

Unauthorized Use of Mother and Daughter's Images Violates Right of Publicity Act

The use of a mother and her daughter's images without their written permission on the cover of a media kit used to generate advertising revenue for a monthly publication violates the Illinois Right of Publicity Act, an Illinois appellate court found.

McHenry County Living magazine originally took the photograph when it selected the mother's garden as one of the winners in a gardening contest. The image was published as part of a magazine article announcing the contest winners. Later, the magazine published the image on the cover of its "Media Kit & Editorial Calendar," which was used to solicit advertisers for the magazine.

The mother and her daughter sued under the Illinois Right of Publicity Act. The trial court granted the defendant's motion for summary judgment. The defendant argued that, even though there were two publications, "there was only one purpose (to generate advertising revenue), to which plaintiff consented when she entered the garden contest."

The appellate court reversed the trial court, finding the use of the images of the media kit violated the Right of Publicity Act. Under the Act, a person's image or likeness cannot be used for commercial purposes without obtaining the person's previous written consent for the use. The appellate court found that "[n]owhere in the rules is there any language that would advise a contest entrant that, by entering the contest, he or she agreed to the unlimited use of his or her likeness for commercial purposes."

The appellate court wrote that it also disagreed with the defendant's "claim that the media kit and the magazine are bundled into one 'commercial device' that was covered by plaintiff's consent to the subject photograph appearing in the article announcing the garden-contest winners. [The magazine's publisher] testified at her deposition that both the magazine and the media kit were vehicles to generate advertising revenue. From this, defendant concludes that since, from defendant's point of view, the purpose of each was the same—to attract advertisers—plaintiff consented to the unrestricted use of the subject photograph for that advertising purpose."

"[W]e cannot ignore that defendant published the subject photograph twice," the appellate court wrote. "While defendant might have obtained a complete release covering all uses, it did not do so. . . . Contrary to defendant's argument, we believe that the two publications of the subject photograph were for entirely different purposes, one covered by the Act, one not."

The appellate court found that the mother and daughter were entitled to statutory damages. The appellate court remanded the case to the trial court to determine if court costs and attorneys' fees should be awarded to plaintiff.

The plaintiff was represented by Balough Law Offices, LLC.

Trannel v. Prairie Ridge Media, Inc., Ill. 2d District No. 2-12-0725, issued March 29, 2013.