

Florida Court of Appeal: Photos on Facebook are Fair Game in Discovery

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Discovery of social media is often appropriately considered in any case where evidence or admissions tending to disprove the other party's case is potentially available. Although social media has long been firmly rooted in our daily lives, no single rule has developed regarding discoverability of social media postings in litigation. Many courts, in fact, craft discovery orders tailored to the facts of the case and nature of the claims, but remain reluctant to order blanket disclosure of social media accounts. In January 2015, however, Florida's 4th District Court of Appeal did exactly that. In *Nucci v. Target Corp., et al*, the plaintiff sued Target, claiming that she slipped and fell on the floor of one of their stores. Target obtained what it alleged were post-accident surveillance videos showing plaintiff carrying heavy items and performing other physical acts, and moved to compel disclosure of any photographs of plaintiff posted on her Facebook profile beginning two years before the date of the accident. The plaintiff responded that, because her Facebook page had, since its creation, been on a privacy setting blocking access to the general public, she maintained a reasonable expectation of privacy in the photos. She also argued that the request was overbroad and would violate the federal Stored Communications Act (SCA). The trial court granted Target's motion and plaintiff appealed. Affirming the trial court, the appellate court found that the photos were "powerfully relevant to the damage issues in the lawsuit," particularly in concert with the post-accident surveillance footage. The appellate court further noted that because of the requested discovery's electronic format, production would not be onerous. Plaintiff's privacy interest in the photos was, said the court, "minimal," because the very nature of social media is to share information that can be freely accessed and shared by others. Finally, the appellate court rejected the plaintiff's SCA argument because the statute prevents only providers, not end-users, of communications from divulging private communications.

Authored By



Jonathan Sterling

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