

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 OBJECTION AND MOTION IN LIMINE NO. 5 TO
EXCLUDE EXTENDED VIDEO FOOTAGE AT TRIAL**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby objects and moves this Court in limine under Fla. Stat. § 90.104 for an Order prohibiting Defendants from introducing, and striking from Defendants' June 8, 2015 Exhibit List, the extended, secretly recorded video containing footage of Mr. Bollea naked and engaged in sexual intercourse.

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

1. Defendants included the extended, 30-minute secretly recorded video depicting Mr. Bollea naked and engaged in sexual intercourse with Heather Clem, as an exhibit on their trial exhibit list (Exhibit 311).

2. A.J. Daulerio received this extended secretly recorded footage in late September 2012. It includes a substantial amount of images and audio of Mr. Bollea fully naked and having

sex with Heather Clem. The 1 minute 41 second video “highlight reel” Defendants posted on Gawker.com emanated from this extended footage (the “Sex Video”).

3. The full 30-minute video is irrelevant. Fla. Stat. §§ 90.401, 90.402. Mr. Bollea’s claims are based on the publication of the 1 minute 41 second Sex Video Defendants posted online.

4. Assuming arguendo that the extended footage has some relevance, any probative value is substantially outweighed by the prejudice of putting the full video before the jury. Fla. Stat. § 90.403. The extended video will confuse and inflame the jury, unfairly prejudicing Mr. Bollea, especially considering the graphic content of the video. *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”); see *Fischman v. Suen*, 672 So.2d 644, 645 (Fla. 4th DCA 1996) (holding that the “unsubstantiated allegation of medicare fraud is precisely the type of inflammatory matter which should be extinguished by an order in limine”).

5. Publicly disclosing the extended video also invades Mr. Bollea’s privacy.

6. Florida public policy recognizes a fundamental right to privacy. The Florida Constitution provides, at Article 1, Section 23: “Every natural person has the right to be let alone and free from governmental intrusion into his private life.” See also *Doe v. State*, 587 So.2d 526, 531 (Fla. 4th DCA 1991) approved sub nom; *Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So.2d 549 (Fla. 1992) (“The right of privacy has traditionally been applied to sexual intimacies conducted in a private setting.”) (Barkett, J., specially concurring).

7. The law provides a remedy for an invasion of that privacy. *Allstate Insurance Co. v. Ginsberg*, 863 So.2d 156, 162 (Fla. 2003) (holding that the tort vindicates the “right of a private person to be free from public gaze”). Moreover, Fla. Stat. Ann. § 934.09(10) provides that an aggrieved person in any trial, hearing, or proceeding may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted.

8. Mr. Bollea’s privacy should not be further invaded by publicly showing the extended video, most of which has never been made public. This holds particularly true given that the footage was recorded unlawfully in violation of Florida’s Security of Communications Act. (Fla. Stat. Ann. § 934.01 et seq.).

9. Mr. Bollea is willing to stipulate to a description of the full 30-minute version of the tape, including the number of minutes of nudity, oral sex, intercourse, dialogue with no nudity, and any other relevant events on the tape

10. Should the Court introduce any or the entire full 30-minute version of the tape, or Mr. Bollea’s stipulated description, that evidence should remain confidential and not available to the public.¹

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing, and strike from Defendants’ Exhibit List, the extended secretly recorded video of Mr. Bollea.

¹ Mr. Bollea is also filing a Motion to Determine Confidentiality of Court Records and for Protective Order to Exclude the Public at Trial for Certain Evidence and Argument to prevent the public from viewing, at trial, the Sex Video itself, the full 30-minute version of the sex tape received by Gawker, and images from the videos.

Respectfully submitted,

/s/ Kenneth G. Turkel

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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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