

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

GAWKER MEDIA, LLC, *et al.*,

Defendants.

DEFENDANTS' POSITION STATEMENT NO. 5
ADMISSIBILITY OF MEDIA REPORTS ABOUT PLAINTIFF'S PERSONAL LIFE

In June 2015, Plaintiff Terry Bollea filed two motions *in limine* that sought to exclude, *inter alia*, evidence of, and testimony about, media reports about Bollea's personal life, including reports about the sex tape that refer to prior public controversies in Bollea's life. *See* Pl.'s Motion *in Limine* No. 8 (filed June 12, 2015); Pl.'s Motion *in Limine* No. 12 (filed June 12, 2015). This Court heard argument on those motions on July 1, 2015, reserving on each. Ex. A (July 1, 2015 Hrg. Tr.) at 150:4 – 152:10, 166:4 – 180:20, 194:11 – 196:1. Pursuant to Paragraph 8 of the Second Pretrial Order (dated November 19, 2015), Defendants hereby submit their Position Statement regarding the admissibility of evidence of, and testimony about, media reports about Bollea's personal life.

The exhibits that fall into that category are admissible for at least the following reasons:

1. **Public Concern:** These media reports are relevant to establish a basic fact central to the public-concern analysis: that Bollea's personal life, including his sex life, has been the subject of on-going media attention for roughly three decades. This is especially the case for those media reports about the sex tape that place that scandal within the context of other public controversies that have bedeviled Bollea. *See, e.g., Gawker Media, LLC v. Bollea*, 129 So. 3d

1196, 1201 (Fla. 2d DCA 2014) (“It is clear that as a result of the public controversy surrounding the affair and the Sex Tape, . . . the report and the related video excerpts address matters of public concern.”). The same goes for those media reports that establish that Bollea’s marital fidelity has been subject to ongoing public discussion. The video excerpts Defendants posted were, among other things, “video evidence” of “Mr. Bollea’s extramarital affair.” *Id.* at 1202. Accordingly, Defendants should be permitted to make the case to the jury that the video excerpts were an outgrowth of the extensive prior public interest in that topic. *See id.* (holding that the video excerpts related to matters of public concern because they were evidence of such an affair).

2. **Emotional Distress:** Bollea contends that Defendants invaded his privacy in a manner that caused him “severe” emotional distress, for which he is entitled to millions of dollars in damages. *See, e.g., Clemente v. Horne*, 707 So. 2d 865, 866-67 (Fla. 3d DCA 1998) (intentional infliction of emotional distress claim requires “severe” emotional distress). To rebut that contention, Defendants should be permitted to put on evidence demonstrating that Bollea has become acclimated to public discussions of the details of his personal and sexual life.

3. **Non-Hearsay Purpose:** Contrary to what Bollea has contended, Defendants do not intend to use these media reports to establish the truth of the allegations contained therein. Defendants have no interest, for instance, in whether the claims about Bollea’s personal life found in these news reports were true. Defendants are only interested in establishing the fact that his personal life, including his sex life, has been the subject of extensive ongoing discussion.

4. **Evidence Is Not Unfairly Prejudicial:** Bollea will not suffer unfair prejudice as a result of the introduction of these media reports. Again, Defendants are only interested in the fact that numerous reports subjecting Bollea’s life to tabloid treatment were published, not the specific details of any tabloid report. To the extent that this Court is nonetheless concerned about prejudice, that can be dealt with through a limiting instruction to the jury.

4. **Evidence Is Not Cumulative:** Finally, the evidence of media coverage of Bollea's personal life that Defendants intend to introduce is not cumulative in nature. The relevant fact that Defendants wish to establish is not simply that Bollea's personal life has been subject to public attention, which could be done effectively with just a few examples. Rather, it is that Bollea's personal life has been subject to *pervasive public attention*. That requires that Defendants be permitted to introduce a number of examples so that they jury may appreciate the pervasiveness of that public attention.

CONCLUSION

Defendants respectfully request that this Court rule that evidence of, and testimony about, media reports about Bollea's personal life are admissible for the limited purpose of establishing that Bollea's personal life has the been the subject of pervasive, ongoing public interest.

Dated: February 12, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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