

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. 12012447-CI-011

HEATHER CLEM, *et al.*,

Defendants.

**THE PUBLISHER DEFENDANTS' MOTION *IN LIMINE* LIMITING
THE KINDS OF DAMAGES TO WHICH PLAINTIFF IS ENTITLED**

Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (the “Publisher Defendants”) hereby move *in limine* to preclude Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan (“Plaintiff” or “Hogan”) from seeking damages for economic harm in connection with his claims for (a) publication of private facts, (b) intrusion upon seclusion, or (c) intentional infliction of emotional distress because, as a matter of law, Plaintiff is entitled to no such recovery.

ARGUMENT

First, as a matter of law, damages for violations of privacy by publication of private facts and intrusion on seclusion are limited to those calculated to compensate a victim for harm caused by the disclosure, including “stress, anxiety, humiliation, and physical ailments.” *Doe v. Beasley Broad. Grp., Inc.*, 105 So. 3d 1, 3 (Fla. 2d DCA 2012); *see also Cason v. Baskin*, 30 So. 2d 635, 640 (Fla. 1947) (privacy damages remedy harms like impairments of health, mental anguish, loss of friends, or injury to reputation). Economic damages are not among those which a private facts or intrusion on seclusion plaintiff may recover. *See Carson*, 30 So. 2d at 640. Indeed, the ability

to recover damages only for emotional distress, rather than for economic harm is one of the primary differences between claims for the invasion of privacy and one for misappropriation of a person's likeness for which economic damages are recoverable. *See, e.g.*, 19A Fla. Jur. 2d Defamation and Privacy § 232 (“an invasion of the right of privacy by a publication confers no right on the plaintiff to share in the proceeds of the publication on the theory of unjust enrichment.”); J. Thomas McCarthy, 1 Rights of Publicity and Privacy § 4:22 (2d ed. 2015) (“invasion of privacy” damages are “injury to dignity and feelings” while “infringement of the right of publicity” incurs damages for “injury to the commercial value of human identity”): “While both claims flow from defendant’s unpermitted commercial use, they measure different types of injury, one to ‘person,’ the other to ‘property.’”). Economic damages are not, therefore, available to Plaintiff on his claim for private fact publication or intrusion on seclusion.¹

Next, as a matter of law, Plaintiff cannot recover economic damages based on his claim for intentional infliction of emotional distress. A successful claim for the intentional infliction of emotional distress allows “recovery for mental pain and anguish.” *See* 32 Fla. Jur. 2d Interference § 19; *see also* Restatement (Second) of Torts § 46 (1965) (“One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.”). Emotional distress damages are personal in nature, rather than pecuniary. *Friedman v. South Carolina Ins. Co.*, 855 F. Supp. 348, 351 (M.D. Fla. 1994). Accordingly,

¹ While *Cason* would permit recovery of damages for loss of one’s commercial interest on a claim for misappropriation of the right of publicity, here plaintiff has expressly disclaimed any such damages, including to limit discovery into the value of his publicity rights, injury to his brand, or lost business opportunities. Plaintiff’s disclaimed commercial interest is addressed in a separate motion *in limine* filed contemporaneously herewith.

Plaintiff is not entitled to recover economic or special damages for any alleged intentional infliction of emotional distress.²

CONCLUSION

For the foregoing reasons, the Publisher Defendants respectfully request that this Court enter an order precluding Plaintiff from seeking damages for economic harm in connection with his claims for (a) publication of private facts, (b) intrusion upon seclusion or (c) intentional infliction of emotional distress.

June 12, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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² In addition, Plaintiff is further limited on his claim for intentional infliction of emotional distress based on his representation (made to limit discovery in this action) that he is only seeking garden variety emotional distress. That issue is addressed in a separate motion *in limine* filed concurrently herewith.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing portal upon the following counsel of record:

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