

EXHIBIT 5

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447 CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
a/k/a GAWKER MEDIA, et al.,

Defendants.

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TRANSCRIPT OF: PROCEEDINGS
BEFORE: Honorable Pamela A.M. Campbell
DATE: April 23, 2014
TIME: 1:30 p.m.
PLACE: Pinellas County Courthouse
545 First Avenue North
Room 300
St. Petersburg, Florida
REPORTED BY: Natalie W. Breaux, RPR, CRR
Notary Public
State of Florida at Large



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Nick Denton, A.J. Daulerio and for specially
appearing Defendant Blogwire Hungary
Szellemi Alkotast Hasznosito, KFT (now known
as Kinja, KFT).

1 meet and confer, if there isn't more showing up
2 to me, I'm inclined to grant the Kinja motion
3 to dismiss because I'm really -- I appreciate
4 the jurisdictional aspect of it, but the merits
5 aspect of it, I am more troubled with that one
6 than the others.

7 So with that, anybody have any
8 questions?

9 MR. BERLIN: If with that, maybe we
10 could be heard on the individual causes of
11 action? Because some of them --

12 THE COURT: Well, what's going to be
13 really much different? I've read through
14 everybody's -- the motion, the response. I
15 mean, I read through it all. And I appreciate
16 that each of them have a little finer
17 distinctions than the general overviews, but I
18 don't know that we're going to get to the same
19 results unless there is something different
20 that you plan to say that wasn't mentioned in
21 your motions.

22 MR. BERLIN: Well, let me just give an
23 example for Your Honor. I mean, I think this
24 applies. There are -- in addition to the
25 problems with the DCA's ruling being, you

1 know, whether it's law of the case or precedent
2 -- you know, let me just give as an example.
3 So they have a claim for negligent infliction
4 of emotional distress.

5 THE COURT: Right.

6 MR. BERLIN: Right? You can't bring a
7 claim unless there is physical injuries that
8 cause an impact. Right? And they don't
9 allege that. That claim should be dismissed.
10 But that's not related to --

11 THE COURT: That's a motion for summary
12 judgment, in my mind.

13 MR. BERLIN: They would still have to
14 allege that they sustained physical injuries.
15 If they don't allege that, there is no claim.

16 THE COURT: Well, in some of the earlier
17 hearings that we've had on the issue of
18 damages and theories of damage that are out
19 there, I think there is potential for the
20 plaintiff to still maintain that action.

21 MR. BERLIN: There is no -- it's not
22 really about the other hearings, Your Honor,
23 where we met based on what's in the complaint.
24 And the complaint does not allege physical
25 injuries. And they don't dispute that.

1 THE COURT: The complaint doesn't have
2 to say every specific factual aspect of it. I
3 mean, the complaint is -- the amended
4 complaint is at the beginning of the case.
5 It's not after all of the discovery has taken
6 place.

7 MR. BERLIN: Right. But the complaint
8 would still have to allege that. And they're
9 not contending that they suffered any physical
10 injuries at all, so -- in none of the
11 testimony that we've had they've -- have they
12 said that they suffered any physical injuries.

13 So I don't know why a year into the
14 case, if they haven't alleged it either in the
15 complaint or they haven't alleged it now, that
16 we would have a claim for that. I mean,
17 that's just an example, but that's not --
18 that's unrelated to the DCA ruling.

19 THE COURT: But that's not something --
20 you're not saying something that's not already
21 written in your motion or that's not addressed
22 in the response. I mean, all those -- I think
23 all these kind of nuances are written.

24 MR. BERLIN: Well, that's completely
25 unrelated to the DCA ruling because it didn't

1 and it would not be protected by the First
2 Amendment. In fact, this gentleman is being --
3 I shouldn't say gentleman. This employer is
4 being prosecuted by the local authorities under
5 the Florida Wiretap Act for what he did.

6 And I don't think that anyone could say
7 that it would not be outrageous for the same
8 newspaper that published this story to post
9 the video footage of the ladies doing what
10 they did. And that's where we draw the line
11 here in this case. Maybe it was newsworthy
12 that Hulk Hogan was having sex with a person
13 in a particular place at a particular time,
14 but to show the footage of it is a whole other
15 issue. And to show a minute and 41 seconds of
16 him having sex, of him being naked in a
17 private place where he had an expectation of
18 privacy, that was outrageous.

19 Our First Amended Complaint more than
20 adequately addresses that cause of action and
21 that important element of outrageousness.
22 There is no authority that says that the First
23 Amendment forecloses us from bringing this
24 case or forecloses us from arguing that this
25 is outrageous. If -- it's a matter for the

1 jury to decide if it's outrageous or not
2 outrageous. So, Your Honor, for that reason
3 we'd request a denial of the motion.

4 MR. BERLIN: Your Honor, that's actually
5 an incorrect statement of the law. It's the --
6 in the First Amendment area the Court is
7 supposed to decide whether the speech is
8 protected and, therefore, not outrageous, not
9 the jury. And it's precisely for the reason
10 that if the jury doesn't like the speech, it
11 may punish speech it doesn't like, which is
12 exactly the purpose of the First Amendment.

13 In this instance the -- there is
14 authority for this, going to Snyder versus
15 Phelps, going to Hustler versus Falwell. And
16 for what it's worth, this argument should be
17 foreclosed by the -- at least informed by the
18 DCA's ruling that this is speech about a
19 matter of public concern, which can't be
20 outrageous. And on that basis I will submit
21 that part of the motion.

22 THE COURT: Thank you. No. 6 is denied;
23 for cause of action No. 6.

24 MR. BERLIN: Then lastly let me just
25 speak briefly about the publication of private

1 facts. One of -- the evidence of the
2 publication of private facts, Your Honor, is
3 that the matter has to be not a matter of
4 public concern. This is a matter of public
5 concern. We have an appellate court that
6 holds this is a matter of public concern.
7 This is one element of the tort that can't be
8 sustained, and this cause of action should be
9 dismissed.

10 MR. HARDER: Your Honor, the footage of
11 Hulk Hogan having sex in a private place, that
12 footage is not a matter of public concern. It
13 may be that the story about the who, what,
14 where, when was a matter of public concern.
15 And I have my doubts about that as well. But
16 it's a different issue. The footage itself
17 was not a matter of public concern; and so,
18 therefore, the publication of the private
19 facts -- those private facts being Hulk Hogan
20 naked, Hulk Hogan having sex with somebody in
21 a private place -- we have validly stated a
22 cause of action. Thank you.

23 MR. BERLIN: Two things, Your Honor.
24 One is that if the plaintiff is conceding that
25 the story itself is a story and excerpts of

CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF HILLSBOROUGH:

I, Natalie W. Breaux, Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the foregoing proceedings at the time and place therein designated; that the witness herein was duly sworn by me; that my shorthand notes were thereafter reduced to typewriting under my supervision; and that the foregoing pages are a true and correct, verbatim record of the aforesaid proceedings.

Witness my hand and seal April 25, 2014, in the city of Tampa, County of Hillsborough, State of Florida.

Natalie W. Breaux
Notary Public
State of Florida at Large