

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
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

**PLAINTIFF TERRY BOLLEA'S MOTION IN LIMINE NO. 10 TO EXCLUDE
EVIDENCE OR ARGUMENT RELATED TO *HOGAN KNOWS BEST* AND *BROOKE
KNOWS BEST***

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. § 90.104 for an Order prohibiting Defendants from introducing any evidence or argument, during any portion of the trial, related to the television shows *Hogan Knows Best* and *Brooke Knows Best*.

In support of his motion, Mr. Bollea states the following:

1. Mr. Bollea's claims in this case arise out of defendant Gawker Media, LLC's ("Gawker") publication of a secretly filmed recording of Mr. Bollea naked and engaged in sexual relations with Heather Clem (the "Sex Video"). Mr. Bollea has brought claims for invasion of privacy and related torts. Gawker's central defense is that the publication of the Sex Video is protected by the First Amendment as a matter of "legitimate public concern."

2. Gawker intends to introduce evidence relating to the television shows featuring “Hulk Hogan” and his family, titled *Hogan Knows Best* and *Brooke Knows Best*. *Hogan Knows Best* was a “reality”-style show that was filmed in Mr. Bollea’s residence at the time he was living with his then wife Linda and their children. *Brooke Knows Best* was a “spinoff” that was also a “reality”-style show focusing on Mr. Bollea’s daughter, Brooke.

3. Gawker intends to use excerpts of the shows, or may elicit testimony regarding Mr. Bollea’s and his family’s discussion of birth control, Mr. Bollea’s and Linda Bollea’s discussion with a counselor concerning sexual issues in their marriage, and other similar subjects discussed during the show. Gawker identified the shows, presumably to use them at trial, as follows:

- a. *Hogan Knows Best*, Seasons 1–4 [Gawker Trial Exhibits #249, 251–256]
- b. *Brooke Knows Best*, Seasons 1–2 [Gawker Trial Exhibits #250, 257–260]

4. Gawker’s misguided argument is that these types of statements demonstrate that Mr. Bollea’s sex life is a matter of “legitimate public concern.” This argument is the functional equivalent of saying that an actress who performs a scene on TV discussing sex consents to the publication of her nude or engaged in sex.

5. *Hogan Knows Best* and *Brooke Knows Best* were fictionalized, “soft-scripted” shows in which “Hulk Hogan” and his family played characters, and the stories were created by the producers and not the Bollea family. “Hulk Hogan” and his family played the “roles” of the Hogan characters, which is not their true last name. Mr. Bollea portrayed his “Hulk Hogan” character on these television shows instead of his true self (hence, the title of the show), in order to create scenes that the producers could work with in the editing room. Mr. Bollea’s role as Hulk Hogan on these television shows was completely unrelated to the secretly-recorded footage of Mr. Bollea naked and having sex in a private bedroom with Heather Clem.

6. Any evidence related to these television shows is irrelevant to the claims and defenses at issue in this litigation. Fla. Stat. §§ 90.401, 90.402.

7. Gawker's strategy to use this highly prejudicial and inflammatory evidence will be to argue that it somehow justifies Gawker's publication of the Sex Video, in which Mr. Bollea was secretly filmed in a private bedroom while fully naked and engaged in consensual sex, as a matter of legitimate public concern.

8. None of the aforementioned evidence relates to the contents of the video Gawker published. None of the aforementioned evidence depicts images of Mr. Bollea naked or engaged in sexual intercourse with Heather Clem. None of the aforementioned evidence is in any way related, temporally or proximally, to the events depicted in the video.

9. Accordingly, none of the aforementioned evidence tends to prove or disprove whether images of Mr. Bollea naked and engaged in sexual intercourse were a matter of legitimate public concern. Fla. Stat. §§ 90.401-402.

10. The purpose for which Gawker actually intends to use these statements is to inflame and prejudice the jury by attacking Mr. Bollea's character. This improper use of character evidence is prohibited. *See* Fla. Stat. §§ 90.404, 90.609.

11. A number of the statements in the aforementioned evidence also are hearsay and inadmissible under Fla. Stat. §§ 90.801, 90.802.

12. The aforementioned evidence has no bearing on, and no tendency to prove, whether images of Mr. Bollea naked and engaged in sexual intercourse were themselves newsworthy. The issue for the jury to decide in this case will be whether Gawker's posting of a video containing images and audio of Mr. Bollea naked and engaged in sexual intercourse ceased to be the giving of information to which the public is entitled, and became a morbid and

sensational prying into Mr. Bollea's private life for its own sake. *Toffoloni v. LFB Publ'g. Group*, 572 F.2d 1201, 1210 (11th Cir. 2009). The aforementioned evidence has no bearing on this issue.

13. Assuming *arguendo* some relevance to this evidence, any probative value it might have is substantially outweighed by the prejudice of putting these matters before the jury. Fla. Stat. § 90.403. Any evidence regarding *Hogan Knows Best* and *Brooke Knows Best* will confuse and potentially inflame the jury, while unfairly prejudicing Mr. Bollea. *Perper v. Edell*, 44 So. 2d 78, 80 (Fla. 1949) (stating that "if the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence—if it tends to obscure rather than illuminate the true issue before the jury—then such evidence should be excluded").

14. In the event Gawker is permitted to introduce some or all of this evidence, the jury should be provided with an instruction detailing the limited purpose for which it is admitted, and further advising them that it must not be considered for any other purpose, including, without limitation, attacking Mr. Bollea's credibility and character.

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial relating to the *Hogan Knows Best* and *Brooke Knows Best* television shows.

Respectfully submitted,

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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 12th day of June, 2015 to the following:

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