

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-11201

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT September 5, 2002 THOMAS K. KAHN CLERK
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D.C. Docket No. 99-00136-CV-JTC-3

NEAL HORSLEY,
d.b.a. Pathway Communications,
d.b.a. ChristianGallery.com,
d.b.a. BestChoice.com,
d.b.a. The Creator's Rights Party,

Plaintiff-Appellant,

versus

GLORIA FELDT,
PLANNED PARENTHOOD FEDERATION OF AMERICA,
KIM GANDY, and
NATIONAL ORGANIZATION FOR WOMEN,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(September 5, 2002)

Before BIRCH, CARNES and COX, Circuit Judges.

CARNES, Circuit Judge:

This appeal is the second occasion we have had recently to decide issues stemming from a defamation action brought by Neal Horsley in response to criticisms of him in the wake of the murder of Doctor Barnett Slepian, an abortion provider. The first occasion was in a case where Horsley claimed that Geraldo Rivera had defamed him during a television program by accusing him of a felony when he said that Horsley had aided and abetted murder and was an accomplice to murder. Horsley v. Rivera, 292 F.3d 695 (11th Cir. 2002). This Court held the statements in that case were protected as rhetorical hyperbole under the First Amendment and Georgia law, and for that reason the district court should have granted the defendant judgment on the pleadings. Id. at 703.

Although the defamation case giving rise to this appeal also had its origins in criticisms of Horsley because of the murder of Dr. Slepian, it involves different statements and defendants. Here Horsley's suit is against the Planned Parenthood Federation of America (Planned Parenthood); its president, Gloria Feldt; the National Organization for Women (NOW); and its executive vice president, Kim Gandy; and the lawsuit arises out of statements allegedly made by Feldt and Gandy shortly after Dr. Slepian's murder.

Although applying the same principles of law as we did in the related case, Rivera, we reach a somewhat different conclusion in this case. While we affirm most of the district court’s judgment on the pleadings for the defendants, we reverse the part of the judgment that involves one of the statements allegedly made by Feldt.

I. BACKGROUND AND PROCEDURAL HISTORY

Horsley, an anti-abortion activist and founder of the Creator’s Rights Party, created and operated an anti-abortion Internet website known as “the Nuremberg Files,” which listed the names of abortion providers. Dr. Slepian was murdered on October 23, 1998. His name did not appear on the Nuremberg Files website prior to his murder, but on October 24, 1998, the day after the murder, Horsley added Slepian’s name to the list. Also on October 24, Horsley altered the Nuremberg Files website to graphically reflect which abortion providers had been wounded or killed; he did so by “graying-out” the wounded and “striking-through” the dead. Dr. Slepian’s name was shown with a line struck through it.

A. THE FELDT STATEMENTS

On October 24, 1998, Defendant Gloria Feldt, in her capacity as president of Planned Parenthood, held a press conference about Dr. Slepian’s murder. The Associated Press ran an article reporting on Feldt’s statements at the press

conference. The complaint alleged the article stated that Feldt “told a news conference in midtown Manhattan that the name of the physician, Dr. Barnett Slepian, had appeared on a list of abortion doctors marked for death that was circulated on the Internet,” and that “Feldt said she didn’t know how long the Internet target list that included Slepian’s name has existed, or whether either he or the police were aware of it.”

Although Horsley did not include a copy of the AP article with his complaint, Feldt and Planned Parenthood attached a copy of it to their answer. The attached article contained the statements quoted by Horsley in the complaint, which we have quoted in the preceding paragraph, and it also reported that “[Dr. Slepian’s] name . . . was ‘crossed off’ after he was gunned down in his suburban Amherst home late Friday.” The article further characterized Feldt as “charg[ing] . . . that police in Buffalo, N.Y., failed to protect a slain abortion doctor because of a ‘fundamental anti-choice philosophy’ within the department,” and it included several paragraphs about Feldt’s remarks on police bias.

Portions of Feldt’s press conference were broadcast nationwide by CNN Live News on October 24, 1998. As alleged by Horsley, the CNN broadcast showed Feldt stating that “[Dr. Slepian’s] name had been on a list – you can look it up on the web, christiangallery.com – a list of doctors who are subject to

surveillance and murder. His name was already crossed out.” Horsley did not include the CNN transcript with his complaint, but Feldt and Planned Parenthood included with their amended answer two CNN transcripts. Those transcripts did not include the statements that Horsley alleged Feldt made, which we have quoted in this paragraph, and Feldt and Planned Parenthood stated that they had been unable to locate any CNN transcripts containing those statements. Horsley claimed that he had a transcript of the CNN broadcast reflecting the statements he alleged Feldt made, but he did not provide a copy of that transcript.

B. THE GANDY STATEMENTS

On October 26, 1998, Horsley voluntarily participated in a televised debate on CNN Today with Defendant Kim Gandy, the executive vice president of NOW. Horsley’s complaint alleged that the following exchange occurred during the debate:

JEANNE MESERVE, CNN ANCHOR: Mr. Horsley, let me start with you. Do you advocate the murder of doctors who perform abortions? What was the purpose of your Web site?

NEAL HORSLEY, FOUNDER, CREATOR’S RIGHTS PARTY:
Absolutely not. We want to make one [thing] clear, that we don’t want to see anybody die. But the fact is, 3,000 babies are going to die today, and that fact has been ignored for the last 25 years. And the thing the Nuremberg files– Web site is doing is reminding people that doctors who kill babies, even if it is authorized by the Supreme Court, might find themselves on trial someday in the same way that the Nazis found themselves on trial at Nuremberg.

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