



# Kansas Supreme Court Reverses Judgment in First Amendment Case as Lathrop Gage Obtains Total Success for News Outlet in BTK Media Dispute

April 30, 2010

Lathrop Gage obtained a total success for the First Amendment on behalf of a Kansas-based news outlet today when the Kansas Supreme Court reversed a jury verdict that had been awarded to a Wichita man who was identified by a TV station as a possible suspect in the BTK murders. The case raised, and answered, the question of what are the limits to a news organization's rights to report the news. *Melanie Valadez, Adm. of Estate of Roger G. Valadez, Appellee, v. Emmis Communications and Todd Spessard, Appellants.*

On October 20, 2006, the Sedgwick County, Kansas jury in Wichita, Kansas awarded Roger Valadez \$1.1 million for mental suffering, shame, humiliation, and damage to his reputation. The Supreme Court today reversed the award, finding "[t]he news media enjoy constitutional protection for reporting true information" and that while Valadez provided testimony that he suffered emotional distress, he failed to "demonstrate that he suffered *severe* emotional distress *beyond* what he experienced as a result of the defendants' constitutionally protected activities." Lathrop Gage attorney Bernie Rhodes (Business Litigation - Kansas City) served as the lead attorney for KSN and tried the case. He was assisted by Melissa Sherman (Business Litigation - Overland Park) on the brief the Firm filed on behalf of the station.

The original jury award was against Emmis Communications (then owner of the station) and the station's news director. Valadez claimed the station linked Valadez to the BTK case after a search of Valadez' home in December 2004 and his arrest on unrelated charges. Dennis Rader was arrested two months later in connection with the murders and ultimately pled guilty to 10 counts of first-degree murder.

Kansas Supreme Court Justice Eric S. Rosen said in today's decision that the state's high court held that the plaintiff didn't present sufficient evidence to get around the First Amendment protection given to the media. "We do not hold that the media is beyond the scope of tortious outrage actions in all circumstances; we merely hold that under the facts of this case the plaintiff failed to prove an injury severe enough to sustain his claim," he wrote in the decision. He also ruled that Valadez's separate claim for defamation "abated," or lapsed, when Valadez died shortly after the trial.



The appeal was originally going to be heard by the state Court of Appeals, but in late 2008 the Kansas Supreme Court selected it on its own accord as a case that should instead be heard in that venue. In his brief filed in that court, Mr. Rhodes argued that the Wichita news outlet "was exercising its legally protected right to inform its viewers of the activities of the local police on a matter of utmost public concern in the community, the ongoing search for the serial killer who had eluded police for decades."

Mr. Rhodes has more than 25 years experience litigating complex business and commercial disputes throughout the United States. In particular he has a wide range of experience in all phases of media law and communications law for print, broadcast, cable and media throughout the Midwest. His extensive jury trial practice, appellate practice and, more recently, alternative dispute resolution, on behalf of media outlets and other business interests has earned him frequent inclusion in publications such as *The Best Lawyers in America* and *Missouri/Kansas Super Lawyers*.

**About Lathrop Gage:**

A full-service law firm, Lathrop Gage LLP has almost 300 attorneys in 10 offices nationwide - from Los Angeles to New York. In 2009, *Chambers USA* ranked Lathrop Gage's corporate, environmental, intellectual property, litigation, real estate and labor and employment teams among the best in the Midwest. For more information, visit [www.lathropgage.com](http://www.lathropgage.com).