

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. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
Et al.,

Defendants.

**PLAINTIFF TERRY BOLLEA'S RESPONSE TO GAWKER MEDIA LLC'S
EXCEPTIONS TO RULING PRECLUDING DISCOVERY RELATING TO MEDIA
REPORTS OF ALLEGED SEXUAL ENCOUNTERS INVOLVING MR. BOLLEA**

I. INTRODUCTION

At the outset of discovery in this case, more than one year and nine months ago, Gawker Media, LLC ("Gawker") asked for information regarding all of Terry Bollea's sexual encounters, with all of his partners, over a period of several years. In response, Mr. Bollea sought a protective order, because this case concerned the surreptitious recording of **one** sexual encounter (the "Sex Video"), which Gawker published on its website without the authorization of either Mr. Bollea or Heather Clem, the other person depicted on the Sex Video. Mr. Bollea did not waive his privacy rights with respect to the entirety of his sex life when he filed this lawsuit.

Mr. Bollea sought to limit discovery of his sexual relationships. This Court agreed with Mr. Bollea's position: that his efforts to seek justice for the invasion of his privacy as to one sexual encounter did not justify Gawker's attempts to question him about all of his sexual encounters. The Court drew a clear line, finding that discovery relating to Mr. Bollea's sexual activities would be limited to any relationship with Heather Clem during the ten years prior to this lawsuit. In entering this order, the Court struck a careful balance between Mr. Bollea's

privacy rights and Gawker's desire to obtain discovery of the circumstances surrounding the encounter depicted in the Sex Video. Now, Gawker seeks to upset that careful balance and introduce in the case other alleged sexual encounters, involving women other than Heather Clem. Gawker's efforts should be rejected, its exceptions overruled, and this Court's protective order upheld.

II. RELEVANT FACTS & PROCEDURAL HISTORY

In June 2013, Gawker served written discovery asking Mr. Bollea to provide information regarding not only his relationship with Heather Clem, who was depicted in the Sex Video, but also other alleged sexual relationships involving Mr. Bollea. Further, in addition to asking Mr. Bollea directly about sexual encounters, Gawker asked for public statements by Mr. Bollea about sexual relationships. *See Exhibit 1* (Exhibit A to Motion for Protective Order, Interrogatory No. 7); *Exhibit 2* (Exhibit B to Motion for Protective Order, Request No. 21).

Mr. Bollea moved for a protective order prohibiting discovery of any sexual encounters other than the encounter with Heather Clem depicted on the Sex Video. In response, Gawker made the exact same argument it makes here: that it needed to take discovery relating to publicity surrounding Mr. Bollea's sex life generally, to make its argument that the sex video was a matter of public concern. *Exhibit 3* (Opposition By Gawker Media, LLC And A.J. Daulerio to Plaintiff's Motion for Protective Order at 8) (arguing that discovery of Mr. Bollea's sex life was necessary to establish "whether his conduct and public statements – as well as other prior news reports – made the publication newsworthy").

On February 26, 2014, the Court granted Mr. Bollea's motion and entered a carefully balanced protective order: "For the purposes of depositions, interrogatory responses, requests for production of documents, and all other types of discovery, inquiry into... all sexual and

romantic relationships of Terry Bollea and Heather Clem, respectively, with the sole exception of the sexual and/or romantic relationship between Terry Bollea and Heather Clem (as to the time period January 1, 2002 to the present), is hereby prohibited, absent further order of the court.” **Exhibit 4** (2/26/14 Protective Order, ¶ 4). This allowed Gawker to conduct discovery of Mr. Bollea’s relationship with Heather Clem (which it has done) while protecting Mr. Bollea’s privacy.

The protective order has not in any way interfered with Gawker’s ability to argue that media coverage of Mr. Bollea’s sex life made the sex video a matter of public concern. Gawker has continued to make that argument, citing to discussions of Mr. Bollea’s sex life in books, periodicals, and websites.

The current dispute arose when Gawker sought to question Mr. Bollea’s publicist, Elizabeth Rosenthal Traub, regarding press coverage of an alleged relationship Mr. Bollea had with a different woman, not Heather Clem. This violates the Court’s protective order, which limits discovery of Mr. Bollea’s sex life to his relationship with Heather Clem. Special Discovery Magistrate Judge Case, who heard argument from both parties on the issue at the deposition, agreed: Gawker’s line of questioning violated this Court’s protective order, and he sustained the objection.

III. ARGUMENT

Gawker’s questioning violates this Court’s February 26, 2014 protective order. Each of Gawker’s justifications for why its questioning supposedly does not violate the protective order is without merit.

First, Gawker argues that the protective order only applies to direct questions about sexual encounters, not about press coverage. Not so. The text of the order is broad:

For the purposes of depositions, interrogatory responses, requests for production of documents, and all other types of discovery, inquiry into . . . all sexual and romantic relationships of Terry Bollea and Heather Clem, respectively, with the sole exception of the sexual and/or romantic relationship between Terry Bollea and Heather Clem (as to the time period January 1, 2002 to the present), is hereby prohibited, absent further order of the court.

Exhibit 4 (2/26/14 Protective Order, ¶ 4).

The purpose of the February 26, 2014 protective order was to prohibit inquiry into Mr. Bollea's sexual encounters with anyone other than Heather Clem. It therefore would thwart the purpose of the order if Gawker were allowed to make inquiries about Mr. Bollea's other sexual encounters by asking about a news story regarding an alleged affair (as opposed to asking the question directly). Gawker's tactics are obvious. Gawker seeks to circumvent the order.

The record shows that this Court prohibited such indirect questioning as well as direct questions. The discovery that resulted in the protective order's issuance was **not** limited to direct questions about the who, what, when, and where of Mr. Bollea's sexual encounters. *See Exhibit 1* (Exhibit A to Motion for Protective Order, Interrogatory No. 7) (asking for all statements Mr. Bollea made about sexual relations that he engaged in); **Exhibit 2** (Exhibit B to Motion for Protective Order, Request No. 21) (asking for all documents concerning a public statement Mr. Bollea allegedly made about his sexual activities with other women). In opposing Mr. Bollea's motion for a protective order, Gawker made the exact same argument it makes here: that it needed to take discovery relating to publicity surrounding Mr. Bollea's sex life to make its argument that the Sex Video was a matter of public concern. **Exhibit 3** (Opposition By Gawker Media, LLC And A.J. Daulerio to Plaintiff's Motion for Protective Order at 8) (arguing that

discovery of Mr. Bollea’s sex life was necessary to establish “whether his conduct and public statements – as well as other prior news reports – made the publication newsworthy”). This confirms that the Court’s intention was not limited to precluding Gawker from asking Mr. Bollea or other witnesses directly about who he slept with, but also extended to the discovery Gawker seeks here: asking about **publicity** concerning alleged sexual encounters with people other than Heather Clem.

Second, Gawker claims that it needs this discovery to argue that Mr. Bollea’s sex life was a matter of public concern. The claim is disingenuous. Gawker’s argument, such as it is, is that tabloids such as the *National Enquirer* extensively covered Mr. Bollea’s sex life, and that general coverage therefore permitted Gawker to publish the explicit, surreptitiously recorded Sex Video. Gawker’s conclusion does not follow from its premise. Coverage **about** celebrities’ sex lives is not anything like publishing surreptitiously recorded **video** of them having sex. Even assuming *arguendo* that Gawker’s argument is colorable, Gawker does not need to ask witnesses about the content of press stories about Mr. Bollea’s sex life in order to make its argument. The coverage of Mr. Bollea’s sex life itself is sufficient to make that same point. (Mr. Bollea objects to the admissibility of any evidence relating to any alleged sexual relationships other than Ms. Clem.) The only reason to ask a witness about these stories is to “dig up dirt” and embarrass Mr. Bollea, which was precisely what the protective order was intended to prevent.

As is its habit, Gawker points to the Court of Appeal’s ruling on the temporary injunction appeal, which accepted Gawker’s argument about public concern. Of course, both this Court **and the Court of Appeal** have repeatedly **rejected** Gawker’s argument that the decision has preclusive effect. Additionally, the Court of Appeal opinion demonstrates Mr. Bollea’s point that Gawker does **not** need the evidence that it seeks to make its point. Gawker was able to

make its public concern argument to the Court of Appeal (and has made the argument to this Court as well) by pointing to **press coverage** of Mr. Bollea's sex life. If there is a public concern argument to be made, Gawker does not need to ask any witness about Mr. Bollea's sex life in order to make it.

Third, and finally, if Gawker's exceptions are sustained, it could open "Pandora's Box" in this litigation, as Gawker attempts to push the limits by asking more and more intrusive questions of Mr. Bollea, and those who know him or worked with him, about the veracity of press reports of alleged affairs having nothing to do with this case. It would permit Gawker to shift the focus of the case from the real issue—Gawker's conduct, and whether it invaded Mr. Bollea's privacy or was protected by the First Amendment—to Mr. Bollea's sex life generally. It would allow Gawker to punish Mr. Bollea for bringing this lawsuit by prying deeper and deeper into his private life as retribution. The Court drew a reasonable, proper, carefully balanced line at the beginning of discovery to prevent Gawker from doing this. That line should be held.

IV. CONCLUSION

For the foregoing reasons, Gawker's exceptions should be overruled and Judge Case's ruling upholding this Court's protective order sustained.

DATED on March 13, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 13th day of March, 2015 to the following:

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