8th Circ. Affirms Dismissal Of CBS Defamation Claims

By Erin Coe

Law360, New York (December 12, 2011, 7:33 PM ET) -- The Eighth Circuit on Friday upheld a decision that CBS Broadcasting Inc. and a reporter did not defame a man who was arrested for running a contest that allegedly violated Minnesota charitable gambling laws.

The three-judge panel determined that a Minnesota federal court correctly dismissed allegations that local CBS TV station WCCO TV and a reporter broadcast a news story containing defamatory statements about homebuilder Paul Stepnes' arrest and contest. The panel also upheld the dismissal of claims against Minneapolis and a police sergeant for civil rights violations during the arrest and search.

After a home constructed by Stepnes went into foreclosure and was sold to the bank, he designed a contest to raise money to redeem the mortgage, according to the opinion. While his contest website did not mention the house was in foreclosure, one section of the website said the contest aimed to raise $1.5 million for an affordable housing foundation that, undisclosed on the website, was solely run by Stepnes, according to the opinion.

When a contractor who had a lien on the house tipped the police off that Stepnes might be conducting an illegal raffle that included guessing the number of fasteners in a chest and weekly drawings for small prizes, a sergeant arrested him in 2008 without a warrant, and after getting a warrant, the police seized property as well as records on the foundation, according to the opinion.

In July 2008, WCCO TV reported that Minneapolis police said Stepnes could be headed to jail, that the foundation was not a registered charity, that the house was in foreclosure and that the Minneapolis city attorney was continuing to investigate the matter, the opinion said.

Stepnes filed suit, alleging defamation against CBS and the local reporter and claiming Fourth Amendment violations against the sergeant and Minneapolis, but the district court granted summary judgment for the defendants.

On appeal, Stepnes argued that the district court erred in holding that he was a limited purpose public figure, but the Eighth Circuit disagreed, finding that a public controversy existed at the time of the broadcast because Stepnes' contest and arrest had been debated in the local press and that Stepnes had access to effective channels of communication to counteract allegedly defamatory statements.
The appeals court also found that none of the allegedly defamatory statements indicated either knowledge of falsity or reckless disregard as to the statements’ truth or falsity.

Stepnes disputed the news report’s statements that he could be going to jail and that the Minneapolis city attorney’s office was investigating the situation, claiming that CBS and the reporter should have known that he would not ultimately be charged with a crime. But the Eighth Circuit found that because the sergeant told the reporter that it was believed that Stepnes was conducting an illegal lottery, the jail confirmed that Stepnes had been arrested, and the city attorney’s office indicated that the investigation was still active, it was not reckless to conclude that Stepnes may face future incarceration.

Stepnes also disputed the broadcast’s overall implication that he hid the fact that the house was in foreclosure, arguing in part that the reporter was informed of the house’s foreclosure status by another WCCO TV employee, but the Eighth Circuit held that the contention did not show that the reporter recklessly disregarded the truth in conveying the impression that Stepnes was not forthright with potential contestants regarding the foreclosure.

Stepnes’ spoliation claims were also brushed aside by the appeals court, finding that nothing in the record showed CBS intentionally destroyed a videotape containing original footage of the interview with Stepnes.

In addition, the Eighth Circuit agreed with the lower court that Stepnes failed to demonstrate the sergeant and Minneapolis violated his Fourth Amendment rights.

Attorneys representing the plaintiff and CBS were not immediately available for comment.

Judges Roger Wollman, Diana Murphy and Duane Benton sat on the panel for the appeal.

The plaintiff is represented in this matter by Michael C. Mahoney of Mahoney & Anderson and attorney Jill Eleanor Clark.

CBS is represented by Jeanette Melendez Bead, Chad Bowman and Michael Dennis Sullivan of Levine & Sullivan and John Philip Borger and Mary Walker of Faegre & Benson.

The case is Paul C. Stepnes v. Peter Ritschel et al., case number 11-1381, in the U.S. Court of Appeals for the Eighth Circuit.

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