 State Capitol Building
Salt Lake City UT 84114

Dear Geoff:

I represent the Society of Professional Journalists, Utah Chapter in the case of Society of Professional Journalists, Utah Chapter v. Honorable J. Robert Bullock, District Judge, filed with the Utah Supreme Court on April 12, 1985.

Pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure, I have enclosed copies of the case In Re Fatzinger decided by the Pennsylvania Court of Common Pleas Lehigh County. The case holds there is a First Amendment constitutional right of access to notes of testimony taken at a mental health commitment hearing. The Pennsylvania Court details the rationale for openess by citing Jeremy Bentham, who wrote "the great virtue in our Anglo-American court system is that it is open to the public so that all will know that the courts, as instruments of government, are defending the rights of people and not suppressing them."

I believe this case would provide assistance in the matter now pending before the court.

Sincerely,

Patrick A. Shea

/mm

Enclosures

Imitted to Practice:
Utah
District of Columbia
Tenth Circuit Court of Appeals
Inited States Supreme Court

Stanford University B.A. 1970
Oxford University M.A. 1972

There is no indication on the record that the Librarian of Congress will not abide by this ruling and, indeed, he has agreed pursuant to this ruling to resume production of *Playboy* in braille. In accordance with the bench ruling of August 28, 1986, the parties submitted proposed orders of relief. The government indicated in its filing, pursuant to the Court's decision that in the exercise of his authority the Librarian of Congress violated the First Amendment, that the defendant would not object to the following terms of relief directing the Librarian

(1) to resume production and distribution of braille editions of *Playboy;*

(2) to produce and distribute braille editions of *Playboy* for calendar year 1987;

(3) to notify all subscribers to the program and libraries of the renewed availability of braille editions of *Playboy;* and

(4) to produce and maintain at the Library of Congress recorded or "talking book" editions of the 1986 issues of *Playboy* and to notify all persons and libraries who ordinarily receive such notice of the availability of these editions.

The Court finds that these terms of relief are sufficient and appropriate insofar as the Librarian has decided to undertake these steps in response to the Court's decision and shall so order, thereby minimizing court interference in the budgetary process. *See e.g. Joyner v. Whiting,* 477 F.2d 456 (4th Cir. 1973) (authorizing injunction requiring resumption of funding for college newspaper); *Salvail v. Nashua Board of Education,* 469 F.Supp. 1269 (D. N.H. 1979) (ordering high school library to replace issues of *MS* Magazine removed from library and to resubscribe to *MS*). It does not find it necessary to order other more far reaching relief, confident the Librarian of Congress will act in the future in conformity with this Opinion and Order.

An order consistent with the terms of this opinion shall be issued simultaneously herewith.

IN RE FATZINGER

Pennsylvania Court of Common Pleas
Lehigh County

IN RE: COMMITTMENT OF RAYMOND FATZINGER, No 86-261-MH, August 1, 1986

NEWSGATHERING

Access to records—Judicial (§38.15)

Restraints on access to information—Privacy (§50.15)

Newspaper has right to access to notes of testimony taken at mental health commitment hearing concerning police officer who had temporarily been committed after having been found not guilty of criminal homicide charge by reason of insanity, since Pennsylvania Mental Health Act provision governing closure of such hearings does not impose mandatory closure but rather requires court to exercise its discretion to determine, after hearing, if proceeding should be closed, and since police officer is public figure whose right of privacy is outweighed by public's right to know facts determined at commitment hearing.

Petition by newspaper seeking to intervene in commitment proceeding in order to gain access to notes of testimony presented at hearing.

Granted.

Malcolm J. Gross, of Gross McGinley & LaBarre, Allentown, Pa., for newspaper.

Full Text of Opinion

Mellenberg, J.:

The matter before the Court is a unique situation in which "The Morning Call" by petition seeks to intervene to gain access to notes of testimony of a commitment hearing for Raymond Fatzinger. The commitment hearing was held on July 17, 1986, and closed to the public on request of counsel for Raymond Fatzinger, which request was granted without objection, discussion or hearing, in accordance with Section 304(4) of the Mental Health Act of 1976, July 9, P.L. 817, No. 143, as amended, 50 P.S. 7304(4). The commitment hearing was held on the petition of the Lehigh County Mental Health/Mental Retardation Bureau, executed by the District Attorney, William Platt, which was filed in response to a written report submitted by the Allentown State Hospital to which Raymond Fatzinger had temporarily been committed after having been found

"not guilty by reason of insanity" of a criminal homicide charge. Raymond Fatzinger was an off-duty police sergeant of the City of Allentown who was accused of killing Pamela Smith, to which complaint a plea of "not guilty" was entered by the defendant, with notice to the Commonwealth that the defense of insanity would be asserted.

The trial resulted in the return of a jury verdict of "not guilty by reason of insanity" as aforesaid. Raymond Fatzinger, without reviewing in detail the circumstances of his being at the Allentown State Hospital, remained in that hospital's custody for the purpose of complying with this Court's order that a report should be prepared and submitted to the Court to determine if further commitment was appropriate under the Mental Health Act.

The Court, after considering the testimony of the psychiatrists of the Allentown State Hospital and the reports submitted by the hospital committee, at the closed hearing on July 17, 1986 dismissed the petition for involuntary commitment as being without merit; a copy of said order is attached hereto [omitted].

Whether by design of the local newspaper, as alleged by counsel for Raymond Fatzinger, or otherwise, considerable public interest has understandably resulted from these facts. Although not a part of the record, the Court must not that much of the publicity subsequent to the dismissal of the commitment petition has resulted from Raymond Fatzinger's request for reinstatement with the Allentown Police Department and further demands for back pay and retirement benefits. Raymond Fatzinger was never relieved of his employment as a police officer after the homicide charge or the jury's verdict. The question of his being reinstated as a gun-carrying police officer understandably would cause an intense interest in the Court's determination after a private hearing that Raymond Fatzinger did not represent a present danger to himself or to others.

Counsel for the petitioning intervenor argues that Section 304(4) is not mandatory inasmuch as it speaks in terms of the hearing shall be public unless it is requested to be private. Counsel points to a recent case of *Wisconsin ex rel. Wisconsin State Journal v. Dane County Circuit Court,* 12 Media Law Reporter 2320, Wisconsin Appellate Court (1986) in which the Wisconsin Court of Appeals determined that a similar provision of that state's Mental Health Act was sufficiently ambiguous and interpreted the section to mean that a hearing on such a request or motion must be had in which the trial judge must recite on the record the factor or factors that impelled him to close the courtroom for such a hearing, and why such factors override the presumptive value of a public trial. We agree with the Wisconsin court when it observed that a public trial is rooted in the principle that justice cannot survive behind walls of silence, and its valued place in our jurisprudence reflects the traditional Anglo-American distrust of secret trials. The Wisconsin Court further cited an observation by one, Jeremy Bentham, who wrote in the 19th century that "the great virtue in our Anglo-American court system is that it is open to the public so that all will know that the courts, as instruments of government, are defending the rights of people and not suppressing them." We could find no interpretive provisions, legislative history of the Pennsylvania Mental Health Act, or Pennsylvania cases declaring that a commitment hearing if requested to be a closed hearing is mandatory. The Pennsylvania Superior Court in *Commonwealth v. Helms,* _____ Pa. Super _____, 506 A.2d 1384 (1986), recognized that a state must confine a mentally ill person who is dangerous to others in order to protect the welfare of the community. We find that the welfare of the community includes the assurance both in fact and in the perception of the community that society is not subject to the potential dangerousness of someone following an insanity acquittal. The perception of the community can only be served in this regard by a full understanding and knowledge of the facts developed at such a commitment hearing, and not by the conclusions drawn by a sitting judge at a hearing at which the public is excluded whether the judge's conclusions are appropriate or not.

We are impelled by the cogent reasoning of the Wisconsin court to find that Section 304(4) of the Pennsylvania Mental Health Act should be similarly interpreted as in Wisconsin, and that before a commitment hearing is closed to the public, the court should exercise its discretion, after hearing, to determine if the matter should be closed. This is particularly true if the mental health commitment hearing concerns an insanity acquittee in a criminal homicide case as in the matter before the Court. This determination the Court did not make and in consideration of the petition before Court we find that The Morning Call should be permitted to in-

tervene and the notes of testimony should be made public.

The aforesaid determination is made without a further hearing based upon facts of record and the Court's having taken judicial notice of Raymond Fatzinger's employment status. We find that Raymond Fatzinger was an active police sergeant with the Allentown Police Department although off duty at the time of the killing of Pamela Smith; that after being charged with criminal homicide he was found "not guilty by reason of insanity," that at the time of the involuntary commitment hearing Raymond Fatzinger had not been dismissed from the Allentown Police Department and there is a question of his being returned to active duty. We find that Raymond Fatzinger on July 17, 1986, was a public figure whose right of privacy would be outweighed by the right of the public to know the facts elicited at the mental health commitment hearing.

For the foregoing reasons the Court is constrained to grant the petitioner's, The Morning Call, request for permission to intervene, and that the notes of testimony taken at the hearing held on July 17, 1986 shall be immediately transcribed and made available to the petitioner.

NEWS-PRESS PUBLISHING v. FIRESTONE

Florida Circuit Court
Twentieth Judicial Circuit
Lee County

NEWS-PRESS PUBLISHING CO., INC., d/b/a FORT MYERS NEWS-PRESS v. GEORGE FIRESTONE, et al., No. 86-5946 CA, October 30, 1986

NEWSGATHERING

Access to places—In general (40.01)

Print and broadcast media are granted access, through pooling arrangement, to photograph and videotape voting process at polling places.

Newspaper seeks right of access to photograph voting process at polls. On plaintiff's motion for temporary injunction.

Motion granted.

Steven Carta, of Simpson, Henderson, Savage & Carta, Fort Myers, Fla., for plaintiff.

Full Text of Order

Nelson, J.:

This cause came on to be heard upon the Plaintiff's Prayer for Temporary Injunction on the basis that Section 101.121, Fla. Stats. (1985) is unconstitutionally vague and overbroad, both facially and as applied to Plaintiff under the First Amendment, and the Court having heard the testimony of the parties' witnesses, and having considered the affidavit filed by Plaintiff and other documentary evidence introduced by the parties, and finding that:

(a) The Plaintiff, as a member of the news media, would appear to have a right of access to polling places similar in nature and extent as its right of access to the Courts, and, for the purpose of this Order only, the Court so finds;

(b) The Defendants are charged by law with insuring peace and order at the polls and the secrecy of the vote and with enforcing the provisions of Florida's Election Code;

(c) Competing interests exist between the Plaintiff's First Amendment rights to access to polling places in order to gather the news and Defendants' duty to enforce the laws to insure orderly elections and the secrecy of the vote;

(d) Because of the imminence of the November 4, 1986 general election and the complexity of the constitutional and other issues before the court, the Court will not be able to rule on the issue of the constitutionality of Section 101.121, Fla. Stats. (1985) or whether Plaintiff is entitled to have Defendants wholly enjoined from enforcing the statute prior to the election;

(e) In order to temporarily best serve the aforesaid competing interests of the parties and the interests of justice until such time as the Court may rule on such issues, and without ruling on the constitutionality of the statute at this time, a balancing of such competing interests should be made for the accommodation of all of the parties before the Court and other persons bound by this Order, it is, therefore,

ORDERED AND ADJUDGED that:

1. Defendants, GEORGE FIRESTONE, as Secretary of Sate, DOROTHY GLISSON, as Deputy Secretary of Elections, ENID EARLE, as Lee County Supervisor of Elections, and FRANK