

CHP dispatcher loses appeal over grisly Catsouras photos

By [GREG HARDESTY](#)

2011-05-27 12:22:56



SANTA ANA – An appellate court has rejected an attempt by a former California Highway Patrol dispatch supervisor to get out of a lawsuit concerning grisly photos of a decapitated teenager that were circulated worldwide over the Internet.

This week's ruling, part of an ongoing civil case filed by survivors of Nicole "Nikki" Catsouras, 18, of Ladera Ranch, who died Halloween 2006 after losing control of her father's Porsche, means that Aaron Reich likely will argue his case in a lower court trial.

A three-justice panel of the 4th District Court of Appeal in Santa Ana ruled Wednesday that Reich failed to produce evidence proving that he emailed the photos to family and friends as a warning about drunken driving. Reich had argued that his actions therefore were protected by the U.S. Constitution as free speech.

Reich has until July 5 to appeal to the state Supreme Court but he is not likely to do so, said his attorney, Jon R. Schlueter.

Appellate Court Justice Eileen Moore, who wrote the majority opinion, ruled that the Catsouras family can recover their legal costs, but rejected the family's request for sanctions against Reich.

The CHP, Reich and Thomas O'Donnell, also a dispatch supervisor, are being sued for negligence, invasion of privacy and intentional infliction of emotional distress for emailing the accident-scene pictures to family and friends.

The images of Nikki Catsouras, slumped behind the wheel of the Porsche after she slammed into an unmanned toll booth on the Foothill (241) Toll Road in Lake Forest, then went viral on the Internet.

Some of the photos, accompanied by taunting messages, also were sent anonymously in emails to Nikki's parents, Christos and Lesli Catsouras, who opened the disguised messages only to see close-up photos of the remains of the eldest of their four daughters.

CHP officers estimated that Nikki had been driving more than 100 miles per hour when she lost control of the car after clipping another vehicle.

Keith Bremer, an attorney for the Catsouras family, said he and co-counsel Tyler Offenhauser are pleased with the appellate court's ruling.

"The panel agreed that the conduct of Reich in sending the emails is not protected speech," Bremer said. "Moreover, we've never seen the emails that he says serve as a cautionary tale as it relates to this catastrophic event."

Reich, in his appeal, argued that he was protected by the First Amendment because he emailed – from his

computer at home – the photographs to friends and family along with an anti-drunken driving message.

He argued that he was engaging in free speech concerning a matter of public interest.

Nikki had not been drinking, autopsy and toxicological reports show.

In its ruling, the panel wrote: "Any editorial comments that Reich may have made with respect to the photographs are not before us. In short, there is no evidence at this point that the e-mails were sent to communicate on the topic of drunk driving."

Reich destroyed the emails with the anti-drunken driving messages and photos at the request of his supervisors, Schlueter said.

Schlueter said he was encouraged that the justices, while not letting his client out of the lawsuit, did not directly rule in their nine-page opinion on the merits of his First Amendment claim.

"This is a huge First Amendment case," Schlueter said. "What my client did is protected by the First Amendment. Some people might not like what he did, but the First Amendment protects speech."

In oral arguments last week, the justices questioned whether the recipients of the emails still had them, but Reich's attorneys conceded they had not investigated that.

Schlueter said Reich plans to find out if the recipients still have the emails so they can try to prove the retired officer's claims at the lower-court trial.

In its ruling, the panel also ordered Reich to pay the appellate-court costs for the Catsouras family.

Bremer said the lawsuit appears to be on track to go to trial in Orange County Superior Court in several months.

The lawsuit already has rewritten law throughout California concerning the privacy rights of surviving family members when it comes to death images of a decedent.

Previously, under state law, surviving family members had no right of privacy "in the context of written media discussing, or pictorial media portraying, the life of a decedent," but the Catsouras lawsuit has changed that.

City News Service contributed to this report.

Contact the writer: 714-704-3764 or ghardesty@ocregister.com