Court of Appeal, First District, Division 4, California.
Oliver W. SIPPLE, Plaintiff and Appellant,
v.
The CHRONICLE PUBLISHING CO., et al., Defendants and Respondents.
154 Cal.App.3d 1040, 201 Cal.Rptr. 665

April 13, 1984.

CALDECOTT, Presiding Justice.

On September 22, 1975, Sara Jane Moore attempted to assassinate President Gerald R. Ford while the latter was visiting San Francisco, California. Plaintiff Oliver W. Sipple (hereafter appellant or Sipple) who was in the crowd at Union Square, San Francisco, grabbed or struck Moore's arm as the latter was about to fire the gun and shoot at the President. Although no one can be certain whether or not Sipple actually saved the President's life, the assassination attempt did not succeed and Sipple was considered a hero for his selfless action and was subject to significant publicity throughout the nation following the assassination attempt.

Among the many articles concerning the event was a column, written by Herb Caen and published by the San Francisco Chronicle on September 24, 1975. The article read in part as follows: "One of the heroes of the day, Oliver 'Bill' Sipple, the ex-Marine who grabbed Sara Jane Moore's arm just as her gun was fired and thereby may have saved the President's life, was the center of midnight attention at the Red Lantern, a Golden Gate Ave. bar he favors. The Rev. Ray Broshears, head of Helping Hands, and Gay Politico, Harvey Milk, who claim to be among Sipple's close friends, describe themselves as 'proud-maybe this will help break the stereotype'. Sipple is among the workers in Milk's campaign for Supervisor."

Thereafter, the Los Angeles Times and numerous out-of-state newspapers published articles which referring to the primary source, (i.e., the story published in the San Francisco Chronicle) mentioned both the heroic act shown by Sipple and the fact that he was a prominent member of the San Francisco gay community. Some of those articles speculated that President Ford's failure to promptly thank Sipple for his heroic act was a result of Sipple's sexual orientation.[FN1]

Finding the articles offensive to his private life, on September 30, 1975, Sipple filed an action against the California defendants, the Chronicle Publishing Company, Charles de Young Thieriot, the publisher of the Chronicle, Herb Caen, a columnist for the Chronicle, The Times Mirror Company, the owner and publisher of the Los Angeles Times, and Otis Chandler (hereafter together respondents) and numerous out-of-state newspapers. The complaint was predicated upon the theory of invasion of privacy and alleged in essence that defendants without authorization and consent published private facts about plaintiff's life by disclosing that plaintiff was homosexual in his personal and private sexual orientation; that said publications were highly offensive to plaintiff inasmuch as his parents, brothers and sisters learned for the first time of his homosexual orientation; and that as a consequence of disclosure of private facts about his life plaintiff was abandoned by his family, exposed to contempt and ridicule causing him great mental anguish, embarrassment and humiliation.

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It is well settled that there are three elements of a cause of action predicated on tortious invasion of privacy. First, the disclosure of the private facts must be a *public disclosure*. Second, the facts disclosed must be *private facts*, and not public ones. Third, the matter made public must be one which would be *offensive* and objectionable to a reasonable person of ordinary sensibilities. It is likewise recognized, however, that due to the supreme mandate of the constitutional protection of freedom of the press even a

tortious invasion of one's privacy is exempt from liability if the publication of private facts is truthful and newsworthy. The latter proposition finds support primarily in Restatement Second of Torts section 652D which provides that "One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public."

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When viewed in light of the aforegoing principles, the summary judgment in this case must be upheld on two grounds. First, as appears from the record properly considered for the purposes of summary judgment, the facts disclosed by the articles were not private facts within the meaning of the law. Second, the record likewise reveals on its face that the publications in dispute were newsworthy and thus constituted a protective shield from liability based upon invasion of privacy.

(A) *The facts published were not private.*

[4] As pointed out earlier, a crucial ingredient of the tort premised upon invasion of one's privacy is a public disclosure of *private facts*, that is the unwarranted publication of intimate details of one's private life which are outside the realm of legitimate public interest. In elaborating on the notion, the cases explain that there can be no privacy with respect to a matter which is already public or which has previously become part of the "public domain" Moreover, it is equally underlined that there is no liability when the defendant merely gives further publicity to information about the plaintiff which is already public or when the further publicity relates to matters which the plaintiff leaves open to the public eye.

The case at bench falls within the aforestated rules. The undisputed facts reveal that prior to the publication of the newspaper articles in question appellant's homosexual orientation and participation in gay community activities had been known by hundreds of people in a variety of cities, including New York, Dallas, Houston, San Diego, Los Angeles and San Francisco. Thus, appellant's deposition shows that prior to the assassination attempt appellant spent a lot of time in "Tenderloin" and "Castro," the well-known gay sections of San Francisco; that he frequented gay bars and other homosexual gatherings in both San Francisco and other cities; that he marched in gay parades on several occasions; that he supported the campaign of Mike Caringi for the election of "Emperor"; that he participated in the coronation of the "Emperor" and sat at Caringi's table on that occasion; that his friendship with Harvey Milk, another prominent gay, was well-known and publicized in gay newspapers; and that his homosexual association and name had been reported in gay magazines (such as Data Boy, Pacific Coast Times, Male Express, etc.) several times before the publications in question. In fact, appellant quite candidly conceded that he did not make a secret of his being a homosexual and that if anyone would ask, he would frankly admit that he was gay. In short, since appellant's sexual orientation was already in public domain and since the articles in question did no more than to give further publicity to matters which appellant left open to the eye of the public, a vital element of the tort was missing rendering it vulnerable to summary disposal.

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(B) *The publication was newsworthy.*

[6]But even aside from the aforegoing considerations, the summary judgment dismissing the action against respondents was justified on the additional, independent basis that the publication contained in the articles in dispute was newsworthy.

As referred to above, our courts have recognized a broad privilege cloaking the truthful publication of all newsworthy matters. Thus, *** our Supreme Court stated that a truthful publication is protected if (1) it is

newsworthy and (2) it does not reveal facts so offensive as to shock the community notions of decency. While it has been said that the general criteria for determining newsworthiness are (a) the social value of the facts published; (b) the depth of the article's intrusion into ostensibly private affairs; and (c) the extent to which the individual voluntarily acceded to a position of public notority the cases and authorities further explain that the paramount test of newsworthiness is whether the matter is of legitimate public interest which in turn must be determined according to the community mores. *** " 'In determining what is a matter of legitimate public interest, account must be taken of the customs and conventions of the community; and in the last analysis what is proper becomes a matter of the community mores. *The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake,* with which a reasonable member of the public, with decent standards, would say that he had no concern.' "

In the case at bench the publication of appellant's homosexual orientation which had already been widely known by many people in a number of communities was not so offensive even at the time of the publication as to shock the community notions of decency. Moreover, and perhaps even more to the point, the record shows that the publications were not motivated by a morbid and sensational prying into appellant's private life but rather were prompted by legitimate political considerations, i.e., to dispel the false public opinion that gays were timid, weak and unheroic figures and to raise the equally important political question whether the President of the United States entertained a discriminatory attitude or bias against a minority group such as homosexuals.[FN2] Thus appellant's case squarely falls within the language of *Kapellas* in which the California Supreme Court emphasized that "when, [as here] the legitimate public interest in the published information is substantial, a much greater intrusion into an individual's private life will be sanctioned, especially if the individual willingly entered into the public sphere."

> FN2. For example, the Los Angeles Times reporters explained the newsworthiness of the publication in the following language: "First, since Sipple publicly performed a heroic act of national and international significance, reporting his connections to the gay community presented information contrary to the stereotype of homosexuals as lacking vigor-a concept apparently much desired to be reported by activist members of the San Francisco gay community.
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> > "Second, the intimation that the President of the United States had refrained from expressing normal gratitude to an individual who perhaps had saved his life raised significant political and social issues as to whether the President entertained discriminatory attitudes toward a minority group, namely, homosexuals."

Appellant's contention that by saving the President's life he did not intend to enter into the limelight and become a public figure, can be easily answered. In elaborating on involuntary public figures, Restatement Second of Torts section 625D, comment f, sets out in part as follows: "There are other individuals who have not sought publicity or consented to it, but through their own conduct or otherwise have become a legitimate subject of public interest. They have, in other words, become 'news.' ... These persons are regarded as properly subject to the public interest, and publishers are permitted to satisfy the curiosity of the public as to its heroes, leaders, villains and victims, and those who are closely associated with them. As in the case of the voluntary public figure, the authorized publicity is not limited to the event that itself arouses the public interest, and to some reasonable extent includes publicity given to facts about the individual that would otherwise be purely private."

In summary, appellant's assertion notwithstanding, the trial court could determine as a matter of law that the facts contained in the articles were not private facts within the purview of the law and also that the publications relative to the appellant were newsworthy. Since the record thus fails to present any triable issue of fact, the trial court was justified (if not mandated) in granting summary judgment and dismiss the case against respondents by way of summary procedure.