



Legal Alert

May 14, 2013

Michael R. King
mking@gblaw.com
602-256-4405

QUESTION: FAMILY MEMBERS CAN'T SUE ME FOR WHAT I SAY ABOUT THEM ON THE INTERNET, CAN THEY?

ANSWER: BE CAREFUL, YOUR SIBLINGS COULD SUE YOU FOR DEFAMATION, FALSE LIGHT INVASION OF PRIVACY, OR OTHER THINGS!

Robin Reynolds wrote and published an article, "*I Want To Die Like A Dog: Poignant Insights On Aging Gracefully*." She published the article about her mother's situation in the online magazine, *phoenixWoman*. Her sister, Sylvia L. Reynolds, and her brother, Douglas L. Reynolds, sued Robin for defamation and false light invasion of privacy!

What did Robin put in her article to make her brother and sister sue her? Some of the things that she wrote were:

Many years ago, my mother made a point of saying to my siblings and me that she didn't ever want to be a burden to us, but as she has aged, her denial has grown. I have been called to her home in the middle of the day and the middle of the night for emergencies that range from—"I can't find my hearing aid and I need it now!" to a neighbor who found her in the gutter after she fell taking the garbage out in the rain.

Still, the everyday calamities or even the disagreement about in-home versus assisted living care is not the real issue. The issue is that my mother has no plan. She says, "when the time comes, I'll make that decision." But the truth is, "when the time comes," she may not be cognizant of the decisions that need to be made and at a time of extreme stress, the decisions will be left to her children who have not agreed on much thus far.

Reynolds v. Reynolds, 231 Ariz. 313, 294 P.3d 151 (Ct. App., 2013). Robin's siblings said that readers might "think worse of individuals who had been involved in their mother's affairs but had ignored Robin[s] pleas and recklessly ensured that their 92-year-old mother did not have an end-of-life plan in place as she approached incompetence and death." The court wasn't buying it, however!

Defamation

A published statement about a private person is only defamatory if the person publishing the statement knows that it is false and will harm someone else's reputation, or acts in reckless disregard or negligently in making the false and damaging statement. "To be defamatory, a publication must be false and must bring the defamed person into disrepute, contempt, or ridicule, or must impeach plaintiff's honesty, integrity, virtue, or reputation." So the court decided the article did not defame the brother and sister.

False Light Invasion of Privacy

Sylvia and Douglas said that their sister's article had placed them in a false light before the public.

What is the tort of false light invasion of privacy?

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

False light invasion of privacy requires that the statement be highly offensive to a reasonable person. "Unlike defamation, false light does not protect reputation or good name, but rather protects mental and emotional interests." False light invasion of privacy can include the publication of true information if it creates a false implication that is highly offensive.

For Robin's siblings, the court did not think the article even concerned them sufficiently to place them "before the public in a false light." The case was dismissed.

We don't think that Thanksgiving dinner is a cause for gathering in the Reynolds household anymore. Holiday gift exchanges are probably hazardous, as well. Probably few people read Robin Reynolds' article. In all likelihood, the lawsuit and the reported decision of the Arizona Court of Appeals did more to damage the reputations in the Reynolds family than the original article.

If you ever have any questions about what you should or should not say, either take your mother's advice or else call me.