

Verdicts & Settlements

Oklahoma Man Misidentified As Sex Offender By Website Awarded \$3.7M Judgment

Continued from page 20

to sign up, the information quickly becomes outdated.

"Our argument to the jury was that by definition when sex offender registries were first set up in Oklahoma and other states everybody understood that this is a self-reporting mechanism," Nelon said. "Law enforcement to a great extent has to rely on convicted felons to tell them where they are. It can't be treated as a list."

NewsOK.com published the registry information from December 2001 until Feb. 12, 2002, when it was removed because the DOC said it had data problems (not related to Stewart's case), according to Nelon.

During the time the link was available, a user of the NewsOK.com web page could access the DOC registry by clicking on a link to the registry and inserting a name, address, city or other information into fields on the search page.

The DOC sex offender registry available through NewsOK.com identified a "Ron Wesley Lyon" as registered at the address where Stewart lived.

Stall showed jurors the printout from the website that Stewart's neighbor, Donna Taylor, had distributed throughout the neighborhood. A former municipal judge in Collinsville, Taylor had retrieved the list of several offenders in the area of Collinsville, where she lived. She then went to the DOC site and downloaded a full-color picture of Lyon, the sex offender whose registered address was closest to her home. Taylor showed the picture of Lyon and

the list of offenders to about seven neighbors.

Stewart's suit originally named Taylor as a defendant, but the case was settled out of court prior to trial. Details are confidential, but Stall said the settlement included a "very nominal" amount of cash.

During the trial, the two sides presented competing media experts. The plaintiff's expert said NewsOK.com should have posted a disclaimer on the sex offender registry link. The defense witness testified that the media's job was only to report the information the government supplied.

"Our argument at trial was that accuracy is measured by whether NewsOK accurately reported what the government said, not whether the government was right," Nelon said.

But Stall argued that the media defendants had made it appear that the information was their own, not the DOC's.

"When they published that registry, they made an effort to own that data," he said. "It had all the appearances of a database that was owned by the media defendants. It did not reference the Department of Corrections," he said.

A partner in a 13-lawyer firm in Oklahoma City, Stall went up against a defense firm with 100 lawyers.

During the trial, he delivered what he called a "David and Goliath" theme in which his defendant was pitted against large media companies.

"I began that theme in voir dire and asked the jurors whether they would be intimidated

about returning a verdict against the media giants," Stall said. "I carried that through opening statement and my closing."

Defense

The defense was based on claims of immunity under federal law and privilege under state law.

Under the federal Communications Decency Act, interactive computer services are immune from any liability for defamatory or other actionable content supplied to it by another content provider. The plaintiff claimed that immunity is available only to Internet service providers like AOL, not website providers like NewsOK.com

The defense countered that NewsOK.com is immune as both a "provider" and a "user." NewsOK.com made its server available to multiple users to access the DOC sex offender registry database and was therefore a provider; it is also a "user," because to distribute the information on its website, NewsOK accesses the Internet through an interactive computer service.

NewsOK.com itself is therefore an interactive computer service to which the federal immunity applies, the defense claimed.

Nelon also argued that under state law, NewsOK.com was "absolutely privileged" to disseminate public information, even if it is allegedly defamatory, as long as the publication is a substantially accurate description of the public information.

Verdict

The eight-man, four-woman jury deliberated about five hours before finding in favor of the plaintiff. The jury awarded Stewart \$200,000 in damages and \$3.5 million in punitives.

"The punitives were large because of all the warnings and notices that the defendants had that the database was inaccurate," Stall said.

Nelon said, however, that the deck was stacked against the media defendants from the start.

"Creek County, Oklahoma, is notorious," he said. "Plaintiffs always win."

Stall said he asked to have the case heard in Creek County District Court, which is about an hour and 15 minutes' drive from Oklahoma City, because it is "neutral ground," and he wanted to ensure that jurors were not swayed by the defendants' media power in Oklahoma City. Nelon said, however, that Stall wanted the case heard in Creek County because it's a "plaintiff's county."

Nelon said he plans to appeal on several grounds, including the punitive damages, which he said should not have been allowed. He also said that the judge failed to properly instruct jurors on the state law allowing media the privilege to accurately report a state document.

Plaintiffs' Attorneys: Douglas E. Stall of Latham, Stall, Wagner, Steele & Lehman in Tulsa, Okla., and Steven E. Chlouber and R. Michael Cole of Fuller Chlouber & Frizzell in Tulsa, Okla.

Defense Attorneys: Robert D. Nelon and John Epstein of Hall, Estill, Hardwick, Gable, Golden & Nelson in Oklahoma City, Okla.

The Case: *Stewart v. The Oklahoma Publishing Co.*; District Court, Creek County, Okla.; Judge Donald Thompson.

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