

Court: Bloggers have 1st Amendment protections

Jeff Barnard, AP Media Writer 9:20 p.m. EST January 17, 2014

Federal appeals court rules Web journalists have same constitutional protections as traditional media.

Story Highlights

- 9th Circuit Court of Appeals orders new trial in defamation suit in Oregon
- Media activism group says ruling affirms what many have long argued
- Standards set by a 1974 Supreme Court ruling shows First Amendment applies to all

GRANTS PASS, Ore. (AP) — A federal appeals court ruled Friday that bloggers and the public have the same First Amendment protections as journalists when sued for defamation: If the issue is of public concern, plaintiffs have to prove negligence to win damages.

The 9th U.S. Circuit Court of Appeals ordered a new trial in a defamation lawsuit brought by an Oregon bankruptcy trustee against a Montana blogger who wrote online that the court-appointed trustee criminally mishandled a bankruptcy case.

The appeals court ruled that the trustee was not a public figure, which could have invoked an even higher standard of showing the writer acted with malice, but the issue was of public concern, so the negligence standard applied.

Gregg Leslie of the Reporters Committee for the Freedom of the Press said the ruling affirms what many have long argued: Standards set by a 1974 U.S. Supreme Court ruling, *Gertz v. Robert Welch*, apply to everyone, not just journalists.

"It's not a special right to the news media," he said. "So it's a good thing for bloggers and citizen journalists and others."

Crystal L. Cox, a blogger from Eureka, Mont., now living in Port Townsend, Wash., was sued for defamation by Bend attorney Kevin Padrick and his company, Obsidian Finance Group LLC, after she made posts on several websites she created accusing them of fraud, corruption, money-laundering and other illegal activities. The appeals court noted Padrick and Obsidian were hired by Summit Accommodators to advise them before filing for bankruptcy, and that the U.S. Bankruptcy Court later appointed Padrick trustee in the Chapter 11 case. The court added that Summit had defrauded investors in its real estate operations through a Ponzi scheme.

A jury in 2011 had awarded Padrick and Obsidian \$2.5 million.

"Because Cox's blog post addressed a matter of public concern, even assuming that Gertz is limited to such speech, the district court should have instructed the jury that it could not find Cox liable for defamation unless it found that she acted negligently," judge Andrew D. Hurwitz wrote. "We hold that liability for a defamatory blog post involving a matter of public concern cannot be imposed without proof of fault and actual damages."

The appeals court upheld rulings by the District Court that other posts by Cox were constitutionally protected opinion.

Though Cox acted as her own attorney, UCLA law professor Eugene Volokh, who had written an article on the issue, learned of her case and offered to represent her in an appeal. Volokh said such cases usually end up settled without trial, and it was rare for one to reach the federal appeals court level.

"It makes clear that bloggers have the same First Amendment rights as professional journalists," he said. "There had been similar precedents before concerning advocacy groups, other writers and book authors. This follows a fairly well established chain of precedents. I believe it is the first federal appeals court level ruling that applies to bloggers."

An attorney for Padrick said in an email that while they were disappointed in the ruling, they noted the court found "there was no dispute that the statements were false and defamatory."

"Ms. Cox's false and defamatory statements have caused substantial damage to our clients, and we are evaluating our options with respect to the court's decision," wrote Steven M. Wilker.