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CHARLES CORNELIUS *v.* MARKLE INVESTIGATIONS, INC., ET AL.
(AC 45319)

Alvord, Cradle and Clark, Js.

Syllabus

The plaintiff sought damages from the defendants, H Co., a private high school, and M Co., a company that provided investigative services to H Co., for invasion of the plaintiff's privacy by intrusion upon seclusion. The plaintiff attended H Co. in the 1980s but was expelled prior to graduation. In 2001, the plaintiff obtained, without permission, stationery and envelopes embossed with H Co.'s letterhead, with which he attempted to mail an organized hate group's anti-Semitic newsletter to approximately 1000 of H Co.'s alumni. Shortly thereafter, the police searched the plaintiff's home, which was located across the street from H Co.'s campus, and found an arsenal of weapons, bomb making materials, and anti-Semitic and racist materials. The plaintiff pleaded guilty in both state and federal court to charges stemming from the conduct underlying the search and the items seized by the police. He was incarcerated, and H Co. was registered as a victim of his crimes. In 2016, following the plaintiff's release from prison, H Co. hired M Co. to surveil the plaintiff. Thereafter, the plaintiff filed this action against the defendants alleging, inter alia, that, in carrying out their surveillance, the defendants intentionally intruded upon his solitude, seclusion and private affairs or concerns by following and surveilling him in various public spaces and that such an intrusion would be highly offensive to a reasonable person. Each of the defendants filed a motion for summary judgment, asserting, inter alia, that the plaintiff could not demonstrate that he had an objectively reasonable expectation of seclusion because there was no evidence that he was surveilled in any private place and that their conduct was not highly offensive or strongly objectionable but, rather, was reasonable and justified given the circumstances. The trial court granted the defendants' motions, and the plaintiff appealed to this court. *Held* that the trial court properly rendered summary judgment in favor of the defendants because, in viewing the evidence in the light most favorable to the plaintiff, there were no genuine issues of material fact as to the second and third elements of the plaintiff's claim of invasion of privacy by intrusion upon seclusion: there was no genuine issue of material fact that the plaintiff had an objectively reasonable expectation of seclusion or solitude, and, accordingly, that there was an actionable intrusion, because the defendants surveilled the plaintiff only while he was in a public setting, the defendants never viewed the plaintiff's mail, his wallet or his private bank account when he was observed at an automated teller machine, and the defendants used only basic equipment during their surveillance to capture images of the plaintiff while he was in public; moreover, contrary to the plaintiff's claim, the surveillance was not overzealous or unreasonably intrusive because the defendants did not physically enter the plaintiff's private property, did not utilize advanced electronic surveillance equipment to oversee or overhear the plaintiff's affairs, and did not surveil the plaintiff for the purpose of hounding or harassing him; furthermore, there was no genuine issue of material fact as to whether any alleged intrusion by the defendants would be highly offensive to a reasonable person because the manner in which M Co. surveilled the plaintiff was reasonable and justified, as the plaintiff's history with H Co. and his past conduct rightfully caused H Co. to be concerned about potential danger to its staff and students after the plaintiff was released from prison, such concern was also expressed by the state sentencing court and was acknowledged by the plaintiff himself, and, even after the plaintiff knew he was being surveilled, he sought information regarding the security practices being implemented in schools throughout the state, including at H Co.; accordingly, the burden shifted to the plaintiff, as the nonmoving party, to demonstrate the existence of some disputed factual issue, which the plaintiff failed to do, as the excerpts from transcripts of the depositions

of M Co.'s investigators, which the plaintiff presented in support of his assertions, failed to demonstrate any issues of material fact.

(*One judge concurring separately*)

Argued February 27—officially released June 20, 2023

Procedural History

Action to recover damages for invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *S. Richards*, *J.*, granted the motion to dismiss the plaintiff's claims against the defendant Hopkins Committee of Trustees filed by the defendant Hopkins Committee of Trustees et al.; thereafter, the court, *S. Richards*, *J.*, granted the motions for summary judgment filed by the named defendant et al. and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Eric M. Creizman, pro hac vice, with whom was *Thomas V. Juneau, Jr.*, for the appellant (plaintiff).

Eva K. Larsen, with whom were *Megan A. Kittler*, and, on the brief, *James L. Brawley*, for the appellee (named defendant).

James M. Sconzo, with whom was *Amanda M. Brahm*, for the appellee (defendant Hopkins School, Inc.).

Opinion

ALVORD, J. The plaintiff, Charles Cornelius, appeals from the judgment of the trial court granting the motions for summary judgment filed by the defendants Markle Investigations, Inc. (Markle), and Hopkins School, Inc. (Hopkins School).[1] On appeal, the plaintiff claims that the court improperly rendered summary judgment in favor of the defendants as to the plaintiff's claim of invasion of privacy by intrusion upon seclusion because genuine issues of material fact existed as to whether (1) the defendants' alleged intrusion was intentional, (2) the defendants' surveillance of the plaintiff solely in public was an actionable intrusion, and (3) the defendants' surveillance of the plaintiff was highly offensive to a reasonable person. We disagree with the plaintiff as to his claims regarding whether there was an actionable intrusion and whether such intrusion was highly offensive[2] and, accordingly, affirm the judgment of the trial court.[3]

The following facts, viewed in the light most favorable to the plaintiff, and procedural history, are necessary for our resolution of this appeal. The plaintiff attended high school at Hopkins School, during which time he was disciplined on several occasions and was expelled from the school for plagiarism in 1987. In October, 2001, the plaintiff obtained, without permission, stationery and envelopes embossed with Hopkins School's letterhead with which he attempted to mail a National Alliance[4] publication to approximately 1000 Hopkins School alumni. Approximately one month later, the police lawfully searched the home where the plaintiff lived with his parents. The home was located across the street from Hopkins School's campus. During their search, the police seized an arsenal of weapons of mass destruction, bomb making materials, and anti-Semitic and racist materials. Thereafter, the plaintiff pleaded guilty in state and federal court to charges stemming from the conduct underlying the search and the items seized by the police, for which he was incarcerated. See *Cornelius* v. *Commissioner of Correction*, 167 Conn. App. 550, 551–52, 143 A.3d 1179 (2016). Hopkins School is a registered victim of the plaintiff's crimes.

On November 26, 2018, the plaintiff commenced the present action against the defendants, alleging claims of invasion of his right to privacy, arising from Hopkins School's retention of Markle to conduct surveillance of the plaintiff following his release from prison in September, 2016. In his complaint, the plaintiff alleged that, following his release from consecutive state and federal prison sentences; see id., 552; he resided in a halfway house in Hartford from September, 2016, to November, 2017. The plaintiff alleged that, in April, 2017, he noticed that "he was being surveilled by the same two or three people." He further alleged that such surveillance

included individuals observing him outside of the halfway house in Hartford and following him to or through several locations such as malls, stores, restaurants, public libraries, and on public transportation.

The plaintiff alleged that, in November, 2017, he moved to a halfway house in New Haven, where, "[f]rom the moment he arrived . . . [he] noticed [that] he was being followed . . . took down the license plate [of the vehicle following him] and, in consultation with his attorneys, provided the information to a private investigator, who traced the automobile to [Markle]." Additionally, he alleged that, "[u]pon information and belief, Hopkins School . . . uses Markle . . . for various matters, and has retained it to follow and surveil the plaintiff." The plaintiff further alleged that his private investigator has "conducted countersurveillance of Markle . . . and has confirmed that [the plaintiff] has . . . been followed and surveilled by Markle . . . ." The plaintiff proceeded to delineate several dates from January 17 to July 26, 2018, and alleged that, on those dates, he was surveilled and followed by Markle's employees and agents.

The plaintiff further alleged that "Hopkins School . . . intentionally intruded upon [his] solitude, seclusion, and private affairs or concerns by directing employees and/or agents of Markle . . . to follow and surveil him in multiple locations, including, but not limited to, his residence; doctor's offices . . . multiple stores, malls, and restaurants; and through multiple cities." Additionally, he alleged that "Markle . . . intentionally intruded upon [his] solitude, seclusion, and private affairs or concerns by following and surveilling him in multiple locations . . . and . . . cities." Moreover, the plaintiff alleged that "[t]he nearly continuous surveillance of [him] is behavior that would be highly offensive to a reasonable person." Finally, the plaintiff alleged that, "[a]t all relevant times . . . Markle . . . was acting at the direction of, and with the full permission and consent of . . . Hopkins School," and, therefore, Hopkins School is "vicariously liable for the actions of . . . Markle . . . ."

On November 2, 2020, the plaintiff filed an expert witness disclosure, in which he disclosed Jim Nanos, a private investigator, owner of a private investigation company, and owner and operator of an online retailer that sells surveillance equipment. The disclosure stated that Nanos was "expected to testify regarding the industry accepted policies and practices of private investigators, the type of surveillance equipment that is available to licensed private investigators, the capabilities of the surveillance equipment, the types of surveillance equipment and the capabilities of the equipment used by the defendants in this case, and the type of equipment and resources that would be required in order to surveil the plaintiff as alleged in the complaint."

On March 4, 2021, the defendants filed a joint expert witness disclosure, in which they disclosed Eric Daigle, an attorney and "expert in the field of police practices and private security/investigations, fourth amendment protections and privacy considerations . . . ." The defendants' disclosure stated that Daigle "is expected to testify regarding permissible use of surveillance and the reasonable expectations of privacy that an individual in the plaintiff's position can expect, and the actions taken by Markle . . . and/or Hopkins School as [they] relate to the claims asserted by the plaintiff."

On May 17, 2021, the defendants filed separate motions for summary judgment and memoranda of law in support of their motions. In Hopkins School's motion for summary judgment, it asserted, inter alia, that it was "not legally liable . . . because codefendant, Markle . . . did not . . . invade the plaintiff's privacy." In its memorandum of law, to which it attached twenty-two exhibits, Hopkins School set forth that, " '[f]or there to be liability, the defendant's interference with the plaintiff's seclusion must be substantial, must be of a kind that would be highly offensive to a reasonable person, and must be a result of conduct to which a reasonable person would strongly object.' " It argued that "[t]here is no evidence in the record that supports any of these elements and the plaintiff's 'upon information and belief' allegations are insufficient to survive summary judgment."

First, Hopkins School argued that Markle did not commit an intentional intrusion because it had the necessary legal permission to surveil the plaintiff in the manner it did.[5] In support of that contention, Hopkins School pointed to the deposition testimony of Markle's investigator, Thomas Murray, who "testified that the frequency and the duration of the surveillance of the plaintiff was 'typical' " and that they would have basic equipment, such as cell phones and binoculars available to them while surveilling the plaintiff. Additionally, Hopkins School noted that the plaintiff's own expert witness, Nanos, "testified that he and his team commonly use all the surveillance tactics that the plaintiff alleges Markle used—*and more*," which Nanos stated included surveilling a subject in public places and near their home, following them for as long as possible whether they are in a private car or on public transportation, and taking as many videos and photographs as possible with advanced technology because cell phone photography is insufficient. (Emphasis in original.) Finally, Hopkins School pointed to Daigle's affidavit, in which he averred that "[o]bserving, photographing, or recording an individual in a public space is not a violation of a reasonable expectation of privacy."

Second, Hopkins School argued that the "[p]laintiff cannot show that he had an objectively reasonable expectation of seclusion in [the] place at issue" because

the plaintiff has demonstrated "no *evidence* that he was surveilled in any private place, and his conjecture about where Markle may have done so is insufficient to evade summary judgment." (Emphasis in original; internal quotation marks omitted.) In support of its argument, Hopkins School pointed to the plaintiff's own deposition testimony in which he stated that "he has no reason to believe that Markle ever surveilled him while he was in his home," "he does not believe that Markle ever took pictures of him at his home and only took pictures of him in public places," and his own countersurveillance team "confirmed that Markle did not surveil [him] in 'a place not open or accessible to the public.' "

Third, Hopkins School argued that "Markle's conduct was not highly offensive or [strongly] objectionable, but instead entirely reasonable and justified." (Internal quotation marks omitted.) Hopkins School asserted that the plaintiff "is a dangerous man who Hopkins [School] rightly fears based on . . . the opinions of law enforcement experts" and that the plaintiff "has used false identities, hoarded an array of lethal weapons on multiple occasions, been fixated on white supremacist literature that advocates a race war . . . shown a fascination with school shootings . . . [and] has established animosity toward Hopkins School which is within sight of his house . . . ." In support of its assertions, Hopkins School attached portions of the transcript from the plaintiff's state sentencing proceeding in 2004, at which the court, *Blue*, *J.*, acknowledged that Hopkins School was "understandably concerned, just as almost any of us would be if we were in their shoes" and the plaintiff himself testified that he recognized the concern Hopkins School could have regarding his behavior. Additionally, Hopkins School attached testimony of John Aldi, security risk group intelligence coordinator for the Department of Correction, from the plaintiff's habeas trial that was held approximately one and one-half years prior to the plaintiff's release from prison, who testified that he had "a true fear of when [the plaintiff is] released" because he "believe[d] [the plaintiff] is plotting [some] sort of violence once he is out."

In Markle's motion for summary judgment, it asserted that "[t]he undisputed evidence . . . reflects that, as a matter of law, [Markle] never engaged in any conduct that would constitute an invasion of privacy, and that no reasonable jury could conclude otherwise." In its memorandum of law, to which it attached seven exhibits, Markle argued that it did not intrude into the plaintiff's solitude or seclusion because "in every instance in which the plaintiff was being surveilled by Markle, *without exception*, [the plaintiff] was in a public area, readily open to general public observation and without any reasonable expectation of privacy" and, therefore, Markle is not liable for invasion of privacy as a matter of law. (Emphasis in original.) Additionally, Markle argued that the surveillance requested by Hopkins School and

performed by Markle was reasonable and appropriate under the circumstances. Markle asserted that "[t]he plaintiff's investigation and ultimate arrest for possession and interstate purchase of an illegal high-powered rifle, along with bomb making materials and other dangerous and deadly implements, was precipitated by his theft and use of Hopkins School stationery to distribute ethnic hate literature to former alumni. [Therefore] Hopkins [School] had reasonable grounds to believe its students and/or staff may be targeted upon the plaintiff's release from prison, particularly in light of the discovery of a list of racially charged and militaristic literature in his prison cell shortly before his release."

On October 4, 2021, the plaintiff filed a joint objection to the defendants' motions for summary judgment and a memorandum of law in support of his objection, and he appended six exhibits thereto. The plaintiff argued, inter alia, that "[t]he depositions and other, limited, discovery materials that the defendants produced demonstrate that a reasonable jury could conclude that the defendants invaded the privacy of the plaintiff [and] [a]s such, the defendants' motions for summary judgment must be denied." Specifically, the plaintiff asserted that genuine issues of material fact existed with respect to whether the investigators viewed his private and confidential banking information while he was at the automated teller machine (ATM) or bank, took photographs of his private and confidential information, and used equipment that enabled them to view the plaintiff's confidential information "from a great distance . . . ." In support of his assertion, the plaintiff appended "pictures [Markle] took of the plaintiff, over his shoulder, of a computer screen while [he was] at a FedEx location," and his own affidavit, in which he averred that he has "accessed [his] bank account information on computers at . . . several FedEx locations." He further argued that the "issue does not just involve the single day that the picture was taken but instead is evidence of the conduct of the defendants for years . . . [and] [a]s a result, it is a question of fact whether the defendants observed this type of confidential material on numerous occasions throughout their daily surveillance." Moreover, the plaintiff argued that "whether the conduct of the defendants was reasonable is a question for the jury to decide" and, in support, noted that "there has been testimony that demonstrates that the defendants followed, photographed, and surveilled [him on] more than 900 days." In conclusion, he stated that "a person does not automatically make public everything he does merely by being in a public place . . . [and that] [t]here exist facts and circumstances whereby a jury could reasonably conclude that the defendants invaded the plaintiff's privacy and should be held liable."

On October 18, 2021, Hopkins School filed a reply to the plaintiff's objection. Therein, Hopkins School

argued, inter alia, that the plaintiff failed to present any admissible evidence that his privacy was invaded but, rather, "merely continues to speculate that *maybe* Markle viewed his ATM PIN number or banking records while he was in public," despite that "every Markle witness denied viewing the plaintiff's banking information and the plaintiff testified that he did not see anything like that happen." (Emphasis in original.) Hopkins School further asserted that the plaintiff "attempt[ed] to manufacture a dispute of fact by way of a self-serving affidavit," however, "[e]very witness that the plaintiff has deposed has confirmed that they did not, and would not have observed the plaintiff's private banking information," and appended testimony from the depositions of three of Markle's investigators in support.

On October 19, 2021, Markle filed a reply to the plaintiff's objection, wherein it reiterated Hopkins School's arguments. Markle emphasized that the plaintiff failed to establish through admissible evidence that the defendants observed any of his private information and that his arguments amounted to mere speculation. Markle supported its argument by appending the testimony of its investigators who "affirmatively denied obtaining any private banking information" of the plaintiff's and did not use "any 'sophisticated equipment' beyond their personal cell phones, which could not possibly have zoomed in several hundred feet to identify information being input into an ATM." Markle further argued that, even if the plaintiff's assertions were true, the fact that Markle's investigators may have viewed the plaintiff's private information "would not amount to an invasion of privacy . . . [because] the plaintiff did not take reasonable steps to ensure the privacy and security of his banking information in public." (Emphasis omitted.) Moreover, Markle argued that the plaintiff submitted no evidence to support his allegations. Finally, Markle argued that the plaintiff failed to cite any legal authority to support his argument that the mere duration of the surveillance constitutes an invasion of privacy.

On October 20, 2021, the court held oral argument on the defendants' motions for summary judgment. On February 1, 2022, the court granted the defendants' motions for summary judgment and issued a separate memorandum of decision as to each defendant.[6] After setting forth the three elements that a plaintiff must prove to establish a claim for intrusion upon seclusion as articulated by this court in *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 153, 172–73, 204 A.3d 717 (2019), the court proceeded to examine each element to determine whether a genuine issue of material fact existed.

As to the first element, "an intentional intrusion, physical or otherwise"; id., 172; the court determined that the defendants had established that there was no genuine issue of material fact that "any intrusion upon seclu-

sion was not intentional." In support of its determination, the court stated that Dan Markle, owner of Markle, testified that each investigator working for him abides by the law and is told what is legal and illegal. The court noted that his testimony was corroborated by two of Markle's investigators who testified that they were told "not to go anywhere that the public could not go" and that Markle has "policies that they cannot do anything illegal and cannot go into a private space."

Additionally, the court determined that the plaintiff had failed to produce any evidence that raised a genuine issue of material fact. Specifically, it noted that the plaintiff's own expert, Nanos, testified that "the number of photographs taken in the surveillance of the plaintiff in the present case was far lower than the number he would have taken," and the court referenced testimony in which Nanos reported that he once took 1,299,327 photographs of an individual over the course of one and one-half years of surveillance. Finally, the court stated that the plaintiff testified that "none of the photos or information from his countersurveillance gave him any reason to believe he was being observed in private, and, to his knowledge, no Markle investigator ever stepped foot on his private property." Therefore, the court found that there was no genuine issue of material fact that, if any intrusion occurred at all, it was not intentional.

As to the second element, which "requires that the intentional intrusion be upon the plaintiff's solitude or seclusion or private affairs or concerns" and requires the plaintiff to "show that he had an objectively reasonable expectation of seclusion or solitude in that place"; *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 175; the court determined that the defendants had established that there was no genuine issue of material fact that "all surveillance occurred in public, and any private matters observed were exhibited to the public gaze." The court noted that the "only instance of private matters *possibly* being observed" is the plaintiff's allegation that Markle viewed his private banking information while he used an outdoor ATM. (Emphasis added.) The court stated, however, that the defendants introduced evidence, via the deposition testimony of Markle's investigators, that Markle did not seek nor obtain the plaintiff's private information, and the plaintiff testified "that he had concluded that he was being surveilled when he was using the ATM because a car was in the vicinity, but that none of the people he thought were following him were within ten feet of him when he was using the ATM, nor did he see anyone surveilling him at all at that time."

The court further concluded that the plaintiff's argument, premised on comment (c) to § 652B of the Restatement (Second) of Torts,[7] "that observing someone entering his PIN number or seeing his bank balance,

without any evidence that any such information was used or recorded, is equivalent to an intrusion upon the matter of someone's private undergarments" was unconvincing. The court noted that "a person using an ATM on a public street does not have a reasonable expectation of privacy in that place . . . [because] there is always a possibility that passersby may observe someone's banking information." The court further stated: "Even if such an expectation could be reasonable, there is no evidence of an intrusion into such matters in this case. Rather, the plaintiff merely asserts that an investigator *may* have been in the vicinity of the ATM and *may* have seen or recorded the plaintiff's banking information while driving by. This is not sufficient to demonstrate the existence of an issue of material fact with respect to the second element." (Emphasis in original.) Finally, the court stated that "[t]here is no evidence that the investigators used any technology beyond binoculars and a standard camera or video camera," therefore, the plaintiff's "mere assertion" that Markle may have used more advanced equipment, without any evidence, is insufficient to demonstrate the existence of a genuine issue of material fact.

As to the third element, which requires that the intrusion upon the plaintiff's solitude or seclusion be "highly offensive to a reasonable person"; *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 176; the court determined that there is no genuine issue of material fact that "any intrusion upon seclusion would not be highly offensive to a reasonable person . . . [because] [t]he plaintiff's history with Hopkins [School] and his past conduct leading to his imprisonment rightfully caused Hopkins [School] to be concerned about potential danger to its staff and students after the plaintiff's release. [Therefore] Markle's surveillance of the plaintiff in a legal manner in response to this concern was reasonable and justified." In support of the court's conclusion that the surveillance was reasonable and justified, despite it occurring "at times, on a near daily basis over multiple years," the court stated that, "prior to his imprisonment, the plaintiff maintained a stockpile of weapons and bomb making materials"; during his imprisonment, the plaintiff's "release date was also delayed due to concerning materials being found in his cell, including a photograph of the gun used in the Sandy Hook school shooting" and "a list of racially charged and militaristic literature"; "[f]ollowing his release, the plaintiff also moved into his mother's home across the street from Hopkins School"; and, "through the current proceeding and a [Freedom of Information Act] request, the plaintiff tried to learn about security on [Hopkins School's] campus and at other public schools in the state."[8] Accordingly, the court concluded that, "viewed in the light most favorable to the plaintiff, the evidence establishes that there is no genuine issue of material fact that there was no invasion of privacy

by intrusion upon seclusion . . . [t]he burden thus shifts to the plaintiff to demonstrate such an issue of material fact . . . [and] [t]he plaintiff has not submitted evidence sufficient to do so." This appeal followed. Additional facts and procedural history will be provided as necessary.

We first set forth the legal principles governing motions for summary judgment and the standard of review applicable to this appeal. "Our review of a trial court's decision granting a motion for summary judgment is well established. Practice Book § 17-49 provides that the judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A material fact is a fact that will make a difference in the result of the case. . . . The facts at issue are those alleged in the pleadings. . . .

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . .

"The party opposing a motion for summary judgment must present evidence that demonstrates the existence of some disputed factual issue . . . . The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents. . . . The opposing party to a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . The existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence. . . . Our review of the trial court's decision to grant a motion for summary judgment is plenary. . . . On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." (Citation omitted; internal quotation marks omitted.)

Parnoff v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 164–65.

We turn now to the relevant legal principles governing the plaintiff's claim. In *Davidson* v. *Bridgeport*, 180 Conn. App. 18, 29–30 and n.15, 182 A.3d 639 (2018), "this court addressed for the first time an intrusion upon seclusion claim . . . [and] noted that [§] 652B of the Restatement (Second) of Torts provides: One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person. . . . It is clear from the Restatement's language that to establish a claim for intrusion upon the seclusion of another, a plaintiff must prove three elements: (1) an intentional intrusion, physical or otherwise, (2) upon the plaintiff's solitude or seclusion or private affairs or concerns, (3) which would be highly offensive to a reasonable person." (Citations omitted; internal quotation marks omitted.) *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 172–73; see also 3 Restatement (Second), Torts § 652B, p. 378 (1977).

On appeal, the plaintiff claims that the court erred in granting the defendants' motions for summary judgment as to each element of his claim for intrusion upon seclusion. Specifically, the plaintiff argues, inter alia, that the court erred in concluding that there was no genuine issue of material fact as to the second element because "surveillance of a person, even if solely limited to surveillance of the target in public places, can satisfy the second element . . . where . . . the investigation was overzealous and unreasonably intrusive." Additionally, the plaintiff argues that, as to the third element, "[t]he trial court erred in concluding that, as a matter of law, the surveillance was 'reasonable given the circumstances and level of concern.' " On the basis of our thorough review of the record, we agree with the court that, viewing the evidence in the light most favorable to the plaintiff, there is no genuine issue of material fact that the conduct the plaintiff attributes to the defendants did not intrude upon his solitude or seclusion or private affairs or concerns, nor would it be considered "highly offensive" to a reasonable person under the circumstances of this case. See *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 173, 175–76. The following additional facts are relevant to our analysis.

The plaintiff attended high school at Hopkins School during the mid-1980s, during which time he was disciplined for assisting a fellow student in spreading glass on a teacher's driveway and carrying a "throwing star,"[9] and he was expelled in 1987 for plagiarism.

In October, 2001, when the plaintiff was thirty-one years old, he obtained, without permission, stationery

and envelopes embossed with Hopkins School letterhead and attempted to mail approximately 1000 Hopkins School alumni a publication of the National Alliance on Hopkins School's stationery because he "wanted [the alumni] to pay attention to it [because it is] from their alma mater."[10] The National Alliance publication was "an eight page [newsletter] . . . exposing that the Jews and Minority groups are controlling the media and television entertainment and that White Americans of European descent have to take back control or risk losing [their] way of life." The plaintiff characterized the publication as "reasonable" and "factual."

Approximately one month later, the New Haven Police Department, in conjunction with an arrest warrant for the plaintiff, executed a search warrant at the home where the plaintiff was residing with his parents, which is located across the street from the campus of Hopkins School.[11] Upon searching the plaintiff's residence, the police seized a "vast arsenal . . . weapons of mass destruction and . . . anti-[Semitic]/Racist material," which included, among other items, "numerous assault rifles, shot guns, handguns, [knives], practice hand grenades, bomb making materials, [and] razor ribbon wire . . . ." In addition, the police also seized publications with the following titles: "Do-it Yourself Submachine Gun"; "Pipe and Fire Bomb Design"; "How to Be Your Own Undertaker"; "How to Dispose of a Dead Body"; "Up Yours—Guide to Advanced Revenge Techniques"; "The Holy Book of Adolf Hitler"; "Breath of the Dragon, Home-Built Flame [Throwers]"; "Hit Man—A Technical Manual for Independent Contractors"; "Kill Without Joy—The Complete How-to-Kill Book."

Thereafter, the plaintiff pleaded guilty to two counts of possession of an assault weapon and one count of attempted manufacture of a bomb, in state court, and to importing or manufacturing firearms and fraud with identification documents, in federal court. It is undisputed that Hopkins School is a registered victim of the plaintiff's crimes.

During the plaintiff's state sentencing hearing, the court, *Blue*, *J.*, observed that, in his "fifteen years on the bench, [he had not] had a case like this" and that "[p]art of [him] wants to warehouse [the plaintiff] for the rest of [his] life, not out of vindictiveness . . . but simply out of concern for the protection of society . . . ." Additionally, the court stated that the plaintiff's assertion "that the bomb making collections here were . . . collector's items [was] . . . just a preposterous suggestion" and one that the court was "concerned about." Moreover, the court stated that it believed the plaintiff was "not impulsive in any way, but . . . very deliberate," and that, "for all [his] immaturity, in some ways [the plaintiff has] a way [of] looking forward . . .

that is, that [the plaintiff] stated in [his] own testimony that [he was] putting [his gun] away for a rainy decade, and that . . . [he was] storing the bomb materials for the remote future. And the remote future is exactly what [the court is] concerned about." Furthermore, the court recognized that "Hopkins School . . . is understandably concerned about this case, and not . . . vindictive in any way, but understandably concerned just as almost any of us would be if we were in their shoes," a sentiment the plaintiff also acknowledged during his own statements before the sentencing court. The plaintiff was sentenced to ten years and six months' incarceration and ten years of special parole for his state crimes and eighteen months' incarceration for his federal crimes, to be served consecutively. *Cornelius* v. *Commissioner of Correction*, supra, 167 Conn. App. 551–52.

During his incarceration, the plaintiff attempted to contact the National Alliance by letter. Thereafter, prison officials searched the plaintiff's cell and discovered several documents, including an image of the weapon, an assault rifle, that Adam Lanza used during the Sandy Hook Elementary School shootings. The plaintiff testified that he "used to have one," he "liked it . . . thought [the image of the weapon] was a nice picture," and that he "put it up in [his] locker to tick off the guy in the next bunk . . . ." Among the other documents found in the plaintiff's cell were a handwritten list of organizations, including "Liberation Movement of the German Reich," "The National Alliance," and "NS White Americans Party"; and an order form containing a list of books and DVDs with titles such as, "Cannibal Suburbia," "Hostage Rescue Manual," and "U.S. Army Guide to Boobytraps."

In January, 2014, toward the plaintiff's end of sentence date, he was placed in a restrictive housing unit because his "continued presence in the general population pos[ed] a serious threat to life, property, self, other inmates, and/or the security of the facility . . . ." Additionally, the plaintiff received a security risk group designation based on a finding that he was affiliated with the Aryan Brotherhood. As a result of this designation, the plaintiff lost his risk reduction earned credit (RREC).

The plaintiff filed a habeas petition to challenge the loss of his RREC, which was adjudicated and denied by the trial court and dismissed on appeal. See *Cornelius* v. *Commissioner of Correction*, supra, 167 Conn. App. 552–53, 556. At the trial on the plaintiff's habeas petition, in early 2015, the court heard testimony from Aldi, the security risk group intelligence coordinator for the Department of Correction. He testified that, "[i]n [his] opinion . . . [the department] did the right thing by placing [the plaintiff] in . . . the Special Management Unit, to keep [their] eyes on him." Additionally, Aldi testified that, "[w]hen [he] looked at the totality of the

information that we had prior to the designation, then after receiving phone calls from the Hopkins School, from their representation, reading the letters[12] . . . I have a true fear—I have been doing this a long time; I have a true fear of when [the plaintiff is] released." (Footnote added.) Aldi elaborated that "my fear is that, given the opportunity, I believe [the plaintiff] is plotting [some] sort of violence once he is out."

In anticipation of the plaintiff's release from prison, Hopkins School engaged Markle to surveil the plaintiff "to confirm that [the plaintiff] was not (1) attempting to come to [Hopkins School's] property; (2) attempting to stockpile weapons; or (3) meeting with any associates who could help [him] carry out an attack on Hopkins [School]," so that Hopkins School "could adequately respond and protect its community." Markle's surveillance began when the plaintiff was released from prison to a halfway house in Hartford, where he lived for fourteen months, continued when the plaintiff moved to a halfway house in New Haven, and thereafter when the plaintiff moved back into his parents' residence located across the street from Hopkins School. Markle was instructed "to document [the plaintiff's] daily activities," and, when it began surveilling the plaintiff, Markle generally communicated with Hopkins School on a daily basis.

Markle's investigators surveilled the plaintiff only in public places, such as when he "would walk briskly to and from different locations . . . [when] he would put stickers on utility boxes, phone boxes . . . [when] [h]e would travel . . . to the bus terminal . . . [and] by the Connecticut River . . . [and when] he would get on the bus . . . to the library . . . [and to] pick up lunch." During their surveillance of the plaintiff, Markle's investigators utilized portable radios to communicate with one another, a cell phone, and "perhaps a set of binoculars." One of Markle's investigators stated that although he could not estimate the number of photographs he took of the plaintiff during surveillance, it was between ten and fifty, and he would generally "take a picture of any subject at the beginning of a surveillance . . . mean[ing], the . . . first day or so on the surveillance" and, thereafter, "if [the plaintiff] met with another person . . . ." Additionally, he stated that the type, frequency, and duration of his surveillance of the plaintiff was "typical."

In April, 2017, the plaintiff became aware that he was being surveilled and hired his own private investigation firm, Advanced Investigations, LLC (Advanced), to conduct countersurveillance. Advanced "confirmed that [the plaintiff] has indeed been followed and surveilled by Markle . . . ." Advanced did not identify any time when Markle observed the plaintiff "while [he was] in a place not accessible to the public." The plaintiff himself admitted that during any instance in which he was

aware that Markle's investigators were surveilling him, he was in a public setting, including walking along the street, inside a mall, riding on a bus, inside a FedEx location, and while he was driving. Additionally, insofar as the plaintiff was aware, no Markle investigator had "stepped foot" onto his private property, and, although he had "seen them drive by and look at [his] house," he was unaware of any instance in which any Markle investigator observed him while he was inside his house. Finally, the plaintiff did not have any specific knowledge as to whether any Markle investigator had overhead him on the cell phone, obtained any of his financial information, or taken any video or photographs of him while he was in his home.

During the pendency of these proceedings, in 2019, the plaintiff filed a Freedom of Information Act request for records related to the School Security Grant Program (SSGP).[13] Therein, the plaintiff requested an opportunity to inspect or copy public records showing " 'the names of all the security contractors who have received funding under the [SSGP]' " and he "acknowledge[d] that [the Division of Emergency Management and Homeland Security (Division) had] not released the list of schools that have received funding, [because they] have argued [it] would constitute a safety risk under [General Statutes §] 1-210 (b) (19)."[14] In denying the plaintiff's request, the Division stated that "[t]here is a safety risk to persons and/or property in releasing the names and dollar amounts of contractors that have received reimbursement for work performed in support of school security infrastructure projects [because] [t]hat information would provide a roadmap of what type of work was performed and where the work occurred." Additionally, in 2021, Hopkins School filed a motion for a protective order pursuant to Practice Book § 13-5 wherein they requested an order "precluding discovery about general security practices, methods, means and procedures on the Hopkins School campus" due to the plaintiff's counsel asking a Markle investigator about Hopkins School's protective measures during a deposition. See footnote 8 of this opinion.

On appeal, with regard to the second element of intrusion upon seclusion, the plaintiff challenges, inter alia, the court's determination that "no intrusion occurred because 'all surveillance occurred in public, and any private matters observed were exhibited to the public gaze' " and argues that "the trial court improperly considered dispositive the fact that the intrusion occurred in public." The plaintiff further contends that, "[a]lthough a plaintiff may waive some degree of privacy by virtue of his appearance in public, the question does not become whether the intrusion occurred in a public place but rather remains whether the defendant[s] intruded upon the plaintiff's 'private affairs or concerns.' " See 3 Restatement (Second), supra, § 652B, p. 378. We are unpersuaded by the plaintiff's argument.

The second element of intrusion upon seclusion "requires that the intentional intrusion be upon the plaintiff's solitude or seclusion or private affairs or concerns," and this court has held that "[t]he plaintiff . . . must show that he had an objectively reasonable expectation of seclusion or solitude in that place." *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 175; see 3 Restatement (Second), supra, § 652B, p. 378. The Restatement further provides guidance on circumstances in which a defendant's conduct would satisfy the second element of intrusion upon seclusion. Namely, "[t]he invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room in a hotel or insists over the plaintiff's objection in entering his home. It may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs, as by looking into his upstairs windows with binoculars or tapping his telephone wires. It may be by some other form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents." 3 Restatement (Second), supra, § 652B, comment (b), pp. 378–79. Moreover, "[t]he defendant is subject to liability . . . *only* when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs." (Emphasis added.) Id., comment (c), p. 379.

The evidence before the court revealed that there was no genuine issue of material fact as to the second element of intrusion upon seclusion. First, the defendants surveilled the plaintiff only while he was in a public setting, such as while he was riding on public transportation, visiting a library, and walking along the street and, therefore, in settings where he lacked "an objectively reasonable expectation of seclusion or solitude . . . ." *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 175; see also *Perkins* v. *Freedom of Information Commission*, 228 Conn. 158, 174, 635 A.2d 783 (1993) ("a reasonable expectation of privacy must be viewed from the vantage point of an objective, ordinary reasonable person"). Second, the defendants never viewed the plaintiff's "private and personal mail . . . safe or his wallet . . . [or] private bank account . . . ."[15] 3 Restatement (Second), supra, § 652B, comment (b), p. 379. Third, the defendants used only basic equipment, including cell phones, walkie-talkie radio devices, and binoculars, during their surveillance to capture images of the plaintiff while he was in public. See id., comment (c), p. 380 (stating that there is no "liability for observing [a subject] or even taking his photograph while he is walking on the public highway, since he is not then in seclusion, and his appear-

ance is public and open to the public eye"). Accordingly, we agree with the court that the conduct that the plaintiff attributes to the defendants cannot, as a matter of law, sustain the second element. See *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 176.

The plaintiff also argues that "surveillance of a person, even if solely limited to surveillance of the target in public places, can satisfy the second element of an intrusion upon seclusion claim where, as here, the investigation was overzealous and unreasonably intrusive." In support of his contention that "ostentatious 'rough shadowing' may give rise to an actionable claim of intrusion upon seclusion"; see 5 Restatement (Second), Torts § 652B, Appendix, reporter's notes, comment (b), pp. 278–79 (1977); he cites cases from an array of other jurisdictions. See *Wolfson* v. *Lewis*, 924 F. Supp. 1413, 1420 (E.D. Pa. 1996) ("[c]onduct that amounts to a persistent course of hounding, harassment and unreasonable surveillance, even if conducted in a public or semi-public place, may nevertheless rise to the level of invasion of privacy based on intrusion upon seclusion"); *Polay* v. *McMahon*, 468 Mass. 379, 385, 10 N.E.3d 1122 (2014) (plaintiffs raised plausible claim for invasion of privacy where they "alleged a continuous surveillance of the interior of their home that was conducted for the purpose of harassment"); *McLain* v. *Boise Cascade Corp.*, 271 Or. 549, 555, 533 P.2d 343 (1975) ("If the surveillance is conducted in a reasonable and unobtrusive manner the defendant will incur no liability for invasion of privacy. . . . On the other hand, if the surveillance is conducted in an unreasonable and obtrusive manner the defendant will be liable for invasion of privacy." (Citations omitted.)); see also *Galella* v. *Onassis*, 487 F.2d 986, 994 (2d Cir. 1973) (plaintiff photographer found liable on defendant's counterclaim alleging invasion of privacy where his conduct involved physical contact, endangered safety of children, and caused fear when he attempted to obtain photographs of defendant).

Even if this court were to apply the standards as set forth in these other jurisdictions, we are unpersuaded that the plaintiff raised a genuine issue of material fact that the surveillance at issue in this case was unreasonably intrusive, as required by the case law relied on by the plaintiff. In contrast to the facts of the cases the plaintiff cites in support of his argument, the defendants in the present case did not physically enter the plaintiff's private property, the defendants did not utilize advanced electronic surveillance equipment to "oversee or overhear the plaintiff's affairs"; 3 Restatement (Second), supra, § 652B, comment (b), p. 378; and the purpose of the surveillance was not to hound or harass the plaintiff. See *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 176 (summary judgment on second element is proper where "[a]t no point does the plaintiff indicate that the defendants entered his resi-

dence or that they compromised any private information or [his] general privacy"). Therefore, we reject the plaintiff's argument that the surveillance was "overzealous and unreasonably intrusive" such that there existed a genuine issue of material fact as to whether there was any intrusion upon his solitude or seclusion or private affairs or concerns. See *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 175–76.

With regard to the third element of a claim for intrusion upon seclusion, on appeal, the plaintiff claims, inter alia, that "[t]he trial court erred in concluding that, as a matter of law, the surveillance was 'reasonable given the circumstances and level of concern.' " Specifically, he argues that the court improperly "invaded the province of the jury by resolving several issues of disputed material fact" regarding "the credibility and reasonableness of [Hopkins School's] subjective beliefs about the purported danger that [the plaintiff] posed to its staff and students . . . [and] whether that concern would justify surveilling [the plaintiff] on a near daily basis for over 900 days."[16] (Citations omitted.) We disagree.

The third element of the tort requires that any "intentional intrusion upon a plaintiff's solitude or seclusion be highly offensive to a reasonable person." *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 176. "For there to be liability, the defendant's interference with the plaintiff's seclusion must be substantial, must be of a kind that would be highly offensive to a reasonable person, and must be a result of conduct to which a reasonable person would strongly object. See 3 Restatement (Second), supra, § 625B, comment (d) [p. 380]. In the context of intrusion upon seclusion, questions about the reasonable person standard are ordinarily questions of fact, but they become questions of law if reasonable persons can draw only one conclusion from the evidence." *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 173.

Even if we were to assume, arguendo, that there is a genuine issue of material fact with respect to the first two elements of the plaintiff's invasion of privacy claim, we agree with the trial court that there is no genuine issue of material fact as to whether any alleged intrusion by the defendants would be highly offensive to a reasonable person. The court aptly noted that "[t]he plaintiff's history with Hopkins [School] and his past conduct leading to his imprisonment rightfully caused Hopkins [School] to be concerned about potential danger to its staff and students after the plaintiff's release." The court further concluded that the manner in which Markle surveilled the plaintiff was "reasonable and justified."[17] Although we emphasize but decline to repeat all the facts as previously set forth in this opinion, it is helpful to reiterate that more than ten years after he was expelled from Hopkins School, the plaintiff acquired,

without permission, stationery and envelopes embossed with Hopkins School's letterhead, with which he attempted to mail a National Alliance newsletter to Hopkins School alumni.[18] Shortly thereafter, the police lawfully searched the residence where the plaintiff lived, which is located across the street from Hopkins School's campus, and discovered an arsenal of weapons, bomb making materials, and related publications. Moreover, while the plaintiff was imprisoned, he posted in his locker an image of the weapon Adam Lanza used in the Sandy Hook Elementary School shootings because he "liked" that image.[19] Furthermore, Hopkins School is a registered victim of the plaintiff's crimes and the trial court in this civil matter was not the first to assert that the plaintiff's "conduct . . . rightfully caused Hopkins [School] to be concerned about potential danger to its staff and students . . . ."[20] In fact, and notably, this apprehension was also expressed by the state sentencing court, the security risk group intelligence coordinator for the Department of Correction, and even the plaintiff himself, who acknowledged during his state sentencing hearing that he understood the concern that Hopkins School could have over the conduct that led to his incarceration. Finally, after his release from prison and while he knew he was being surveilled, the plaintiff sought information regarding security practices being implemented in schools throughout the state, including but not limited to Hopkins School.[21] Accordingly, we agree with the court that the defendants' surveillance of the plaintiff was not "conduct to which the reasonable [person] would strongly object." 3 Restatement (Second), supra, § 652B, comment (d), p. 380.

The burden then shifted to the plaintiff, as the nonmoving party, to demonstrate the existence of some disputed factual issue. See *Fiano* v. *Old Saybrook Fire Co. No. 1, Inc.*, 332 Conn. 93, 101, 209 A.3d 629 (2019) ("[o]nce the moving party has met its burden . . . the opposing party must present evidence that demonstrates the existence of some disputed factual issue" (internal quotation marks omitted)). We agree with the court that "[t]he plaintiff has not submitted evidence sufficient to do so."

As previously set forth, in his opposition to the defendants' motions for summary judgment, the plaintiff argued, inter alia, that genuine issues of material fact existed with regard to whether the defendants' invasion of the plaintiff's privacy was reasonable.[22] In support of his assertions, the plaintiff appended several transcript excerpts from depositions of Markle's investigators, which, as the trial court determined, fail to demonstrate any issues of material fact. Therein, the investigators stated that they were instructed "to not go where the public [cannot] go" and not to "look into somebody's windows . . . go into a private space . . . [or] do things like that . . . [t]hat would be against the law."

Additionally, they stated that, during their surveillance of the plaintiff, they primarily utilized their cell phones. In his deposition, Dan Markle testified that, in general, his investigators "mostly . . . use handheld video recorders . . . cell phones . . . and, if need be, some of our investigators have cameras . . . for still photos." Additionally, the investigators further stated that they "take photographs of the subjects during the surveillance and/or video if it's possible," but only when the subjects are "in a public setting . . . [where] another person of the public could [also] do that . . . ." Moreover, one investigator stated that "in five years, [she] maybe took a handful of photographs" and another stated that he took fewer than one hundred photographs during his surveillance of the plaintiff. Accordingly, we agree with the trial court that the plaintiff failed to demonstrate the existence of a material fact as to whether the defendants' surveillance constitutes an intrusion upon seclusion because he failed to set forth any evidence to support his contention that the defendants intruded upon his solitude or seclusion or private affairs or concerns, or that their conduct "would be highly offensive to the ordinary reasonable [person]" under the circumstances. (Internal quotation marks omitted.) *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 176; see also id., 165 ("[t]o oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents" (internal quotation marks omitted)).

For the foregoing reasons, we conclude that the court properly rendered summary judgment in favor of the defendants.

The judgment is affirmed.

In this opinion CLARK, J., concurred.

[1] The plaintiff also named "Hopkins Committee of Trustees" as a defendant in his complaint. Hopkins School and "Hopkins Committee of Trustees" filed a joint motion to dismiss the plaintiff's complaint as to "Hopkins Committee of Trustees" pursuant to Practice Book § 10-30. The court granted the joint motion to dismiss. Accordingly, all references in this opinion to the defendants are solely to Hopkins School and Markle, collectively.

[2] In light of our conclusion that the court properly rendered summary judgment on the second and third elements of the plaintiff's claim for intrusion upon the seclusion of another, we need not address the plaintiff's claim regarding the first element. See *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 153, 172–73, 204 A.3d 717 (2019).

[3] In its motion for summary judgment, Hopkins School raised, as an alternative ground for the court to grant summary judgment, that Markle was acting as an independent contractor and, therefore, Hopkins School was not legally liable for any of Markle's alleged tortious conduct. In its memorandum of decision as to Hopkins School, the court explicitly stated that it did "not address [Hopkins School's] argument that Markle was an independent contractor because the investigation and surveillance by Markle was not an intrusion upon [the plaintiff's] seclusion, nor was it highly offensive to a reasonable person." Because we affirm the court's decision, we need not address this alternative ground for affirmance.

[4] In his appendix, the plaintiff included a report authored by the Anti-Defamation League, which states that the National Alliance "is the single most dangerous organized hate group in the United States" and "is determined to secure a racially clean area of the earth . . . no non-whites in

our living space . . . [and] will do whatever is necessary to achieve this White living space and to keep it White." (Internal quotation marks omitted.) Anti-Defamation League, Explosion of Hate: The Growing Danger of the National Alliance (2012), pp. 1–3, available at https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Explosion-of-Hate.pdf (last visited June 8, 2023); see *National Alliance* v. *United States*, 710 F.2d 868, 871 (D.C. Cir. 1983) ("[t]he general theme of the [National Alliance] newsletter is that 'non-whites'—principally blacks—are inferior to white Americans of European ancestry ('WAEA'), and are aggressively brutal and dangerous; Jews control the media and through that means—as well as through political and financial positions and other means—cause the policy of the United States to be harmful to the interests of WAEA").

[5] In *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 153, 174, 204 A.3d 717 (2019), this court stated that "an actor commits an intentional intrusion if he believes, or is substantially certain, that he lacks the necessary legal or personal permission to commit the intrusive act." See 3 Restatement (Second), Torts § 652B, comment (b), illustrations (1) through (5), p. 379 (1977).

[6] Although separate, each memorandum of decision addressed and analyzed whether there was a genuine issue of material fact as to whether the defendants engaged in conduct that constituted an invasion of the plaintiff's privacy. Accordingly, we discuss the decisions simultaneously.

[7] Comment (c) to § 652B of the Restatement (Second) of Torts provides: "The defendant is subject to liability under the rule stated in this Section only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs. Thus there is no liability for the examination of a public record concerning the plaintiff, or of documents that the plaintiff is required to keep and make available for public inspection. Nor is there liability for observing him or even taking his photograph while he is walking on the public highway, since he is not then in seclusion, and his appearance is public and open to the public eye. Even in a public place, however, there may be some matters about the plaintiff, such as his underwear or lack of it, that are not exhibited to the public gaze; and there may still be invasion of privacy when there is intrusion upon these matters." 3 Restatement (Second), Torts § 652B, comment (c), pp. 379–80 (1977).

[8] On March 1, 2021, Hopkins School filed a motion for a protective order pursuant to Practice Book § 13-5 in which it requested that the court issue a protective order "precluding [the plaintiff's] discovery about general security practices, methods, means and procedures on the Hopkins School campus" and attached a supporting memorandum of law. The plaintiff filed an objection to Hopkins School's motion for a protective order and a supporting memorandum of law wherein he requested "that [the] court enter an order denying [Hopkins School's] motion for protective order." The court overruled the plaintiff's objection to Hopkins School's motion for a protective order.

[9] A " 'Chinese throwing star' [is] a throwing-knife, throwing-iron, or other knife-like weapon with blades set at different angles." Ind. Code Ann. § 35-47-5-12 (b) (LexisNexis 2016).

[10] The record reflects that, on October 30, 2001, the plaintiff entered a printing shop in East Haven. The plaintiff intended to send approximately 925 addressed and sealed envelopes that were embossed with Hopkins School's name and address. The owner took the order from the plaintiff, who told the owner that his name was Todd Martin, but did not provide the owner with a phone number. The plaintiff told him that he would be back the next day to pay the final cost for the bulk mailing and then left. "After the [plaintiff] left, [the owner] realized that he [had not] asked the man whether the order was to have been placed as a for profit or [nonprofit] mailing . . . [so he] called the Hopkins School to inquire about this at which time he was told that they had never heard of a Todd Martin nor did they authorize any mailing." Hopkins School authorized the owner to open one of the envelopes, the owner proceeded to contact the Postal Inspector's Office to confirm that he could do so, and "when he did he found that it was inserted with what appeared to be a White Supremacist Newsletter." Hopkins School told the owner not to mail the items, and the owner called the police about the incident.

[11] The record reflects that the arrest and search warrants were precipitated by an "investigation . . . by the Connecticut State Police Firearms Unit into the [plaintiff's] illegal purchase of a banned assault . . . rifle using a stolen identity." The plaintiff confirmed in his deposition testimony that he

purchased the weapon with a fake identification because "[he] wanted to keep it . . . [and] figured they were going to ban it."

[12] As set forth in the plaintiff's complaint, "Hopkins [School] submitted letters to the Board of Pardons and Parole opposing parole for [the plaintiff]."

[13] The Division of Emergency Management and Homeland Security administers the SSGP, which "provides funding to schools to implement security infrastructure improvements. Eligible projects under SSGP include, but are not limited to, replacement or enhancements to doors and windows, access control systems, perimeter security (such as fencing, lighting, bollards, etc.,), interior and/or exterior camera systems and panic alarm systems." State of Connecticut, Division of Emergency Management and Homeland Security, School Security Competitive Grant Program, available at https://portal.ct.gov/DEMHS/Grants/School-Security-Competitive-Grant-Program-Overview (last visited June 8, 2023).

[14] General Statutes § 1-210 (b) provides in relevant part: "Nothing in the Freedom of Information Act shall be construed to require disclosure of . . . (19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. . . ."

[15] As previously set forth, the trial court stated that "[t]he plaintiff alleges upon information and belief that Markle viewed the plaintiff's private banking information while he was using an outdoor ATM. This is the only instance of private matters possibly being observed in the present case. The defendant[s] [provide] evidence that the investigators did not seek nor obtain the plaintiff's ATM PIN number. . . . The plaintiff's evidence does not contradict this information." (Citation omitted.) See *Parnoff* v. *Aquarion Water Co. of Connecticut*, supra, 188 Conn. App. 165 ("[t]o oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents" (internal quotation marks omitted)). The court further concluded that the plaintiff's "mere assertion that an investigator *may* have been in the vicinity of the ATM and *may* have seen or recorded the plaintiff's banking information while driving by . . . is not sufficient to demonstrate the existence of an issue of material fact with respect to the second element." (Emphasis in original.) The plaintiff does not argue on appeal that the court improperly determined that he failed to raise a genuine issue of material fact with respect to the viewing of his private information.

[16] See footnotes 17, 19, 20, and 21 of this opinion.

[17] In his brief, the plaintiff argues that "the trial court overlooked that . . . at no point during the near daily, yearslong surveillance did the defendants ever observe [the plaintiff] even attempt to come . . . to [Hopkins School's] property, stockpile weapons, or meet with anyone to plot an attack on Hopkins [School]" and that this is "the clearest evidence that the defendants' surveillance . . . was unreasonable . . . ." (Citation omitted.) We disagree with the plaintiff's contention that his purported decision to refrain from engaging in criminal activity while observed by Markle's investigators compels a conclusion that the surveillance was unreasonable. Rather, the purpose for which Hopkins School retained Markle to surveil the plaintiff, regardless of whether the criminal conduct of concern materialized, is relevant to our determination that any invasion of privacy would not be highly offensive to a reasonable person. See *Wolfson* v. *Lewis*, supra, 924 F. Supp. 1421 ("[i]n determining whether an invasion of a privacy interest would be offensive to an ordinary, reasonable person, a court should consider all of the circumstances including the degree of the intrusion, *the context, conduct and circumstances surrounding the intrusion* as well as the intruder's motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded" (emphasis added; internal quotation marks omitted)); *Sanchez-Scott* v. *Alza Pharmaceuticals*, 86 Cal. App. 4th 365, 377, 103 Cal. Rptr. 2d 410 (2001) (same); see also *Hernandez* v. *Hillsides, Inc.*, 47 Cal. 4th 272, 287, 211 P.3d 1063, 97 Cal. Rptr. 3d 274 (2009) (relevant factors in determining whether alleged intrusion is highly offensive include "the degree and setting of the intrusion, and the intruder's motives and objectives"); *Polay* v. *McMahon*, supra, 468 Mass. 383 ("[i]n determining whether a defendant committed an unreasonable intrusion, we balance the extent to which the defendant violated the plaintiff's privacy interests against any legitimate purpose the defendant may have had for the intrusion").

[18] See footnote 4 of this opinion.

[19] In his brief, the plaintiff asserts that "the trial court made a gross misstatement of fact when it found that [his] 'release date was . . . delayed due to concerning materials being found in his cell, including a photograph of the gun used in the Sandy Hook school shooting.' . . . This is simply untrue. [His] release date was delayed because prison officials determined that he was affiliated with a security risk group." (Citation omitted.) We are unpersuaded that the reason for the delay in the plaintiff's release date presents a material fact regarding whether the surveillance in this case was highly offensive to a reasonable person.

[20] Accordingly, we are unpersuaded by the plaintiff's contention that a genuine issue of material fact exists as to the reasonableness of the defendants' surveillance in that "Hopkins [School] never produced a single iota of evidence linking [the plaintiff's] possession of ['an illegal high-powered rifle and bomb making materials'] to any animus he may have held against Hopkins [School]."

[21] In his brief, the plaintiff contends that "the trial court misconstrued the reason for [his] requests for information concerning [Hopkins School's] security measures. . . . Security on [Hopkins School's] campus is relevant to whether the near daily, yearslong surveillance of [the plaintiff] was 'no greater than necessary' to achieve [Hopkins School's] interest in protecting its staff and students"; (citation omitted); and cites *Galella* v. *Onassis*, supra, 487 F.2d 995, in support of such contention. The plaintiff asserts that "the trial court never considered whether the intrusion, even if justified, was greater than necessary to achieve [Hopkins School's] goal of protecting its students and staff." Accordingly, he claims that "reasonable minds may disagree about whether [Hopkins School's] concern justified the ongoing, persistent, and overzealous public surveillance into [his] personal affairs and concerns." We are unpersuaded.

First, our appellate courts have not adopted the standard as set forth in *Galella* and the facts of that case are *overwhelmingly distinguishable* from those of the present case. See *Galella* v. *Onassis*, supra, 487 F.2d 994 ("court found [Donald Galella] guilty of harassment, intentional infliction of emotional distress, assault and battery, commercial exploitation of [Jacqueline Onassis's] personality, and invasion of privacy . . . [where] [e]vidence . . . showed that Galella had on occasion intentionally physically touched Mrs. Onassis and her daughter, caused fear of physical contact . . . followed [her] and her children too closely in an automobile, endangered the safety of the children while they were swimming, water skiing and horseback riding"). Second, our conclusion that there is no genuine issue of material fact that the defendants' surveillance at issue here was not highly offensive is premised on the fact that there was no evidence of any intrusion into the plaintiff's personal affairs and that under the circumstances the defendants' conduct was not of the kind "to which the reasonable [person] would strongly object." (Internal quotation marks omitted.) *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 176, quoting 3 Restatement (Second), supra, § 625B, comment (d), p. 380.

[22] Additionally, the plaintiff merely asserted, without any legal or evidentiary support, that a genuine issue of material fact exists as to whether any invasion of privacy was "reasonable" because "[t]he surveillance was so frequent that the individuals conducting the surveillance were unable to [give] an actual number of days of . . . surveillance. Instead, they were only able to give an estimate." We are unpersuaded by the plaintiff's assertion that the "frequency" of the surveillance, under the circumstances of this case, which the court recognized occurred "at times, on a near daily basis over multiple years," raises a genuine issue of material fact that the surveillance constitutes an invasion of privacy.