

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

TERRY GENE BOLLEA,
professionally known as HULK
HOGAN,

Plaintiff,

Case No.
12-012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC, aka GAWKER MEDIA, et
al.,

Defendants.

HEARING BEFORE THE HONORABLE PAMELA A.M. CAMPBELL

DATE: March 19, 2015

TIME: 9:32 a.m. to 11:45 a.m.

PLACE: Pinellas County Courthouse
545 1st Ave. N.
Third Floor
St. Petersburg, Florida

REPORTED BY: Aaron T. Perkins, RPR
Notary Public, State of
Florida at Large

Pages 1 to 117

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Exhibit "A"

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1 THE COURT: All right. So I believe the next
2 one, then, would be the defendants' exceptions
3 precluding about the media reports bearing on
4 whether Gawker publication addressed matters of
5 public concern. This is the deposition on March
6 2nd of Ms. Traub.

7 Mr. Sullivan?

8 MR. SULLIVAN: A new person, Your Honor.
9 Good morning.

10 THE COURT: You'll give Mr. Berlin a break.

11 MR. SULLIVAN: Exactly.

12 MR. BERLIN: Much appreciated.

13 MR. SULLIVAN: Give his voice a break.

14 Your Honor, I will address the exceptions to
15 the rulings made at the deposition of Ms. Traub in
16 New York.

17 Here is the thing. Among other things, the
18 defendant sought deposition testimony to establish
19 that plaintiff's personal life had been the
20 subject of longstanding public interest and
21 pervasive press coverage. That's what we sought
22 to establish there.

23 Ms. Traub, for her part, she's a public
24 relations professional. She specialized in media
25 regulation. That's her business. Once more, she

1 has worked for Hulk Hogan and his family since
2 about 2004. Ms. Traub testified that Hulk Hogan's
3 personal life had been the subject of press
4 coverage for some time, not surprising.

5 Defense counsel inquired about specific
6 instances in which his personal life had been the
7 subject of tabloid media coverage. First,
8 Ms. Traub was asked about an article from an
9 entertainment website called E! Online, which she
10 indicated was an example of press coverage about
11 the plaintiff's divorce.

12 Next, defense counsel turned to press
13 coverage of plaintiff's 2007 affair with
14 Christiane Plante, and Ms. Traub acknowledged that
15 the press had covered his relationship with that
16 woman. At that point, defense counsel then marked
17 as an exhibit, an article that had appeared in the
18 National Enquirer. And that, in fact, was the
19 article that broke the story about this Plante
20 affair.

21 But plaintiff's counsel at that point
22 objected. Plaintiff objected -- plaintiff's
23 counsel objected even though the National Enquirer
24 reporting on that Plante affair had been discussed
25 publicly by Hulk Hogan in his autobiography.

1 Indeed, in his own book the plaintiff wrote,
2 quote, The Plante affair became national news. I
3 don't think there is a blog or entertainment show
4 in America that didn't run with the story of
5 Hulk Hogan cheating on his wife, closed quote.
6 That's what he puts in his own book.

7 Now, plaintiff counsel, he objects, and he
8 argues that this violated Your Honor's protective
9 order because it related to sexual relationships
10 with people other than Hulk Hogan and the Clems.
11 Now, the defense did not seek to show the truth of
12 the report or delve into the plaintiff's sex life.
13 The purpose was simply to establish that this had
14 been the subject of coverage in the public press.

15 The plaintiff's private life had, indeed --
16 had, indeed, been the subject of public discourse
17 in this country and had been that for some years.
18 This isn't new.

19 Defense counsel had four or five of these
20 articles that he sought to go through in that
21 fashion and establish the simple fact with this
22 witness, who one would think would be a good
23 person to do it because she's his public relations
24 person. Right?

25 Nevertheless, counsel objects. Judge Case,

1 for his part, he heard argument on this, and he
2 sustained the plaintiff's objection. He did not
3 want to tread on the toes of the protective order
4 issued by Your Honor. But he invited the parties
5 to take this up, you know, to address this with
6 you, Your Honor. So that's why we're here. It's
7 as simple as that.

8 As Your Honor will recall, the protective
9 order was entered so plaintiff would not have to
10 identify and be probed about all the people he had
11 sexual relationships with and disclose intimate
12 details of those relationships. All right? The
13 purpose of the protective order was to protect his
14 privacy, not to preclude discovery into matters
15 that were already public out there being discussed
16 in the press. The protective order was not
17 intended to cut us off from probing stuff that's
18 already out in the public circulation in the
19 media.

20 Indeed, when arguing this, this, for the
21 order, plaintiff's counsel recognized that
22 distinction. He objected to this discovery into
23 the details of plaintiff's sexual relationship,
24 but he acknowledged that press stories were
25 appropriate for us to pursue and made some comment

1 like, We're a news organization; one would think
2 we would be able to, you know, round that kind of
3 stuff up.

4 Your Honor, this discovery plainly should
5 have been permitted. Like I say, we did not delve
6 into his sexual history. We didn't do any of
7 that. The focus was solely on whether his private
8 life had been the subject of this media coverage
9 and then the extent of that media coverage.

10 Now, as Your Honor well knows, one of the
11 central issues in this case is whether the
12 challenged publication addressed matters of public
13 concern. Now, that issue is dispositive if the
14 challenged publication addressed matters of public
15 concern, then plaintiff cannot prevail on his
16 name.

17 When this case was before the court of
18 appeal, it ruled that the challenged publication
19 did address matters of public concern. In doing
20 so, the court expressly relied on the long history
21 of news coverage and public interest in
22 plaintiff's private life, including his sex life.

23 Once more, Your Honor, that court noted that
24 plaintiff himself, quote, openly discussed an
25 affair he had while married to Linda Bollea in his

1 published biography. And he discussed his family,
2 his marriage, and his sex life through various
3 media outlets, closed quote. The appellate
4 court's analysis made clear that the prior press
5 coverage is certainly relevant when determining
6 the public concern issue.

7 We should be able to develop that record
8 through discovery. We have what we had at that
9 stage, but now we're further into the case.
10 Unfortunately, Judge Case foreclosed that
11 discovery and improperly curtailed the development
12 of that record. Your Honor, it simply cannot be
13 that media material that was considered
14 determinative of the public concern issue by the
15 appellate court, when we were way back at the
16 temporary injunction stage, would not even be
17 discoverable in this court now that we're at the
18 media stage -- the merit stage. How could that
19 possibly be?

20 So the law is clear that when you're called
21 upon to determine whether a publication addresses
22 a matter of public concern, the court must look at
23 the broader media context. What is out there
24 being reporting, being discussed in the public
25 press? And they make an assessment of the

1 surrounding public interests in that subject
2 matter that was addressed in the challenged
3 report.

4 Your Honor, we respectfully request that the
5 discovery magistrate's ruling be overruled so we
6 can take the discovery and develop a proper record
7 in this case.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Sullivan.

10 Mr. Harder? I thought maybe you'd let
11 Mr. Turkel do it, give you a break. Okay.

12 MR. HARDER: I was actually at the Traub
13 deposition.

14 MR. TURKEL: Judge, I'm kind of moving in the
15 rafters and then swooping in occasionally.

16 THE COURT: Okay. Thank you.

17 MR. HARDER: I believe a clear record is that
18 immediately after they started asking about
19 Ms. Plante, I objected. I think her answer -- she
20 had like a one-word answer right as I was making
21 my objection, that any questioning regarding any
22 other sexual activity of Mr. Bollea with anyone
23 else other than Heather Clem is outside the bounds
24 of this lawsuit.

25 Time and again, Gawker is saying that we're

1 seeking discovery that's outside of the bounds of
2 the law, and yet they're talking about an alleged
3 affair that has nothing to do with the subject
4 matter of the case. It has nothing to do with
5 Hulk Hogan, Heather Clem, Gawker Media or Bubba
6 Clem or any of that subject matter. That's not
7 what our case is about.

8 They say they want to be able to depose
9 witnesses. That's what this is about, deposing
10 witnesses regarding news articles that are out
11 there in order to show that news articles have
12 been written about Hulk Hogan's private life.
13 They don't need to depose any witnesses to
14 establish that news articles have been written.

15 Ms. Traub didn't write any articles. The
16 National Enquirer apparently wrote articles.
17 We're in the process of stipulating to
18 authenticity of a whole variety of news articles
19 and other materials. If an article got written,
20 we're not going to say it didn't get written. But
21 that's the -- there is a big difference between
22 that and trying to depose people and have them
23 admit that certain things were reported on and
24 then take that toehold and open the flood gates
25 to: Okay, well, if we can ask questions about

1 Ms. Plante, then let's talk about other sexual
2 relationships that Terry Bollea has had and
3 allegedly had and let's start prying into his sex
4 life? That has nothing to do with Heather Clem,
5 nothing to do with Gawker Media.

6 So Your Honor made a correct ruling a year or
7 so ago when you said that this case is about
8 Terry Bollea and Heather Clem and Bubba Clem, and
9 that's where the relationship that is the focus of
10 this case is going to -- discovery is going to be
11 permitted as to that relationship and not to any
12 other extraneous relationship that anyone has had.
13 And Heather Clem was concerned that they were
14 asking for discovery into her sexual relationships
15 other than Terry Bollea. We were concerned about
16 inquiries into other sexual relationships besides
17 Heather Clem. And Your Honor made the correct
18 ruling.

19 So Gawker doesn't need to take depositions of
20 people to show what they are trying to show,
21 assuming it was even relevant, which we deny that
22 this is relevant to our case. But they don't need
23 to be asking witnesses about news articles,
24 particularly when the people didn't write them who
25 were being deposed. And Your Honor made the

1 correct ruling that other sexual relationships are
2 off limits. We're just concerned about this
3 Pandora's Box that is trying to be opened up.
4 It's unnecessary of what they're trying to ask
5 Ms. Traub.

6 THE COURT: All right, Mr. Harder.

7 Mr. Sullivan?

8 MR. SULLIVAN: Yes, ma'am. I will be just
9 real brief.

10 Here is the thing. He talks about Pandora's
11 Box. We didn't get in the room with Pandora's
12 Box. Okay? Mr. Harder, when it's his turn, he
13 wants wide discovery. He tells you about it in
14 the deposition. You get to ask your questions,
15 and he objects. Judge, here he pulled the trigger
16 too soon. My colleague, Mr. Berry, asked this
17 question: The press also -- asking about this
18 coverage, this press coverage.

19 He says: This is an example of one of the
20 times that you mentioned that Hulk Hogan's divorce
21 was covered by the press, correct?

22 Yes.

23 The press also covered his affair with
24 Christiane Plante, correct?

25 Mr. Harder: I object. Calls for

1 speculation; lacks foundation.

2 Answer: I mean, the press dubbed it an
3 affair. I wouldn't say that. They covered his,
4 whatever, his relationship with her, whatever.

5 And you are aware of that, the press
6 coverage?

7 Answer: I don't recall the specific press
8 coverage. Bringing it up, I recall that it had
9 happened.

10 So then Mr. Berry: I'm going to show you a
11 document that we will mark as Exhibit 15.

12 And this is a point where the National
13 Enquirer article discussed Hulk Hogan's book and
14 is brought up to show the witness, who is his
15 public relations person. Right?

16 Deposition Exhibit 15 gets marked.

17 Mr. Harder: Also, this is a violation of the
18 protective order, and on and on. And that's where
19 the process grinds to a halt before Judge Case and
20 makes his ruling. And then he says, Perhaps you
21 should take it up with Judge Campbell. And we're
22 here today.

23 I submit to you, Your Honor, Mr. Harder says,
24 Well, they have got all these articles. They
25 don't need to ask somebody about them. But we had

1 four or five articles that we wanted to ask his
2 public relations professional.

3 You know as well as I do, Judge, that now
4 we're facing a trial. This isn't just summary
5 judgment. We're not going to come in here with a
6 box of these articles for purposes of the trial.
7 You need to have some of this stuff brought in,
8 bring a few in through this witness, you bring a
9 few in through that witness. That's just how it
10 goes.

11 So we chose four or five for this particular
12 witness. And what do we get? We get the door
13 slammed saying, No, you can't do that as well.
14 I'm just telling you, Judge, that's not right.
15 That isn't the way the game is played.

16 Thank you.

17 THE COURT: Okay. Thank you.

18 So the defendants' exceptions are going to be
19 denied, plaintiff's objections sustained.

20 All right. Now, why don't we take a brief
21 five-minute, or whenever we all get back, quick
22 comfort break and then we'll come back and then go
23 on to other exceptions.

24 Okay. Great. Thank you.

25 (A recess was taken from 11:01 a.m. to

1 And, Mr. Harder, if you can get back with me
2 in the next two weeks as to what's your position
3 with those pages and then any other supplement,
4 Mr. Berlin, or, Mr. Sullivan, that you-all want to
5 make. And I will make that call after everybody
6 has had an opportunity, especially since the
7 motion -- I didn't understand it either.

8 MR. BERLIN: Very well, Your Honor.

9 MR. SULLIVAN: Thank you, Your Honor.

10 THE COURT: Thank you.

11 So let's say -- Mr. Harder, let's just have a
12 date certain in here. If you can let me know by,
13 let's say, April 6th.

14 MR. HARDER: Okay.

15 THE COURT: April 6th and your position.

16 Okay. Thank you. Anything else in regards
17 to that?

18 MR. BERLIN: Did you want a date for us or
19 just we should do it promptly? I don't think it
20 will take us very long to do it, so --

21 THE COURT: If you have anything else you
22 want to tell me, just tell me by April 6th. How
23 about that?

24 MR. BERLIN: Well, I think we should probably
25 do it after, so we can see what they say. But,

1 you know, we can do it within -- I'm sure we can
2 do it within that week, probably faster.

3 THE COURT: Great. April 13th.

4 MR. BERLIN: Very well, Your Honor.

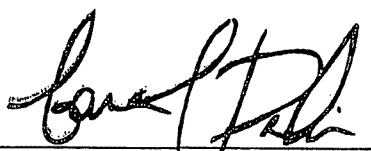
5 THE COURT: All right. Then I believe the
6 next one is Gawker's exception to the report and
7 recommendation of March 11th as to the defendants'
8 objection to the corporate representative
9 deposition topics and the defendants' motion for
10 protective order and the plaintiff's motion to
11 compel. I'm sort of wrapping them all in the
12 same.

13 MR. BERLIN: I believe it's all the same
14 issue, Your Honor, so that sounds like a good way
15 to go.

16 Your Honor, we basically have two concerns on
17 this. And I will try and streamline that.

18 One is, this deposition happened already. It
19 happened under circumstances early in the case,
20 and we went to the plaintiff and said, you know,
21 There is still some discovery motions outstanding;
22 why don't we get those adjudicated by
23 Judge Campbell before -- this was before
24 Judge Case was involved -- and then just do this
25 once. And the plaintiff was raring to go and

1 REPORTER'S CERTIFICATE

2
3 STATE OF FLORIDA
4 COUNTY OF HILLSBOROUGH
56
7 I, Aaron T. Perkins, Registered Professional
8 Reporter, certify that I was authorized to and did
9 stenographically report the above hearing and that
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11 stenographic notes.12
13 I further certify that I am not a relative,
14 employee, attorney, or counsel of any of the
15 parties, nor am I a relative or employee of any of
16 the parties' attorney or counsel connected with
17 the action, nor am I financially interested in the
18 action.19
20 Dated this 20th day of March, 2015.
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