

Catsouras family wins right to sue CHP in death-images case

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In a groundbreaking ruling in a case involving ghoulish death images, an appellate court has reversed a lower court's dismissal of a lawsuit against the California Highway Patrol and two of its employees for leaking photos of a decapitated teenager onto the Internet.

The opinion, by the 4th District Court of Appeal (Division 3) in Santa Ana, is certified for publication, meaning it stands to rewrite state law concerning the privacy rights of surviving family member when it comes to death images of a decedent.

The ruling, made public today, also means that the family of Nicole "Nikki" Catsouras can proceed with their civil action against the CHP, which admitted to improperly disseminating pictures of the 18-year-old's remains following a high-speed crash on a toll road in Lake Forest on Oct. 31, 2006.

"The entire Catsouras family is ecstatic with the court's findings," said family attorney Keith G. Bremer of Bremer, Whyte, Brown & O'Meara in Newport Beach. "The family is pleased that it will now be afforded the opportunity to confront the CHP and the officers with their actions and request that each be held responsible."

In sometimes stinging language, the panel of three justices, in their 64-page ruling, said the Catsouras family, of Ladera Ranch, is on solid legal ground in pursuing damages for negligence, invasion of privacy, and infliction of emotional distress – causes of action that Orange County Superior Court Judge Steven L. Perk tossed out in March 2008.

The appellate court did, however, back Perk in dismissing legal arguments that the family's civil rights were violated.

"The alleged acts (of the CHP) were morally deficient," the appellate ruling said.

The CHP admitted that two employees, Thomas O'Donnell and Aaron Reich, e-mailed nine photos of Nikki's body to friends and family for apparent shock value on Halloween day in 2006.

"It is a sad day, to be sure, when those upon whom we rely to protect and serve do the opposite, and make the decapitated corpse of a teenage girl the subject of international gossip and disrespect, and inflict devastating emotional harm on the parents and siblings of that girl," the ruling said.

"The CHP should know better. Every one of its officers should know better. The CHP is in a position to ensure that this does not happen again."

Under existing state law, surviving family members have no right of privacy "in the context of written media discussing, or pictorial media portraying, the life of a decedent."

However, the Catsouras case is unique, the appellate court noted.

"California law has not heretofore addressed the precise issue before us, having to do with gruesome death images that were in the control of law enforcement officers and allegedly disseminated out of sheer morbidity or gossip, as opposed to any official law enforcement purpose or genuine public interest," the ruling said.

The CHP does not comment on pending litigation.

In a previously released statement, the agency sent condolences to the Catsouras family, calling the accident "tragic" and its aftermath a "difficult, unfortunate situation."

Nikki died when she lost control of her father's Porsche while driving more than 100 mph on the 241 toll road and slamming into an unmanned toll station. She is survived by her parents, Lesli and Christos Catsouras, and three younger sisters.

Soon after the crash, images of Nikki's corpse proliferated worldwide on more than 2,500 Web sites and were "spit back at the family members, accompanied by hateful messages," the ruling noted.

One of her sisters was so traumatized by taunting at school she dropped out to be home-schooled.

While expressing their dismay at how the images were exploited on the Internet, Reich and O'Donnell – in previous interviews and through their attorneys – maintained they meant no harm to the family.

They also say they sent the images to warn family and friends about the dangers of speeding and driving under the influence. Toxicological tests turned up no signs of alcohol in Nikki's system but did turn up scant traces of cocaine metabolites.

"He (Reich) intended to present an issue ... of legitimate public concern," said Jon R. Schlueter, attorney for Reich. "We have no sympathy for the cyber-bullies who targeted the family. We wish those people had been sued."

Reich resigned from the CHP shortly after news of the leaked images broke for reasons unrelated to the controversy, according to Schlueter.

O'Donnell's attorney, R. Rex Parris, could not be reached for comment. A dispatch supervisor in Irvine, O'Donnell was ordered suspended without pay for 25 days after the CHP admitted to the leak.

Schlueter said he is considering filing a petition for review before the state Supreme Court – a decision he has 40 days to make. He said he also is considering filing a motion of reconsideration before the appellate court.

Bremer said the Catsouras family is looking forward to a possible settlement or jury trial.

Lesli and Christos Catsouras said they want the CHP and its dispatchers held accountable for causing what has become a never-ending nightmare for them and their three surviving daughters.

They have spent tens of thousands of dollars trying to rid the Internet of the images by hiring a private company that specializes in going after offensive material on Web sites.

"We're looking forward to confronting Aaron Reich, Thomas O'Donnell and the CHP in court for their incompetent behavior," Lesli and Christos Catsouras said in a statement.

"Up until now, the CHP has told us there was nothing we could do about the pictures — that we were on our own. We're thankful that now, we finally have an opportunity to get them to sit down and talk to us and offer us help."