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Verdicts & Settlements In-Depth

Video Voyeurism Case Nets \$300,000 Verdict

By Natalie White

Heather Bradbury was staying in an oceanfront condominium along with her husband and other friends when she discovered that the owner had videotaped her in the shower.

Horrified, she took the videotape to the local police and, after four years won a \$300,000 verdict against the voyeur/host.

Peter Holland, who represented the woman along with Douglas Fierberg, said the verdict might be just the tip of the iceberg in voyeurism cases.

Since the verdict, Holland and Fierberg have received several phone calls from lawyers handling similar cases or those interested in bringing civil complaints. They said video voyeurism is an area of law that is drawing increased interest.

Expert witnesses at trial testified that victims of video voyeurism number in the tens of millions each year and that they expect those numbers to increase with advances in technology such as cell phones with cameras and smaller video equipment.

The number of criminal cases has increased steadily over the past few years as legislators have enacted stricter state and federal law to stem abuses. However, civil cases remain relatively rare, said Robert Ellis Smith, an attorney and publisher of the Privacy Journal, a monthly newsletter on privacy issues.

But Holland said this verdict and others like it in the last few years show the potential of such cases:

- In 2003, an aspiring model in Michigan was secretly videotaped while changing clothes at a talent agency where she worked and won \$250,000 for intentional emotional distress and

- \$325,000 for invasion of privacy. In 2002, a Chicago judge ordered eight companies and three people to pay more than \$1 million each to 46 male college athletes who were secretly videotaped in locker rooms and showers. The videos were sold through internet sites.

The defense attorney in the case, Ernest Cornbrooks, refused to comment other than to say the case is of no interest beyond its own narrow facts.

"There is nothing about this case which warrants any further public discussion," said Cornbrooks in an e-mail. "There were no novel legal or factual issues in the case. There is nothing about this case which could be regarded as a 'trend.' I have no further comment."

Holland disagrees.

As one of the largest verdicts to come out of Worcester County, Md., he said the award demonstrates that invasion of privacy issues can resonate even in conservative regions. Jurors awarded the plaintiff \$100,000 compensatory and \$200,000 in emotional damages.

"The jury said that this kind of conduct is unacceptable," Holland said. "I think this theme of invasion of privacy sells across geographic and economic lines. I think this verdict says that everyone, everywhere, can understand invasion of privacy and feel the outrage when it happens."

A Blinking Light

Bradbury, a nurse in her mid-twenties, met Alan Kendrick, also in his mid-twenties, about a year before the incident through a mutual friend.

In the summer of 2001, Kendrick invited Bradbury, her husband, and several other friends to vacation at his condominium in Ocean City. When his guests arrived at the condominium Kendrick told them that the only shower working at the time was in the master bedroom. So guests took turns using that shower.

Bradbury went first, followed by another woman who noticed a red blinking light beneath the bed when she exited the shower. She also noticed that the dust ruffle was sitting funny and when she looked beneath the bed she found a video camera running and pointed towards the open bathroom door. The guest pulled out the camera and found video of herself and Bradbury using the bathroom and showering.

Soon after, the guests left the apartment and gave the tape to the Ocean City Police Department, which conducted the criminal investigation. Three years ago Kendrick was found guilty of criminal charges related to the incident and was sentenced to probation and mental health counseling.

A Question Of Strategy

The case highlights some of the challenges presented by civil lawsuits in video voyeurism complaints, such as whether a homeowner's insurance policy is required to cover a criminal act and whether the video itself should be shown to the jury.

The plaintiff's attorneys convinced the jury that the homeowner's policy should provide coverage, despite the defense argument that coverage should be negated by the defendant's criminal conviction in the matter three years ago.

Using a premises liability claim, they argued that a homeowner can be held liable for injuries sustained if there are unsafe conditions on the property or if the owner failed to warn about unsafe conditions despite knowing of them.

"If a landlord knows something is wrong and doesn't warn, that is clearly covered under the policy. In this case he did not warn her that she could not safely take a shower or use the restroom without an invasion of privacy. The video recorder was an unsafe condition and he knew about it," Holland said.

They also argued traditional negligence.

"The standard for negligence is doing something a reasonable person would not do and I argued to the court that this clearly fit the bill. Clearly there is a standard of care that unlawful surveillance is something we do not do to each other and he violated that," Holland said.

The jury found the defendant liable on both claims.

A Delicate Question

Fierberg said another tough issue in the case was deciding how to use the video.

Although the defendant had never shown it to anyone, the woman was already humiliated by having to show it to the police and her lawyers.

"It was clear to us that she had already been tremendously humiliated by others viewing the videotape," said Fierberg. "Simply because she decided to pursue her rights several people had already taken a shot at seeing her. And from a trial perspective, we thought it made no sense to say she was humiliated and then humiliate her again before strangers in the courtroom."

Still, the video played a dramatic role.

Although the video was more than 12 minutes long, they showed only the first minutes of film, which pictured Kendrick (the host) as he made sure the camera was working. Then they showed only a few seconds of Bradbury as she entered the bathroom.

"The moment she begins to disrobe we stopped," Fierberg said. "By doing this we were able to show the clarity of this invasion of privacy. It was a clear and significant invasion of privacy, not a grainy view or obstructed view. We also decided to stop so the jurors could use their imagination. They were permitted to imagine the extent of the violation, to imagine what they may have done themselves in a bathroom that could be caught on film."

Fierberg and Holland said they called several witnesses to show Bradbury's emotional damages, including a post traumatic distress expert, investigators in the criminal case and her co-workers. They testified that she was devastated by the incident. She has a warped sense of her body image; gets dressed in the dark; refuses to use dressing rooms at stores. Her relationship with her husband has been strained.

"The defense tried to argue that it just wasn't that bad, that she was upset but that was a normal reaction, and it wasn't totally disabling," Fierberg said. "We didn't set out to say it was totally disabling. If we had, they would have called us malingerers. What we tried to do was show that it changed her. It changed the way she saw herself and her relationships. It affected her sense of self."

When she broke down at work, her boss helped her get into counseling.

"It was her boss who recognized that there were significant changes and that she was having trouble handling things and got her into counseling. That was the springboard," Fierberg said. "It wasn't the result of lawyers telling her to get counseling or the result of litigation."

Plaintiff's Attorneys: Peter Holland of the Holland Law Firm in Annapolis, Md.; and Douglas Fierberg of Bode & Grenier in Washington D.C.

Defense Attorney: Ernest Cornbrooks III of Webb, Burnett, Cornbrooks, Wilber, Vorhis, Douse & Mason in Salisbury, Md.

The Case: *Bradbury v Kendrick*; Jan. 2005; Circuit Court for Worcester County, Md.; Judge Thomas C. Groton, III.

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