

18-8478

No. _____

Supreme Court, U.S.
FILED

AUG 28 2018

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

SHEILA HALOUSEK
Petitioner

v.

YUBA COUNTY ANIMAL CARE SERVICES
Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL,
APPELLATE DEPARTMENT,
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF YUBA,
THIRD APPELLATE DISTRICT

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ORIGINAL

QUESTIONS PRESENTED

With regard to the violation of Petitioner's rights to receive advance notice for due process, prior to the Respondents' seizure of private property: what is required for the consistent application of these civil rights and the application for redress?

With regard to Respondents' violation of Petitioner's rights to privacy: what is required for the consistent application of these civil rights and for redress of violations?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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For cases from state courts: the opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The remaining California court decisions appear at Appendix B through C to the petition and are unpublished.

JURISDICTION

The date on which the highest state court decided this case was/is unknown to Petitioner, however, it was filed on April 5, 2018. A copy of that decision, from the Appellate Division of the Superior Court of California, County of Sacramento, Third Appellate District, appears at Appendix A.

No petition for rehearing was filed in this case.

A timely Petition for Review, electronically filed on May 8, 2018, in the Supreme Court of the State of California, was thereafter denied. This was filed on the following date: June 13, 2018; this information appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitution:

In the United States the right to petition is guaranteed by the First Amendment to the United States Constitution, which specifically prohibits Congress from abridging "the right of the people...to petition the Government for a redress of grievances."

According to the Court in the 1972 decision *California Motor Transport v. Trucking Unlimited*, "The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. **Certainly, the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right to petition.**"

In 1983, the Supreme Court's opinion in *Bill Johnson's Restaurants, Inc. v. NLRB* set out the principle that "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances." In a June 2002 decision, *BE&K Construction Co. v. National Labor Relations Board*, the high court, though not ruling on First Amendment grounds, nevertheless noted that it had long viewed the right to sue in court as a form of petition.

"We have recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights," Justice Sandra Day O'Connor wrote for the Court, "and have explained that the right is implied by the very idea of a government, republican in form." O'Connor further observed that the First Amendment petition clause says nothing about success in petitioning — "it speaks simply of the right of the people to petition the Government for a redress of grievances."

The right to petition the government for redress of grievances includes a right to file suit in a court of law. When right-to-sue claims do not involve issues of constitutional magnitude, such as forms of "political expression," the Court has grounded its First Amendment analysis in associational freedoms inherent in a collective resort to the courts. But when neither constitutional issues nor collective action is present, the Court has addressed claims of the right to seek redress in court as a due-process or equal-protection challenge.

The Constitution states only one command twice, the requirement for due process. The genesis of due process found in the United States Constitution is as follows: the Fourth Amendment stipulates that, according to the federal government, no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states, which includes California as well as the counties and municipalities incorporated therein. Section One of the Fourteenth Amendment to the United States Constitution states in the relevant part: "...[N]or shall any State deprive any person of life, liberty, or property, without due process of law...." These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.

The U.S. Supreme Court has published many opinions on this issue and has arrived at the conclusion that due process is essentially the right of a party to be provided "notice" and "an opportunity to be heard" on all issues in dispute. Such a requirement provides that notice must be in advance so that one might be speak up to be heard prior to any other action taken. In the U.S. Supreme Court case of *Grannis v. Ordean* (1914) 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 [234 U.S. 385], the Court stated, "The fundamental requisite of due process of law is the

opportunity to be heard. Petitioner contends that, if she had actually been “heard,” the merits of her case would have prevailed.

In a 2016 case, in the Court of Appeals of the State of Oregon, the *State of Oregon, Plaintiff-Respondent, v. Voyles, Defendant-Appellant*, it was concluded that the trial court erred in allowing the warrantless seizure of the defendant’s horses that were boarded on another’s property.

Policy of law favors trial on merits, that controversies should be heard and disposed of on their merits (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal. App. 4th 681, 694–703, 84 Cal. Rptr. 3d 351; *Berman v. Klassman* (1971) 17 Cal. App. 3d 900, 909, 95 Cal. Rptr. 417).

See also, *California Casualty Ins. Co. v. Appellate Department* (1996) 46 Cal.App.4th 1145, 1147, 1149, while a small case, it raises a significant principle: judges, including appellate judges, are required to follow the law.

While there is no express right to privacy in the United States Constitution, the United States Supreme Court recognized the right for the first time in *Griswold v. Connecticut* 381 U.S. 479 (1965). Over the past few decades, there has been a proliferation of privacy-related statutes passed aimed at protecting privacy rights in a wide variety of contexts.

United States Code: Section 652A. General Principle.

- “(1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.
- “(2) The right of privacy is invaded by:
 - (a) **unreasonable intrusion upon the seclusion of another**, as stated in 652B; or
 - (b) appropriation of the other's name or likeness, as stated in 652C; or
 - (c) unreasonable publicity given to the other's private life, as stated in 652D; or
 - (d) **publicity that unreasonably places the other in a false light before the public**, as stated in 652E.”

United States Code: Section 652B. Intrusion upon Seclusion.

“One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”

United States Code: Section 652E. Publicity Placing Person in False Light.

“One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.”

As above, invasion of privacy occurs when a person or entity intrudes upon the personal life of another person without just cause. Civil rights laws provide a legal right to privacy. There are four main types of invasion of privacy, all of which support a civil lawsuit. These include (1) intrusion of solitude, (2) appropriation of name or likeness, (3) public disclosure of private facts, and (4) false light. Many actions may be considered an invasion of privacy.

Intrusion of solitude occurs when an individual intrudes upon another person’s private affairs in a physical manner where such person had a reasonable expectation of privacy. Given the heavy duty locks Petitioner had in place to secure access to her rented property preventing any unauthorized access, along with the years of no other breaking and entering, Petitioner not only took steps to secure her property and privacy, she also had a reasonable expectation of privacy. This is especially true as Respondents’ did not provide any advance notice whatsoever to Petitioner. By not adhering to the legally required due process in providing Petitioner with advance notice, Respondents also effectively precluded Petitioner from making any timely defense.

Invasion of privacy is considered the intrusion upon, or revelation of, something private. *Huskey v. National Broadcasting Co.*, 632 F. Supp. 1282 (N.D. Ill. 1986). One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his/her private affairs or concerns, is subject to liability to the other for invasion of privacy. *Jackson v. Playboy Enterprises, Inc.*, 574 F. Supp. 10 (S.D. Ohio 1983).

United States Code: Section 652B Intrusion Upon Seclusion

“One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to *liability to the other for invasion of his privacy*, if the intrusion would be highly offensive to a reasonable person.”

This form of invasion of privacy does not depend upon any publicity given to the person whose interest is invaded or to his affairs. It consists solely of an intentional interference with his interest in solitude or seclusion, either as to his person or as to his private affairs or concerns, of a kind that would be highly offensive to a reasonable person.

The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room

An invasion of privacy here is one consisting solely of an intentional interference with Petitioner's interest in solitude or seclusion, either as to his or her person or private affairs or concerns, of a kind that would be highly offensive to a reasonable person. *Whipps Land & Cattle Co. v. Level 3 Communications*, 265 Neb. 472, 658 N.W.2d 258 (2003). In this case, the court represented that trespassing onto real property, without more, is not the form or magnitude of interference into a person's solitude or seclusion. Petitioner disagrees; even the smallest or most simple trespass on her property disturbs valuable livestock that might be birthing or otherwise in a delicate condition. (To be explicitly clear, disrupting birthing might result in the death of newborns and/or mothers. Also, disturbing livestock in a delicate condition might result in further injury. Both these situations could cause huge economic losses.) Such would not only rise

to the level of being highly offensive to a reasonable person, but would require investigation, and would be actionable to recover damages.

However, Respondents' trespass was not inadvertent, but more than interference into a person's solitude or seclusion and highly offensive. Any person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall be liable for invasion of privacy. In fact, Respondents' trespass included breaking through a locked barrier and was done with clear intention of seizing and removing Petitioner's private property without her knowledge, awareness, or any due process. Even beyond this trespass and invasion of privacy, Respondents interfered with Petitioner's ranching activities and sabotaged her agricultural business.

In *Sillasen v. Winterer*, 76 Neb. 52, 54, 107 N.W. 124, 125 (1906), the court stated that "the rule is firmly established in this state and elsewhere that, where the nature and frequency of trespasses are such as to prevent or threaten the substantial enjoyment of the rights of possession and property in land, an injunction will be granted." Also stated in *Thomas v. Weller*, 204 Neb. 298, 304, 281 N.W.2d 790, 793 (1979), that "[c]oncerning simple acts of trespass, equity has, in most cases, no jurisdiction, but if the nature and frequency of trespasses are such as to prevent or threaten the substantial enjoyment of the rights of possession and property in land, an injunction will be granted."

"In an action for invasion of privacy, the damages that a plaintiff may recover are (1) general damages for harm to the plaintiff's interest in privacy which resulted from the invasion; (2) damages for mental suffering; (3) special damages; and (4) if none of these are proven, nominal damages." *Sabrina W. v. Willman*, 4 Neb. App. 149, 540 N.W.2d 364 (1995).

United States Code: Section 652E. False Light. One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, (a) the false light in which the other was placed would be

highly offensive to a reasonable person, and (b) the actor had knowledge of or *acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.*

The legal doctrine of false light addresses people's right to not have false or misleading information, which puts them in a false light, made public. In other words, it deals with the invasion of a person's privacy by disseminating false or misleading information, rather than the gathering of information through invasion of privacy. For Respondents, Yuba County Animal Care Services, to publically haul off Petitioner's horses, in plain view of all the neighbors and all passersby, who would have driven past on Loma Rica Road, the main road through town, without cause or justification, publically disseminates the misleading information that Petitioner's horses were abused in some way. Such a false presentation of any animal owner would be highly offensive or embarrassing to any reasonable person. Respondents' actions resulted in reputation damage as well as caused mental anguish, injury, and suffering to Petitioner, a long term resident of the Loma Rica Community.

One court has explained that "[t]he requirement to show malice applies only to public figures, which plaintiffs are not." *M. G. v. Time Warner, Inc.*, 89 Cal. App. 4th 623, 636 (2001)

False light invasion of privacy "is the wrong inflicted by publicity which puts the plaintiff . . . in a false but not necessarily defamatory position in the public eye." . . . "[A] false light claim still requires the invasion of some type of privacy interest. "The right of privacy concerns one's own peace of mind, while the right of freedom from defamation concerns primarily one's reputation."

Cort v. St. Paul Fire & Marine Ins. Cos., 311 F.3d 979, 987 (9th Cir. 2002); accord *Kennedy Funding, Inc. v. Chapman*, No. C 09-01957 RS, 2010 U.S. Dist. LEXIS 116038, at 13 (N.D. Cal. Nov. 1, 2010) ("The two torts are distinct, however, in that false light involves an invasion of privacy, not just harm to reputation."). However, "[w]hen . . . an invasion of privacy

claim rests on the same allegations as a claim for defamation, the former cannot be maintained as a separate claim if the latter fails as a matter of law." *Alszeh v. Home Box Office*, 67 Cal. App. 4th 1456, 1464 (1998).

STATEMENT OF THE CASE

This petition is from an order made after the judgment, which deprived Petitioner of her substantial rights and civil liberties.

Without any prior contact or notice, expression of concern, or due process of any kind, on August 24, 2017, Respondent, Yuba County Animal Care Services, absconded with Petitioner's valuable horses from her rented pasture. In so doing, Respondents trespassed, illegally seized her private property, violated her privacy, and created a public spectacle, which damaged Petitioner's reputation. Respondents also interfered with her ranching activities and sabotaged her agricultural business. (One of the horses, "Max," a registered Arabian, was Petitioner's best cowpony, he could and would navigate any terrain, from rock piles to "quicksand" like mud up to his hocks, also water and jumping obstacles. Max would also side up to open gates, spin and turn on a dime, and jump into a full gallop from a standstill, keeping up with the most "rocket" like little calves that can blast off every direction. We used to practice these skills during team penning at the Yuba County Sheriff's Posse arena on weekends during the summer; Max knew his job and applied himself, really putting his heart into it. The other horse, "NestLee," a registered American Warmblood; was both a breeding and eventing prospect and also in training. Neither were mere pasture ornaments and both were incredibly valuable.)

Petitioner, as is her constitutional civil right, has pursued her grievance against Respondents by bringing suit in court to seek redress for this horrific malfeasance.

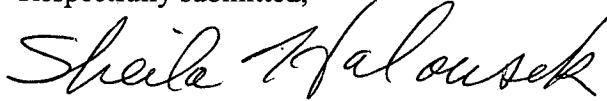
REASONS FOR GRANTING THE PETITION

We hold that the federal mandated civil rights to due process are so vital and inherent to the fundamental and effective operation of law as to warrant two Amendments, the Fourth and the Fourteenth Amendments, to the United States Constitution, which states only this one command twice; stipulating that no one shall be "deprived of life, liberty or property without due process of law." Also, that the right to petition the government for redress of grievances, including the right to file suit in a court of law, has been recognized as one of the most precious of the liberties to be safeguarded. In this case, the lower court has so far departed from the accepted and usual course of proceedings as to necessitate the Court's supervisory power. This case presents important issues and provides the opportunity to provide clarity and consistency in application of law on important points: the right of the Petitioner to file suit in court, at any and all levels, to seek redress for being deprived of property without due process of law.

CONCLUSION

Accordingly, for the foregoing reasons, Petitioner requests that this Court grant the petition for certiorari.

Respectfully submitted,



Sheila Halousek, in Pro Se

Dated: August 28, 2018