

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

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

Defendants

Case No : 12012447-CI

FILED
S. J. PETERSBURG
2015 SEP 28 PM 2:35
KYLE BURKE
CLERK OF CIRCUIT COURT

**ORDER ON PLAINTIFF'S MOTION TO DETERMINE CONFIDENTIALITY OF
COURT RECORDS AND FOR PROTECTIVE ORDER EXCLUDING
THE PUBLIC AND PRESS AT TRIAL FOR CERTAIN EVIDENCE AND ARGUMENT**

THIS CAUSE came before the Court on July 1, 2015 on the Motion of Plaintiff Terry Gene Bollea to Determine Confidentiality of Court Records and for Protective Order Excluding the Public and Press At Trial for Certain Evidence And Argument (the "Motion") Charles Harder, Esq and Kenneth Turkel, Esq appeared on behalf of Mr. Bollea Rachel Fugate, Esq and Seth Berlin, Esq appeared on behalf of Defendants Gawker Media, LLC, Nick Denton and A J. Daulerio (the "Gawker Defendants") Alison Steele, Esq. appeared on behalf of Intervenor, Times Publishing Company Timothy Conner, Esq appeared on behalf of Intervenor, First Look Media, Inc , WFTS-TV and WPTV-TV, Scripps Media, Inc , WFTX-TV, Journal Broadcast Group, Vox Media, Inc , Cable News Network, Inc , BuzzFeed, and The Associated Press¹ The Court has reviewed the Motion and Oppositions, heard argument of

¹ Mr Conner advised the court during the hearing that Media General Operations, Inc (WFLA) opted out of the opposition to Mr Bollea's Motion

counsel for the parties and Intervenor, and is otherwise fully advised. Accordingly, it is ORDERED and ADJUDGED as follows

1 The Motion's request for a determination that the video footage of Mr Bollea and Heather Cole (f/k/a Heather Clem) naked and engaged in sexual relations (the "Video") is confidential under Rule 2.420 of the Florida Rules of Judicial Administration is GRANTED. The Video is CONFIDENTIAL.

2. Mr Bollea has asserted privacy rights in this case and seeks, among other relief, an injunction prohibiting further public display of the Video. These rights would be compromised if the Video is publicly displayed during the trial.

3. Ms Cole is now a third party, having reached a settlement agreement with Mr. Bollea. As a third-party, she has an even stronger privacy right to prohibit the public display of the Video.

4 Confidentiality of the Video therefore is required to avoid substantial injury to Mr. Bollea and Ms Cole.

5. Confidentiality of the Video also is required based on established public policy set forth in the Florida and United States Constitutions, as well as controlling case law. "Both the rights to freedom of speech and freedom of the press, as guaranteed by the First Amendment, and the right to privacy, as guaranteed by the Due Process Clause, are fundamental constitutional rights. The Constitution directs no hierarchy between them. Thus, courts are required to engage in a fact-intensive balancing, with an eye toward that which is reasonable and that which resonates with our community morals, in order to protect the Constitution as a whole." *Toffoloni v LFP Publishing Group, LLC*, 572 F.3d 1201, 1207-08 (11th Cir. 2009).

6 Maintaining confidentiality of the Video through the measures prescribed in this Order is reasonable and resonates with our community morals, to protect the Constitution as a whole

7. Confidentiality of the Video also is required to prevent serious and imminent threat to the fair, impartial and orderly administration of justice. This requires a consideration of potential impact on the jury of publicly displaying the Video that Mr. Bollea seeks to keep private, as well as balancing the chilling effect that publicly displaying the Video could have on lawsuits to protect privacy rights, against the public's right to access to the courts. These factors also weigh in favor of maintaining confidentiality of the Video during the trial.

8 Independently, the Video is tangible evidence under Florida Rule of Judicial Administration 2.420 rather than documentary evidence, and is not encompassed within Florida's open judicial records rules.

9 The relief requested in Mr. Bollea's Motion as originally written (seeking closure of the courtroom and exclusion of the press while the Video is played) is DENIED.

10 The relief sought in the Motion was modified orally in open court on July 1, 2015 to seek only that monitors be turned to shield the public and press from viewing or recording the Video when it is played for the jury. The Motion, as modified, is GRANTED.


11 When the Video is played for the jury at trial, the monitors shall be turned in such a way so that only the jury, the parties, their trial counsel, and court personnel may see the Video. The public and press shall not be excluded from the courtroom when the Video is played, and the pooled camera shall not be turned off during such time.

12 The Motion, as modified on July 1, 2015, is the least restrictive measure available to protect the confidentiality of the Video.

13. The degree, duration, and manner of confidentiality ordered herein concerning the Video is no broader than necessary to protect the important privacy interests described above.

14. The Clerk is directed to publish this Order consistent with the terms of Fla. Jud. Admin. R. 2.420(e)(4).

DONE and ORDERED in Chambers at Pinellas County, Florida this 23 day of ~~July~~ ^{September} 2015.


Pamela A.M. Campbell
Circuit Court Judge

Copies furnished to:
Counsel of Record