

Attachment to Notice of Filing Proposed Uniform Pre-Trial Conference Order

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No. 12012447CI-011

vs.

GAWKER MEDIA, LLC aka GAWKER
MEDIA; NICK DENTON;
A.J. DAULERIO,

Defendants.

UNIFORM PRE-TRIAL CONFERENCE ORDER (JURY TRIAL)

On this date, the parties to this action and/or their respective attorneys appeared before the court at a Pre-Trial Conference, pursuant to Rule 1.200, Florida Rules of Civil Procedure. The following action was taken:

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APPEARING FOR DEFENDANT(S):

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1. CONCISE AND NEUTRAL STATEMENT OF THE CASE:

Plaintiff Terry Bollea, professionally known as Hulk Hogan, alleges in this case that the defendants, Gawker Media, LLC, Nick Denton and A.J. Daulerio, posted on their website Gawker.com, and refused to remove for six months, a secretly recorded video that included uncensored images and audio of Mr. Bollea naked and engaged in consensual sexual activity in a private bedroom. Mr. Bollea alleges that this video was secretly recorded without his knowledge or consent, and that he did not give his consent to defendants to post the contents of the secretly recorded video on their website. Mr. Bollea alleges that over 7 million people accessed the video on the Internet after it was posted.

Mr. Bollea asserts claims against defendants for invasion of privacy, violation of his right of publicity, intentional infliction of emotional distress, and violation of Florida's Security of Communications Act. Mr. Bollea seeks compensatory damages and punitive damages.

Defendants deny Mr. Bollea's claims. They also contend that their post was protected by the First Amendment because it related to matters of legitimate public concern. Defendants contend that they published the excerpts from the video and accompanying audio from those excerpts with a good faith belief that the posting was lawful and protected by the First Amendment. They further claim that their publication was not made for a commercial purpose. And, Defendants maintain that Mr. Bollea did not experience emotional distress because of their conduct and that he is not entitled to monetary damages.

2. ISSUES:

PLAINTIFF'S PROPOSED STATEMENT OF ISSUES

- 1) Were the uncensored images of Terry Bollea naked and engaged in consensual sexual activity in a private bedroom, that were contained in the video posted on the website Gawker.com (the "Video") a matter of legitimate public concern?

- 2) Did defendants Gawker Media, LLC, Nick Denton or A.J. Daulerio wrongfully intrude into plaintiff Terry Bollea's private affairs by posting and refusing to remove the Video on Gawker.com?
- 3) Was the posting of and refusal to remove the Video offensive?
- 4) Was Video posted on Gawker.com in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities?
- 5) Did Terry Bollea suffer harm as a result of defendants' posting and refusing to remove the Video on Gawker.com?
- 6) Did defendants post the Video on Gawker.com for any commercial or advertising purpose?
- 7) Did Terry Bollea consent to the Video being posted on Gawker.com?
- 8) Was posting and refusing to remove the Video extreme and outrageous conduct?
- 9) Did defendants act with the intent to cause Terry Bollea severe emotional distress, or act with reckless disregard of the high probability of causing him severe emotional distress?
- 10) Did defendants' conduct cause Terry Bollea to suffer severe emotional distress?
- 11) Were Terry Bollea's oral communications recorded without his knowledge or consent?
- 12) Did Terry Bollea have a reasonable expectation of privacy in his oral communications?
- 13) Did defendants intentionally use, disclose and/or post Terry Bollea's oral communications?
- 14) Did defendants know or have reason to know that Terry Bollea's oral communications were recorded without his knowledge or consent?
- 15) Did defendants use or disclose Terry Bollea's intercepted oral communications in good faith reliance on a good faith determination that Florida or federal law permitted defendants to post the oral communications online?
- 16) What damages did Terry Bollea suffer as a result of defendant(s)' conduct?
- 17) Whether punitive damages are warranted against defendants and, if so, the total amount of punitive damages that should be assessed against each of the defendants.
- 18) Whether defendants had a specific intent to harm Terry Bollea.

- 19) Whether defendants' wrongful conduct was motivated solely by unreasonable financial gain.
- 20) Whether the unreasonably dangerous nature of defendants' conduct, together with the high likelihood of injury resulting from the conduct, was actually known by defendants.

DEFENDANTS' PROPOSED STATEMENT OF ISSUES

- 1) Whether the Video related to matters of public concern.
- 2) Whether the evidence presented at trial establishes that defendants are liable on plaintiff's claim for publication of private facts.
- 3) Whether the evidence presented at trial establishes that defendants are liable on plaintiff's claim for intrusion upon seclusion.
- 4) Whether the evidence presented at trial establishes that defendants are liable on plaintiff's claim for commercial misappropriation of plaintiff's right of publicity.
- 5) Whether the evidence presented at trial establishes that defendants are liable on plaintiff's claim for intentional infliction of emotional distress.
- 6) Whether the evidence presented at trial establishes that defendants are liable on plaintiff's claim for violation of the Florida Wiretap Act.
- 7) Whether the evidence presented at trial establishes that plaintiff suffered damages as a result of the defendants' posting of the Video.
- 8) If the evidence establishes that plaintiff suffered damages as a result of the defendants' posting of the Video, what amount in damages should be awarded.
- 9) Whether plaintiff is entitled to punitive damages.
- 10) If plaintiff is entitled to punitive damages, how much he should be awarded.

3. ADMISSIONS:

- 1) The Video (defined herein as the one minute and forty-one seconds of video and audio footage of Terry Bollea and Heather Clem) was published at Gawker.com on October 4, 2012, where it remained continuously through April 25, 2013.
- 2) A commentary accompanying the Video was written by A.J. Daulerio and entitled "Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work But Watch it Anyway." It was posted on October 4, 2012, and has remained posted continuously to the present.

- 3) Defendants did not contact Mr. Bollea or his legal counsel, or Heather Clem or her legal counsel, or Bubba Clem or his legal counsel, before posting the Video on Gawker.com.

4. STIPULATIONS AND WAIVERS: (Yes or No)

- a) Less than 6 jurors if one becomes incapacitated. The parties agree to having and request three alternate jurors in case jurors become incapacitated or are discharged. The parties do not stipulate to less than six jurors if more than three jurors become incapacitated.
- b) Use of expert testimony at any time during trial as a result of unavailability at other time. The parties do not agree at this time, but will work cooperatively if this situation arises.
- c) Waive technicians for imaging studies identified in discovery to date. N/A
- d) Waive records custodians for documents produced in discovery to date. This is not the equivalent of a stipulation to the admissibility of the documents in question. Yes
- e) Copies of ordinances or foreign laws. N/A
- f) The prior stipulations of the parties concerning the authenticity of records, Ron Howard, Ben Mallah, Bay Harbor Hotel and Convention Center, LLC, Darren Prince, Prince Marketing Group, Peter Young, Matt Loyd, Jennifer Bollea, Brooke Bollea, Nick Bollea, World Wrestling Entertainment, Inc. (“WWE”), and any employee of WWE (other than Mr. Bollea).
- g) The parties stipulate to the use of the video deposition of Heather Clem/Cole at trial in lieu of her live testimony

5. PLEADINGS: A list of pleadings upon which the case will be tried, including the date of filing for each.

First Amended Complaint, originally filed December 28, 2012; on June 18, 2015, the same pleading was re-filed adding a claim for punitive damages

Amended Answer and Affirmative Defenses of Defendant Gawker Media, LLC, filed July 17, 2015

Amended Answer and Affirmative Defenses of Defendant Nick Denton, filed July 17, 2015

Amended Answer and Affirmative Defenses of Defendant A.J. Daulerio, filed July 17, 2015¹

6. REMAINING MATTERS: A list of all remaining matters that require action by the Court, including the dates of filing for any motions:

- 1) All pending and unresolved Motions *in Limine*, as well as the evidentiary issues identified by the parties during their meet-and-confer on January 28, 2016, which will be addressed in the Position Statements submitted by the parties on February 12, 2016
- 2) Objections to Deposition Designations – all designations, counter-designations, and objections
- 3) Objections to Exhibits
- 4) Jury instructions, pre-voir dire instructions, special instructions, and verdict form
- 5) All pending Motions to Determine Confidentiality, including Defendants’ motion challenging the confidential and “Attorneys’ Eyes Only” status of certain material
- 6) Plaintiff’s Motion to Strike and Motion to Modify, filed February 8, 2016

7. PARTIES AND WITNESSES:

- a) Special needs: None
- b) Interpreter: None
- c) Limitations on the number of witnesses (e.g. expert witnesses, before and after witnesses, etc.): None

8. A LIST OF SPECIAL DAMAGES CLAIMED IS ATTACHED. [N/A]

9. JURY PREEMPTORY CHALLENGES PER SIDE: 6

10. ESTIMATED LENGTH OF THE CASE IN CHIEF FOR EACH LITIGANT AND THE ENTIRE TRIAL, INCLUDING VOIR DIRE:

Voir dire is currently set for March 1-3, 2016, with the trial to begin on March 7.

¹ Pursuant to a stipulation entered by the parties, all defendants have withdrawn the allegations in their Amended Answers asserting affirmative defenses relating to Florida Statutes § 768.295 as amended (the “anti-SLAPP statute”) and (b) as a result of an ongoing pattern of fraud on the court.

Plaintiff: 5 days for case in chief with additional day(s) for rebuttal and punitive damages, if necessary

Defendants: 5 days for case in chief

11. MAXIMUM NUMBER OF TRIAL DAYS, EXCLUDING JURY SELECTION:

15.

12. SETTLEMENT POSSIBILITIES: Settlement is unlikely.

13. THE PARTIES, WITH THE COST SPLIT 50/50, ARE RESPONSIBLE FOR ATTENDANCE OF THE COURT REPORTER.

14. ADDITIONAL MATTERS:

- 1) The treatment of irrelevant nudity/graphic images in trial exhibits.
- 2) Plaintiff proposes redaction of the name and email address of the woman that is the subject of Plaintiff's Trial Exhibit #27, at Plaintiff's Trial Exhibit #20, 144, 247. Defendants maintain that these exhibits are wholly inadmissible for the reasons stated in their motions *in limine*.
- 3) Plaintiff proposes redaction of the names of the individuals mentioned by Kevin Blatt at his deposition as having sex videos that were never released. Defendants maintain that Mr. Blatt's deposition testimony is wholly inadmissible for the reasons stated in their motion *in limine*, and that, even if it is not inadmissible in its entirety, the portions of deposition testimony to which this proposal refers are inadmissible on multiple independent grounds.
- 4) Evidence and demonstrative aids may be used during opening statements. The parties must provide each other with copies of any demonstratives they intend to use during opening statements by March 1, 2016.
- 5) Possibility of sequestration of jurors.
- 6) Rule of sequestration for witnesses, as it relates to media coverage of trial.
- 7) Counsel providing 48 hours' notice of witnesses they intend to call to testify.
- 8) Treatment of motions, documents, exhibits and testimony designated as CONFIDENTIAL.
- 9) The parties have agreed that Heather Cole will testify by deposition.

15. THE PARTIES WILL COMPLY WITH THE UNIFORM ORDER SETTING TRIAL AND PRE-TRIAL CONFERENCE SPECIFICALLY REGARDING MEETING PRIOR TO TRIAL AND ACTIONS TO BE TAKEN ON THE FIRST DAY OF TRIAL.
16. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER WILL SUBJECT THE PARTY AND/OR COUNSEL TO APPROPRIATE SANCTIONS.

DONE AND ORDERED in Chambers, at _____, _____ County,
Florida, this ____ day of _____, 201__.

Hon. Pamela A.M. Campbell