

Nebraska Court Rejects Newspaper Reporter's Challenge to Coverage of His Scuffle with Parking Attendant

By Tiffany B. Gelott

A Nebraska state judge dismissed a defamation case – brought, ironically, by a newspaper reporter – holding that a television station's coverage of the reporter's run-in with a city parking employee was substantially true and protected by the fair report privilege. See [Cooper v. WOWT-Channel 6 Gray Television Group Inc.](#), Case No. CI 18-2674 (Neb. Dist. Douglass Cty. Nov. 5, 2018). This decision provides much needed recent precedent reinforcing defamation defenses in Nebraska.

The Run-In, the News Reports and the Lawsuit

According to an Omaha Police Incident Report, on March 24, 2017, the Police Department received a radio call to “investigate an assault on a parking enforcement officer.” The incident began when Todd Cooper, an *Omaha World-Herald* reporter who covers crime, heatedly disputed a parking ticket issued by a Park Omaha employee. The parking employee, Timothy Foster, told police that Cooper followed him to his vehicle, prevented him from closing the door to his Park Omaha truck, and grabbed his neck, and that when Foster tried to push Cooper away, both men fell to the ground. The police also took the statement of an eyewitness to the incident.

WOWT-Channel 6 in Omaha, owned by Gray Television Group, Inc., broadcast and posted a news report based on the Police Incident Report and its own interview with the eyewitness. After Cooper pled guilty to disturbing the peace, WOWT aired an update and published a website article in which it recounted that “*Omaha World-Herald* reporter Todd Cooper was accused of attacking a parking officer.”

Cooper sued WOWT for defamation alleging that WOWT's reports were incomplete, inaccurate, and inflammatory. He based his claims on five statements from the reports, many of which quoted verbatim from the Police Incident Report and the eyewitness's statements to WOWT. Cooper also alleged that WOWT omitted material information including Foster's alleged criminal background.

WOWT moved to dismiss Cooper's complaint, arguing that the reports were not actionable because (1) they were substantially true or statements of opinion; (2) they were protected by Nebraska's common law fair report privilege; (3) the incremental harm doctrine applies – *i.e.*, the statements about which Cooper complained in the reports did no greater harm to his reputation than did the unchallenged statements contained in the reports; and (4) Cooper failed to plead special damages as required under Nebraska's retraction statute.

This decision provides much needed recent precedent reinforcing defamation defenses in Nebraska.

(Continued from page 21)

The Court's Decision Dismissing the Case

On November 5, 2018, after a hearing, the court granted WOWT's motion, agreeing the reports were substantially true and protected by the fair report privilege. The court also held that certain statements were not actionable because they were not about the plaintiff.

Specifically, the court found that WOWT's statement that "Cooper faced two misdemeanor counts after the alleged assault" was not materially false – notwithstanding Cooper's contention that he was only charged with one misdemeanor count of disturbing the peace – because "the WOWT reporters did not make any statements about Cooper's guilt or what crimes Cooper was in fact charged with, but merely reported on the alleged incident as reported by the Omaha Police."

The court also held that WOWT's statement that "Cooper was accused of attacking Foster" was substantially true even though the word "attack" was not used in the Police Incident Report or by the eyewitness. The statement was not "wholly false," the court said, noting that "[a] detailed review of the Omaha Police Incident Report and the statements of the witness, Ms. Kleager, show that there was some type of altercation between Cooper and the employee."

With respect to Foster's alleged criminal background, the court found that WOWT had no obligation to include that information in its news reporting because it was not contained in the police report "and does not appear to be relevant to the incident involving Cooper."

Therefore, the court held, "WOWT's omission in its reporting about any criminal background of the employee is not a false statement concerning the Plaintiff."

The court further held that under the fair report privilege, as provided in Section 611 of the Restatement (Second) of Torts, WOWT's reports were protected even if there were "minor inaccuracies" because they conveyed "'a substantially correct account' of the incident between Cooper and the parking employee from the Police Incident Report and judicial records."

In particularly helpful language, the court also acknowledged that early dismissal of meritless defamation claims is appropriate, a point that has not yet been articulated in any published appellate decisions in Nebraska: "[D]efamation/libel lawsuits are particularly amenable to motions to dismiss pursuant to § 6-1112(b)(6) because 'the communication about which the suit has been brought is literally before the court at the pleading stage.'" Order at 3 (quoting 2 Robert D. Sack, *Sack on Defamation* § 16.2.1 (5th ed. 2017)).

WOWT is represented by Ashley I. Kissinger, Charles D. Tobin, and Tiffany B. Gelott of Ballard Spahr LLP and Jill R. Ackerman and Lindsay K. Lundholm of Baird Holm LLP. Plaintiff is represented by George B. Achola, Esq.

The court granted WOWT's motion, agreeing the reports were substantially true and protected by the fair report privilege.