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Colorado Court Affirms Dismissal of Anti-Abortion Activist's Libel Suit

Labeling Deceptively Edited Videos "Fake News" Is Not Materially False

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In an unpublished decision issued February 16, 2023, Colorado's Court of Appeals affirmed the trial court's granting of defendant's anti-SLAPP motion terminating the libel case brought by anti-abortion activist David Daleiden and his so-called Center for Medical Progress (CMP) against Dr. Savita Ginde, the former medical director of Planned Parenthood of the Rocky Mountain Region (PPRM). [Daleiden v. Ginde](#).

Daleiden earned national prominence in 2015 when he and a female colleague, Sandra Merritt, posed as agents for fetal tissue procurement for stem cell researchers and infiltrated a number of Planned Parenthood clinics, using hidden cameras, to prepare a series of highly publicized videos that purported to show Planned Parenthood officials engaged in selling fetal tissue and organs ("baby parts") for profit. It is only the latest in a series of major defeats Daleiden has suffered in the nation's courts.

Daleiden's Sinister Plot and Its Impact

In the summer of 2015, Daleiden's CMP released a series of heavily edited, so-called "Human Capital Investigation" videos (the "Short Videos"), that were paid for by and orchestrated along with Operation Rescue founder Randall Terry. As intended, the videos garnered massive media attention and prompted four congressional committees and 13 states' attorneys general to launch formal investigations into Planned Parenthood's activities. None of those investigations found any wrongdoing by Planned Parenthood.

Shortly after their release, the deceptively edited videos promulgated by Daleiden and CMP were roundly denounced by members of Congress and the press. See, e.g., [U.S. House Comm. on Oversight and Reform, "Planned Parenthood: Fact v. Fiction,"](#) (Sept. 24, 2015) (stating that "The videos include no credible evidence that Planned Parenthood profits from its fetal tissue donation program." and "The videos have been heavily edited and deceptively manipulated."); *Ideology Over Truth; It is Time to Shutter the House Panel on Fetal Tissue Research*, Wash. Post at A16 (May 28, 2016) (describing plaintiff's videos as "bunk, neither accurate nor reliable."); Ted Anderson, [Why The Undercover Planned Parenthood Videos Aren't Journalism](#), Columbia Journalism Rev., May 12, 2016 ("the fact that footage was edited in a deceptive way points to a deliberate distortion of the truth").

Dr. Ginde published a book, “The Real Cost of Fake News: The Hidden Truth Behind the Planned Parenthood Video Scandal,” in which she recounted her travails.

One of the Planned Parenthood clinics that Daleiden and Merritt infiltrated, under false pretenses, in April 2015 was in Aurora, Colorado, where they interviewed Dr. Savita Ginde, the clinic’s medical director, and captured interview on two hours and forty minutes of surreptitiously recorded audio-video (“Raw Footage”) with a hidden camera.. In discussing the possibility of entering a future contract in which Daleiden’s bogus company, Biomax Procurement Services, LLC, would serve as the middleman between PPRM and various medical researchers in providing *donated* fetal tissue, Daleiden and Ginde discussed the fees that Biomax would pay to procure those specimens. In that discussion, Ginde made clear, thirteen separate times, that any such future agreement would need to be carefully reviewed and approved by Planned Parenthood’s legal counsel, to ensure that there was no violation of the federal prohibition on the sale of fetal tissue for profit under which the only monies anyone can lawfully receive in exchange for providing fetal tissue for research purposes are the actual costs and expenses of collecting, processing, and shipping of such donated specimens.

Not one of those thirteen statements appeared in “Short Videos” that CMP posted on its website in the summer of 2015. Nor did those videos contain any of the exchange between Daleiden and Ginde in which they discussed the highly variable costs associated with the harvesting, processing, labeling, storage and delivery of the specimens. Instead, the videos, using deceptively excerpted snippets from the interview, presented the completely false narrative that Dr. Ginde had agreed to “sell” (and was then *actually* “selling”) aborted fetal tissue (“baby parts”) *for profit*, in clear violation of federal law. The ending slide of the second of CMP’s “Short Videos” that featured Dr. Ginde read:



Daleiden and CMP also issued numerous press releases and tweets touting their deceptively edited videos with the hashtag #PPSellsBabyParts.

Just days after the second of CMP’s two “Short Videos” was posted online, FBI agents notified Ginde they had confirmed credible threats against her and her family’s lives, prompting them to flee their home in the middle of the night under armed security escort and spend the next two years in hiding, not even informing close friends of their new residence. Four months later, a deranged gunman entered one of the Planned Parenthood clinics that Dr. Ginde supervised, in Colorado Springs, shot and killed three innocent people, and wounded nine others, while screaming “no more baby parts!”

The Publications at Issue

In 2018, Dr. Ginde published a book, “The Real Cost of Fake News: The Hidden Truth Behind the Planned Parenthood Video Scandal,” in which she recounted her travails. Dr. Ginde described Daleiden’s campaign of disinformation and the impact it had on her life and that of her colleagues. Among the statements contained therein, that plaintiffs challenged were:

- “The words and actions [of Daleiden] are completely false — literally, FAKE NEWS — and nevertheless, the immediate aftermath of the infiltration was devastating.”
- “The entire video campaign that David Daleiden and the Center for Medical Progress created is based on lies. The facts were fabricated.
- “In July of 2015, following a multiyear infiltration led by a well-known anti-abortion extremist named David Daleiden, a series of deceptively edited videos were released attempting to

implicate Planned Parenthood in the selling of fetal tissue.”

- “[A] series of deceptively edited videos were released attempting to implicate me in the selling of fetal tissue.”
- “I wouldn’t lie. I wasn’t good at it because it never felt right to me. Then there is David Daleiden, who knowingly built a house of cards based on lies.”

Shortly after the book’s release Dr. Ginde was invited to present a Ted-X talk, in which she again recounted her harrowing story of being subjected to death threats and fear as a result of Daleiden’s promulgating blatant untruths about her (though she did not mention him or CMP in that talk).

The Lawsuit, and the Trial Court’s Ruling

In November 2019, Daleiden and CMP sued Dr. Ginde in Colorado state court, asserting claims for slander and libel. Dr. Ginde filed a Special Motion to Dismiss under Colorado’s anti-SLAPP statute, which took effect in April of that year. No appellate precedents applying that statute had yet been issued, so both parties cited California authorities, because that state’s statute served as the model for Colorado’s law; they are virtually identical. Dr. Ginde’s motion asserted various alternative grounds for dismissal, including the incremental harm doctrine, lack of special damages for the Ted-X talk which was at most libelous *per quod*, and substantial truth. On the issue of truth, Dr. Ginde urged the trial court to engage in a simple side-by-side comparison between the “Raw Footage” and the two “Short Videos” that Daleiden generated therefrom in order to conclude that her describing the latter as “fake news,” “deceptively edited” and “a house of cards built on lies” was substantially true.

In a thorough 24- page ruling, District Judge Diego Hunt granted Ginde’s motion. After comparing the Raw Footage against the Short Videos, Judge Hunt ruled that plaintiffs had not met their burden under the second prong of the statute of demonstrating a “reasonable probability” of prevailing on their libel claims because they could not establish that Ginde’s statements were materially false.

The Court of Appeals Affirms

The [unpublished decision](#) explains the facts and procedural history above before turning to Daleiden’s and CMP’s arguments on appeal. Plaintiffs asserted that the trial court had erred in granting Dr. Ginde’s anti-SLAPP motion because it was inappropriate, they claimed, for the judge to compare the two sets of video tapes — the longer Raw Footage to the two Short Videos — to determine whether the latter accurately conveyed the substance or gist of the former.

The appellate panel categorically rejected that contention: “A side-by-side comparison was not only proper in this case but was necessary and unavoidable. Thus, we discern no error by the district court when it performed the comparison.” Upon performing that same comparison on its own, exercising *de novo* review, the appellate court concluded “that Daleiden edited the Raw Footage in such a way to falsely suggest that Dr. Ginde and PPRM were presently engaged in the illegal sale of aborted fetal tissue for profit and, thus, that the gist of Dr. Ginde’s statements is not materially false.”

In an important portion of its ruling, the Court concluded that not only did the Short Videos misrepresent that Dr. Ginde had expressed willingness to commit a federal crime (selling fetal tissue for profit) in the future, but that she had actually already done so: “No one disputes that the [Short] Videos characterize PPRM and Dr. Ginde as engaging in illegal *activity*.... The Raw Footage contains no evidence of a criminal *act*, nor has Daleiden directed us to any record evidence of a criminal *act*.” (emphasis added).

In short, the panel said “[b]ased on our comparison, we conclude that the gist of Dr. Ginde’s statements is true — that the Raw Footage was deceptively edited ... to convey the false impression that Dr. Ginde and PPRM were engaged in the illegal sale of fetal tissue for profit.”

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The case was remanded to the trial court to determine the amount of reasonable attorney’s fees and costs Dr. Ginde is entitled to under the anti-SLAPP act. Daleiden and CMP have stated publicly that they are contemplating seeking review from Colorado’s Supreme Court.

Daleiden’s Other Legal Setbacks

Daleiden deservedly has not fared any better in his other encounters in America’s courts. In 2019 a federal jury in California awarded Planned Parenthood more than \$2.2 million in compensatory and punitive damages against Daleiden and CMP for violating California’s wiretap act, fraud, and invasion of privacy. U.S. District Judge William H. Orrick subsequently awarded Planned Parenthood \$13.6 million in attorney’s fees and costs.

Daleiden and CMP also sued the Planned Parenthood Federation of America (PPFA) for defamation in the Southern District of New York. In July 2021, District Judge Coleen MacMahon granted PPFA’s anti-SLAPP motion dismissing the case, finding that “The phrase ‘false smear campaign,’ which is alleged to be defamatory, *perfectly encapsulates what the Plaintiffs did*. It is, therefore, substantially true and completely non-defamatory.” (emphasis added). The Second Circuit affirmed that ruling in April, 2022.

Daleiden and Merritt will be tried later this year in the Superior Court for San Francisco County on ten felony counts of wiretapping, fraud, and false identification.

Steve Zansberg is the founder and managing partner of The Law Office of Steven D. Zansberg, L.L.C. in Denver, Colorado. He is a past co-chair of MLRC’s Newsgathering and State Legislative Affairs committees. Dr. Savita Ginde is represented by Steven Zansberg, Thomas B. Kelley of Killmer, Lane and Newman of Denver, Colorado, and Brad Ross-Shannon and Patrick Delaney of Shannon-Ross and Delaney in Lakewood, Colorado. David Daleiden and the Center for Medical Progress are represented by Krista Baughman of Dhillon Law Group in San Francisco, California and Andrew Contiguglia of The Contiguglia Law Firm in Denver, Colorado.

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