

“Intrusion Upon Your Seclusion: Where Can Video Cameras Be Installed by Residents and Community Associations?,” FLCAJ Magazine

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Video cameras are everywhere these days. Many residents have “ring”-type doorbells, which video people who come to their door. Further, many residents have cameras on the outside of their homes which are pointed at their own lots for security purposes; however, sometimes the view of these cameras even extend onto other lots or into other homes or units. This leads to the question, where can a video camera be installed? When is there an invasion of privacy? When is there an “intrusion upon seclusion?” This issue was addressed in *Jackman v. Cebrink-Swartz*, 2021 WL 2171745 (Fla. 2d DCA 2021).

In the *Jackman* case, the Jackmans had installed a five-foot-high chain-link fence, which surrounded the backyard of their property. The chain-link fence was installed three feet inside of their actual property line, and there was a “No Trespassing” sign on the fence. At a later time, their neighbors, the Swartzes, also installed a fence but used the Jackmans’ fence in conjunction with their own fence. The Jackmans permitted this with the caveat that the Swartzes were not to plant anything along the fence on the Jackmans’ property.

There were no problems for a couple of years, but then the Swartzes planted plants and trees along the fence on the Jackmans’ property and, according to the Jackmans, the Swartzes’ dog was not being controlled. Therefore, the Jackmans demanded removal of the fence and that the fence be installed within the Swartzes’ property line. The Jackmans enlisted the help of the city, and the fence was moved. The Jackmans then installed a six-foot-high privacy fence inside the chain-link fence, which enclosed the back portion of their property.

The parties continued to have disputes, and the Swartzes installed a camera on the top of their home, which was 25-feet high. This camera also had night vision and recorded 24 hours a day, seven days a week. The camera was positioned to see over the Jackmans’ privacy fence, into the Jackmans’ backyard, and into the edge of their lanai. Both parties had cameras facing the common property line; however, the Jackmans believed that the camera on the roof invaded their privacy and filed a lawsuit against the Swartzes seeking a temporary injunction requiring them to remove the 25-foot-high camera from the roof of their home. The Jackmans argued that they were entitled to a reasonable expectation of privacy in

their backyard and home. The Swartzes argued that the video footage was not published to third parties; and therefore, the camera was permitted in that location.

The trial court ruled against the Jackmans focusing on the fact that the video footage was stored in the camera and there was no way to retrieve or print out the video footage. Therefore, the video footage was not published to a third party. The Second District Court of Appeals (DCA) determined that the trial court erred in this ruling.

The Second DCA stated that an invasion of privacy, specifically intrusion upon seclusion, is defined as “where a person intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns...if the intrusion would be highly offensive to a reasonable person.” The Second DCA also specifically noted that a claim for invasion of privacy—intrusion upon seclusion—does not require the publication or distribution of photos or videos to a third party. It was enough that the surveillance occurred within the Jackmans’ enclosed backyard, a location which was not visible to the public, and in which the Jackmans had a reasonable expectation of privacy.

In response to the “intrusion upon seclusion” claim, the Swartzes brought up the fact that the Jackmans had their own camera installed on the side of their home, which was aimed primarily at the border area between the homes and their side door. Importantly, the Second DCA stated that there was a “material difference between occasionally viewing the activities within a neighbor’s backyard that are observable without peering over a privacy fence and erecting a camera to see over a privacy fence to thereafter surveil and record those activities on a consistent basis.” The Second DCA reasoned that the Swartzes did not have the same “subjective expectation of privacy” in the border area between the homes and at their side door, which was visible from the street, as they would have if that area was enclosed by a privacy fence with posted “No Trespassing” signs.

Ultimately, the Second DCA determined that the trial court’s reliance on whether the footage of the camera was able to be captured and shared with a third party was not dispositive. Instead, the court concluded “the position of the camera in this case—peering over a privacy fence into the curtilage of a neighbor’s backyard—was dispositive”.

As a result of this case and other Florida cases, homeowners and unit owners should be especially mindful of the scope of their home video cameras and should make reasonable efforts to limit or restrict unintended surveillance of other lots or units. The key is expectation of privacy. Does the camera focus on a location where a person would have a reasonable expectation of privacy? If the camera focuses within a backyard, with a privacy fence, or into any portion of a home, then there is a claim for intrusion upon seclusion.

This also applies to community associations. Community associations that have cameras installed in the common area or common elements should ensure that the cameras only capture the areas which are open to the residents and are not aimed at any individual unit or home. Further, if a camera is located on the common area or common elements, the community association must ensure that the camera is in no way focused in areas where there is an expectation of privacy, such as bathrooms and showers.

To read the original FLCAJ Magazine article, please [click here](#).

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