

Court backs paper's right to publish juvenile's name

By Denny Walsh, Sacramento Bee

California newspapers have a legal right to publish the names of children who are subjected to abuse if a name is newsworthy, a Sacramento appellate court ruled Friday.

Relying heavily on a 1998 California Supreme Court decision, a three-justice panel of the 3rd District Court of Appeal said that "publication of truthful, lawfully obtained material of legitimate public concern is constitutionally privileged and does not create liability" against the publisher.

Newsworthiness is not limited to news in the narrow sense of reports of current events, the panel said. It extends "to the use of names, likenesses or facts ... when the public may reasonably be expected to have a legitimate interest in what is published."

The 17-page, unpublished opinion was issued in the context of a child's challenge to the publication of his name by the *Record Searchlight* as part of the Redding newspaper's coverage of the violent abuse inflicted on the boy when he was 7 by his legal guardian.

Through a successor guardian, the boy sued the *Record Searchlight*; a sister newspaper, the *Anderson Valley Post*, which republished the six articles at issue; and the newspapers' owner, E.W. Scripps Co.

He accused the defendants of invasion of privacy and gross negligence based on the use of his name and the fact he was in foster care. He asserted his name was confidential and privileged because he was a dependent minor.

Court documents filed by his attorney claim the boy's emotional distress over the disclosure of his name was so intense that he needed therapy and he would surely later request to have his name changed.

The suit sought money to pay for his therapy, as well as punitive damages to "set an example and punish" the newspapers and stop reporters from violating the privacy rights of minors.

The appellate justices saw it differently and said in Friday's opinion, "The minor's lawsuit arose from acts by the media defendants in furtherance of the right of free speech in connection with a public issue, and the minor failed to prove a probability of prevailing on the merits."

The opinion was authored by Associate Justice Louis Mauro, with the concurrences of Presiding Justice Vance W. Raye and Associate Justice George Nicholson.

In rejecting the boy's appeal, the justices affirmed the ruling of Shasta Superior Court Judge Monica Marlow, who granted the defendants' motion to strike down the boy's complaint as one designed to choke off their constitutional rights to freely report on public affairs.

The boy's attorney, Marc Barulich, argued in the trial court that, while the brutal abuse of his client in 2009 was newsworthy, the victim's name was not.

"If that's the case, why publish any name in the newspaper?" Marlow asked. "Are they just going to say 'a person?' You don't think people would be curious who that person was?"

The appellate opinion quotes Silas Lyons, editor of the Record Searchlight, as explaining that the newspaper learned the boy's name from a relative and published it because he was not a victim of a sexual crime, and because there was an outpouring of community good will toward the boy.