Hernandez v. Hillsides, Inc., 211 P. 3d 1063 - Cal: Supreme Court 2009
47 Cal.4th 272 (2009) 97 Cal.Rptr.3d 274 211 P.3d 1063

Hernandez v. Hillsides, Inc. was a 2009 California Supreme Court decision that explored the scope of invasion of privacy in a civil tort action for breach of privacy with recording devices and cameras in a workplace environment where the employer, without advising employees, surreptitiously placed a camera in the work area for purposes of monitoring abuse of the computers after hours. In these circumstances, the employer was monitoring possible misuse of the computers after hours to view pornographic sites when the business itself counseled sexually abused children. The precepts used today in evaluation of "level of harm" from the intrusion, and whether it rises to an action in damages – or invasion of privacy -- (much less, whether it rises to a criminal act) was set by this case.

Citing from Hernandez --

"On the one hand, the Court of Appeal did not err in determining that a jury could find the requisite intrusion. While plaintiffs' privacy interests in a shared office at work were far from absolute, they had a reasonable expectation under widely held social norms that their employer would not install video equipment capable of monitoring and recording their activities— personal and work related—behind closed doors without their knowledge or consent." At 277

" **On the other hand**, [emphasis added] the Court of Appeal erroneously found a triable issue as to whether such intrusion was so highly offensive and sufficiently serious as to constitute a privacy violation. Any actual surveillance was drastically limited in nature and scope, exempting plaintiffs from its reach." At 278

The Supreme Court then reversed the Court of Appeal decision and found even though there had been a breach of the reasonable expectation of privacy, the second element of the offense had not been established. Plaintiff workers failed to establish the seriousness of the intrusion resulted in egregious and significant harm.

Further Hernandez Citations --

"(1) A privacy violation based on the common law tort of intrusion has two elements. First, the defendant must intentionally intrude into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy. ***Second, the intrusion must occur in a manner highly offensive to a reasonable person.*** [emphasis added] (*Shulman, supra,* 18 Cal.4th 200, 231, approving and following Rest.2d Torts, § 652B; *Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1482 [232 Cal.Rptr. 668] (*Miller*); accord, *Taus v. Loftus* (2007) 40 Cal.4th 683, 724-725, 731 [54 Cal.Rptr.3d 775, 151 P.3d 1185] (*Taus*).) These limitations on the right to privacy are not insignificant." At 286

"…the plaintiff must show that the intrusion is so serious in "nature, scope, and actual or potential impact [as] to constitute an egregious breach of the social norms." (*Id.* at p. 37; accord, *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998 [89 Cal.Rptr.3d 594, 201 P.3d 472] (*Sheehan*); *Pioneer Electronics* (*USA*), *Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370-371 [53 Cal.Rptr.3d 513, 150 P.3d 198] (*Pioneer*).) At 287

"A relevant inquiry in this regard is whether the intrusion was limited, such that no confidential information was gathered or disclosed." (*Ibid.;* accord, *Sheehan, supra,* 45 Cal.4th 992, 998-999; *Pioneer, supra,* 40 Cal.4th 360, 371.) At 287

“For guidance, we note that this court has previously characterized the "offensiveness" element as an indispensable part of the privacy analysis. It reflects the reality that "[n]o community could function if every intrusion into the realm of private action" gave rise to a viable claim. (*Hill, supra,* 7 Cal.4th 1, 37.) Hence, no cause of action will lie for accidental, misguided, or excusable acts of overstepping upon legitimate privacy rights. (*Miller, supra,* 187 Cal.App.3d 1463, 1483-1484.) In light of such pragmatic policy concerns (see *Taus, supra,* 40 Cal.4th 683, 737), a court determining whether this requirement has been met as a matter of law examines all of the surrounding circumstances, including the "degree and setting" of the intrusion and "the intruder's `motives and objectives.'" (*Shulman, supra,* 18 Cal.3d 200, 236, quoting and following *Miller, supra,* 187 Cal.App.3d at pp. 1483-1484.)” At 295

Degree and Setting of Intrusion (*296)

“Defendants' surveillance efforts also were largely confined to the area in which the unauthorized computer activity had occurred. “ At 296

“Likewise, access to the storage room and knowledge of the surveillance equipment inside were limited.” At 296

“Timing considerations favor defendants as well. After being moved to plaintiffs' office and the storage room, the surveillance equipment was operational during a fairly limited window of time.” At 296

“Defendants' actual surveillance activities also were quite limited in scope. On the one hand, the camera and motion detector in plaintiffs' office were always plugged into the electrical circuit and capable of operating the entire time they were in place. On the other hand, Hitchcock took the critical step of connecting the wireless receptors and activating the system only three times. At most, he was responsible for monitoring and recording inside of plaintiffs' office an average of only once a week for three weeks.” At 296-297

“He never activated the system during regular business hours when plaintiffs were scheduled to work. The evidence shows they were not secretly viewed or taped while engaged in personal or clerical activities.” At 297

Defendants' Motives, Justifications (*297)

“This case does not involve surveillance measures conducted for socially repugnant or unprotected reasons. (See, e.g., *Shulman, supra,* 18 Cal.4th 200, 237 [harassment, blackmail, or prurient curiosity].) Nor, contrary to what plaintiffs imply, does the record reveal the absence of any reasonable justification or beneficial motivation. The undisputed evidence is that defendants installed video surveillance equipment in plaintiffs' office, and activated it three times after they left work, in order to confirm a strong suspicion— triggered by publicized network tracking measures—that an unknown staff person was engaged in unauthorized and inappropriate computer use at night.” At 297

“We also note that Hitchcock's repeated assurances that he installed the surveillance equipment solely to serve the foregoing purposes and not to invade plaintiffs' privacy are corroborated by his actions afterwards. When confronted by plaintiffs about the camera in their office, he explained its presence, and tried to assuage their concerns about being suspected of wrongdoing and secretly videotaped. To this end, he showed them the actual surveillance tape on demand and without delay. Against this backdrop, a reasonable jury could find it difficult to conclude that defendants' conduct was utterly unjustified and highly offensive.” At 299

CONCLUSION: “Nothing we say here is meant to encourage such surveillance measures, particularly in the absence of adequate notice to persons within camera range that their actions may be viewed and taped.

(9) Nevertheless, considering all the relevant circumstances, plaintiffs have not established, and cannot reasonably expect to establish, that the particular conduct of defendants that is challenged in this case was highly offensive and constituted an egregious violation of prevailing social norms. We reach this conclusion from the standpoint of a reasonable person based on defendants' vigorous efforts to avoid intruding on plaintiffs' visual privacy altogether. Activation of the surveillance system was narrowly tailored in place, time, and scope, and was prompted by legitimate business concerns. Plaintiffs were not at risk of being monitored or recorded during regular work hours and were never actually caught on camera or videotape.

We therefore reverse the judgment of the Court of Appeal insofar as it reversed and vacated the trial court's order granting defendants' motion for summary judgment on all counts alleged in the complaint.” At 300-301