Right Of Privacy Claim Survives Summary Judgment Based On Oral Disclosure in Workplace

In *Ignat v. Yum! Brands* (March 18, 2013) an employee claimed a violation of her right of privacy when her supervisor publicly disclosed to coworkers her bipolar condition. The trial court granted summary judgment to the employer, but the 4th District Court of Appeal recently reversed.

Summary judgment was granted at trial because the court held that the right of privacy tort required a disclosure in writing. But the appellate court reversed, reviewing the history of the right of privacy tort in California and finding that:

The "rule" requiring a written publication as an element of a public disclosure of private facts privacy claim in California originated in dictum – which lacked support in the case law on which it was based – in an opinion that rejected the tort and all its principles, instead basing its holding on another principle entirely.

We conclude that limiting liability for public disclosure of private facts to those recorded in a writing is contrary to the tort's purpose, which has been since its inception to allow a person to control the kind of information about himself made available to the public – in essence, to define his public persona.

The 4th District noted that the writing requirement may have made sense before radio and television came into being, but these days private facts can be widely disclosed through oral media.

The court also noted the distinction between the California constitutional right of privacy and the right of privacy tort which was at issue in the case. By contrast, the constitutional right of privacy, enacted by voters in 1972 as an amendment to the state constitution, was propelled by concern about "government snooping" and collecting and stockpiling unnecessary information by government and businesses.