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Interception of Spouse's Email under Maryland Law

Introduction

Our client represents a married woman in a divorce case. A private investigator was hired by her husband. The private investigator is accessing the wife's emails without the wife's permission. The wife's email account is owned by her employer. Wife wants to prevent her husband from further accessing her email.

Question Presented

Can a private investigator be enjoined from accessing a wife's or a third party's email?

Short Answer

Yes, the wife can enjoin the private investigator from accessing her email.

Discussion

Under Maryland law, interception of communications is only authorized if consent of all parties to the interception is obtained. *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 448 (Md. 2002). Section 10-402 of the Maryland Wiretapping and Electronic Surveillance Act, *Md.Cts. & Jud.Proc.Code Ann*, 10-401 et. seq., provides that except as otherwise specifically provided in § 10-402 it is unlawful for any person to willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.

The language of the statute makes it clear that no person in Maryland is authorized to intercept another person's private communication.

In *Standiford v. Standiford*, 89 Md. App. 326 (Md. Ct. Spec. App. 1991) the Appellee, Mary Lee Standiford, brought a civil action against her ex-husband, appellant, James A. Standiford, for invasion of privacy and violation of *Md.Cts. & Jud.Proc.Code Ann. § 10-401 et seq.*, Maryland's Wiretapping and Electronic Surveillance Act. *Id.* at 330. Appellee alleged that appellant listened to and recorded her telephone conversations that occurred in the marital home over a period of three years. Appellee testified that she never gave permission for appellant to place any listening devices on the telephone lines. *Id.* at 331.

A jury trial was held, and judgment was entered for the Appellee. On appeal, one of the issues raised by the Appellant was whether the trial court erred in refusing to grant judgment for appellant on Count I of Appellee's Complaint which alleged a violation of Maryland's Wiretapping and Electronic Surveillance Act. *Id.* The Appellant contended that that he was exempted from the civil sanctions provided by the Act because the Act was not intended to apply to spousal wiretaps where the spouse intercepting the conversations acts alone to install and utilize the wiretap, and is the sole subscriber for the telephone service in the commonly occupied marital abode. *Id.* at 333. The Appellate Court disagreed with the Appellant's argument and discussed the purpose of the Act, which was to prevent, in noncriminal situations, the unauthorized interception of conversations where **one of the parties has a reasonable expectation of privacy**. *Id.* Consequently, the Court observed that the Act was an offspring of, and closely parallels, Title III of the Federal Omnibus Crime Control and Safe Streets Act of 1968, *18 U.S.C. §*

§ 2510-20. Maryland courts often turn to the federal courts for guidance in construing the Maryland Act. *Id.* Accordingly, the Court relied on *18 U.S.C. § 2511(1)* in order to determine if the Act applied to spousal wiretaps. The Court observed that even though the Maryland Act is modeled upon the federal act, some alteration where made by the General Assembly before enacting the Act and found that the **Maryland Act was designed to afford the people of Maryland a greater protection than Congress provided in Title III.** On this finding the court affirmed the Trial Court's denial of Appellant's motion to dismiss and held:

The Maryland statute clearly and unambiguously prohibits all willful interceptions and endeavors to intercept any wire, oral or electronic communication. **There is no explicit exception regarding the interception of a spouse's communication.**

Id. at 335. (emphasis added)

The *Standiford* court interpreted the Maryland statute and ruled that spousal communication are not exempted from the Act. In the present case, the wife's email is intercepted by a private investigator, under the husband's instruction. In, *Standifor, supra*, it was the husband who directly intercepted the communication. Hence, our client is enabled by statute and precedent to enjoin the investigator from accessing his client's emails.

In *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434 (Md. 2002) while discussing the scope of an exemption clause under the Maryland Wiretapping and Electronic Surveillance Act, the court observed that emails are also included into the purview of the Act, due to the advancements in the telecommunication industry. *Id.* at 451-452.

Thus, the wife has the right to enjoin the investigator from violating her privacy by accessing her emails.

Conclusion

Maryland statute and courts have emphasized the importance of safeguarding the right to privacy of its citizens. Therefore, in the case at hand, the private investigator can be enjoined from accessing the wife's or third party's email.

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