

***Mezger v. Bick*, 2021 Cal. App. LEXIS 550**

There is no invasion of privacy where sounds and video captured from a neighbor's Nest security camera are incidental to a neighbor's security interest.

FACTS/PROCEDURE

In July 2018, Plaintiffs Sandra and Jeffrey Mezger sued Defendants and neighbors, Kathy Griffin and her boyfriend Randy Ralph Bick, Jr., alleging Defendants' Nest security cameras invaded Plaintiffs' right to privacy by recording video footage of their backyard and audio of their private conversations. Plaintiffs alleged the true purpose of the camera system was to record their family and provide Defendants with evidence to make noise complaints to the HOA—something that occurred regularly. Furthermore, Plaintiffs alleged the security system also captured conversations within their home, that the recordings were constant and continuous, and that Plaintiffs were consequently prevented from opening the windows or using their backyard as desired.

Defendants moved for summary adjudication. In support of the motion, Defendant Griffin testified that she was a public figure who had been stalked and received death threats in the past. She stated the Nest security system was installed for her personal safety and was entirely within her property. The trial court granted Plaintiffs' ex parte application requesting the court allow additional evidence in support of their opposition. Plaintiffs filed a supplemental opposition with further supporting evidence, including testimony that Defendants previously released one of the recordings to the Huffington Post and that Griffin used some of the recordings during her stage performances. On March 16, 2020, the trial court issued a ruling granting Defendants' motion, finding the evidence did not create a material dispute and Defendants' conduct had an insubstantial impact on Plaintiffs' privacy interests. Plaintiffs appealed.

HOLDING/DISCUSSION

The Court of Appeal for the Second District affirmed. Plaintiffs argued the case presented an issue of first impression: "Do residents have a reasonable expectation of privacy concerning constant audio/video surveillance of their private, walled backyard?" (*Mezger v. Bick*, 2021 Cal. App. LEXIS 550, 21.) The Court rejected that this was the true issue at hand, stating: "The question here is, *did plaintiffs create a material factual dispute whether defendants' cameras intruded on their right to privacy in a highly offensive or serious matter?*" (*Ibid.*)

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (hereinafter *Aguilar*)). "Once the [movant] has met that burden, the burden shifts to the [other party] to show that a triable issue of one or more material facts exists as to [that] cause of action . . ." (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar*, at p. 850.) Summary judgment is no longer a disfavored remedy, but rather "a particularly suitable means to test the sufficiency" of the plaintiff's or defendant's case." (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542.) The elements of a common law invasion of privacy claim are intrusion into a private place, matter, or conversation, in a manner highly offensive to a reasonable person. (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259.)

Here, the Court concluded no material dispute regarding the offensiveness or seriousness of the intrusion existed. Griffin's celebrity status and past demonstrated legitimate safety concerns existed. Furthermore, the audio and video recordings of Plaintiffs were incidental—the videos only showed a small portion of plaintiffs' backyard, guests could hardly be seen, if at all, and the content of the conversations was hardly discernible unless spoken at clearly elevated levels, in which case Plaintiffs could no longer reasonably expect such conversations to remain private. **Therefore, any impact on Plaintiffs' privacy interests was insubstantial as a matter of law and the trial court properly granted summary judgment in favor of Defendants.**