

FREE SPEECH

Travis v. Strubel, 242 P.3d 690 (2010)

Oregon Court of Appeals

FACTS

Respondent (Travis) and Appellant (Strubel) are neighbors. They live across the street from each other. Travis accuses Strubel of looking in her windows, appearing at her workplace (a restaurant), mowing her front lawn without her permission, appearing in her driveway to talk about an incident of vandalism, and meeting with her ex-husband. Travis further notes that she asked a former police officer (a friend of Travis) to warn Strubel to avoid contact with Travis and Travis also posted a No-Trespassing sign on her property with Strubel's name on it.

HANDOUT QUESTIONS

1. If you were Travis what arguments might you make in order to prevail?
2. If you were Strubel what would you say to defend yourself?
3. If you were the court what would you decide? Why?
4. In your deliberation as a judge, explain how the following facts would or would not affect your decision:
 - a. The fact that he was looking in her windows?
 - b. The fact that he mowed her lawn without her permission?
 - c. The fact that he appeared at her workplace (which is a restaurant)?
5. Do you think that expression-related unwanted contact should be treated differently than other kinds of unwanted contact that are not related to freedom of expression? Why?

6. After reading the case, answer the following questions:

- a. How did the Oregon Court of appeals actually rule?
- b. What reasons did the Oregon Court of Appeals give for its decision?
- c. Compare your decision and the Court's decision? What were the similarities and differences?

ISSUES

Did the Trial Court err in finding that the stalking protective order in favor of Travis was valid? Should freedom of speech related to unwanted contact be treated differently than other kinds of unwanted contact?

WHAT HAPPENED AT TRIAL

The trial court ruled for Travis and granted the SPO finding that the statutory elements for the stalking protective order were met.

HOW DID THIS CASE REACH THE OREGON COURT OF APPEALS?

Stubel appealed the trial court's decision.

ARGUMENTS:

Travis' Arguments:

1. Strubel peeped through my windows, he showed up at my workplace unannounced, he mowed my lawn without my permission.
2. To stop such contact, I asked my friend, an ex-cop to tell him to stay away, my fiancé told Strubel not to come on my property and I even posted a "No Trespassing" sign – with his name – on my property.

Strubel's Arguments:

1. I didn't know my contacts with Travis caused her alarm or that she didn't want to see me.
2. The trial court didn't tell me I had a right to counsel to argue my side and the SPO is too broad – effectively I have to move out of my house in order to abide by the order.

WHO WON?

Strubel won. The Appeals Court reversed the trial court's decision.

HOW THE COURT EXPLAINED ITS DECISION

The Appeals court reversed arguing that there was no evidence provided which showed the appellant knew or should have known that his contact with respondent was unwanted nor could Strubel's contacts with Travis be considered coercive or alarming.

APPLICATION

1. This opinion is significant for the following concepts:
 - a. It demonstrates the conflict that exists between freedom of speech and unwanted contacts. Because the former is such an elementary right, there is a heightened standard of proof to fulfill the elements for a stalking protective order.
 - b. Though there was unwanted contact in this case, the remaining elements of coercion, respondent's fear/alarm for her safety, reasonableness for such alarm and the subjective knowledge of appellant that he was causing such emotions were all missing.

2. There is a free speech issue here. The standard is heightened when it come to freedom of speech. This shows how important this protection is.