

Delayed directed verdict in libel suit of Lake Sun



MPA opposes Sen. Bond's bill to stop leaks

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Shortly it will be time for the MPA annual convention. I look forward to the convention trade show as an opportunity to see all of you in person who call me with your problems and concerns. I'll have new pink hotline stickers with me, and this time they have the correct email address for me, as well as the phone number for the hotline, so stop by and pick up some for your offices.

During the last month I've had the opportunity to experience a tremendously exciting time involving a newspaper in the state. The Lake Sun Leader was sued for libel in 2002 in connection with a story it ran about the city shutting down a Lake Ozark motel for building code violations, in particular for electrical wiring issues that the city felt created a safety hazard. The motel filed a libel suit in 2003, then five months later voluntarily dismissed the case.

But it was not over. In 2004 the suit was refilled, and lengthy litigation commenced. Eventually, the court dismissed one of the two counts, leaving only the original story about the shut-down still pending. Part of the reason for the long delay in the process of the litigation is that both judges assigned to the case in Miller County died during the course of the matter, a rare event for this attorney.

Eventually the case was assigned to Senior Judge Byron Kinder, out of Jefferson City. Judge Kinder has never been a strong supporter of the media, and he had no qualms about saying that to even the jury members that eventually were empaneled to hear the libel case. Two pending motions for summary judgment on the case were denied by Judge Kinder, who did not seem to understand the principle of qualified privilege – that a newspaper has a right to report on a matter of public concern unless there is evidence of “actual malice,” of known falsity or reckless disregard for the truth.

The case began trial on Aug. 2. The plaintiff presented a number of witnesses who told the jury about how terrible this story was to the reputation of the motel – once closed down, it never reopened and the reputation of the motel was ruined, the witnesses said. (Of course, the plaintiffs didn't explain to the jury why they declined to just do the repairs and reopen the motel. And one of their witnesses, who claimed he declined to send customers there after the story ran, admitted that he couldn't send customers there because the hotel never reopened after the city closed it.)

But the most important thing was that every single plaintiff's witness was specifically asked if they knew anything that would support that the paper or the reporter knew the statements made by the city officials in the story were false. No, they each responded. Did they know anything that would support that the paper or the reporter acted in reckless disregard as to whether the statements by city officials were false? Again, each responded that they did not.

We moved for a directed verdict at the end of the plaintiff's case, and the judge denied our motion. We then began putting on evidence, including the reporter who wrote the story and the building inspector, who did an excellent job telling the jury about all the defects in the wiring that he found.

At some point during a break in that evidence, apparently the judge read the legal argument that went with the motion, explaining again the argument of qualified privilege and how that sending a case without evidence of actual malice to the jury would be reversible error. And in a dramatic moment after the building inspector's testimony, he ordered the defendants to rest their case (which was far from over) and announced to the plaintiffs

that he was granting the directed verdict after all, dismissing the jury and thus ending the trial.

Whatever the judge's feelings about the media in general, this time he did it right, and I credit Judge Kinder for that, whatever his history might be. The qualified privilege in Missouri stands yet.

Finally, I would note that MPA has taken a strong position opposing the proposal by U.S. Sen. Christopher Bond to criminalize the leaking of classified information. The Senator's bill was filed in response to media reports in recent months about the government's domestic spying and monitoring of personal information in connection with its anti-terrorist activities. The New York Times and other newspapers disclosed certain governmental programs which resulted in this governmental access to personal information.

Sen. Bond says his bill only affects government employees and contractors or anyone who has signed a non-disclosure agreement with the federal government. It does not affect the media, businesses or private citizens and only pertains to information that has been properly and appropriately classified.

Meanwhile, the MPA joins with the First Amendment Center in Arlington, Va., in suggesting the better approach is for the government to more closely monitor its classified information and to open a dialogue between the press and the intelligence community to share concerns about government policy and action.

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