CRM 123

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**Background**

In the case of Estate of Berthiaume v. Pratt, M.D. the plaintiff is her husband's administratix who brought the case into the court demanding to take an action against the surgeon for privacy invasion and for battery and assault. The case is presented by the plaintiff on the fact that the photographs of her dying husband are taken without the consent of her husband. Also, no consideration was taken regarding the physical indication of her husband who did not want to be photographed. She said that in taking these pictures, her husband head is lifted by the physician which is an account for battery charge and assault. Later that day, her husband died. In its decision, the lower court granted the motion passed by the physician for the directed verdict. The Maine Supreme Judicial Court later reversed the case, providing the reasoning that it is found by the jury that the right to privacy of the decedent has been violated, and that battery and assault had taken place when the touch has been made by the physician without the consent of the patient. In its verdict, the Maine Supreme Court had ordered a new trial.

**Analysis**

During the period of the case, the appellee was aiding Mr. Berthiaume as the surgeon. The jury was told that the only purpose for which the photographs were taken was to make the use of collecting the medical record of the patient. Although the consent was not taken by the physician at any time in written form either directly from the patient or his family members. The testimony of the appellee is that the photographs of Berthiaume were always taken by asking his permission verbally.

Although it is testified by the appellee that before taking the photographs, Mrs. Berthiaume told him in the corridor that she did not think that the pictures should be taken. As the privacy law holds that the individual invasion of four contrasting interests has to be addressed. The four types of invasions are:

1- The plaintiff mental and physical solitude intrusion

2- The private facts public disclosure

3- Publicize the information of the plaintiff that bring him negative fame

4- Appropriation for the benefits of the defendant

As in this particular case above, we are only concerned with the intrusion that is claimed upon the intestate of plaintiff mental and physical seclusion. It is the right of the jury in this context to conclude from the presented evidence that the intestate plaintiff was dying. Also, it can be concluded that the desire of the patient in this circumstance is that he should not be photographed in such a condition when he was lying on the bed in such bad physical condition. The instructions should have been provided by the jury that if the fact is found that the picture taking of the patient is done without the proper consent or his objection is overheard is the invasion of his legal right to privacy. In such a case of privacy invasion, the tort for money damage has to be recovered.

Instead of that, the verdict is directed to be entered for the defendant that is obviously premised on justice announced presiding false conclusion that the picture taking without the consent is not included in the invasion of privacy. Also, the further conclusion that is presented is erroneous which asserts that the commission of tort took place in the proof absence and though not published publically.

Because the questions of the fact are unresolved which if decided in the favor of the plaintiff by the fact finders would make the justification in the plaintiff favor, therefore, the Supreme Court reverses the error and directed to start the trial from scratch.

**References**

Schubert, F. A. (2011). Introduction to law and the legal system. Cengage Learning.