

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.: 12012447-CI-011

vs.

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

Defendants.

PUBLISHER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Florida Rule of Civil Procedure 1.510 and Florida Statutes § 768.72, and in accordance with the schedule set by the Court at the April 22, 2015 Case Management and Status Conference, Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (collectively, the "Publisher Defendants"), through the undersigned counsel, hereby move for summary judgment on plaintiff's proposed claim for punitive damages. Submitted herewith, in support of this motion, are (a) the Publisher Defendants' Combined Brief on Punitive Damages (filed in opposition to Plaintiff's Motion for Leave to Amend to Assert a Claim for Punitive Damages and in Support of this Motion); (b) the Publisher Defendants' Statement of Undisputed Material Facts on Punitive Damages (the "Punitive Damages SUMF"); and (c) the Affidavit of Alia L. Smith and the exhibits attached thereto (the "Smith Affidavit").

1. As set forth in the Publisher Defendants' Punitive Damages SUMF, and supporting Smith Affidavit, the following material facts are undisputed:

- a. Gawker published the news report and commentary at issue in this action, accompanied by one minute and 41 seconds of heavily-edited excerpts from a

full 30 minute video recording (the “Video Recording”) of plaintiff and Heather Clem conversing and engaging in sexual activity (the “Publication”). Punitive Damages SUMF ¶¶ 5-21.

- b. The Publisher Defendants played no role in creating the Video Recording. *Id.* ¶¶ 22-23.
- c. The Publisher Defendants believed that the Publication addressed a matter of public concern. *Id.* ¶¶ 24-30.
- d. After publication, the Publisher Defendants continued to believe that the Publication was newsworthy. *Id.* ¶¶ 31-34.
- e. The Publisher Defendants believe that whether something is newsworthy depends on the context. *Id.* ¶¶ 35-43.

Based on these undisputed material facts, the Publisher Defendants are entitled to summary judgment as a matter of law.

2. As more fully set forth in their accompanying Combined Brief, to be entitled to punitive damages, a plaintiff must show that the defendants acted with “actual knowledge” that their conduct was unlawful or a “conscious” disregard or indifference to the plaintiff’s life, safety or rights. Because the undisputed record reflects that Publisher Defendants believed that the Publication was newsworthy and therefore was lawful, they did not act with the required “actual knowledge” or “conscious” disregard. In particular, a host of cases confirms that, both generally and in the specific context of publishing images of a plaintiff (including where those images depict sex or nudity), a defendant’s belief that its conduct is lawful forecloses a plaintiff’s ability to obtain punitive damages.

3. Here, a federal judge and three Florida appellate judges reached the same belief that the Publication was “newsworthy” and involved a “matter of public concern,” as those terms are defined in the case law. Given that, and the substantial body of other case law finding depictions of sex or nudity to be newsworthy and addressing matters of public concern, it can hardly be said that the Publisher Defendants’ decision to publish here was evidence of a knowing or conscious violation of plaintiff’s rights.

4. This is particularly true where the evidence also confirms that the Publisher Defendants understood more generally that whether something is newsworthy depends on the context and circumstances. Indeed, as the many examples Hogan submitted in his Motion for Leave confirm, the Publisher Defendants routinely elect not to publish depictions of sex and/or nudity, and vocally criticize others for doing so, when the context makes plain that there is nothing newsworthy about them. This further confirms that the Publisher Defendants – both generally and in the this particular instance – attempt to engage in proper editorial decision-making, publishing only that which they believe is newsworthy and therefore lawful. Such conduct cannot, as a matter of law, be subjected to a claim for punitive damages.

Dated: May 8, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing portal and by hand delivery upon the following counsel of record:

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