

SUPREME COURT OF NEVADA

Wynn v. Smith

117 Nev. 6 (2001) (Nev. 2001) · No. Nos. 31063, 31220, 31221 · Decided January 29, 2001

SUMMARY

The Nevada Supreme Court reviewed consolidated appeals arising from Stephen Wynn’s defamation action concerning an advertisement for an unauthorized biography. The court affirmed summary judgment for John L. Smith and the denial of his attorney-fee request, holding that Smith did not publish the advertisement and that the district court did not abuse its discretion. The court reversed the judgment against Barricade Books and Lyle Stuart and remanded for a new trial because the jury received an inaccurate actual-malice instruction; it also held that the fair-report privilege did not apply to the confidential Scotland Yard report.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Supreme Court of Nevada en banc
JURISDICTION	Nevada
DECIDED	January 29, 2001
DOCKET	Nos. 31063, 31220, 31221
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wynn appealed the summary judgment entered for Smith; Smith appealed the denial of attorney fees; and Stuart and Barricade appealed the judgment entered on the jury's defamation verdict.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Attorney-fee decisions under NRS 17.115 and NRCP 68 are reviewed for abuse of discretion. Erroneous jury instructions require reversal unless the error was harmless.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Stephen A. Wynn, John L. Smith, Barricade Books, Inc., Lyle Stuart v. John L. Smith, Stephen A. Wynn, Stephen A. Wynn

TOPICS

- defamation
- first amendment
- summary judgment
- attorney fees
- appellate procedure

PRACTICE AREAS

Defamation

First Amendment

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether Smith could be held liable for defamation when he did not write, edit, print, distribute, or otherwise publish the allegedly defamatory advertisement.
2. Whether the district court abused its discretion by denying Smith attorney fees under NRS 17.115 and NRCP 68.
3. Whether the fair report privilege applies to an unauthorized or confidential investigatory report that was not accessible to the public or recognized as official.
4. Whether the jury instruction defining actual malice improperly permitted a finding of reckless disregard based on mere doubt rather than serious doubt.
5. Whether the advertisement's statement was, as a matter of law, non-actionable opinion or instead presented an ambiguous fact-versus-opinion question for the jury.

HOLDINGS

1. A person may not be held liable for defamation for a statement that the person did not write, edit, print, distribute, or otherwise publish.
2. The district court did not abuse its discretion by denying Smith attorney fees after considering the applicable Beattie factors, even though it did not make separate explicit findings on each factor.
3. The fair report privilege applies to public, official actions or proceedings, but it does not protect publication of an unauthorized or confidential investigatory report that was not accessible to the public and was not recognized as official.
4. A jury instruction allowing reckless disregard to be found from mere doubt, rather than serious doubt or a high degree of awareness of probable falsity, impermissibly lowers the constitutional actual-malice standard.
5. The advertisement's statement that the book detailed why a confidential Scotland Yard report called Wynn a front man for the Genovese family was ambiguous as to fact versus opinion, so the issue had to be submitted to the jury.

KEY QUOTATIONS

“Accordingly, we affirm the district court and hold that Smith may not be held liable for defamation for a statement that he did not write, edit, print, distribute or otherwise publish.” (at 428)

“We agree with the court's reasoning in Schiavone and hold that unauthorized or confidential investigatory reports do not qualify as an “official action or proceeding” under the fair report privilege.” (at 430)

“Thus, the malice instruction did not sufficiently qualify the degree of doubt required for a finding of malice in accordance with Posadas and Allen.” (at 431)

“Because the entire case against Stuart and Barricade hinged on a finding of actual malice, the erroneous malice instruction requires reversal of the district court's judgment and remand for a second trial as to Stuart and Barricade.” (at 431)

FACTUAL BACKGROUND

Smith wrote an unauthorized biography of Wynn that Stuart and Barricade planned to publish. Stuart and Barricade placed an advertisement in a trade catalog stating that the book detailed why a confidential Scotland Yard report called Wynn a front man for the Genovese family. Smith supplied Stuart and Barricade with manuscript materials, including the report, but did not write, edit, print, distribute, or otherwise publish the advertisement. A jury found the statement libelous and awarded Wynn compensatory and punitive damages against Stuart and Barricade.

PROCEDURAL HISTORY

Wynn sued Smith, Stuart, and Barricade Books for defamation based on statements in an advertisement for Smith's unauthorized biography. The district court granted Smith summary judgment, denied Smith's motion for attorney fees, and after trial entered a compensatory and punitive damages judgment against Stuart and Barricade. The Supreme Court of Nevada affirmed the rulings concerning Smith and reversed and remanded the judgment against Stuart and Barricade for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In Docket No. 31221, conduct a new trial against Stuart and Barricade. On remand, submit to the jury the ambiguous question whether the advertisement's statement is an assertion of fact or opinion and instruct the jury on actual malice using the required serious-doubt standard.

CASES CITED

- Chowdhry v. NLVH, Inc., 109 Nev. 478, 851 P.2d 459 (1993)
- New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)
- Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967)
- Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 825 P.2d 588 (1992)
- Mitchell v. Superior Court, 37 Cal. 3d 268, 208 Cal. Rptr. 152, 690 P.2d 625 (1984)
- McKinney v. County of Santa Clara, 110 Cal. App. 3d 787, 168 Cal. Rptr. 89 (1980)
- Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995)
- Schouweiler v. Yancey Co., 101 Nev. 827, 712 P.2d 786 (1985)
- Beattie v. Thomas, 99 Nev. 579, 668 P.2d 268 (1983)
- Schwartz v. Estate of Greenspun, 110 Nev. 1042, 881 P.2d 638 (1994)
- Sahara Gaming v. Culinary Workers, 115 Nev. 212, 984 P.2d 164 (1999)

- *Medico v. Time, Inc.*, 643 F.2d 134 (3d Cir. 1981)
- *Schiavone Construction Co. v. Time, Inc.*, 847 F.2d 1069 (3d Cir. 1988)
- *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993)
- *Nevada Independent Broadcasting v. Allen*, 99 Nev. 404, 664 P.2d 337 (1983)
- *St. Amant v. Thompson*, 390 U.S. 727, 88 S. Ct. 1323, 20 L. Ed. 2d 262 (1968)
- *Garrison v. Louisiana*, 379 U.S. 64, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964)
- *Robey v. State*, 96 Nev. 459, 611 P.2d 209 (1980)
- *K-Mart Corp. v. Washington*, 109 Nev. 1180, 866 P.2d 274 (1993)
- *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990)

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