

WASHINGTON CASE UPDATE

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From the desk of Joshua P. Hayward: Is posting a URL that leads to a website containing defamatory material enough to be liable for defamation?

Claims Pointer: In the following case, the Washington Court of Appeals held that a disgruntled customer's posting of a URL to a site that made several false statements about the plaintiff's business was not defamation. This is an interesting holding because in the context of other forms of print media, reposting defamatory statements is itself an act of defamation.

case in point...

Life Designs Ranch, Inc. v. Sommer, No. 32922-4-III, Court of Appeals of Washington, Division III (November 12, 2015).

Life Designs Ranch, Inc. (Life Designs), owned by Vince and Bonnie Barranco, is a substance abuse treatment program for young adults located near the Eastern Washington town of Cusick. Participants in the program attend Narcotics/Alcoholics Anonymous meetings off-site around three times per week. The program lasts six months and costs more than \$53,000 per participant. Life Designs' business relies largely on referrals and its website.

In 2012, Michael Sommer entered a contract with Life Designs for his son to participate in the program. When he received his bill for the program, Mr. Sommer challenged it. Sommer sent an email to Mr. Barranco stating "We all know how easily reputation can be destroyed, without the legal system even getting involved. But I would go both routes if I have to." Sommer then contacted Chad Balagna, who referred clients to Life Designs, telling him that he should reconsider sending referrals to Life Designs if he valued his reputation. Sommer also created a website with a URL similar to that of Life Designs in order to draw potential clients in. The site made a number of misleading claims about the business and its staff. The site's stated intent was to "try to protect people from the financial and emotional distress that comes with attending Life Designs Ranch." The site also provided a URL to a similar site that stated (falsely) that Life Designs is "run like a cult, illegally exploits

student labor, and employs a staff member who worked at another camp when a young boy died."

Life Designs filed claims against Sommer for defamation, tortious interference with a business expectation, and false light (a claim similar to defamation). Sommer moved for summary judgment. The trial court granted the motion and dismissed the case. Life Designs appealed.

In a split decision, the majority (2 of 3 judges) of the Washington Court of Appeals upheld the trial court's dismissal of Life Designs' defamation, tortious interference with a business expectation and false light claims for reasons that we will not discuss in this update.

The most interesting part of the opinion was that the Court ruled unanimously that Sommer's use of a URL on his site that linked to a webpage containing defamatory material was not "publication" of defamatory material, a necessary element of a defamation claim. This is important in today's digital world because historically, republication of defamation (i.e., publishing a defamatory letter in a newspaper) is itself considered defamation.

The Court affirmed the trial court's grant of summary judgment and dismissal of the case.



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