

A 'blame the victim' defense

Thank you for your article, "Not taking blame" [Front page, Jan. 24], about the California Highway Patrol dispatcher, Thomas O'Donnell, and his views concerning the release of the horrific pictures of the body of Nicole Catsouras.



O'Donnell

However, comments by O'Donnell's attorney, Rex Parris, turned my stomach (and as a lawyer myself - that takes some doing). Parris' attempt to smear the dead teenager (and revile her parents) were reprehensible. The issue in this case has nothing to do with Catsouras' character or behavior or who was responsible for the accident.

The issue is the culpability of CHP dispatchers O'Donnell and Aaron Reich, who allowed (deliberately or inadvertently), the gruesome photos of her body to be leaked to the public, contrary to CHP policy. It was that conduct that has resulted in her family being tormented by some very sick people who have mocked their pain via anonymous Internet taunts and worldwide dissemination of these tragic pictures.

My heart goes out to the Catsouras family. Attempting to blame the victim with irrelevant character attacks is a time-honored tactic by trial lawyers, but this goes beyond the bounds of zealous representation and calls to mind the famous quote by Joseph Welch, when he asked Joe McCarthy, "Have you no sense of decency, sir?"

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Local

Judge to rule on leaked photos of dead teen

Case could go to trial against CHP workers after the release of 2006 car accident images.

By GREG HARDESTY
THE ORANGE COUNTY REGISTER

SANTA ANA • A judge will decide early this week on the merits of a civil lawsuit that blames two California Highway Patrol dispatchers for leaking graphic accident photos of a dead teenager onto the Internet.

Judge Steven L. Perk on Friday heard oral arguments at Orange County Superior Court, and will decide whether to put the case on a path toward trial.

Lawyers for the family of Nicole "Nikki" Catsouras need the case to move forward against at least one dispatcher in order for the CHP to be potentially held li-



Catsouras

able for publicly circulating images of their daughter's corpse. "I think the court understands the gravity of what's going on and whether (CHP dispatchers) had a heightened duty of care in the control and custody of photos of a dead person," Catsouras family attorney

Keith Bremer said after the hearing.

Attorneys for dispatchers Thomas O'Donnell and Aaron Reich, in separate legal motions, want to get the lawsuit tossed out before it has a chance of moving toward a possible trial. If Perk rules in favor of the dispatchers, the Catsouras family will appeal, Bremer said.

Friday's hearing addressed

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SUIT: CHP responsible for leak

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such issues as the right to privacy and free speech, and the sometimes ruthless, unforgiving nature of the Internet.

A few weeks after Nikki was killed on Oct. 31, 2006, after slamming her father's Porsche into a toll-road plaza in Lake Forest, photos of her decapitated remains started appearing on Web sites. Taunting messages accompanied by the pictures were sent anonymously to her family's e-mail.

"I don't think there's anyone on either side of this case who does not feel empathy for the (Catsouras) family and (who agrees) that what has happened is absolutely reprehensible," Perk told six attorneys appearing at the hearing as a television news camera chronicled what has become a high-profile legal drama.

O'Donnell, Reich and members of the Catsouras family - parents Lesli and Christos, and their three younger daughters - were not at the hearing.

Perk said he would issue a final ruling on both motions by the end of Wednesday. Tuesday is a court holiday.

The CHP took responsibility for the photo leak and, in documents sent to the Catsouras family's lawyers, named O'Donnell and Reich after an internal probe. Accident scene photos are supposed to be used only for investigative purposes, and not made public.

O'Donnell, a dispatch supervisor at CHP offices in Irvine, was suspended without pay for 25 days. Reich no longer works for the agency in a decision his attorney, Jon R. Schlueter, says was not related to the case.

In court, Bremer and fellow Catsouras family attorney Tyler Offenhauser, of Bremer Whyte Brown & O'Meara in Newport Beach, argued that their lawsuit should be allowed to proceed because the dispatchers violated their obligation to keep the images private and under CHP control.

The dispatchers, they said, had a heightened obligation to protect the privacy of Nikki and her family because, as law enforcement officials, they had a de facto fiduciary relationship with her. Bremer compared the relationship to attorney-client privilege.

R. Rex Parris, representing



H. LORREN AU JR., THE ORANGE COUNTY REGISTER

CASE: Thomas O'Donnell is one of two CHP dispatchers being sued after photos of Nikki Catsouras' accident became public.

O'Donnell, said his client only e-mailed the photos to his unsecured home computer for work purposes. He said even if O'Donnell had posted the pictures on the Internet - which O'Donnell denies - he legally would be protected under constitutional rights to free speech.

The images of Nikki's corpse are a matter of public interest and should be made public to deter others from driving recklessly or while under the influence, Parris said.

"If you take the emotions out of it, (this case) is silly," he said outside of court.

Nikki, who took her father's Porsche without his permission, was driving in excess of 100 mph when she lost control and crashed, according to CHP investigators. Traces of cocaine were later found in her system.

Nikki's physical or mental condition leading up to the crash was irrelevant to the lawsuit, Perk said.

Schlueter, Reich's attorney, argued that Nikki's rights to privacy died when she died,

and that case law does not support extending privacy rights to her family.

Perk pressed Catsouras family attorneys on this point, calling it a "quantum leap" to argue her family's right to privacy was violated by the photos going public.

As for O'Donnell, Perk asked his attorneys whether his claim that he only viewed the photos for work purposes shouldn't be a matter best addressed in the discovery phase of the lawsuit - the next step should the case progress.

Catsouras family attorneys said Nikki's survivors have endured great emotional distress because of the release of the photographs on the Internet. In a legal claim filed in advance of their lawsuit, the family sought at least \$20 million in damages.

"The family's devastated," Offenhauser said outside court. "They want accountability."

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