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Ga. Appeals Court Upholds Libel Verdict Against Blogger

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David Milum was angry that his former lawyer wouldn't return the \$3,000 he'd paid before deciding to hire another attorney to handle his DUI case, which was eventually dismissed. So he did what a lot of people do these days when they've got complaints: He went online and grouched to the world.

But the indefatigable Forsyth County, Ga., political gadfly didn't just complain that he and his ex-lawyer had disagreed over strategy; instead, he used his Web site -- a frequently fiery forum for online commentary in which local officials and personalities are routinely skewered -- to accuse the lawyer of paying a local judge \$25,000 "for the release of a drug dealer," and also paying off a federal judge in Florida, according to the Georgia Court of Appeals opinion.

Rafe Banks III, a former Blue Ridge Circuit, Ga., district attorney now in private practice in Cumming, Ga., signed on to represent Milum for a Dec. 19, 1998 DUI charge. But Milum dismissed Banks two years later because, according to Milum, "he wanted me to plead guilty, and I wasn't guilty. ... I got another lawyer, and he got the case thrown out."

"He wanted to politicize the case," recalled Banks, "and I wanted to argue it on the facts. So he got another lawyer who argued it on the facts, and won."

When Banks refused Milum's demands to return his fee, Milum began posting the allegations against the lawyer, taunting him with accusations of being a "drug dealer bribery mule" and daring him to do something about it, according to the opinion.

"Rafe Banks will never make one single move against me or this Web site," Milum gloated on the site, "because he knows that we have the witnesses."

Banks took the challenge and sued Milum for libel, winning a \$50,000 judgment in Forsyth County Superior Court on Jan. 27, 2006. On Monday, the Georgia Court of Appeals upheld the decision in what Banks' attorney said is a still rare, but growing, sub-genre of litigation: libel suits against Web blog operators, or "bloggers."

"There aren't many of these cases around," said Atlanta sole practitioner Myles E. Eastwood. "It's my understanding that this is the first contested jury verdict against a blogger. There have been default judgments -- there was one in Florida where the defendant didn't show up -- but most of them get thrown out or decided on summary judgment."

David Heller, a staff attorney with New York-based Media Law Resource Center, agreed.

"It does appear that this is the first fully litigated case against a blogger/Web publisher to end in a verdict against the defendant," said Heller. "I say fully litigated because there are two other cases with large verdicts, but the defendants defaulted and did not present any defense at trial.

"This is also an interesting decision because both the jury and appeals court rejected defendant's claim that his statements were intended as opinions and not actual statements of fact. ... In the

context of the Internet, a lot of speech is intended and should be understood as hyperbole. That was rejected here."

The appellate decision, authored by Chief Judge Anne E. Barnes, recounts large portions of Milum's online screeds, including one in which he ridicules the late Forsyth County Superior Court Judge Richard S. "Stan" Gault, whom he accused of taking bribes from Banks: "Which judge do you pay bribes to now Rafe, since [that judge] went to hell? Is it another Forsyth County judge?"

Banks, whose district included Forsyth when he was a DA from 1981 to 1988 but has since been redrawn, said he was particularly gratified by the decision because of Milum's attacks on the judge.

"When all this happened, Stan had died, so this was as much about restoring his reputation as it was about me," said Banks.

The lawyer, who said he has known Milum "a long time," said the whole case could have been avoided if the Webmaster had just taken down the offending postings.

"We never asked for an apology or anything," he said. "We only wanted that stuff taken down."

A key issue during the four-day jury trial, according to Barnes' decision, was the trial court agreeing to allow Banks to be characterized as a "limited public figure," which meant that the plaintiff had to show that Milum "published false and defamatory statements knowing that they were false or acting in reckless disregard of their truth or falsity."

Forsyth Superior Court Judge Arthur Fudger charged the jury with a definition of a public figure offered by Milum's attorneys, but declined their request to also charge them that "if the jury finds Privilege, the Plaintiff has the burden of showing clear and convincing evidence of actual malice."

During deliberations, the jury sought clarification as to whether a public figure can be libeled and the court reiterated the definition offered by Milum's attorneys, "that a 'public figure' is one who by reason of notoriety of his achievements or the vigor and success with which he seeks the public's attention has commanded or is in a position to command a substantial amount of public interest." Milum's attorneys did not object when the judge recharged the jury.

"Milum cannot now argue that the trial court erred in giving a jury charge that he submitted, which correctly stated the law," wrote Barnes, whose opinion was affirmed by Judges Gary B. Andrews and Debra H. Bernes.

Eastwood said that despite Milum's slurs against the trial judge his attorneys were given remarkable latitude.

"[Judge Fudger] gave them everything they asked for," said Eastwood. It was Milum who lost the case for himself, he said.

"Mr. Milum was impeached on the witness stand seven or eight times," he said, and was further undermined by his own witnesses, "who could not testify directly about the truth or falsity of his claims. ... He had no credibility."

Milum's attorney, Jeffrey M. Butler of Augusta, Ga.'s Woodard & Butler, said he had not read the decision and therefore could not comment upon it.

Asked about the likelihood of collecting the judgment, Eastwood was confident.

"Oh, we'll collect," he said.

But Milum, who said he is in the security business said he doesn't have any money left. "They've sucked me dry," says the 58-year-old, who added that he was disappointed and surprised by the verdict.

He said he didn't receive a fair trial and vowed "I'm going to let the public know it."

The case is *Milum v. Banks*, No. A06A2394.