

SUPREME COURT OF COLORADO

Joe Dickerson & Associates, LLC v. Dittmar

34 P.3d 995 (Colo. 2001) · No. 00SC115 · Decided November 19, 2001

SUMMARY

The Colorado Supreme Court recognized invasion of privacy by appropriation of another's name or likeness as a cognizable tort under Colorado law. It held that a plaintiff seeking personal damages need not prove that her identity had commercial value. The court nevertheless held that publication of the plaintiff's name and photograph in an article concerning her crime and felony conviction was newsworthy and protected by the First Amendment, requiring summary judgment for the defendant.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Bender; Justice Coats
JURISDICTION	Colorado
DECIDED	November 19, 2001
DOCKET	00SC115
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioners sought review of a court of appeals decision reversing the trial court's grant of summary judgment on respondent's invasion-of-privacy-by-appropriation claim.
STANDARD OF REVIEW	De novo review of the legal question whether the publication was constitutionally protected speech; summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joe Dickerson & Associates, LLC, Joe H. Dickerson v. Rosanne Marie (Brock) Dittmar

TOPICS

- invasion of privacy appropriation
- first amendment
- free speech
- damages
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Colorado recognizes the tort of invasion of privacy by appropriation of another's name or likeness.
2. Whether a plaintiff seeking only personal damages must prove that her name or likeness has exploitable or commercial value.
3. Whether publication of a plaintiff's name and likeness in a truthful article concerning her felony conviction is privileged under the First Amendment.

HOLDINGS

1. Colorado recognizes the tort of invasion of privacy by appropriation of an individual's name or likeness.
2. The elements of invasion of privacy by appropriation are: (1) the defendant used the plaintiff's name or likeness; (2) the use was for the defendant's own purposes or benefit, commercially or otherwise; (3) the plaintiff suffered damages; and (4) the defendant caused the damages. A plaintiff seeking only personal damages need not prove that her identity had commercial or exploitable value.
3. A truthful publication of a plaintiff's name and likeness in connection with an article concerning the plaintiff's felony conviction is privileged under the First Amendment when the use is made in the context of, and reasonably relates to, a newsworthy matter or matter of legitimate public concern.

KEY QUOTATIONS

"We now hold that Colorado recognizes the tort of invasion of privacy by appropriation of an individual's name or likeness." (1001)

"We do not require the plaintiff, who seeks only personal damages, to prove the value of her identity." (1002)

"We hold that the publication of a plaintiff's name and likeness in connection with a truthful article regarding the plaintiff's felony conviction is privileged." (1005)

FACTUAL BACKGROUND

Joe Dickerson and his investigative firm investigated Rosanne Marie (Brock) Dittmar during a child-custody dispute and reported suspected bearer-bond theft to authorities. Dittmar was charged with and convicted of felony theft and ordered to pay restitution. Dickerson later published a free newsletter article describing the investigation, Dittmar's theft and conviction, and the restitution order; the article appeared on the front page and included Dittmar's name and photograph. Dittmar claimed that the publication appropriated her name and likeness for Dickerson's benefit.

PROCEDURAL HISTORY

Dittmar sued Joe Dickerson and Joe Dickerson & Associates, LLC on several tort theories after Dickerson published a newsletter article identifying her by name and photograph and describing her theft conviction. The trial court granted defendants summary judgment on all claims, concluding, as to the appropriation claim, that

Colorado had not expressly recognized the tort and that Dittmar had presented no evidence that her name or likeness had value. The court of appeals recognized the tort and reversed the summary judgment because factual issues existed concerning the purpose of the publication and whether the use benefited Dickerson. The Colorado Supreme Court granted certiorari, recognized the tort, but reversed the court of appeals on the ground that the publication was privileged under the First Amendment and directed reinstatement of the trial court's judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the court of appeals and return the case to that court with directions to reinstate the trial court's order granting summary judgment to the defendants.

CASES CITED

- Dittmar v. Dickerson & Associates, 9 P.3d 1145 (Colo. App. 1999)
- Rugg v. McCarty, 173 Colo. 170, 476 P.2d 753 (1970)
- Ozer v. Borquez, 940 P.2d 371 (Colo. 1997)
- Motschenbacher v. R.J. Reynolds Tobacco Co., 498 F.2d 821 (9th Cir. 1974)
- Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)
- City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410 (1993)
- Board of Trustees of the State University of New York v. Fox, 492 U.S. 469 (1989)
- In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics, 132 Colo. 591, 296 P.2d 465 (1956)
- Lovell v. City of Griffin, 303 U.S. 444 (1938)
- Lane v. Random House, Inc., 985 F. Supp. 141 (D.D.C. 1995)
- Eastwood v. Superior Court, 149 Cal. App. 3d 409, 198 Cal. Rptr. 342 (1983)
- Haskell v. Stauffer Communications, Inc., 26 Kan. App. 2d 541, 990 P.2d 163 (1999)
- Pierson v. News Group Publications, Inc., 549 F. Supp. 635 (S.D. Ga. 1982)

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