

MORRIS COMMUNICATIONS CORPORATION, etc., et al.,
Petitioners,
vs.
SUSANNE Y. FRANGIE, et al.,
Respondents.
No. 92,321

[October 22, 1998]

OVERTON, J.

We have for review Morris Communications Corp. v. Frangie, 704 So. 2d 1143 (Fla. 1st DCA 1998), in which the district court affirmed the trial court's order denying Morris Communications Corporation's motion to quash a subpoena duces tecum served on its reporter in a civil proceeding. In affirming the trial court's order, the district court concluded, in accordance with the rationale of Davis v. State, 692 So. 2d 924 (Fla. 2d DCA 1997), quashed, No. 90,457 (Fla. Oct. 22, 1998), that Florida law did not recognize a privilege for nonconfidential sources of a reporter. However, because Davis involved the reporter's privilege in the context of a criminal proceeding and because the instant case involved the privilege in the context of a civil proceeding, the district court certified the following question as one of great public importance:

DOES FLORIDA LAW PROVIDE A QUALIFIED REPORTER'S PRIVILEGE AGAINST THE DISCLOSURE OF NONCONFIDENTIAL INFORMATION RELEVANT TO A CIVIL PROCEEDING?

Morris, 704 So. 2d at 1143. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

In State v. Davis, No. 90,457, slip op. at 10 (Fla. Oct. 22, 1998), we quashed the district court's opinion in Davis, holding as follows:

Through this opinion, we clarify the limitations of the qualified reporter's privilege in Florida. First, we hold that a qualified reporter's privilege exists in Florida and that such a privilege extends to both confidential and nonconfidential information gathered in the course of a reporter's employment. Second, we hold, consistent with our opinions in Morejon and Jackson, that the privilege does not apply to eyewitness observations or physical evidence, including recordings, of a crime. Third, we hold that, once the privilege attaches, a court must apply the three-prong balancing test used by an overwhelming majority of other states to determine whether the privilege will act to prevent the disclosure of the reporter's information; that is, the court must determine whether the movant has established that: (1) the reporter possesses relevant information; (2) the same information is not available from alternative sources; and (3) the movant has a compelling need for any information the reporter may have.

Consistent with our opinion in Davis, we answer the certified question in the affirmative and we clarify that a qualified reporter's privilege applies in both civil and criminal proceedings. Accordingly, we quash the district court's decision in the instant case and remand this cause for reconsideration of the motion to quash in light of our decision in Davis.

It is so ordered.

HARDING, C.J., and SHAW, KOGAN and ANSTEAD, JJ., concur.

WELLS, J., concurs in result only.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED,
DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public
Importance

First District - Case No. 97-2864

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Editors; Gainesville Sun Publishing

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Publisher of The Miami Herald;

Lake City Reporter, Inc.; Lakeland

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Ocala Star-Banner Corporation;
Palatka Daily News, Inc., Publisher
of the Daily News and the Marco
Island Eagle; Sarasota Herald-
Tribune Co.; Sebring News-Sun,
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WFLA-TV Channel 8; and the
Tribune Company, Publishers of
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