

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

**DAVID S. WILLIAMS and** )  
**ANGELIKA M. WILLIAMS** ) CIVIL ACTION NUMBER  
)  
Plaintiffs ) 05C-11-209-JOH  
v. )  
)  
**CHARLES W. MANNING and** )  
**TERRI LAMBORN MANNING** )

*Submitted: September 17, 2008*

*Decided: September 23, 2008*

**MEMORANDUM OPINION**

*Upon Motion of the Plaintiffs' to Dismiss and/or  
for Judgment upon the Mannings' Counterclaims  
for Invasion of Privacy and/or Private Nuisance - **DENIED***

***Appearances:***

Jeffrey M. Weiner, Esquire, Wilmington, Delaware, attorney for the plaintiffs

William J. Rhodunda, Jr., and Chandra J. Rudloff, Esquire, of Wolfblock, LLP,  
Wilmington, Delaware, attorney for the defendants

HERLIHY, Judge

Plaintiffs argue that the Defendants' cross complaints of (1) invasion of privacy and (2) private nuisance should be dismissed by summary judgment.<sup>1</sup> ***Factual Background***

The origins of this case relate back to the original complaint which was filed on November 22, 2005 by David S. Williams and Angelika M. Williams ("Williams") asserting a trespass claim against Charles W. Manning and Terri L. Manning ("Mannings"). Currently, there are many issues of fact and law which are disputed between the parties. The instant motion before the Court focuses on two counterclaims in the Mannings' complaint of (1) invasion of privacy and (2) private nuisance against their neighbors, the Williams.

Both the Williams and the Mannings live in the residential community known as Wooddale, Millcreek Hundred, in New Castle County Delaware. Lot 15 of Wooddale is owned by the Williams. They obtained the lot by deed in December of 1983. The Mannings acquired Lot 17 of Wooddale by deed in October of 1987. The lots owned by each party abut each other and share a common border, making the two parties residential neighbors.

Since the filing of the original complaint, the Williams have installed a camera surveillance system just within the borders of their property. Michael Hendricks ("Hendricks") of Executive Technologies LLC installed the system. With his assistance,

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<sup>1</sup> Because of unique circumstances, such as new counsel for both parties, a recent counterclaim which is the subject of this motion, very recent discovery, the Court at the August 20th pre-trial conference authorized plaintiffs' motion. Trial started 9/17/08.

the Williams property was fitted with “one camera to cover the front drive and three cameras to cover the rear access area.”<sup>2</sup> The Williams decided to employ four (4) cameras for their surveillance system using three different models of Panasonic brand cameras. In the front portion of their property one (1) Panasonic Vandal Proof Super Dynamic III Color Dome Camera WV-CW484 (“WV-CW484”) was installed. To cover the right and left boundary lines of the property, two (2) of the Panasonic Weather Proof Super Dynamic II Color Cameras with model number WV-CW374 (“WV-CW374”) were chosen. Lastly, one (1) Panasonic Weather Proof Super Dynamic III Color Dome Camera WV-CW964 (“WV-CW964”) was mounted to monitor the rear of the Williams’ property. In addition to the cameras, the two (2) WV-CW374s were accompanied with illuminators to enhance the ability of the WV-CW374s to record visuals during the nighttime.<sup>3</sup>

The Mannings’ expert witness Russell Staten (“Staten”), who investigated the surveillance system on June 13, 2008 and July 28, 2008,<sup>4</sup> opined on the various capabilities of the cameras in his deposition testimony which took place on August, 22, 2008. In addition to being stationary, Staten testified that the WV-CW484 and the WV-CW374 cameras did not possess the technology to zoom.<sup>5</sup> Staten admitted that the WV-CW484

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<sup>2</sup> Plaintiffs’ Motion, Exhibit A, TRS #4.

<sup>3</sup> Plaintiffs’ Motion, Exhibit A, Staten’s Dep. 40:15-23.

<sup>4</sup> Plaintiffs’ Motion, Exhibit A, TRS #5.

<sup>5</sup> Plaintiffs’ Motion, Exhibit A, Staten’s Dep. 19:18-19.

and the WV-CW374 were not equipped with a zoom capability.<sup>6</sup> However, the stationary cameras that overlooked the east/west boundaries of the property were equipped with day/night function that would allow the cameras to switch from color in the daytime to black and white recording in the nighttime.<sup>7</sup> According to his testimony, Staten stated that a stationary camera's view could not be changed without first physically moving the camera's mount.<sup>8</sup>

Staten went on to comment about the WV-CW964 camera that was installed on the rear portion of the Williams' property. As distinct from the other cameras on the Williams' property, the WV-CW964 has a "pan-tilt zoom" ability.<sup>9</sup> Staten defines "pan-tilt" as the ability for a camera to "be remotely and manually adjusted without you physically moving it to go in a different direction."<sup>10</sup> During his investigation, Staten determined that this pan-tilt camera is "set in auto motion mode" and "is programmed to scan automatically the area not covered by the two side cameras."<sup>11</sup> He also described this camera in this fashion:

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at Staten Dep. 41:6-12.

<sup>8</sup> *Id.* at Staten Dep. 13:-14-15.

<sup>9</sup> *Id.* at Staten Dep. 15:13-24.

<sup>10</sup> *Id.* at Staten Dep. 46:-19-23.

<sup>11</sup> *Id.* at Staten Dep. 15:13-16:7.

A. The capability, the camera I gave you documentation, and you all have the access on the manufacturer's website to see that they have more than 500 lines of resolution. And may I read what the manufacturer says?

Q. Sure

A. "The WV-CW964 camera would play a dynamic role in a host of security applications, including parking lots, amusement parks, shopping malls, airports, train stations, expressways, city streets and plazas."<sup>12</sup>

Staten's deposition continued with a discussion concerning the angles, ranges, and distances of the cameras as they were when he undertook his investigation. When asked about the two stationary cameras monitoring the right and left side of the property, Staten stated that the "cameras can do visuals for several hundred feet."<sup>13</sup> During the deposition, Staten was shown two pictures, one depicting the view of each stationary camera that patrolled the eastern and western boundaries of the Williams' property. With regard to the angles the cameras were set, Staten commented that one of stationary cameras "was towards the fence...to see a little of both properties"<sup>14</sup> while the other side camera "saw more of, on the [Manning portion] of the fence as opposed to on the [Williams portion] of the fence."<sup>15</sup> The latter camera had a projection that "was not vertical", but "a little below

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<sup>12</sup> *Id.* Staten Dep. 48:17-49:15.

<sup>13</sup> *Id.* at Staten Dep. 20:6-7.

<sup>14</sup> *Id.* at Staten Dep. 20:19-21:1.

<sup>15</sup> *Id.* at Staten Dep. 21:2-7.

vertical".<sup>16</sup> Although Staten commented generally that the quality of the photos presented to him were poor,<sup>17</sup> Staten noted that one of the pictures depicted the a pathway along with the fence line and did not encompass the Manning house.<sup>18</sup> For the other visual depicting the view from the other stationary camera, Staten attested to the fact that he could see more of the Manning portion of property than the Williams portion, but again, could not see the Manning home in the picture presented before him.<sup>19</sup> Later, however, Staten commented that one of the stationary cameras did, in fact, point in the general direction of the Mannings' home.<sup>20</sup> Ultimately when pressed to conclude whether the scope of one of the stationary cameras could reach the Mannings' house, Staten could not make a definitive conclusion for two reasons. First, because the dates Staten conducted his investigation were during the summer months, he could not adequately simulate what the camera could see due to the foliage of the trees.<sup>21</sup> Second, Staten said he would also not make a

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<sup>16</sup> *Id.* at Staten Dep. 21:12-22.

<sup>17</sup> *Id.* at Staten Dep. 24:18, 26:10-12.

<sup>18</sup> *Id.* at Staten Dep. 24:8-25:6. By way of further clarification, this picture was noted in the deposition as coming from production page 63.

<sup>19</sup> *Id.* By way of further clarification, this picture was noted in the deposition as coming from production page 67.

<sup>20</sup> *Id.* at Staten Dep. 28:10-13, 39:7-18.

<sup>21</sup> *Id.* at Staten Dep. 30:21-31:8.

conclusion because “of the way the cameras were specifically pointed at that time.”<sup>22</sup>

Finally, the deposition appraised the capabilities and visuals that could be obtained by the pan-tilt zoom camera (WV-CW964) positioned by the Williams’ in order to view the rear of their property. Staten commented that while he was visiting the Williams’ surveillance system in their house, he was shown a split screen visual which he was told by a gentleman (apparently a representative of the company that installed the surveillance system) was coming from the visuals being taken by the pan-tilt zoom camera.<sup>23</sup> Staten was presented with a picture during his deposition depicting the visuals coming from the pan-tilt zoom camera and noted that the Mannings’ house was not visible in any screen;<sup>24</sup> however, Staten qualified his remark due to the poor quality of the picture shown him during the deposition.<sup>25</sup>

Staten’s deposition testimony also highlighted various ways or possibilities that the Williams might adjust the layout of their surveillance system in order to potentially expand their purview into the Manning property. For example, he opined that the stationary cameras that were predominately focused on the property line could be physically adjusted

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at Staten Dep. 26:13-18. By way of further clarification, this picture was noted in the deposition as coming from production page 86.

<sup>24</sup> *Id.* at Staten Dep. 28:4-6.

<sup>25</sup> *Id.* at Staten Dep. 28:1-3.

to change its viewpoint.<sup>26</sup> He also commented on the ease in which one could replace the infrared cameras with a coaxial cable so that those cameras might begin to take visuals.<sup>27</sup> Staten reaffirmed the ability of both the stationary and the pan-tilt zoom of having the capability of recording a clear image from 200 feet in distance.<sup>28</sup> Finally, he reiterated the possibility that one of the stationary, east/west border cameras was pointed in the general direction of the Manning house.<sup>29</sup> And Staten reinforced the point that the camera technology could reach the Manning house with because of its 200 foot range or, in the alternative, through additionally technological aids, such as DVR technology and other capabilities available on a personal computer, that could enlarge a picture.<sup>30</sup>

It has also recently come to the Court's attention that the plaintiffs filed an undated affidavit of Hendricks, who was hired by the Williams to install the camera system. The affidavit, which was filed on September 9, 2008, generally supported the observations of Staten in regard to the number and type of cameras used to monitor the property. The affidavit, however, reinforced the Williams' premise that they have no ability to control the pan-tilt zoom camera. Hendricks stated that the pan-tilt zoom camera scans the back

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<sup>26</sup> *Id.* at Staten Dep. 38:10-12.

<sup>27</sup> *Id.* at Staten Dep. 45:12-18.

<sup>28</sup> *Id.* at Staten Dep. 43:15-23 (for stationary cameras), 51:13-17 (for the pan tilt zoom camera).

<sup>29</sup> *Id.* at Staten Dep. 29:19-30:2, 43:11-14.

<sup>30</sup> *Id.* at Staten Dep. 33:18-34:13.



border of the property automatically and cannot be adjusted without the assistance of a trained professional. Hendricks also stated that the surveillance system did not have the ability to zoom into or move in the direction of the Manning house. Hendricks has not been deposed.

### *Parties' Contentions*

The Williams' claim, in the current motion before the Court, that the facts clearly preclude a finding in favor of the Mannings for their claims of intrusion upon seclusion and private nuisance. The Williams argue that the deposition testimony of Staten, the Mannings' own expert witness, shows that there is no disagreement that the Williams' surveillance system only monitors the property line and does not focus on the Manning house. According to the Williams, Staten could not affirmatively state with any conviction that any camera was viewing the Manning residence. They also claim that Staten, while visiting the properties, did not see anything that would have lead him to believe the Williams were viewing other portions of the Manning property except for the areas that abutted the property line. As a result, the Williams' assert that there is no intrusion and the Mannings' counterclaim must fail.

To support their proposition, the Williams cite case law originating from outside Delaware. They cite an Illinois case, *Schiller v. Mitchell*.<sup>31</sup> In that case, the Illinois court dismissed the complaining party's intrusion claim even though that party was able to show

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<sup>31</sup> 828 N.E.2d 323 (Ill. App., 2005)

that a camera was aimed at their neighbor's garage, driveway, side door area and backyard. The claim of intrusion upon seclusion failed because the footage that was alleged as private was footage that could be seen by the passing public and other neighbors in that residential community. Plaintiffs' also cite two cases from Oregon and Ohio which held that surveillance was not intrusion where the surveillance was reasonable and was conducted by an investigation company that monitors employees who were making claims for worker's compensation due to injuries they allegedly sustained on the job.<sup>32</sup> Relying on these cases and the present facts before this Court, the Williams argue the Mannings have failed to state a claim for intrusion upon which relief can be granted.

The Court notes that the Williams do not specifically make any argument directly addressing the claim of private nuisance about which the Mannings complain. Their motion simply lists the paragraphs in the Mannings' complaint making this claim, but the Williams offer no argument why this cause of action should be dismissed.

The Mannings complain of the Williams surveillance system and allege that the cameras point into the Mannings property thereby intruding upon their privacy,<sup>33</sup> causing them mental distress, and devaluing their property.<sup>34</sup> The Mannings argue that Staten's

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<sup>32</sup> *Mclaine v. Boise Cascade Corp.*, 533 P.2d 343 (Or. 1975); *York v. Gen. Elec. Co.*, 759 N.E.2d 865 (Ohio App. 2001).

<sup>33</sup> Defendants' Counterclaim ¶ 39.

<sup>34</sup> *Id.* at ¶ 45.

deposition testimony of Staten presents the jury with a question of fact that is not proper for summary judgment. Their response to the Williams' motion documents the capability of the cameras to view 200 feet and the testimony of Staten in which they argue that two of the cameras point in the general direction of the Mannings' home. The response also claims that the Court should take note of the pan-tilt zoom camera's ability to zoom up to 30 times in magnification. Furthermore, the Mannings also highlight the fact that the cameras could be repositioned by anyone to obtain a new vantage point. Finally, the Mannings allege that the Williams' production of documents pertaining to the visual capability of their camera system do not fairly depict the visual power of the surveillance system.<sup>35</sup>

The Mannings also take issue with the cases cited by the Williams. They argue the factual scenarios of all three cases are different than the current facts before this Court. The Mannings emphasize that in *Schiller*, the residents involved in that squabble were living in a neighborhood community which did not afford its residents a great degree of privacy from public onlookers or other neighbors. In *McLain* and *York*, the defendants' argue that the case law in those cases dealing with intrusion were grounded in the understanding that once one makes a claim under worker's compensation, a claimant waives their right to privacy for purposes of ensuring the claim is genuine.

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<sup>35</sup> Defendants' Response, ¶ 4.

### *Applicable Standard*

In order for the moving party to obtain summary judgment, that party must bear the burden of showing the Court that no genuine issue of material fact is present and is entitled to judgment as a matter of law.<sup>36</sup> When considering a motion for summary judgment, the Court must view the facts and circumstances in a light most favorable to the non-moving party.<sup>37</sup> Summary judgment is improper when a material fact or an inference that might be drawn from a material fact is in dispute.<sup>38</sup> When the moving party can establish that there is no genuine issue of material fact, summary judgment may be appropriate.<sup>39</sup>

### *Discussion*

The state Supreme Court considered the tort of intrusion upon seclusion in *Barker v. Huang*.<sup>40</sup> In that case, the Court re-confirmed Delaware's adoption of the *Restatement (Second) of Torts* § 652B which outlines the tort as:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

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<sup>36</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>37</sup> *Windom v. William C. Ungerer, W.C.*, 903 A.2d 276, 280. (Del. 2006).

<sup>38</sup> *Ebersole v. Lowengrub*, 180 A.2d 467 (Del. 1962), rev'd in part and aff'd in part, 208 A.2d 495 (1965).

<sup>39</sup> *Pryor v. Aviola*, 301 A.2d 306, 308 (Del. Super. 1973).

<sup>40</sup> 610 A.2d 1341, 1349-50 (Del. 1992).

Thus, in order to state a claim for intrusion of seclusion, the Mannings must show (1) an intrusion that invades their personal privacy and (2) that the intrusion must be one that would be considered highly offensive to a reasonable person.

The main thrust of the Williams' motion is Staten's inability to arrive at a firm conclusion as to whether or not one of the cameras was videotaping the Manning home prevents the Mannings from asserting a claim of intrusion upon seclusion. The Court disagrees.

Unfortunately for the parties involved and this Court, Staten's investigation and letter outlining his findings are generally unhelpful in providing any solid conclusions concerning the issue of intrusion. Staten's findings are even more problematic because they were conducted in the summer months during which foliage blocked the view that is complained of by the Mannings. Although Staten stated the stationary cameras did not take footage of the Mannings' house, he testified about the numerous technological capabilities of the cameras which would have the potential to reach the Mannings' household. The Court has also reviewed the various pictures submitted before it as exhibits and determined that reasonable jury could determine that the cameras may or may not be intruding upon the Mannings' seclusion.<sup>41</sup> Notably, one picture presented by the

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<sup>41</sup> The Court notes with some disappointment that neither party presented a map of the lots in question, including a geographical representation of the positions of the cameras or their view angles (side to side, up and down). A subdivision map would have been helpful, too; one that included a location of homes of both these parties.

Mannings' in which there is no shows a line of sight from their home extending to one of the camera poles of the Williams' property.<sup>42</sup> With this picture and a knowledge of the technological capabilities of the cameras as opined by Staten, a reasonable jury could conclude that the cameras did in fact view or record footage that might not be possible with the naked eye.

The cases presented by the Williams do not provide helpful guidance either. In *Schiller*, the factual scenario revolved around a residential community in which neighbors could generally see the daily activities of other neighbors outside of their homes. Consequently, the videotaping conducted in that case only recorded what a person could view in public. The other cases referred to by the Williams are also inapposite because those cases specifically focused on individuals who were considered fair targets for surveillance due to the worker's compensation claims they filed.

The Court finds that this case will revolve around the jury's determination of whether the camera system is an intrusion worthy of being classified as "highly offensive to a reasonable person." Such a question is one that the jury must consider based on the specific facts of this case. It is undisputed that the complaining parties possess property that is more secluded than the typical suburban development. The exhibits show the two parties own lots that are heavily wooded. As such, a reasonable jury could conclude that a property owner like the Williams and Mannings might have a higher expectation of

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<sup>42</sup> Defendants' Response, Exhibit B, but poor quality.

privacy than neighbors of an urban or suburban residences with smaller more open lots. Additionally, the question of whether the camera system by the Williams installed was reasonable or highly offensive would be another question the jury would need to consider, including the use of a commercial-use camera in a residential setting.

Lastly, the Williams moved for summary judgment on the claim of private nuisance; but provided no argument to the Court. Liability for private nuisance can attach to a party if a jury finds that a party's use of property unreasonably inhibits the use and enjoyment of another party's land.<sup>43</sup> The question of reasonableness or unreasonableness is determined by balancing the inconvenience one party suffers from the complained of use against the utility of the use that is causing the alleged harm. In order to recover under the tort claim of private nuisance, the harm must be considered significant in nature and weighed under the reasonable person standard of someone in that particular community.<sup>44</sup> Because there are facts in dispute concerning the surveillance system and whether it constitutes a significant harm, summary judgment would not be proper. The plaintiffs' motion makes it unclear whether they are abandoning the argument.

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<sup>43</sup> *Restatement (Second) of Torts*, Sec. 822.

<sup>44</sup> *Id.* Sec. 821F.

*Conclusion*

For the reasons stated herein, the Plaintiffs' Motion to Dismiss and/or for Judgment upon the Mannings' Counterclaims for Invasion of Privacy and/or Private Nuisance are **DENIED.**

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J.