

LAW REVIEW

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CHP OFFICERS EMAIL GROTESQUE PHOTOS OF TRAFFIC ACCIDENT

“It is a sad day, to be sure, when those upon whom we rely to protect and serve do the opposite, and make the decapitated corpse of a teenage girl the subject of international gossip and disrespect, and inflict devastating emotional harm on the parents and siblings of that girl. The CHP should know better. Every one of its officers should know better. The CHP is in a position to ensure that this does not happen again”. So wrote the Court of Appeal last week.

Automobile Accident

Nicole Catsouras, age 18, was decapitated in a tragic automobile accident. CHP officers Thomas O’Donnell and Aaron Reich took photographs at the scene which were transmitted to CHP computers. Then as hard as it is to even imagine that this occurred, Nicole’s family’s lawsuit alleges that on Halloween O’Donnell and Reich e-mailed “graphic and horrific photographs” of Catsouras to members of the public who were not involved in the official investigation.

More than 2,500 web sites posted the photographs and lots of “crazies” e-mailed copies of the photos and mean spirited e-mails to the Catsouras family, all of which caused severe emotional distress.

Lawsuit

Nicole Catsouras' family sued Officers O'Donnell and Reich and the CHP for negligence, infliction of emotional distress, and invasion of privacy, among other claims. Based on the allegations in the lawsuit, the trial court ruled in favor of the officers and the CHP. The family appealed.

Emotional Distress

The Court of Appeal noted that in California, surviving family members generally have no right of privacy when the media discusses the life of a decedent. Any privacy claim dies with the decedent. However, in a lengthy opinion, the Court of Appeal concluded that family members themselves have a privacy right in the death images of a decedent, at least with facts as egregious as those alleged in the Catsouras family lawsuit.

The Court also found that the CHP officers owed a duty to use the death images exclusively for the purposes of the accident investigation and to protect the family's privacy from foreseeable harm by not spreading the sensational images across the Internet.

Governmental Immunity

The Court discussed federal and state immunities ultimately concluding that e-mailed photographs sent to persons unrelated to the accident investigation certainly were not transmitted in furtherance of the investigation and therefore immune acts.

Ruling

The Court of Appeal overturned the trial court ruling – the family’s claims established absence of any legitimate public interest in the details the officers revealed in the photographs. The family’s privacy was invaded by publication of private facts.

Comment

CHP officers are charged with protecting the public, and we have learned to trust and appreciate their service. That an officer would intentionally e-mail such lurid photographs, such that they became a malignant firestorm across the country is so shocking that I question whether it really happened. However, the Catsouras family pleadings claim it happened and those allegations are initially accepted as true, allowing the family to proceed to trial, where they will present their evidence.

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