

Parents May Be Liable for Son's Fake Facebook Page

The parents of a 13-year-old may be liable for negligence by failing to compel their son to remove a fake Facebook page that remained online for nearly a year, when the Facebook page contained libelous, racist, and sexual content about a female classmate.

The boy, along with another classmate, created a fake Facebook page on May 4, 2011. The fake page included an unauthorized profile with racist viewpoints and sexual orientation comments. Some postings were graphically sexual, and some stated that the victim was on medication for mental health disorders and that she took illegal drugs. The students who created the fake page were disciplined by the school on May 10, 2011. The page was not removed by Facebook until April 21, 2012.

The victim, through her parents, sued for defamation and intentional infliction of emotional distress and alleged that the boy's parents breached a fiduciary duty to supervise their child by failing to have the defamatory page taken down. The trial court granted the defendants' motion to dismiss.

The Georgia appellate court reversed the trial court, finding there was a question of fact as to whether the parents were negligent in failing to compel their son to remove the Facebook page once they were notified of its existence.

“[W]e conclude that a reasonable jury could find that, after learning on May 10, 2011, of [the boy's] recent misconduct in the use of the computer and Internet account, the Athearns failed to exercise due care in supervising and controlling such activity going forward,” the appellate court wrote. “Given that the false and offensive statements remained on display, and continued to reach readers, for an additional eleven months, we conclude that a jury could find that the Athearns' negligence proximately caused some part of the injury [the girl] sustained from [the boy's] actions (and inactions). Accordingly, the trial court erred in granting the Athearns' motion for summary judgment in part.”

The appellate court affirmed the trial court's dismissal regarding the parents' duty to remove the Facebook page themselves. “There is no evidence that the Athearns unilaterally had the ability to take down the unauthorized Facebook page by virtue of the fact that it was created on a computer in their home, because it was created using an Internet service they paid for, or otherwise.” Instead, the evidence indicated that only the user who signed up for the password-protected account had the authority to remove the page.

Boston v. Athearn, Georgia Court of Appeals No. A14A0971, issued October 10, 2014.