

No. A11-1923

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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Jerry L. Moore,

Plaintiff/Respondent,

vs.

John Hoff a/k/a Johnny Northside,

Defendant/Appellant.

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**AMICI'S RESPONSE TO RESPONDENT'S MOTION TO STRIKE  
THE BRIEF OF AMICI CURIAE  
MINNESOTA PRO CHAPTER, SOCIETY OF PROFESSIONAL JOURNALISTS;  
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS;  
AND THE SILHA CENTER FOR THE STUDY OF MEDIA ETHICS & LAW**

The Court should deny the motion of Respondent/Plaintiff Jerry L. Moore to strike the brief of amici.

The Amicus Brief appropriately served the function of an amicus brief,<sup>1</sup> and its arguments supported the requested action from this Court, as stated in the conclusion:

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<sup>1</sup> See *Breza v. City of Minnetrista*, 706 N.W.2d 512, 514 n.1 (Minn. App. 2005) ("it is this court's practice to freely grant amicus applications to ensure the development of a more complete appellate record"), *aff'd*, 725 N.W.2d 106 (Minn. 2006).

Amici note that Moore simultaneously criticizes amici both (1) for a district court filing that he believes was intended "to educate Appellant Hoff, so that Hoff could utilize those arguments, case cites, etc. in his appeal brief" (Motion at 1) and (2) for not assisting Hoff earlier (Motion at 10). Neither criticism has merit. The combination creates cognitive dissonance.

Regardless of the precise determination on appeal, this Court's opinion should emphasize that it will apply the same rules to publicly accessible online statements that it would to a printed or spoken version of the same material: (1) regardless of what the suit is labeled, when the thing done to cause any damage to the plaintiff arises from an allegedly false and defamatory statement, the suit is governed by the constitutional requirements and other special rules applicable in defamation actions; (2) no liability for tortious interference can arise when one merely gives truthful information to another; and (3) in cases involving protected expression, an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression.

Brief at 16-17.

To support amici's contention that a clear judicial affirmation of those principles was necessary, the Brief at 5-7 pointed to publicly available local and national commentary on the district court proceedings reflecting consternation and confusion over the district court proceedings. Moore (Motion at 8-9) seeks to strike those references as containing material not in the Record. The Minnesota Supreme Court has rejected arguments similar to those Moore makes here. *Camacho v. Todd and Leiser Homes*, 706 N.W.2d 49, 52 n. 3 (Minn. 2005) ("[T]he article lies in the public domain and provides pertinent information to this court's consideration of public policy concerns in statutory construction. The article informs the court of information in the public domain that may have escaped the court's attention and therefore assists the amicus in fulfilling its proper role.").

In presenting amici's arguments, Amici's Brief understandably discusses some of the same cases cited by Appellant John Hoff. These are significant authorities on the points discussed, and any briefs addressing those issues cannot avoid some discussion of

those cases. That does not make the Brief improperly cumulative. *Cf. St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 410 (Minn. 2007) (the amicus brief “provides citations to relevant precedent, arguments, and policy considerations not included in the primary briefs. Because the brief does not simply duplicate one party’s position and adds some useful insights, it has merit, and we deny the motion to strike.”).

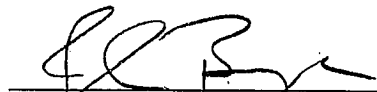
Moore contends that Section II of amici’s Brief “makes new arguments not made below” (Motion at 7-8) in discussing the closing arguments and jury instructions. As the Brief at 10 made clear, that discussion of Moore’s speech-centered closing argument and the district court’s ambiguous instructions provided context for amici’s arguments regarding the need for scrupulous application of the “independent examination of the entire record” standard of review:

Such line-blurring has consequences. As discussed in the next section [Section III], appellate courts cannot ignore the possibility that a jury’s verdict, although arguably proper on some evidence, was tainted by its consideration of an impermissible basis for liability.

Accordingly, the Motion lacks merit. The Court should deny Moore’s motion to strike.

Dated: March 9, 2012

FAEGRE BAKER DANIELS LLP



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John P. Borger #9878  
Leita Walker #387095  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
(612) 766-7501

Attorneys for *amici* Minnesota Pro Chapter,  
Society of Professional Journalists, The  
Reporters Committee for Freedom of the  
Press, and The Silha Center for the Study  
of Media Ethics & Law

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