

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in holding that the surreptitious installation of a so-called “keylogger” on the Appellant’s computer did not state a claim for a recognized claim of invasion of privacy under the theory of intrusion upon seclusion?

- II. Did the Court of Appeals err in holding that Appellee ConDevel was exempt from the notification provision of the Marshall Data Protection Act, 17 Marshall Code § 105 (2006)?

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I. The Fourth Circuit Court of Appeals erred in affirming the summary judgment of the Grant County District Court and subsequently holding that the surreptitious installation of a so-called “keylogger” on the Appellant’s computer did not state a claim for a recognized tort of invasion of privacy under the theory of intrusion upon seclusion.

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A. The Fourth Circuit Court of Appeals erred in affirming the summary judgment that was granted by the Grant County District Court.

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B. The Fourth Circuit Court of Appeals has erred in admitting whilst denying the tort of intrusion upon seclusion and has further erred in holding that if Baylor’s claim was to be recognized, it would fail as a matter of law.
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(i) The Plaintiff / Appellant submits that Steve Nesbit’s intrusion upon Plaintiff / Appellant Ron Baylor’s seclusion from his private place of working was unauthorized.
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(ii) The Plaintiff / Appellant Baylor submits the following:

(1) That the intrusion by Nesbit in his private place of working is objectionable or offensive to a reasonable man.

(2) That the intrusion upon seclusion so caused has defamed and damaged his reputation in Executive and Premier Clubs in the State of Marshall thereby causing him mental agony, anguish, stress and suffering.
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(iii) **The Plaintiff / Appellant Baylor submits that the matter intruded upon by Nesbit was from Baylor’s zone of solitude and of a highly confidential nature and included files containing employees’ electronic personnel files, including his own, contact information, social security numbers, driver’s license numbers, employees performance evaluations, employees salary data, employees benefits information, employee awards and honors and other personal data by virtue of which the information so intruded upon is private.**

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II. The Court of Appeals erred in holding that Appellee ConDevel was exempt from the notification provision of the Marshall Data Protection Act, 17 Marshall Code § 105 (2006).

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A. § 105 (d) of the Act reads as follows, “For purposes of this section, ‘breach of the security of the system’ means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good Faith

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acquisition of personal information by an employee or agent of the agency is not a breach of the security of the system, provided that the personal information is used for the purposes designated by the agency and / or is not subject to further unauthorized disclosure.”
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B. § 105 (g) of the Act reads as follows, “Any and all data subjects within the State of Marshall shall have a civil action against any data collector that obfuscates evidence of a breach or makes an informed choice to not inform data subjects of a breach.”
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APPENDIX A:

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