

Robert Alazork,  
Plaintiff-Appellant,  
v.  
Haul n' Ride, Inc.,  
Defendant-Appellee.

tracking the rental vehicles for the purpose of assessing charges represented a deceptive business practice as defined by Marshall statute.

## **II. FACTS**

The following facts, drawn from the pleadings and stipulations of the parties, are not in dispute:

Robert Alazork is a 20-year-old sophomore who attends Capitol College, a private liberal arts college in Capitol City, West Ducoda. He is a United States citizen of Zorkesian descent, born and raised in the State of Marshall. He currently is, and at all times relevant to this litigation was, a resident of Smallville, a suburb of Marshall City in the eastern region of the State of Marshall.

Alazork received a scholarship for academic excellence from the Zorkesian-American Society of Marshall for the 2000-2001 academic year. Applicants were required to submit an essay that described the importance of community involvement in both American and Zorkesian societies. A scholarship committee reviewed the essays and interviewed each of the applicants. After the committee reduced the application pool to three, the remaining applicants met with Tom Babazork, the benefactor who sponsored the yearly scholarship. Babazork then selected the scholarship recipient. Alazork applied for the scholarship in January 2000, and in May 2000 was told that he had been selected as the recipient for 2000-2001. Babazork presented the award to Alazork at the annual Zorkesian-American Society meeting. In his acceptance speech, Alazork spoke about the importance of excelling in school, serving the community, and honoring one's heritage. Between May and August 2000, Alazork served as a spokesperson for the Zorkesian-

American Society, attending a number of meetings and speaking to several community organizations.

Alazork spent the summer of 2000 living with his parents in Smallville and working as a counselor for a city-sponsored day camp for underprivileged children. He planned to move into an off-campus apartment one week prior to the start of Capitol College's fall semester (classes began on September 9, 2000). On August 16, 2000, Alazork called the national toll-free number for Haul n' Ride, a rental truck company, and was automatically connected to the company's Smallville location. He spoke with John Streeter, an employee of Haul n' Ride who acts as the rental agency manager at the Smallville location. Streeter explained that Haul n' Ride offers two types of rentals, local and one-way. He defined locals as being rentals where the truck is used in town and is returned to Streeter's Haul n' Ride location. He explained that one-way rentals were rentals in which the truck is taken out of state and returned to a different Haul n' Ride location. The one-way rentals were much more expensive than local rentals. Streeter explained that the one-way move rate was higher because of the cost of maintaining a national network of Haul n' Ride locations and because the company's insurance expenses were much higher for rentals in which a truck was driven in more than one state. Alazork reserved a truck for three days as a local move.

Most of Haul n' Ride trucks are equipped with global positioning system (GPS) technology. GPS technology employs a network of satellites and ground stations that continuously transmit data over radio frequencies, along with devices that receive these transmissions and use them to calculate their own location via a method known as triangulation. Some devices that receive GPS transmissions are also capable of

transmitting their location data so that it can be accessed remotely. Location data can be correlated with other data to provide emergency services, navigation or travel information, stolen vehicle tracking, and other services. GPS technology allows Haul n' Ride dealers to track the movement of their trucks and to locate them immediately in case of mechanical malfunction, accident or theft. Each GPS device installed by Haul n' Ride maintains a trip log, recording the precise distance and route that the truck took. This log can be accessed by the dealer upon return of the vehicle. These GPS devices are located in the truck's engine compartment. Alazork's truck was equipped with such a device.

In recent years, Haul n' Ride has been the subject of negative publicity regarding the use of its trucks to transport immigrants into the country illegally and to transport illegal weapons and explosives within the country. Several reports have suggested that Haul n' Ride trucks might be used in terrorist acts specifically involving extremist Zorkesians. As a result, Haul n' Ride instituted a corporate "anti-terrorism" policy. Under the policy, all Haul n' Ride dealers are required to request additional personally identifiable information when the renting customer appears suspicious. (See attached Corporate Memorandum No. 1, Exhibit A.) The policy specifically recommended that dealers scrutinize renters of Zorkesian descent and those customers who do not disclose their intentions upon renting a vehicle.

When Alazork rented the Haul n' Ride he was asked to volunteer information including his name, current and past addresses, present and former telephone numbers, mobile and work phone, three financial references and three personal references. (See Rental Agreement, Exhibit B.) Alazork complied with the requests and identified Tom Babazork as his financial and personal reference. He told Streeter that he needed the

truck to move back to his university for the fall semester. Alazork's rental agreement provided that he would depart with the truck on August 20 and return August 23, 2000.

On August 22, Alazork arrived at Capitol College, which lies approximately thirty miles east of the Marshall state line. He drove to his apartment building located two blocks from campus. He double-parked the truck in front of the apartment building and began unloading his belongings and furniture. The unloading took more time than he had anticipated. He finally finished moving in at 6:00 p.m. on August 23. Alazork decided to park the truck and drive it back to Streeter's Haul n' Ride location early the next morning. However, Capitol City municipal rules dictate that no trucks can be parked on City streets overnight. Therefore, Alazork parked the truck in the convenience store mall parking lot across the street from his apartment. This mall had a convenience store, a cleaner, and an adult bookstore.

On August 23, Streeter received a notice from the Haul n' Ride corporate office alerting him to a possible terrorist threat where a Haul n' Ride truck might be used to carry explosives into Capitol City. (See Corporate Memorandum No. 2, Exhibit C.) Streeter immediately used GPS technology to determine the location of all of his rental trucks that were not presently on his dealership lot. Streeter discovered that the truck Alazork had rented was located in Capitol City. The GPS system gave him a street address, which he ran through a reverse directory on the Internet and identified as the address for an adult bookstore. Streeter began contacting Alazork's references, and first called Babazork. He told Babazork that he had received a report of suspected terrorist activity, and had learned that Alazork had taken a truck out of state in violation of the rental agreement. He told Babazork that he was worried that Alazork "might be involved

or in trouble.” Streeter also told Babazork that the truck was parked at an adult bookstore in Capitol City, and gave him the street address. Fearful of the negative publicity the Zorkesian-American Society would receive if it were leaked that the organization’s scholarship recipient and spokesperson was associated with terrorist activity, Babazork cancelled Alazork’s scholarship. Babazork made no attempt to verify the accuracy of Streeter’s comments.

Alazork attempted to return the Haul n’ Ride truck on August 24, 2000, one day later than the rental agreement called for. However, the Smallville storefront was closed when he arrived, so he left the keys in the after-hours box and returned to Capitol College. Upon arriving at school, he was informed that his scholarship had been revoked and that he would have to pay the full tuition and room and board for the semester prior to starting classes.

When Alazork confronted Babazork about his scholarship situation, Babazork told him, “I received a call from Haul n’ Ride. They told me you were suspected of renting a truck for terrorist activity. They also told me that you were parked at the adult bookstore. We in the Zorkesian-American Society cannot afford that kind of publicity. If people were to hear that we paid for the education of a suspected terrorist, we would lose all of our members and come under heavy government scrutiny. We cannot accept this kind of risk.”

When Alazork called Haul n’ Ride to try and determine what happened, Streeter informed him that because he took the truck across state lines, his credit card had been charged for the one-way rental at \$1,900, rather than the local rate of \$324 he had originally been quoted.

Alazork was forced to quit school at Capitol College because he could not afford the tuition and fees. On September 10, 2000, the student-run newspaper, the *Capitol College Gazette*, which is read by nearly all the 1,500 undergraduate students, ran a front-page story about Alazork's scholarship being revoked.

Robert Alazork filed a three-count lawsuit based on this experience.

### **III. ANALYSIS**

#### **A. Intrusion upon Seclusion**

The State of Marshall has enacted a statute that follows the Restatement (Second) of Torts governing claims for Intrusion upon Seclusion. Under this statute, a plaintiff must show: (1) an unauthorized intrusion or prying into the plaintiff's seclusion; (2) the intrusion must be offensive or objectionable to a reasonable person; (3) the matter on which the intrusion occurs must be private, and (4) the intrusion causes anguish and suffering.

In the case at bar, there is no indication that the information collected through the GPS technology nor the use of this information was objectionable to a reasonable person. Moreover, there is no evidence that the method of using the GPS technology in any way represented some prying into the Plaintiff's life or that the information collected and used was private. Finally, Plaintiff has not shown any anguish or suffering as a result of the gathering and use of the information. Based on the foregoing, Plaintiff has not established an issue of material fact; thus the trial court properly granted summary judgment in favor of the Defendant on this claim.

## **B. Defamation**

For his second assignment of error, Appellant has asked this court to find that there is an issue of material fact that Streeter's comments defamed his character. The State of Marshall follows the Restatement (Second) of Torts view of defamation such that a plaintiff must show: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

In the case at bar, Plaintiff claims that Defendant Haul n' Ride (through its employee, John Streeter) made false statements of fact that the Plaintiff was a "terrorist" and implying that he frequented adult bookstores. According to the Plaintiff these statements were made to Babazork, a third party, who cancelled Plaintiff's scholarship to Capital College. As a result of the loss of the scholarship, Plaintiff claims he was unable to attend the college because he could not pay the tuition, though the issue of special damages is not on appeal. Regardless, the trial court's granting of Defendant's motion for summary judgment was proper in this case as the Haul n' Ride statements are properly classified as opinions or were at least fair comments.

## **C. Deceptive Business Practices**

The State of Marshall has enacted the following statute entitled "Deceptive Business Practices." The applicable section provides:

Unfair deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment,



suppression or omission of such material fact, in the conduct of any trade or commerce are hereby declared unlawful if, in fact, a reasonable person could be misled, deceived or damaged by said representations.

Marshall Revised Code, 505 MRC 815/2.

In the case at bar, there is no indication in the Record that Haul n' Ride neglected to inform Alazork of any material facts that would evidence deceptive practices. Alazork was fully informed of the additional charge that would be assessed if the truck left the State of Marshall. The means by which Haul n' Ride learned of Alazork's misuse was immaterial and in no way represented a deceptive business practice as defined by this statute.

The circuit court granted Haul n' Ride's motion for summary judgment based upon the language in the Agreement. Plaintiff urges this Court to find that Haul n' Ride's rental agreement is silent to the use of GPS technology in the tracking of their rental vehicles; therefore, without notice of this technology, the Plaintiff cannot be charged for taking the rental vehicle across state lines. The use of the GPS technology was known to Streeter at the time of the rental and the use of such technology was implemented to determine rental charges; therefore, the use of this technology was a material fact to the contract that was never disclosed to Alazork. In addition, the Plaintiff argues that the GPS sensor is not obvious, and was actively used by Streeter. Therefore, the failure to disclose this technology represents a deceptive business practice.

We do not find the Plaintiff's argument persuasive. Because the material facts are not in dispute, this issue rests solely upon contract interpretation. We find that Defendant was not bound by the Agreement to notify Alazork of the use of GPS technology to track

the truck's location. Therefore, the circuit court properly granted summary judgment to Haul n' Ride on the deceptive business practices issue.

#### **IV. CONCLUSION**

In light of the foregoing, this Court affirms the order of the Potter County Circuit Court, Judge E. D. Sronik, granting Defendant's motion for summary judgment.

AFFIRMED.

Dated: June 28, 2002

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A. Lires  
Presiding Judge

Smoli, D. N., concurs.  
Wruiing, S. R., concurs.

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**IN THE SUPREME COURT OF THE STATE OF MARSHALL**

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<b>Robert Alazork,</b>	)	
	)	
<b>Plaintiff-Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>No. 02-CV-3024</b>
	)	
<b>Haul n' Ride, Inc.,</b>	)	
	)	
<b>Defendant-Appellee.</b>	)	
	)	

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**ORDER GRANTING LEAVE TO APPEAL**

The Supreme Court of the State of Marshall hereby grants Plaintiff Robert Alazork leave to appeal the decision of the Court of Appeals affirming the Potter County Circuit Court's award of summary judgment in favor of Defendant Haul n' Ride, Inc. The parties shall address the following issues in this appeal:

(1) Did the Court of Appeals err in holding that the use of global positioning system technology in rental vehicles was not an intrusion upon seclusion as a matter of law?

(2) Did the Court of Appeals err in finding that Defendant's statements regarding the Plaintiff were opinion and/or fair comment?

(3) Did the Court of Appeals err in holding that the Defendant did not violate the Deceptive Business Practices Act?

Pursuant to the Parties' stipulation, the opinion of the Court of Appeals shall serve as the Record on Appeal to this Court.

Dated: July 15, 2002

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B. G. Woburt, Chief Justice

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