

When two parents were told that their son should repeat second grade, they sought to have him evaluated by a psychologist. The psychologist, who charged \$300, determined that the son had a learning disability. Based upon the report, the school board placed the son in special classes. At an open meeting of the school board about school expenditures, the parents asked that the \$300 they had paid to the psychologist be reimbursed by the school district. A reporter attending the meeting wrote a newspaper article about this request, mentioning the son by name.

In a privacy action brought by the son's legal representative against the newspaper, will the plaintiff recover?

- A. No, if the parents knew that the reporter was present.
- B. No, if the story is a fair and accurate report of what transpired at the meeting.
- C. Yes, because the son is under the age of consent.
- D. Yes, because the story is not newsworthy.

## Explanation:

### Invasion-of-privacy privileges

#### Absolute privileges

**Consent** to publication

Publication by participant in **judicial or legislative proceeding**

Publication by **executive or administrative officer**

Publication to **spouse**

Publication **required by law**

#### Conditional privileges

Publication serves important **public or private interest**

Publication to someone with **common interest** (eg, business partner)

(lost if abused)

Publication by **inferior state officer**

Report of **official proceeding or public meeting**

Liability for **invasion of privacy** based on **public disclosure of private facts** arises when:

the defendant publicly disclosed facts about the plaintiff's private life

that disclosure would be highly offensive to a reasonable person

the disclosed facts are not of legitimate public interest *and*

the disclosure caused the plaintiff harm.

However, the defendant is **privileged** to disclose such facts if (1) the disclosure was in a **fair and accurate report** of a **public meeting** and (2) the meeting dealt with **matters of legitimate public interest** (ie, newsworthy topics).

Here, the reporter publicized the son's psychological evaluation (private fact)—a disclosure that would be highly offensive to a reasonable person and is not of legitimate public interest. However, the parents requested reimbursement for that evaluation at an open school board meeting about a matter of public interest—school expenditures. Therefore, the reporter's disclosure would be privileged if it was a fair and accurate report of that meeting, and the son's privacy action would fail.

**(Choice A)** A defendant's privilege to publicize a fair and accurate report of a public meeting does not depend on anyone's knowledge of the defendant's presence. Therefore, it does not matter whether the parents knew that the reporter was present.

**(Choice C)** Although consent is a defense to a privacy claim based on public disclosure of private facts, it does not apply here since the son was under the age of consent. Nevertheless, the reporter may have been privileged to publicize the son's psychological evaluation since it was discussed at a public meeting regarding a matter of public interest. In that case, the son would not recover.

**(Choice D)** The story is newsworthy because a school board's consideration of expenditures (eg, reimbursing the parents for the son's psychological evaluation) is a matter of public interest.

**Educational objective:**

A defendant is privileged to publicly disclose facts about the plaintiff's private life if (1) the disclosure is in a fair and accurate report of a public meeting and (2) that meeting dealt with matters of legitimate public interest.

**References**

Restatement (Second) of Torts § 652D (Am. Law Inst. 1977) (public disclosure of private facts).

Restatement (Second) of Torts §§ 611, 652G (Am. Law Inst. 1977) (privilege to report public meeting).

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