

CLIENT NEWS BRIEF

No. 25

June 2009

STUDENT HAS NO REASONABLE EXPECTATION OF PRIVACY IN MATERIALS POSTED TO A UNIVERSALLY ACCESSIBLE WEBPAGE

The California Court of Appeal has affirmed that a student has no reasonable expectation of privacy in an opinion she posts to a universally accessible webpage, and republication of the student's opinion by a newspaper does not violate her right to privacy (Moreno v. Hanford Sentinel, Inc. (2009) 172 Cal. App. 4th 1125; "Moreno"). A University of California at Berkeley undergraduate student alleged that her hometown newspaper and its publishers violated her and her family's right to privacy by republishing the student's "extremely negative" opinion article regarding her hometown of Coalinga.

The student's article, titled "Ode to Coalinga," was first posted to her online journal on MySpace.com, a posting that was open in public viewing and not restricted to certain viewers. Although the article was up for only six days before the student removed it, the principal of Coalinga High School, a school within the Coalinga-Huron Unified School District, found the article online and gave it to his friend, the editor of the Coalinga Record. The editor, in turn, elected to publish the student's article in the Letters to the Editor section of the paper, identifying the author by her full name.

The community's response to the article was immediate and violent. The student's parents lived in Coalinga at the time, and her father maintained a 20-year-old business there. Despite having roots in the community, the family received death threats and a shot was fired at the family home. After the republication of the article, the father's business sustained "severe losses," and the family was forced to move out of Coalinga.

The right to privacy, enshrined in the California Constitution, protects a person's right to be left alone. Invasion of privacy takes different forms, but here the student alleged that the republication of her article by the newspaper constituted a public disclosure of private facts, the disclosure of which would be offensive and objectionable to a reasonable author and is not a legitimate public concern. However, a matter which is already public cannot be regarded as private, and the student's prior posting to MySpace.com made her journal entry public.

The court found that by publishing her opinion regarding Coalinga to MySpace.com, a "hugely popular" website, the student affirmatively acted to make her article available to "any person

with a computer.” Under such circumstances, she had no reasonable expectation of privacy in the published material. The student’s alleged expectation that only a limited audience would read her article was not enough to establish her reasonable expectation of privacy.

The court explained that the right to privacy is “the right to define one’s circle of intimacy—to choose who shall see beneath the quotidian mask.” In plain words, information personally shared with a few people may remain private and protected by law. In light of this, the decision in Moreno does not appear to stand for the broader proposition that posting material to a website automatically defeats an author’s expectation of privacy. The courts will consider all of the facts, including who had access to the posting, in determining whether a privacy right exists.

Although Moreno is not a student discipline case, its holding may be helpful in cases where a student is disciplined for online conduct. This case will provide support to a district’s argument that online conduct is not necessarily private in nature if posted on MySpace.com or a similar website. As such cases are fact-specific and often complex, however, it is important to consult legal counsel with questions about whether a student’s online conduct is subject to discipline.

Please contact any of our seven offices statewide with any questions regarding this topic.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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