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Panel Lets Little League Parents Pursue Invasion-of-Privacy Suit Privacy of Kids Trumps Media's Interest in Photo

By Jason W. Armstrong
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RIVERSIDE - A state appellate panel has cleared the way for a potentially groundbreaking invasion-of-privacy lawsuit filed by a group of Little League parents over Sports Illustrated's use of a photo picturing their children alongside their child-molester coach.

In a strongly worded opinion issued late Wednesday, justices with the 4th District Court of Appeal in Riverside said the magazine's publication of the team's photo was "an intrusion" that "outweighs the values of journalistic impact and credibility."

In publishing the photograph, the defendants "communicated a clear message that [the coach] had continuously molested the members of his Little League team," Associate Justice Barton C. Gaut wrote, joined by Presiding Justice Manuel A. Ramirez and Associate Justice James D. Ward.

Reacting to the ruling, Santa Ana attorney Thomas A. Cifarelli, counsel for the plaintiffs, said, "I think the ruling sends a very strong and important message that the privacy of victims and children must always be respected by the media."

"Even if a person becomes swept up in a matter that becomes newsworthy, it shouldn't mean that person loses their right to privacy," Cifarelli of the Cifarelli Law Firm said.

Robert C. Vanderet, counsel for Sports Illustrated publisher Time Warner Inc. and HBO, a co-defendant in the suit, said his clients plan to ask the California Supreme Court to review the appellate decision.

"We are disappointed with the ruling - we think it's wrong on the law," Vanderet of Los Angeles' O'Melveny & Myers said.

He called the panel's finding "significant for all the press."

"This is a rare instance of a court allowing a suit to go forward for publication of truthful, nonprivate information in a subject of legitimate importance," Vanderet said.

In the lawsuit, filed in February 2000, the parents of nine former players of the East Baseline Pirates Little League team in San Bernardino alleged Time Warner and HBO invaded their children's privacy. Both media agencies used the photo of the Pirates with their coach, Norman Watson, to illustrate a story about child molesters infiltrating youth sports. Watson pleaded guilty in 1998 to molesting more than 30 children, including several he had coached in Little League.

None of the players in the photo was named in the stories. However, the complaint, which seeks unspecified damages, contends they were "mercilessly harassed" after the photo was published. *M.G. v. Time Warner*, SCV64216 (San Bernardino Super. Ct., filed February 2000)

A San Bernardino Superior Court judge in July denied a motion by the media giant's lawyers to dismiss the lawsuit under the Strategic Lawsuit Against Public Participation law, ruling that the team photo was not newsworthy.

The appellate justices agreed.

"In the present case, we concur with the conclusion of the trial court that plaintiffs have shown a reasonable probability of success on their invasion of privacy claim on some grounds," the court wrote.

The panel cited the California Supreme Court case of *Gill v. Curtis Publishing Co.*, 38 Cal.2d 273 (1952), in which a French photographer snapped a photo of a husband and wife without their consent while they "spooned" on counter stools in an ice cream shop. The picture later showed up in *Ladies Home Journal* magazine with an article about love based solely on sexual attraction.

In their complaint, the *Gill* plaintiffs argued that the article portrayed them as immoral and dissolute people. The court concurred, holding that "the public interest did not require the use of any particular person's likeness nor that of plaintiffs without their consent," according to the opinion.

Invasion of privacy "may be actionable if materials such as an article about 'bad' love or sexual molestation are juxtaposed with an illustrative photograph that makes a negative association between the subject matter and the subjects of the photograph," the justices wrote. "That is precisely what occurred

here."

In their arguments over legal privacy in the media, Time Warner lawyers cited the state Supreme Court case of *Schulman v. Group W. Productions*, 18 Cal.4th 200 (1999). In *Schulman*, the high court found no invasion of privacy as long as the challenged material has a "substantial connection" to the subject of a newsworthy report.

"*Schulman* does not assist defendants here," the panel wrote. "A trier of fact could find the publication of plaintiffs' photographs showing their faces was not a legitimate public concern and not newsworthy."

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