

New Jersey Appellate Court Adopts Narrow View Of Digital Media and Data Privacy Law Blog

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Posted in Reporters Privilege

In a decision with important implications for bloggers and other so-called "new media" journalists seeking to invoke the protections of their state's reporter's privilege, a New Jersey appeals court recently held that New Jersey's shield statute did not protect a woman who operated a web site dedicated to revealing "criminal activity" within the pornography industry.

The appellate court's decision in *Too Much Media, LLC v. Shellee Hale* affirmed a trial court decision requiring Hale to reveal her sources for a series of web postings that the plaintiffs asserted were, among other things, defamatory. Hale had sought a protective order, citing New Jersey's shield statute.

In a lengthy analysis, the court focused almost entirely on whether Hale could be considered a journalist under the statute. The statute covers, in relevant part, any

person engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public.

"News media" is defined as "newspapers, magazines, press associations, news agencies, wire services, radio, television or other similar printed, photographic, mechanical or electronic means of disseminating news to the general public."

As an initial matter, the court held that under the statute, Hale bore the burden of proving she was a journalist. In making this holding, the court cited to a portion of the New Jersey shield statute relating to efforts by criminal defendants to obtain a reporter's sources. The court decided, without analysis, that the same burden of proof should apply in civil cases. It is open to question, however, whether the public interest that exists in the civil context is weighty enough to require someone to prove he or she is a "journalist."

With that burden established, the court held that Hale had failed to prove that she was "engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public." The court said:

New Jersey Appellate Court Adopts Narrow View Of Shield Law

Defendant has produced no credentials or proof of affiliation with any recognized news agency, nor has she demonstrated adherence to any standard of professional responsibility regulating institutional journalism, such as editing, fact-checking or disclosure of conflicts of interest.

The standard of proof outlined by the court is troubling. After all, nothing in the text of the statute appears to require that someone adhere "to any standard of professional responsibility," and yet the New Jersey court made it a de facto requirement for being a "journalist" under the shield statute.

According to media reports, Hale will ask the New Jersey Supreme Court to review the decision.