

California Court Finds Right to Privacy in Death Scene Photos

A state appellate court panel in California issued a decision on Jan. 29, 2010, allowing a lawsuit to proceed against the California Highway Patrol (CHP) and two of its officers for disseminating photos depicting a dead woman's body at the scene of an auto accident, on the grounds that the deceased's family members had a sufficient privacy interest in the photographs.

"As cases from other jurisdictions make plain, family members have a common law privacy right in the death images of a decedent, subject to certain limitations," Associate Justice Eileen Moore wrote for the three-judge panel in *Catsouras v. Dep't. of California Highway Patrol* 104 Cal. Rptr. 3d 352 (Cal. App. 4 Dist. 2010), which reversed a trial court's dismissal of the family's claims.

The lawsuit stemmed from a fatal car crash involving 18-year-old Nicole Catsouras, who was decapitated in an auto accident on Oct. 31, 2006. According to the opinion, CHP officers arrived at the scene, cordoned off the area where the accident occurred, and took multiple photographs of the decapitated corpse. Two CHP officers, Aaron Reich and Thomas O'Donnell, later e-mailed "graphic and horrific photographs" of the crash scene to some of their friends and family.

The photos soon became readily available online, with more than 2,500 websites in the United States and other countries posting the images. "Plaintiffs were subjected to malicious taunting by persons making use of the graphic and horrific photographs," Moore's opinion stated. "For example, Christos Catsouras, decedent's father, received e-mails containing the photographs, including one titled 'Woo Hoo Daddy' that said, 'Hey Daddy I'm still alive.'"

"With her demise, the torment of her family members began," the opinion continued. "They endured not only her death, and the hideous manner of it, but also the unthinkable exploitation of the photographs of her decapitated remains. Those photographs were strewn about the Internet and spit back at the family members, accompanied by hateful messages."

The Catsouras family's complaint alleged that O'Donnell and Reich had e-mailed the photos of Catsouras to their friends and family members on Halloween "for pure shock value," and sought damages for invasion of privacy and intentional infliction of emotional distress, among other claims.

“California law clearly provides that surviving family members have no right of privacy in the context of written media discussing, or pictorial media portraying, the life of a decedent. Any cause of action for invasion of privacy in that context belongs to the decedent and expires along with him or her,” Moore wrote in the opinion. “The publication of death images is another matter.”

The court relied on cases previous California cases such as *Shulman v. Group W Productions, Inc.* 955 P.2d 469 (Cal. 1998), for the necessary elements of an invasion of privacy suit based on the public disclosure of private facts, which requires that a plaintiff prove the following: 1) public disclosure 2) of a private fact 3) which would be offensive and objectionable to the reasonable person and 4) which is not of legitimate public concern. The court then cited cases from other jurisdictions, including the U.S. Supreme Court case *Nat’l Archives and Records v. Favish* 541 U.S. 157 (2004) as providing “persuasive authority” for extending privacy rights in death photos to family members seeking to prevent their release.

In *Nat’l Archives*, the Supreme Court extended the “personal privacy” exemption under the Freedom of Information Act, 5 U.S.C. § 552, to include surviving family members seeking to block the release of death scene photos of Vincent Foster, a deputy counsel for President Clinton. (For more on *Nat’l Archives*, See “Citing Family Members’ Privacy, Supreme Court Allows Government to Withhold Foster Photos,” in the Spring 2004 issue of the *Silha Bulletin*, and “The Silha Center Files *Amicus Brief* With the United States Supreme Court, Comments with the Council of Europe, And Department of Homeland Security,” in the Summer 2003 issue of the *Silha Bulletin*.)

“In short, the court in *National Archives* recognized that family members have a privacy right in the death images of a decedent,” Moore wrote. “We recognize that there are instances in which matters pertaining to the dead or dying may involve issues of public interest. . . . In the matter before us, however, there is no indication that any issue of public interest or freedom of the press was involved.”

Later in the opinion, Moore wrote that both the CHP and the individual officers could also potentially be held liable for the emotional distress suffered by the Catsouras family members in having the death scene photographs published on the Internet and made widely available. “It unquestionably was foreseeable that the parents and siblings of a decapitated teenager would suffer emotional harm upon seeing the photographs of her mutilated remains strewn

across the Internet,” Moore wrote. “While the CHP contends it was not foreseeable that the gruesome photographs allegedly disseminated for shock value on Halloween would be forwarded to thousands of Internet users, in these days of Internet sensationalism, we must disagree. . . . It is perfectly foreseeable that those e-mails would be forwarded to others, for exactly the same purpose.”

Moore’s opinion stated that, by allowing the lawsuit to continue to the trial stage, it would discourage any similar action by law enforcement figures in the future. “We rely upon the CHP to protect and serve the public. It is antithetical to that expectation for the CHP to inflict harm upon us by making the ravaged remains of our loved ones the subjects of Internet sensationalism,” Moore wrote. “It is important to prevent future harm to other families by encouraging the CHP to establish and enforce policies to preclude its officers from engaging in such acts ever again.”

In a concurring opinion, Justice Richard Aronson wrote that he “would expressly limit any familial right of privacy in death images to photographs taken during an autopsy or for the coroner at a cordoned-off accident scene, and which serve no newsworthy public interest.”

Although Aronson acknowledged that “decendent’s decapitation was public knowledge as a result of news reports and, moreover, this fact was newsworthy to illustrate the severity of an automobile accident occurring on a public highway,” he concluded that just because “an accident occurs on a public highway, [it] does not make every detail connected to the accident ‘public’ or of overriding public interest. . . . There appears to be no social value in the defendants’ allegedly unprivileged dissemination of the accident-scene photographs and the private facts those photographs revealed.”

“While until today no California case had yet recognized a familial right to privacy in autopsy or similar photographs . . . it is no great leap to do so,” Aronson concluded.

Although the CHP and the officers appealed the ruling to the Supreme Court of California, their petition was denied on April 14, 2010.

In an April 15 story in *The Orange County Register*, Alexander Wheeler, O’Donnell’s attorney, said that, now that the case is headed for a trial, the parties can start “getting past the plaintiffs’ outrageous allegations and to the truth.”

“Up until now, the courts have been limited to the plaintiffs’ sensational story,” Wheeler said. According to the April 15 *Register* story, O’Donnell and Reich

said they sent the images out to warn family and friends about the dangers of speeding and driving under the influence.

The Catsouras death scene photos remain widely available online. According to an April 19, 2010 *Newsweek* story, there are multiple websites devoted solely to the Catsouras photos. “It’s the simple things you never expect,” Christos Catsouras said in the *Newsweek* story. “We live in fear of the pictures. And our kids will never Google their name without the risk of seeing them.”

Although the lawsuit would determine only whether the CHP and individual officers are civilly liable for releasing the photos, the Catsouras family has said they would like to get the photos off the Internet entirely. “In a perfect world, I would push a button and delete every one of the images,” said Lesli Catsouras, Nichole’s mother, in the *Newsweek* story. “But it feels good knowing that at least now, at least in California, our case will (help) prevent this from happening to anybody else.”

– Jacob Parsley
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