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Duckett-Grace case settlement raises questions

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Nov. 19--The settlement between cable show host Nancy Grace and the estate of Melinda Duckett put the estate's lawsuit to rest.

But the deal awakened new questions about the impact the case will have on cable news programming, especially the emotionally charged brand that Grace delivers.

The consensus by experts is that the case won't do much to muzzle Grace -- and may even embolden other talk show hosts to be aggressive with guests.

"I don't think this case will have a dramatic effect on other broadcast journalists because Nancy Grace operates in a unique realm," said Jill Geisler, a faculty member at The Poynter Institute who specializes in broadcast media. "She operates as a personality and as a prosecutor who uses the news as the basis for a show that is largely entertainment-focused."

That could open the door for others.

"I believe that other talk show hosts, at some point, will keep pushing this boundary, almost what you call bullying behavior, on the air that might cause someone to snap," said Clay Calvert, a University of Florida journalism professor who specializes in First Amendment law.

After four drawn-out years of litigation, the civil battle arising from Duckett's suicide after appearing on Grace's show ended in a draw.

CNN established a \$200,000 trust account to help find Duckett's missing son, Trenton.

For its part, Duckett's family issued an apology to CNN and absolved the network of any responsibility for Melinda's death.

And both sides managed to avoid an agonizing jury trial.

Also coming out a winner was the media, in general.

Had the case gone to trial and a jury sided with Duckett's estate, the landscape might have dramatically shifted for plaintiffs pursuing future claims against media, experts say.

"It would have broken new ground, frankly," Calvert said.

That the case ended in a settlement, however, makes it neither more nor less likely for future plaintiffs to prevail when their claims are directly pitted against the First Amendment freedoms afforded to media organizations.

"The case, because it settles, creates no precedent," Calvert explained. "There is no new legal precedent set by this case, as it never reached an appellate court."

Interview conducted

On Sept. 8, 2006, Melinda Duckett was interviewed by Grace about the disappearance of her then-2-year-old son, Trenton, whom the 21-year-old divorced mother claimed had been snatched from his bedroom window a week earlier in Leesburg.

Conducting the interview by phone, Duckett was evasive at times.

Grace, a former prosecutor, interrogated the woman, punctuating her demands for answers with pounding fists.

"Ms. Duckett, you are not telling us for a reason. What is the reason? You refuse to give even the simplest facts of where you were with your son before he went missing. It is Day 12," Grace said, according to the show's transcript.

The next day, Duckett shot herself at her grandparents' Villages home, hours before the interview was set to air.

The show still broadcast, despite the tragic development.

By the end of the year, Bethann and William Eubank of Lockport, N.Y., along with Melinda's aunt, Kathleen Calvert of Virginia, filed a wrongful death claim against Grace and CNN, alleging the host had driven their daughter to commit suicide.

Melinda, they claimed, appeared on the show in the interest of drawing the attention of a national audience to her missing child, yet faced repeated "veiled accusations" by Grace that she was somehow responsible for Trenton's disappearance.

In their Aug. 3, 2007 motion to dismiss, CNN argued the lawsuit could "severely chill" the media's efforts in locating missing children, that courts around the country have acknowledged "the well-established right of journalists to ask questions aggressively," and that per Florida law, no "special relationship" existed between Grace and Duckett that imposed a duty on the host to prevent her guest's suicide.

Senior U.S. Circuit Judge William Terrell Hodges would later deny the motion to dismiss, writing that Grace's conduct may be actionable if it's proven "the alleged victim suffers from known emotional and/or psychological trauma."

But the judge, too, raised free speech concerns.

"This presents a much closer question because, whatever their attitude was towards the Plaintiffs, the Defendants had a business purpose protected by the First Amendment in going forward with the broadcasts after Melinda Duckett's death," he wrote.

Settlement speculations

The final outcome created speculation about what compelled the parties to settle.

"Clearly, based upon the settlement that was reached, it appears that both parties had some reluctance going forward and then it becomes a risk factor both parties need to consider," said **Bruce Baron**, a civil litigator in Brooklyn, N.Y.

He is familiar with the Eubanks' position: Baron handled Patricia Conradt's \$105 million wrongful death claim against NBC Universal several years ago.

In that case, Conradt sued the network after her brother, an assistant district attorney in Texas, killed himself when a crew from Dateline NBC's "To Catch a Predator" series showed up at his doorstep as part of a pedophilia sting.

The lawsuit was "amicably resolved," according to news reports, although it was then-U.S. District Judge Denny Chin's February 2008 order allowing parts of the claims to move forward in court that initially grabbed attention.

"A reasonable jury could find that NBC crossed the line from responsible journalism to irresponsible and reckless intrusion into law enforcement," Chin wrote, adding the network "created a substantial risk of suicide or other harm" and "engaged in conduct so outrageous and so extreme ... no civilized society should tolerate it."

While Baron declined to offer further comment about that case, he said the kind of wrongful death lawsuit initiated against Grace is "usually very difficult."

"The question becomes, was [Melinda Duckett] pushed too hard or not?" he said. "What the [Grace airing] doesn't show is how the plaintiff perceived this intimidation mentally, and that's where an expert could come in and interview the family."

Calvert noted that it is difficult to prove to a jury that one event -- Grace's questioning of Melinda Duckett -- caused the other event: the suicide.

"What you're trying to do is suggest that Nancy Grace's conduct on her television show caused a woman to take her life. It's difficult to show that causation," he said.

Ultimately the question becomes, "Can we go back and hold the media civilly liable?" he added.

"That's an interesting issue because there are First Amendment freedoms. Defining that has been stretched pretty far to include 'Dateline' and Nancy Grace," he said.

That said, the fact that the case settled does not surprise him.

"It would not be a favorable case for Nancy Grace if this ever saw a jury," Calvert said. "A lot of public sentiment would be against her ... given the egregiousness of the scenario."

An appeal that would have been almost inevitable and would have resulted in costly legal fees and more time in court for both plaintiffs and the defense.

"A verdict may not have gone in favor of CNN," Poynter's Geisler said. "It could have been embarrassing to CNN and Nancy Grace even though it would probably ... be overturned on appeal."

"It was a situation that did not bode well from a public relations standpoint at the very least for CNN and Nancy Grace," she added. "Settling as they did gave them an opportunity to declare victory and make a charitable donation."

Trust dedicated to search

The \$200,000 trust, to be administered by Trenton's great-aunt Kathleen Calvert, is dedicated to finding the child, who would be 6 today.

If he is found alive within the next seven years, the funds will be transferred for his use when he turns 18.

Otherwise, the money will be donated to the National Center for Missing and Exploited Children.

"I welcome Melinda's family's help in the search for Trenton," Joshua Duckett, the boy's biological father and Melinda's ex-husband, said in prepared remarks at a press conference outside his attorney's Tavares law firm last week.

"It's not every day that a single missing child receives \$200,000 to aid in their search."

Joshua Duckett, who was once named as a defendant in the Eubanks' civil lawsuit, never joined in the lawsuit against Grace, on whose show he simultaneously appeared that September 2006 day while Melinda was being interviewed by telephone.

"A lot of attention got taken away from Trenton here and we're going to try and keep that out there as much as possible," his attorney, Laura Hargrove, said. "We fully believe Trenton's alive and he's out there. And one day we hope he comes home."

As for the Grace civil lawsuit, she would only say she did not take part in that lawsuit and was "not going to sit back and second-guess anybody."

Grace, a former Fulton County, Ga., homicide prosecutor, has drawn her share of criticism due to her abrasive style.

But her television cachet has seemingly only grown since her notorious interview with Melinda Duckett four years ago: In addition to her HLN show, she now also hosts "Swift Justice," a syndicated program where she helps arbitrate conflicts between participants who appear on a brightly lit set.

Many, not just family members of Duckett, would like to see Grace off the air, owed not in small part to her handling of the 2006 interview.

"She's a bully," said Liz Lennon, a Reddick resident who has created a blog dedicated to uncovering the truth about Trenton's disappearance and the death of his mother.

"I don't like her tactics," she added, "but that's her style. I don't believe in it, but that's her style. She's not just doing it to Melinda, she's doing it to a lot of people. She's supposed to be a prosecutor, not a persecutor."

Grace, in her own words during an interview with the Star-Banner in November 2006, said that, if given the chance, she would "do it again."

"I'd rather take the criticism than hide truth," she said at the time.

Whatever the Eubanks' underlying disdain for the cable news host and Grace's program, they did, at the time the settlement was disclosed, issue an apology to Grace and CNN.

According to Calvert, the apology may have been made to mitigate the possibility of a defamation countersuit.

"That would be my best interpretation of that," he said.

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