

CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT, DIVISION TWO

KSDO v. Superior Court

136 Cal. App. 3d 375 (Cal. Ct. App. 1982) · No. 27868 · Decided October 7, 1982

SUMMARY

The California Court of Appeal considers whether a radio station and reporter could be compelled in a civil libel action to produce unpublished notes and memoranda concerning a broadcast. The court distinguishes California's statutory and constitutional newsperson protections as immunity from contempt rather than an absolute privilege against disclosure, but recognizes a qualified First Amendment privilege. Because the reporter had disclosed his sources and the plaintiffs did not show that the notes were unavailable from other sources or went to the heart of the claim, the court directed the trial court to annul the discovery order.

CASE DETAILS

COURT	California Court of Appeal, Fourth District, Division Two
WRITING FOR THE COURT	Trotter, J.; Morris, P.J.; McDaniel, J.
JURISDICTION	California
DECIDED	October 7, 1982
DOCKET	27868
DISPOSITION	remanded
PROCEDURAL POSTURE	Petition for a writ of mandate or prohibition challenging a superior court discovery order requiring a reporter and his media employers to produce unpublished notes and memoranda in a civil libel and civil-rights action.
STANDARD OF REVIEW	The appellate court reviewed the propriety of the discovery order and the asserted statutory, constitutional, and First Amendment protections governing disclosure of a newsperson's unpublished materials.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion; precedential within the scope permitted by California law.
PARTIES	KSDO, Hal Brown, Gannett Co., Inc. v. Superior Court of Riverside County, Mervyn Feinstein and other members of the Riverside Police Department

TOPICS

discovery dispute

first amendment

defamation

evidence

appellate procedure

PRACTICE AREAS

First Amendment and freedom of the press

Evidence and discovery

Defamation and libel

Civil procedure

Appellate writ practice

QUESTIONS PRESENTED

1. Whether Evidence Code section 1070 and California Constitution article I, section 2 create a privilege barring a discovery order requiring a newsperson who is a party to a civil libel action to disclose unpublished notes.
2. Whether the First Amendment provides a qualified newsperson's privilege protecting the reporter's unpublished notes under the circumstances presented.
3. Whether the plaintiffs established sufficient need for the reporter's notes when the reporter had already disclosed his sources and the information could be obtained from those sources.

HOLDINGS

1. Evidence Code section 1070 and California Constitution article I, section 2 provide immunity from being adjudged in contempt for refusing to disclose sources or unpublished information; they do not create a privilege against disclosure or prohibit other sanctions or discovery orders.
2. The First Amendment provides a qualified newsperson's privilege protecting confidential sources and unpublished materials when the privilege furthers the First Amendment interest in the free flow of information, subject to factual balancing.
3. The plaintiffs were not entitled to compel production of Brown's notes because Brown had disclosed his sources, the plaintiffs could test those sources directly, and the plaintiffs failed to show that the notes were unavailable elsewhere or went to the heart of the claim.

KEY QUOTATIONS

"We find that section 1070 of the Evidence Code and California Constitution, article 1, section 2, confer no greater protection than their clear language provides: That a newsperson "... shall not be adjudged in contempt ... for refusing to disclose...." It is an immunity from contempt, not a privilege against disclosure." (383-384)

"We hold therefore that the qualified privilege under the First Amendment as above stated protects Brown and KSDO from having to reveal Brown's notes." (386)

FACTUAL BACKGROUND

Members of the Riverside Police Department brought a civil libel and civil-rights action alleging that a sheriff-initiated investigation led to reports accusing Riverside police officers of transporting heroin from Mexico in official vehicles and participating in corruption. KSDO and reporter Hal Brown broadcast a report based on unnamed law-enforcement sources, and Brown later disclosed those sources during deposition. The plaintiffs

then sought Brown's notes and memoranda, although the record did not show that the requested materials were unavailable from the disclosed sources or that the materials were necessary to establish the heart of the libel claim.

PROCEDURAL HISTORY

Members of the Riverside Police Department sued for libel and violation of civil rights based on a radio broadcast concerning alleged police involvement in heroin smuggling and corruption. During the plaintiffs' deposition of reporter Hal Brown, Brown disclosed his sources, after which plaintiffs moved to compel production of Brown's notes and memoranda. The trial court granted the motion, and the defendants petitioned the Court of Appeal for extraordinary relief. The Court of Appeal directed the trial court to annul the discovery order.

DISPOSITION

remanded

REMAND INSTRUCTIONS

A writ of mandate shall issue directing the Riverside County Superior Court to annul its order requiring defendants to produce Brown's notes.

CASES CITED

- Farr v. Superior Court, 22 Cal. App. 3d 60, 99 Cal. Rptr. 342 (1971)
- Rosato v. Superior Court, 51 Cal. App. 3d 190, 124 Cal. Rptr. 427 (1975)
- Hammarley v. Superior Court, 89 Cal. App. 3d 388, 153 Cal. Rptr. 608 (1979)
- Branzburg v. Hayes, 408 U.S. 665 (1972)
- State v. St. Peter, 132 Vt. 266, 315 A.2d 254 (1974)
- Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973)
- Application of Caldwell, 311 F. Supp. 358 (N.D. Cal. 1970), aff'd sub nom. Caldwell v. United States, 434 F.2d 1081 (9th Cir. 1970), rev'd sub nom. Branzburg v. Hayes, 408 U.S. 665 (1972)
- Garland v. Torre, 259 F.2d 545 (2d Cir. 1958)
- Maressa v. New Jersey Monthly, 89 N.J. 176, 445 A.2d 376 (1982)