

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. 14
TO EXCLUDE TERRY BOLLEA'S MEDICAL HISTORY

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. §§ 90.104, 90.401, 90.402, 90.403, 90.404, and Fla. Const. Art. 1 § 23 for an Order prohibiting the defendants from introducing any evidence or argument, during any portion of the trial, of Mr. Bollea's medical history.

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's intention to introduce evidence or reference Mr. Bollea's medical history is demonstrated by its extensive written discovery into Mr. Bollea's private life, including his personal, private medical records. These requests have included:

- a. An Interrogatory demanding that Mr. Bollea identify all of his personal doctors (Daulerio's Interrogatories to Bollea, Interrogatory 2); and
- b. A document demand concerning all documents relating to health professionals and doctors Mr. Bollea saw between 2006 and present (Gawker's Request for Production of Documents to Bollea, Request 30).

3. Gawker also recently produced a deposition transcript from a pending lawsuit involving negligent medical care Mr. Bollea received. The transcripts do not appear on Gawker's trial exhibit list, but the complaint in that case is listed on Gawker's trial exhibit list. [Transcript produced as GAWKER 27618-28157; *see* Gawker Trial Exhibit #527 (*Bollea v. Laser Spine Institute*, Complaint (GAWKER 25327-25358))]

4. Mr. Bollea is not asserting claims or damages based upon medical treatment or care and has not placed his medical condition at issue. There is no relevance to the medical history of Mr. Bollea.

5. On February 26, 2014, the Court ordered that "inquiry into the medical records [and] names of physicians [of Mr. Bollea] . . . is hereby prohibited, absent further order of the court" (the "February 26, 2014 Order").

6. The February 26, 2014 Order was based on Mr. Bollea's position that he is not seeking to recover damages for any physical injury or medical treatment or care.

7. The Florida Constitution recognizes a right to privacy. Fla. Const. Art. 1 § 23. Mr. Bollea's medical history, condition and records are protected by his right to privacy.

Peisach v. Antuna, 539 So.2d 544 (Fla. App. 3d Dist. 1989) (reversing denial of motion for protective order seeking to prevent deposition of wife’s gynecologists in child support proceeding); *see also Leonard v. Leonard*, 673 So.2d 97 (Fla. App. 1st Dist. 1996) (holding husband could not depose wife’s therapists in divorce and child custody proceeding).

8. Mr. Bollea’s medical history is constitutionally protected and irrelevant to this case. Fla. Stat. §§ 90.401, 90.402. The Court’s February 26, 2014 Order already makes this clear.

9. Assuming arguendo that there could be some relevance to Mr. Bollea’s medical history or condition, any probative value is substantially outweighed by the prejudice of putting these matters before the jury. Fla. Stat. § 90.403. Any mention of Mr. Bollea’s private, personal medical history will do nothing more than confuse the jury, while further invading his constitutional right to privacy. *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”).

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting defendants from introducing any evidence or argument at trial referencing Mr. Bollea’s medical history, including without limitation Mr. Bollea’s medical procedures, medical conditions, medications, treatment, care and similar matters.

Respectfully submitted,

/s/ Kenneth G. Turkel
Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Shane B. Vogt
Florida Bar No. 0257620
BAJO | CUVA | COHEN | TURKEL
100 North Tampa Street, Suite 1900

Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: svogl@bajocuva.com

-and-

Charles J. Harder, Esq.
PHV No. 102333
Douglas E. Mirell, Esq.
PHV No. 109885
Jennifer J. McGrath, Esq.
PHV No. 114890
Sarah E. Luppen, Esq.
PHV No. 113729
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com
Email: jmcgrath@hmafirm.com
Email: sluppen@hmafirm.com

Counsel for Plaintiff

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:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
Counsel for Heather Clem

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com
krosser@houstonatlaw.com

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

Kirk S. Davis, Esquire
Shawn M. Goodwin, Esquire
Akerman LLP
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602
kirk.davis@akerman.com
shawn.goodwin@akerman.com
Co-Counsel for Gawker Defendants

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
abeene@tlolawfirm.com
Counsel for Gawker Defendants

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

/s/ Kenneth G. Turkel

Attorney