

Memorandum

To: Prof. DeKoven
From: Student
Re: Ms. Maria Hilton
Date: November 22, 2008

Our client, Maria Hilton, inquired whether she can recover against Lana Lingle for invasion of privacy. This memo addresses whether Ms. Hilton has a reasonable expectation of privacy (REP) in the third floor common area of her dorm.

Statement of Facts

Ms. Hilton attends a public college, and lives in one of the resident halls provided for on-campus housing. To enter the dorm, a person must use a computerized passkey. A resident advisor sits in the front lobby, monitoring entry and requiring guests to sign in and produce ID. The lobby is monitored by security cameras. Hilton's private bedroom and resident's communal bathroom are on the third floor. The third floor is not monitored. Both the elevator and stairwell require use of a key to access.

Students residing in the dorm are familiar with the public's interest in Ms. Hilton's life, but are disinclined to care. This freedom allows Hilton to relax while in the common area of the dorm, as she does not expect anyone to expose her actions to the public.

Lingle, disguised as a delivery person, gained access to the third floor lounge. While Hilton was spending time with her peers, Lingle took pictures on her camera-phone of Hilton. Lingle published the photos through her employer at 'Stalker Photos.'

Issue Presented

Under California law, does a person have a REP from unwanted intruders in the third floor common area of a dorm when there are stringent rules for entry and other students are unlikely to expose him or her to public view?

This is not a 'deep issue' statement which some professors want. That type of issue statement will generally state the facts, then the law (or vice-versa), then ask the question- in under 75 words.

Brief Answer

Most likely, yes. California law allows a person to recover for invasion of privacy when an unwanted person invades an area where someone would reasonably expect privacy. Both the entry requirements for the dorm and residents' disinterest in Hilton's fame support a REP in the third floor lounge. State courts hold that dorm residents have the same REP in the dorm as inside a home or apartment building. Lingle may claim that the dorm was publicly available, and thus Hilton could not expect privacy. A court would likely rule that the combination of fact and law supports a reasonable expectation of privacy.

Discussion

In order for Ms. Hilton (MH) to recover against Lana Lingle (LL) for invasion of privacy, MH must show that she had a REP in the third floor common area of her dorm. Though a person may not have a complete REP in a private area, California may allow recovery from an

unwanted intruder in the private area. City of Carmel-By-The-Sea v. Young, 2 Cal. 3d 259, 270 (1970). MH will argue that the admittance requirements for her dorm gave her a REP from non-residents of the dorm, especially on the upper floors. LL may argue that the public availability of the lounge does not give MH reason to believe that it is private. Most likely, a court will rule in favor of MH.

To make a claim under the intrusion form of invasion of privacy, one must prove that there was a right to privacy which was intentionally violated. Stryker v. Republic Pictures Corp., 108 Cal. App. 2d 191, 194-95 (2d Dist. 1951). A REP is objectively created where, by community norms, the invader is generally excluded from the place in question. Hill v. National Collegiate Athletic Assn., 7 Cal.4th 1, 36-37 (1994). The question of whether a person has a REP requires a mixing of fact and law to determine. Id. at 40.

[The law also requires the intrusion to be highly offensive to a RP; at Prof. DeKoven's request we did not address that issue here]

An individual does not have to be in a completely isolated place to reasonably expect privacy from an unwanted intruder. Sanchez-Scott v. Alza Pharmaceuticals, 86 Cal.App.4th 365, 373 (2001). In Sanchez-Scott, a female patient visiting her oncologist underwent a breast exam in front of a male drug salesperson. Her doctor identified him as a member of a mentor program working with doctors. The patient found out, after an awkward exam, that the man was not a member of the medical profession. Id. at 368-70. The plaintiff stated a claim for

invasion of privacy because a rational trier of fact could find a REP from non-medical personnel in the exam room. Id. at 376.

The court reasoned that during a medical exam a person can expect a reasonable amount of privacy from an unwanted intruder. Id. at 376. The mere fact that the plaintiff mistakenly assumed the salesperson was a member of the medical profession does not mean she gave consent to his presence. Id. at 373-74. Simply because one consents to being seen by some people, they cannot be 'legally forced' to be seen by everyone. Id.; see also De May v. Roberts, 9 N.W. 146 (1881) (taking action against a doctor who brought a layman to help deliver a baby).

Multiple cases have shown not only a reasonable expectation of privacy in medical exam rooms, but in college dorms as well. In People v. Superior Court, the California court recognized that college students in dorms have a similar REP as tenants in houses or apartments. People v. Superior Court, 143 Cal. App. 4th 1183, 1206-07 (2006). This is based on the theory that the dorm is the student's home for "all practical purposes," and thus should have similar rights. Id.

However, when an individual is voluntarily exposed to public view, he or she may not have a REP from any member of the public. Aisenson v. Am. Broad. Co., 220 Cal. App. 3d 146, 162-63 (1990). There, recent news coverage created a public interest in a judge, subjecting him to media scrutiny. Id. at 152. A photographer filmed the judge walking from his house to his car. Id. at 153. The photographer filmed from across the street, never entering the judge's

property. Id. at 162. The court held that if the judge had a REP, it was limited because he was photographed while in full public view. Id. at 163.

The court reasoned that based on the community interest and manner of the invasion, the judge could not reasonably expect privacy on his driveway. Id. By becoming a person of public interest, he has to some extent waived his right to expect privacy outside his home. Any member of the general public would be able to pass by the driveway and view the judge outside his home. This availability negates any REP from a photographer. Id.

MH will contend that she, like Sanchez-Scott, only expected a specific type of person to be present- dorm residents or invited guests. Despite the dorm's large populace, it seems more protected from intruders than most homes because of the extensive security precautions. Public policy often supports privacy at home more strongly than in a medical office because of the comfort and safety associated with the home. By using the dorm as her home for all practical purposes, MH could contest that the dorm was her temporary home. The court could infer that the lounge operates as MH's living room, and LL used deceit to enter without consent. In short, LL's status in the dorm can be construed as a trespasser or burglar.

A mistaken assumption does not qualify as consent to be seen. Sanchez-Scott, 86 Cal.App.4th at 373-74. In SS, a salesperson was mistaken for a doctor, which did not equal consent, so when MH mistook LL for a delivery person, she did not consent. Neither woman desired

to be seen by the intruder in their actual capacity. SS may have consented to a doctor and MH a delivery person, but both reasonably expected to be hidden from members of the general public.

LL will claim that MH had no REP in a college dorm. The dorm is too populated for MH to know everyone who enters, even if they are students or guests. MH has no method of controlling those allowed inside. There is also an equal possibility that a resident's guest could have taken the picture.

The possibility of another stranger taking advantage of their presence in the dorm allows LL to distinguish between Sanchez-Scott and MH's situation. While a doctor's office limits the people allowed in a room during an exam, a dorm does not. This difference may imply a higher REP in the office than in the dorm. Moreover, LL may argue that she was an invited guest by procuring the required consent to enter from the RA. Lastly, if LL was able to enter on her own, the dorm would not be a place where privacy from unwanted intruders could reasonably be expected.

LL will also analogize to Aisenson, claiming that there was no intrusion because MH was in public view. Like the judge in his driveway, anyone could walk past and see MH in the common area of her dorm. This availability negates any REP MH might have had from members of the media.

MH will distinguish Aisenson, claiming that her dorm is not comparable to the driveway of a home. While any member of the general

public has access to a sidewalk, the access to the third floor is very limited. The general public cannot simply stride past the lounge. They would have to show ID, sign the sign-in sheet, and be escorted upstairs by a resident with a key. The inside of the dorm is analogous to the inside of a home, not the outside.

Further, LL's ability to access the lounge by disguise proves that the RA is overly trusting, and may not do background checks. This does not prove that any member of the public can gain access to the dorm lounge. LL cannot distinguish Sanchez-Scott on the grounds of consent; any consent she had was vitiated by fraud. She received consent because she disguised herself, not because she was a member of the paparazzi. Lastly, even if MH had consented to being seen by LL, her consent may not extend to the public viewing of the photo.

Conclusion

Based on California's laws regarding privacy, it is likely that MH will be able to claim that she had a reasonable expectation of privacy. Intruders attempting to outmaneuver the rules of REP by deceit are not protected by law. These laws were designed to protect those intruded upon. The invasion must also fit the requirement of being 'highly offensive' to a reasonable person. This memo does not concern that issue.