Case No. 17-004
SUPREME COURT

ELLIOT v. BROWN PHOTOGRAHPY, INC.

Parties: **Appellants-Cheryl Elliot and Kyra Williams**
Respondent-Brown Photography, Inc.

Issues:

(1) Whether Appellants' claims for invasion of privacy were properly dismissed when Minnesota has never recognized such a claim.

(2) Whether Appellants' negligence and intentional infliction of emotional distress claims against Brown Photography were properly dismissed on summary judgment.

Facts:

Cheryl Elliot and Kyra Williams sued Brown Photography for invasion of privacy and defamation. The two were roommates at Winona State University. During spring break, they visited Elliot's sister in Costa Rica. During the vacation, Elliot's sister took several photographs of Elliot and Williams sunbathing topless on a nude beach. After returning to Minnesota, Elliot took a flash drive full of photographs to Brown Photography to be developed. When she picked up her photos, a note was included that stated several photos were not printed because of their "graphic nature."

The employee at Brown Photography, who developed the photos printed and kept a copy of the nude photos of Elliot and Williams. He was 17-years-old and worked part-time at Brown Photography. He had worked there for only three months. The employee developed the photos during work hours. The employee showed the photos he kept to a friend of his. The friend also attended Winona State University and he recognized Elliot and Williams. The friend asked the employee to send him a copy of the photos. The employee refused, fearing that he might get in trouble at work. The employee did lend the photos to the friend for one day. The friend scanned the photos and posted them online. Neither the employee nor the friend made any money on their use of the photos. The employee did not know what the friend did with the photos.

At the end of the school year, Elliot and Williams heard rumors that copies of nude photographs from their vacation were circulating around the school and in town. Students were printing the photos of Elliot and Williams off of the web site. When they discovered the photos online, Elliot and Williams sued the friend of the Brown Photography clerk and obtained an injunction against that student, which resulted in the removal of the photos from the Internet. Elliot and Williams settled their lawsuit against that student in a confidential settlement, which included a public apology to the two women.

Elliot and Williams separately brought suit against Brown Photography. They did not sue the employee who developed the photos. They claimed that Brown Photography had invaded their privacy, acted negligently in not supervising its employee, and had intentionally inflicted emotional distress upon them by its lax supervision and oversight of its employee. Elliot claimed she was so embarrassed that she transferred to another university. Williams remained at Winona State. Both claimed they were shocked, embarrassed, and became depressed when they learned about the distribution of the nude photos. They complained of headaches, insomnia, and loss of appetite.

Brown Photography generally trained its employees to use their judgment regarding the printing of any potentially inappropriate photos. Regarding nude photos, Brown Photography's practice was for its employees not to print them. Brown Photography was unaware that its employee printed and kept the photographs for himself. Up until this incident, the employee's performance had been satisfactory. He just completed his probationary period with the company.

When Brown Photography learned what its employee had done, it fired him. Brown Photography had never had trouble with employees printing and using inappropriate photos for their own use. In the past, two employees were disciplined for using a computer to view pornography on the Internet. One employee was fired for printing photos for friends and family members for free.

Brown Photography moved to dismiss the complaint on the grounds that it failed to state a claim for which relief could be granted. The district court dismissed the privacy claim, noting that Minnesota courts had never recognized a cause of action for invasion of privacy. Later, the district court dismissed the negligence and emotional distress claims, finding that Brown Photography had not acted unreasonably and that it could not be responsible for the wrongful conduct of its employee.

The Court of Appeals, while noting that an overwhelming number of other states recognized such claims, affirmed the decision. It noted it was without authority to create a cause of action for invasion of privacy that neither the Minnesota Supreme Court nor the Minnesota Legislature ever recognized. It further agreed that Brown Photography had acted reasonably and that it should not be responsible for the conduct of the employee's friend.

Authorities:
The following is a brief summary of some things you should think about and keep in mind when you read the cases and as you prepare your briefs and arguments. You are not limited to these points. Instead, they are just good starter questions to think about. You will also notice some cases are available on the YIG website. These cases represent some of the materials you can use to begin your research. Other case citations are below but are not provided—you will need to seek out these case materials to complete your briefs and oral arguments (denoted by **)

Summary:

Issue #1—Right to Privacy
Should Minnesota recognize a claim for invasion of the right to privacy?
Does *stare decisis* or precedent suggest that this new claim not be allowed?
Has the Minnesota Legislature ever considered enacting a statute allowing a claim for invasion of privacy? Should that matter?
Given the number of other states that permit an invasion of privacy claim, is there a reasoned basis to not allow such a claim in Minnesota?
What will happen if such claims are allowed?
What risks does the ease of spreading information pose to individual's rights?

Issue #2—Employer's Responsibility for Employee Conduct
Did Brown Photography act reasonably? Should it be "vicariously liable" for its employee's conduct?
Should the plaintiffs have an opportunity to present their case to a jury?
Is Brown Photography responsible when one of its employees acts inappropriately? Is it responsible for the conduct of someone who is not its employee?
Was it reasonable for Brown Photography to expect or foresee that an employee might act improperly and misuse a customer's photos? Should the employee have expected or foreseen that his friend might do something with the photos?
Did Brown Photography benefit from its employee's conduct? Does or should that matter?
Were Elliot or Williams harmed from the printing of the photos, from the photos being shared with the friend, or from the friend's posting on the web, or from all the above?

Cases and Related Materials:

Hendry v. Conner, 303 Minn. 317, 226 N.W.2d 921 (1975)
Richie v. Paramount Pictures Corp., 544 N.W.2d 21 (Minn. 1996)
Stubbs v. North Memorial Medical Center, 448 N.W.2d 78 (Minn. Ct. App. 1989)
Hentges v. Thomford, 569 N.W.2d 424 (Minn. Ct. App 1997)
**Marston v. Minneapolis Clinic of Psychiatry & Neurology, Ltd., 329 N.W.2d 306 (Minn 1982)
**Copeland v. Hubbard Broadcasting, Inc., 526 N.W.2d 402 (Minn. Ct. App. 1995)
**W. Page Keeton, Prosser and Keeton on the Law of Torts, § Right of Privacy (5th ed. 1984)
**Restatement (Second) of Torts, §§ 652B—625E (1977)
**P.L. v. Aubert, 545 N.W.2d 666 (Minn.1996)

Restrictions:

Participants may not refer to or rely upon the Minnesota Supreme Court's decision in Lake v. Wal-Mart Stores. Inc., 582 N.W.2d 231 (Minn. 1998), as they prepare their case briefs or oral arguments