

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOS
COUNTY DEPARTMENT, LAW DIVISION

LISA STONE,

Plaintiff,

v.

09 L 5636

PADDOCK PUBLICATIONS, INC.,

Defendant

MEMORANDUM OPINION AND ORDER

Lisa Stone has filed a petition for discovery under Illinois Supreme Court Rule 224 against Paddock Publications, the publisher of a suburban newspaper known as the Daily Herald. Her petition states that an unknown individual using the pseudonym "Hipcheck 16" made a posting on the Daily Herald website which defamed her minor son.

The sole purpose of a proceeding under Rule 224 is to discover the identity of a potential defendant. When this is accomplished, the Rule 224 petition is dismissed and the plaintiff then files a new lawsuit and serves the defendant whose identity has been learned with summons. *Roth v. St. Elizabeth's Hospital*, 241 Ill.App.3d 407 (1993).

No such lawsuit has been filed and, obviously, this court entertains no views on its possible merits. The sole purpose of the hearing today is to decide whether Ms. Stone is entitled to discover the identity of the person whose posting allegedly defamed her son.

Ms. Stone's amended Rule 224 petition was filed on June 11, 2009. The court ordered Paddock to respond on June 19, 2009. On July 10, 2009, Paddock answered by identifying the internet service provider, Comcast, and an IP address. Ms. Stone then served a subpoena on Comcast seeking the name and address of the individual corresponding to the IP address.

On July 21, 2009, the court ordered Comcast to comply with the Subpoena.

On August 14, 2009, attorneys representing the anonymous poster filed a motion to quash the subpoena. On September 25, 2009, after hearing argument, the court again ordered Comcast to comply with the subpoena and to produce the name and street address of "Hipcheck 16" *in camera*. Comcast has done so, and the court now has in its possession the name and street address of the poster.

The parties have now filed cross motions demanding and opposing disclosure of the identity of the poster.

In opposing disclosure, the poster, who refers to himself as John Doe, relies on a specific Illinois statute, the Citizen Participation Act, and, in general, federal cases which discuss the First Amendment protection afforded anonymous political speech.

The legislature enacted the Citizen Participation Act, 735 ILCS 110/1 et seq., to discourage so-called SLAPP suits: "Strategic Lawsuits Against Public Participation" in

government. SLAPP's are defamation suits which have been most frequently utilized by business interests as a means of chilling public discussion inimical to their interests. The Act provides for an expedited proceeding to obtain dismissal of a SLAPP suit. Sec. 15 states that the Act applies to a motion to dismiss a "claim in a judicial proceeding" which is based upon any act or acts of the moving party in furtherance of his "rights of petition, speech, association, or to otherwise participate in government." Sec. 15 further states: "Acts in furtherance of the constitutional rights to petition, speech, association and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result or outcome." Sec. 10 defines "claim" as a lawsuit or other judicial pleading or filing alleging injury.

Two problems exist in applying the CPA in the context of a Rule 224 discovery proceeding. First, a petition to discover the identity of a potential defendant is not a lawsuit and it does not allege injury. Second, even if the petition were deemed to be a claim under the Act, whether the allegedly defamatory speech is not genuinely aimed at procuring government action raises fact questions which are entirely outside the scope of a Rule 224 proceeding.

Accordingly, this court finds that the Citizen Participation Act does not furnish a basis for dismissing a Rule 224 petition.

John Doe also argues that his identity is shielded from disclosure by the First Amendment's guarantee of free speech. Neither party in this suit disputes that

anonymous political speech is protected by the First Amendment. However, immunity from prior restraint or damages is not the same as immunity from suit. Doe has cited no authority to this court which holds that a man may utter a lie and escape the consequences.

Doe I v. Individuals, 561 F.Supp.2d 249 (D.Conn. 2008), cited in Ms. Stone's brief, is directly in point. In that case, an anonymous blogger made a posting on a national web site which stated in very crude terms that the plaintiff, a female law student at Yale University, was sexually promiscuous. She subpoenaed records from the internet provider to discover the identity of the poster.

The federal court held that the right to speak anonymously, on the internet or otherwise, is not absolute and does not protect speech that would otherwise be unprotected. The right to speak must be balanced against the right of an offended party to seek redress. The court went on to suggest a balancing procedure consisting of six factors: 1. Whether the poster has been given notice of the subpoena and a fair opportunity to make his objections to disclosure known to the court, 2. Whether the plaintiff has specifically identified the offensive posting, 3. Whether there is some other way to discover the poster's identity, 4. Whether the subpoenaed information is essential to the plaintiff's case, 5. Whether the poster's expectation of privacy was violated, and 6. Whether the plaintiff has made an adequate showing that his claim has merit.

In this case, the first five factors have already been resolved in favor of disclosure. John Doe has actively participated in this proceeding. The specific offensive language

has been made known to him. Ms. Stone has no other way to discover who he is. She cannot commence a lawsuit unless she learns whom to serve summons upon. John Doe forfeited any expectation of privacy when he chose to make a posting on a newspaper public forum.

The procedure adopted by the federal district judge in *Doe I* seems fair and reasonable, and this court is inclined to follow it. However, there is a problem with implementation of the last element of the district court's analysis, an evidentiary demonstration that the proposed lawsuit has merit, in the context of a Rule 224 proceeding. Evidence supporting Ms. Stone's claims cannot be presented until she actually files a lawsuit and serves Doe with summons, if indeed she ever does.¹

The court proposes a practical solution. Doe's name and address can be given to plaintiff. However, a protective order will be entered simultaneously barring disclosure of his identity to anyone other than the Sheriff of Cook County or other agent designated for service of process, the plaintiff, her attorneys and essential support staff.

No person is immune from suit, not even a president. It is hoped that this order will strike a fair balance between Doe's right to speak and Ms. Stone's right to sue.

¹ According to *Doe I*, the precise demonstration of merit which should be required of the plaintiff before the anonymous poster's identity is disclosed has been the subject of considerable debate. Some court have merely required a plaintiff to plead a good faith basis or probable cause. Others have required a plaintiff to demonstrate that his claim can withstand a motion to dismiss or a motion for summary judgement. The *Doe I* court itself decided that the plaintiff must present evidence establishing a *prima facie* case for each element of the tort claims which he asserted. This issue is best deferred for resolution by the trial judge, if and when Ms. Stone files suit.

ORDER

Counsel for Plaintiff shall submit an order consistent with the views expressed in this opinion, with notice to opposing counsel, within seven days.

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