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ON INFORMATION MATTERS

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A Facebook public profile is much like a city park—there is no right of privacy there.

Largent v. Reed, Case No. 2009-1823 (C.P. Franklin, Penn. Nov. 8, 2011)(unpublished)—The two Plaintiffs in this personal injury case claimed "serious and permanent physical and mental injuries, pain, and suffering." At the deposition of one of the Plaintiffs, Defense Counsel learned that Plaintiff Jennifer Largent had a Facebook account and used her account regularly. Defense Counsel requested information about the account, which Ms. Largent refused to provide. A Motion to Compel followed.

In response to the Motion to Compel, Ms. Largent raised four objections to disclosing her Facebook information: (1) the information was irrelevant to the case and not subject to discovery; (2) the information was privileged; (3) the information was protected by the Stored Communications Act; and (4) the request for the information was unreasonably embarrassing or annoying.

The Court noted that Facebook has some 800 million users, all of whom can view items posted by a Facebook user whose privacy setting on the site is "public". Further, the Court observed that Facebook notifies its users that the user can be "tagged," or identified, in any posting by another user and that the tagging information will generally be visible to the Facebook community at large.

Because of the claims in the case, the Court held that the Defendant was requesting information that was properly subject to discovery under Pennsylvania law. Further, the Court noted that Pennsylvania law does not provide for a "confidential social networking" privilege and stated that "there is no reasonable expectation of privacy in material placed on Facebook."

Next, the Court rejected Ms. Largent's claim that the disclosure of her Facebook information was protected by the Stored Communications Act. The Court held that since the Stored Communications Act only applies to ISPs and other types of network supporters (and since Ms. Largent was not one of these enumerated entities), then Ms. Largent could not avail herself of any protections of the Stored Communications Act. Finally, the Court held that since Ms. Largent had put her health at issue by the claims in the lawsuit, any Facebook postings that may relate to her mental or physical health were discoverable and not unreasonably embarrassing or harassing.

The Court ordered Ms. Largent to disclose her Facebook user name and password to Defendant and that Defendant would have 21 days in which to inspect Ms. Largent's Facebook account for relevant information. The Court specified that after the 21-day examination period, Ms. Largent would be free to change her password to prevent further examination by Defendant.

Lessons for litigants: Our parents really were right—do not put anything on Facebook that you would not want to see on the front page of the New York Times. Certainly that is true in Pennsylvania. Also, before a party makes claims that certain information on any social networking site should be considered private, that party should have taken every possible step to limit public access to the information. For example, while this case may not have come out differently, the Court's inquiry would have been more challenging had Ms. Largent utilized the most restrictive privacy settings for her Facebook account.

A copy of the Opinion and Order can be found here: Largent v. Reed, Case No. 2009-1823 (C.P. Franklin Nov. 8, 2011)

Contact Us: For further information or if you have any questions regarding this Alert, please contact your Redgrave LLP attorney or Managing Partner Victoria Redgrave at (202) 681-2599 or vredgrave@redgravellp.com.