

**DAILY TIMES DEMOCRAT v. Flora Bell GRAHAM**

**No. 6 Div. 8**

**Supreme Court of Alabama**

**276 Ala. 380; 162 So. 2d 474; 1964 Ala. LEXIS 351**

**March 26, 1964**

**OPINION:**

[\*381] [\*\*475] This is an appeal from a judgment in favor of the plaintiff [\*\*\*3] in an action charging an invasion by the defendant of the plaintiff's right of privacy. Damages were assessed by the jury at \$ 4,166.00. From such judgment the defendant has perfected its appeal to this court.

Appellee is a woman 44 years of age who has lived in Cullman County, Alabama her entire life. She is married and has two sons, ages 10 and 8. The family resides in a rural community where her husband is engaged in the business of raising chickens. The appellee has led the usual life of a housewife in her community, participating in normal church and community affairs.

[\*\*476] On 9 October 1961, the Cullman County Fair was in progress. On that day the appellee took her two children to the Fair. After going on some of the rides, the boys expressed a wish to go through what is called in the record the "Fun House." The boys were afraid to enter alone so the appellee accompanied them. She testified she had never been through a Fun House before and had no knowledge that there was a device that blew jets of air up from the platform of the Fun House upon which one exited therefrom.

The appellee entered the Fun House with her two boys and as she was leaving her dress was [\*\*\*4] blown up by the air jets and her body was exposed from the waist down, with the exception of that portion covered by her "panties."

At this moment the appellant's photographer snapped a picture of the appellee in this situation. This was done without the appellee's knowledge or consent. Four days later the appellant published this

picture on the front page of its newspaper.

The appellant publishes about five thousand newspapers daily which are delivered to homes, mailed to subscribers, and displayed on racks in various locations in the city of Cullman and elsewhere.

While the appellee's back was largely towards the camera in the picture, her two sons are in the picture, and the photograph was recognized as being of her by other people with whom she was acquainted. The matter of her photograph was mentioned to the appellee by others on several occasions. Evidence offered by the [\*\*\*5] appellee during the trial tended to show that the appellee, as a result of the publication of the picture, became embarrassed, self-conscious, upset and was known to cry on occasions.

Clearly the right of action for invasion of privacy is now well recognized in the jurisprudence of Alabama, and has been fully discussed in our decisions. Among the alternative statements of what may constitute an actionable invasion of one's right of privacy, this court stated that such action [\*\*\*6] accrued upon "the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities."

There is a fertile medium in this field of torts for the production of conflicts between the right of the individual to be let alone, and the right of the public to know -- the latter concept being crystalized in our age old concept of freedom of speech and of the press.

The right of action for invasion of privacy has had to give way to the interest of the public to be informed,.

As we understand appellant's brief, counsel argues that as a matter of law the publication of the photograph was a matter of legitimate news of interest to the public; that the publishing of the picture was in connection with a write-up of the Fair, which was a matter of legitimate news. If this be so, then of course the appellant would have been privileged to have published the picture.

[\*383] Counsel has quoted from an array of cases as to what constitutes news. We see no need to refer to these cases in that their applicability to the facts now [\*\*\*8] before us is negligible. We can see nothing of legitimate news value in the photograph. Certainly it discloses nothing as to which the public is entitled to be informed.

Not only was this photograph [\*\*\*9] embarrassing to one of normal sensibilities, we think it could properly be classified as obscene, in that "obscene" means "offensive to modesty or decency" or expressing to the mind or view something which delicacy, purity, or decency forbid to be expressed.

The appellant's insistence of error in this aspect is therefore without merit.

Counsel further argues that the court erred in refusal of appellant's requested affirmative charges in that appellee's picture was taken at the time she was a part of a public scene, and the publication of the photograph could not therefore be deemed an invasion of her privacy as a matter of law.

On the public street, or in any other public place, the plaintiff has no right to be alone, and it is no

invasion of his privacy to do no more than follow him about. Neither is it such an invasion to take his photograph in such a place, since this amounts to nothing more than making a record, not [\*\*\*10] differing essentially from a full written description of a public sight which anyone present would be free to see.

To hold that one who is involuntarily and instantaneously enmeshed in an embarrassing pose forfeits her right of privacy merely because she happened at the moment to be part of a public scene would be illogical, wrong, and unjust.

One who is a part of a public scene may be lawfully photographed as an incidental part of that scene in his ordinary status. Where the status he expects to [\*384] occupy is changed without his volition to a status embarrassing to an ordinary person of reasonable sensitivity, then he should not be deemed to have forfeited his right to be protected from an indecent and vulgar intrusion of his right of privacy merely because misfortune overtakes him in [\*\*\*11] a public place.

Affirmed.