

SUPREME COURT OF CALIFORNIA

Mitchell v. Superior Court

37 Cal. 3d 268, 690 P.2d 625, 208 Cal. Rptr. 152 (1984) · No. S.F. 24685 · Decided November 19, 1984

SUMMARY

The California Supreme Court considers whether a newsperson who is a party to civil litigation has a privilege to withhold the identity of confidential sources and unpublished information. The court recognizes a qualified privilege grounded in First Amendment protections, requiring a case-specific balancing of factors including the nature of the litigation, relevance, exhaustion of alternative sources, and the importance of confidentiality. It holds that the discovery sought from the Mitchells was overly broad and that the plaintiffs had not exhausted alternative sources of information.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Broussard, Acting Chief Justice; Mosk, J.; Kaus, J.; Reynoso, J.; Grodin, J.; Lucas, J.; Rouse, J., assigned
JURISDICTION	California
DECIDED	November 19, 1984
DOCKET	S.F. 24685
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of prohibition challenging enforcement of a superior court discovery order requiring party-defendants in a libel action to produce documents that could reveal confidential journalistic sources and information supplied by those sources.
STANDARD OF REVIEW	The court independently determined the existence and scope of the asserted constitutional reporter's privilege and reviewed whether the discovery order could be enforced consistently with that privilege.
PRECEDENTIAL VALUE	Published California Supreme Court opinion; precedential
PARTIES	David Mitchell, Cathy Mitchell v. Superior Court of Marin County

TOPICS

- discovery dispute
- privilege
- first amendment
- civil procedure
- defamation

PRACTICE AREAS

civil procedure

constitutional law

defamation

discovery

First Amendment law

QUESTIONS PRESENTED

1. Whether a party-defendant newsperson in a civil libel action has a constitutional reporter's privilege to withhold the identity of confidential sources and unpublished information supplied by those sources.
2. Whether the privilege is absolute or qualified and, if qualified, what factors govern whether disclosure may be compelled.
3. Whether the superior court's broad discovery order could be enforced where the plaintiffs had not exhausted alternative sources of information and had not made a prima facie showing that the allegedly defamatory statements were false.
4. Whether a source who acts with actual malice and furnishes defamatory material to a publisher with the expectation that it will be published may be liable for the resulting publication.

HOLDINGS

1. In a civil action, a reporter, editor, or publisher has a qualified privilege to withhold disclosure of the identity of confidential sources and unpublished information supplied by those sources.
2. Whether disclosure may be compelled depends on balancing interrelated factors, including the nature of the litigation and whether the reporter is a party, the relevance and importance of the information to the plaintiff's claim, exhaustion of alternative sources, the importance of protecting confidentiality, and whether the plaintiff has made a prima facie showing of falsity.
3. The superior court could not enforce its discovery order insofar as it required the Mitchells to produce documents revealing confidential sources or information supplied by those sources.
4. If a source acts with actual malice and furnishes defamatory material to a publisher with the expectation that the material, either verbatim or in substance, will be published, the source may be liable for the publication.

KEY QUOTATIONS

"We conclude that in a civil action a reporter, editor, or publisher has a qualified privilege to withhold disclosure of the identity of confidential sources and of unpublished information supplied by such sources." (at 279)

"Compulsory disclosure of sources is the "last resort" permissible only when the party seeking disclosure has no other practical means of obtaining the information." (at 282)

"We have concluded that the basis for this ruling was erroneous; that the California courts should recognize a qualified reporter's privilege, depending upon a balancing of the relevant considerations in each case." (at 284)

FACTUAL BACKGROUND

The Mitchells published reports and editorials critical of Synanon in the Point Reyes Light and later provided information to Reader's Digest writer David MacDonald for an article concerning Synanon. Synanon and Charles Dederich brought a libel action alleging that the Reader's Digest article falsely implied that Synanon's drug-rehabilitation claims were unsuccessful and fraudulently made. Synanon sought broad discovery from the Mitchells concerning all documents relating to Synanon, including the sources of the Mitchells' information, even though the requested material was not limited to information supplied to Reader's Digest.

PROCEDURAL HISTORY

Synanon Church and Charles Dederich sued the Mitchells and others for libel arising from a Reader's Digest article. The Marin County Superior Court ordered the Mitchells to identify and produce documents responsive to broad discovery requests, including documents relating to Synanon, and ruled that the asserted reporter's privilege did not exist in California. The Mitchells petitioned the California Supreme Court for a writ of prohibition; the court issued a peremptory writ restraining enforcement of the order insofar as it required disclosure of confidential sources or information supplied by them.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

A peremptory writ of prohibition shall issue restraining the Marin County Superior Court from enforcing its November 16, 1982, discovery order insofar as it requires production of documents revealing confidential sources or information furnished by those sources. The real parties in interest may file a new motion to compel supported by a showing sufficient to overcome the qualified privilege.

CASES CITED

- Reader's Digest Assn. v. Superior Court, 37 Cal. 3d 244, 690 P.2d 610, 208 Cal. Rptr. 137 (1984)
- Playboy Enterprises, Inc. v. Superior Court, 154 Cal. App. 3d 14, 201 Cal. Rptr. 207 (1984)
- Zerilli v. Smith, 656 F.2d 705 (D.C. Cir. 1981)
- Grosjean v. American Press Co., 297 U.S. 233, 250 (1936)
- Baker v. F. & F. Investment, 470 F.2d 778 (2d Cir. 1972)
- Herbert v. Lando, 441 U.S. 153 (1979)
- Garland v. Torre, 259 F.2d 545 (2d Cir. 1958)
- Winegard v. Oxberger, 258 N.W.2d 847 (Iowa 1977)
- KSDO v. Superior Court, 136 Cal. App. 3d 375, 186 Cal. Rptr. 211 (1982)
- Branzburg v. Hayes, 408 U.S. 665 (1972)
- New York Times Co. v. Sullivan, 376 U.S. 254, 279-280 (1964)
- Miller v. Transamerican Press, Inc., 621 F.2d 721 (5th Cir. 1980)
- Greenleigh Associates, Inc. v. The New York Post Corp., 79 A.D.2d 588, 434 N.Y.S.2d 388 (1980)
- Washington Gas Light Co. v. Lansden, 172 U.S. 534, 549-550 (1899)

- Campo v. Paar, 18 A.D.2d 364, 239 N.Y.S.2d 494, 498 (1963)
- Di Giorgio Corp. v. Valley Labor Citizen, 260 Cal. App. 2d 268, 273, 67 Cal. Rptr. 82 (1968)
- Curley v. Vick, 211 Cal. App. 2d 670, 673, 27 Cal. Rptr. 501 (1963)
- McKinney v. County of Santa Clara, 110 Cal. App. 3d 787, 168 Cal. Rptr. 89 (1980)
- Montandon v. Triangle Publications, 45 Cal. App. 3d 932, 120 Cal. Rptr. 196 (1975)
- Britt v. Superior Court, 20 Cal. 3d 844, 859, 143 Cal. Rptr. 695, 574 P.2d 766 (1978)
- Senear v. Daily Journal-American, 97 Wash. 2d 148, 641 P.2d 1180 (1982)
- Silkwood v. Kerr-McGee Corp., 563 F.2d 433 (10th Cir. 1977)
- Carey v. Hume, 492 F.2d 631 (D.C. Cir. 1972)
- Bruno & Stillman, Inc. v. Globe Newspaper Co., 633 F.2d 583 (1st Cir. 1980)
- Caldero v. Tribune Publishing Co., 98 Idaho 288, 562 P.2d 791 (1977)
- Sierra Life Insurance Co. v. Magic Valley Newspapers, 101 Idaho 795, 623 P.2d 103, 109 (1980)
- Dow Jones & Co. v. Superior Court, 364 Mass. 317, 303 N.E.2d 847, 849 (1973)
- Matter of Roche, 381 Mass. 624, 411 N.E.2d 466, 476 (1980)
- Democratic National Committee v. McCord, 356 F. Supp. 1394 (D.D.C. 1973)
- Gilbert v. Allied Chemical Corp., 411 F. Supp. 505 (E.D. Va. 1976)
- Apicella v. McNeil Laboratories, Inc., 66 F.R.D. 78 (E.D.N.Y. 1975)
- Loadholtz v. Fields, 389 F. Supp. 1299 (M.D. Fla. 1975)
- Democratic National Committee v. McCord, 356 F. Supp. 1394 (D.D.C. 1973)
- Apicella v. McNeil Laboratories, Inc., 66 F.R.D. 78 (E.D.N.Y. 1975)
- Gadsden County Times, Inc. v. Horne, 426 So. 2d 1234 (Fla. App. 1983)
- Riley v. City of Chester, 612 F.2d 708 (3d Cir. 1979)
- Adams v. Associated Press, 46 F.R.D. 439, 441 (S.D. Tex. 1969)
- Cervantes v. Time, Inc., 464 F.2d 986, 993 (8th Cir. 1972)

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