UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 36 | Number 2 Article 20

2-1-1958

Torts -- Privacy -- Bad Debt Letters to Employer

Earmine L. Poteat Jr.

porations that cannot afford to finance stock purchase agreements internally and the life insurance companies who will lose many potential buyers of business life insurance.

ROBERT M. HUTTAR

Torts—Privacy—Bad Debt Letters to Employer

In a Georgia case, *Gouldman-Taber Pontiac, Inc. v. Zerbst*,[1] the defendant had written the plaintiff's employer a letter in which the plaintiff's debt was described and the employer's aid in collecting the debt was solicited. The employer confronted the plaintiff with the letter, asked her to explain her failure to pay, and informed her that the letter would be kept in the permanent file on her until the defendant sent another letter stating the debt had been paid. An action was brought by the plaintiff for damages for invasion of her privacy, which invasion was alleged to have caused her great mental pain and distress. Held, an employee has a right of privacy as against his employer in the matter of the debts he owes, and a creditor who gives such information to the employer is liable to the employee for an invasion of his privacy.[2] Judge Townsend concurring specially in denying a motion for rehearing stated, "The spirit and intent of Georgia law on the subject of the right to sue in tort for an invasion of the right of privacy is sufficiently broad to cover a case such as is made here. I do not think this rule of law should be given lip service only. Coercive action which tends to limit the free choice of an individual in resisting what he feels to be an unjust claim for money upon him is reprehensible, and there have been many times in this state where employment was so scarce that to threaten an employee with discharge was equivalent to threatening him with starvation."[3]

A tort action for the invasion of the right of privacy has been recognized in twenty states, Alaska, and the District of Columbia.[4] It has been limited by statute in two other states[5] and has been declared

[1] 99 S.E.2d 475 (Ga. 1957).

[2] The court referred to McDaniel v. Atlanta Coca Cola Bottling Co., 60 Ga. App. 92, 2 S.E.2d 810 (1939), wherein it was held that publication or commercialization of the information by the defendant is not necessary in order for the plaintiff to recover for an invasion of privacy. The court also adverted to Quina v. Roberts, 16 So. 2d 558 (La. App. 1944), wherein the defendant's letter to the plaintiff's employer requesting aid in collecting a debt of $1.45 was held to warrant a recovery by the plaintiff of $100. (The *Gouldman-Taber Pontiac* and the *Quina* cases are the two most extreme holdings protecting a debtor from an invasion of his privacy by a creditor.) That the plaintiff claimed the alleged debt was not owed and that the defendant had not brought suit nor gotten judgment against her was emphasized by the court in the principal case.

[3] 99 S.E.2d at 479.

[4] Annots., 138 A.L.R. 25 (1942), 168 A.L.R. 448 (1947), 14 A.L.R.2d 753 (1950), A.L.R. Supp. Service 771 (1957).

[5] UTAH CODE ANN. §§ 76-4-8, 9 (1953), Donahue v. Warner Bros. Pictures

not to exist in at least two states.[6] However, the majority of these jurisdictions hold, or at least would very likely hold, that under the facts of the *Gouldman-Taber Pontiac* case there is no violation of this right.

In *Voneye v. Turner*,[7] the court held that there was no actionable invasion of the plaintiff's privacy, that any invasion to be actionable must be an unwarranted one in the sense that it unreasonably and seriously interferes with another's interest in keeping his affairs unknown to the public.[8] The court expressed the view that employers properly have an interest in debts of their employees and that debtors realize that most employers have such an interest and will approach them in regard thereto.

In *Patton v. Jacobs*,[9] the defendant sent to the plaintiff's employer letters describing the plaintiff's failure to pay, and the court concluded that since the information was given only to the employer and not to the general public and was not accompanied by libelous or coercive matter, it was not an unreasonable interference with the plaintiff's right of privacy. The court decided that the employer was not in the same category as the general public and that he has the right to know the status of the financial obligations of his employees by virtue of his expense and inconvenience in defending against garnishment proceedings and in making garnishee entries on books.

Housh v. Peth[10] follows the majority in holding that the defendant's conduct to be actionable must have been unreasonable. There are cases which hold that advertisement of the plaintiff's debt by the creditor in his store window[11] is an invasion of privacy and that publishing the debt in a local newspaper[12] subjects the creditor and the newspaper to liability for invasion of the right. But recovery has been denied where the plaintiff's account was advertised by handbill as being for sale,[13] and also where the creditor telephoned the employer.[14]

Distributing Corp., 2 Utah 2d 256, 272 P.2d 177 (1954); N.Y. CIV. RIGHTS LAW §§ 50, 51, Metzger v. Dell Publishing Co., 136 N.Y.S.2d 888 (Sup. Ct. 1955); Schumann v. Loew's Incorporated, 135 N.Y.S.2d 361 (Sup. Ct. 1954).

[6] Brunson v. Ranks Army Store, 161 Neb. 519, 73 N.W.2d 803 (1955); Yoeckel v. Samonig, 272 Wis. 430, 75 N.W.2d 925 (1956).

[7] 240 S.W.2d 588 (Ky. 1951).

[8] See RESTATEMENT, TORTS § 867 (1939).

[9] 118 Ind. App. 358, 78 N.E.2d 789 (1948).

[10] 99 Ohio App. 485, 135 N.E.2d 440 (1955) (the court held that a campaign of telephone calls to the plaintiff was an invasion of her privacy, but one call would not have been enough).

[11] Brents v. Morgan, 221 Ky. 765, 299 S.W. 967 (1927).

[12] Trammel v. Citizens News Co., 285 Ky. 529, 148 S.W.2d 708 (1941).

[13] Judevine v. Benzies-Montanye Fuel & Warehouse Co., 222 Wis. 512, 269 N.W. 29 (1936) (the holding here may be explained by Wisconsin's refusal to recognize the right of privacy).

[14] Lewis v. Physicians & Dentists Credit Bureau, Inc., 27 Wash. 2d 267, 177 P.2d 896 (1947) (the court seems to hold that if the right of privacy exists in the state of Washington, it cannot be violated by oral publication).

In *Flake v. Greensboro News Co.*,[15] the Supreme Court of North Carolina recognized the right of privacy. But there is no indication in that case as to how the court would hold if confronted with facts similar to those in the *Gouldman-Taber Pontiac* case.

EARMINE L. POTEAT, JR.

Torts—Trespass to Land—Unintential and Non-Negligent Entry as a Defense

The early English common law imposed liability for trespass upon one whose act directly brought about an invasion of land in the possession of another. It mattered not that the invasion was intended, was the result of reckless or negligent conduct, occurred in the course of extrahazardous activity, or was a pure accident; nor did it matter that no harm resulted. All that seems to have been required was that the actor did the act which in fact caused the entry.[1]

It has been stated by eminent authority that, "The law on this subject is undergoing a process of change. Among the more important tendencies is the limitation of liability to invasions which are intended, or negligent, or the result of abnormally dangerous activity."[2]

Smith v. Pate[3] presented the North Carolina Supreme Court, for apparently only the second time in its history, the question of whether unintentional and non-negligent entry to land constitutes trespass. The defendant driver's automobile crashed into the plaintiff's building; the plaintiff sued for trespass to land, without alleging negligence; and the defendant pleaded unavoidable accident. The trial court struck the defense, but the supreme court held this to be error on the ground that unavoidable accident is a valid defense if pleaded.

The first North Carolina case on the subject, *Newsom v. Anderson*,[4] followed the early common law rule. There, the defendant, "without design or carelessness," cut down a tree on his own land, the top of the tree falling on plaintiff's land. Plaintiff prevailed in his subsequent suit for trespass, the court holding that design or carelessness were not essential ingredients of trespass.

In *Smith v. Pate*, the court attempted to distinguish the earlier case

[15] 212 N.C. 780, 195 S.E. 55 (1938) (By mistake the plaintiff's picture was used for advertising purposes, and, in the absence of allegations and proof of special damages, the plaintiff was allowed to recover only nominal damages. This has been North Carolina's only case concerning the right of privacy).

[1] RESTATEMENT, TORTS § 166, comment *b* (1934).
[2] PROSSER, TORTS § 13 (2d ed. 1955).
[3] 246 N.C. 63, 97 S.E.2d 457 (1957).
[4] 24 N.C. 42 (1841). In Dougherty v. Stepp, 18 N.C. 371 (1835), it was said that "every unauthorized, and therefore unlawful, entry into the close of another is a trespass." This was dictum since the question of accidental entry was not involved.