

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. 12012447CI-011

vs.

GAWKER MEDIA, LLC aka GAWKER  
MEDIA; NICK DENTON; A.J. DAULERIO,

Defendants.

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**PLAINTIFF’S OPPOSITION TO GAWKER DEFENDANTS’ MOTION TO PRECLUDE  
EVIDENCE OF BAD ACTS BY GAWKER (STYLED “Defendants’ Motion in Limine  
No. 5: Statements By And Opinions of Third Parties Concerning Alleged ‘Bad Acts’”)**

Mr. Bollea opposes Gawker Defendants’ motion in limine number 5 to exclude evidence establishing Gawker’s intent and knowledge of invading privacy, as follows:

This Court already **denied** Gawker Defendants’ omnibus motion seeking an *in limine* order excluding any evidence of its callous invasions of people’s privacy. The present motion is an attempt to relitigate the issue and to exclude evidence (most of which was marked for impeachment purposes) of additional instances where Gawker Defendants callously disregarded the privacy and rights of individuals. There is no reason for the Court to depart from its earlier ruling that this material is admissible.

“Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.” Fla. Stat. § 90.404(2)(a) (emphasis added). Here, Mr. Bollea asserts claims for intentional torts, which

makes Gawker Defendants' other publications involving substantially similar circumstances admissible to show intent, knowledge of the wrongfulness of the conduct at issue, and conscious disregard of privacy rights. This evidence also is relevant to the outrage element of intentional infliction of emotional distress, Gawker Defendants' "good faith" defense to the Wiretap Act claim, and the depravity of Gawker Defendants' conduct for purposes of punitive damages.

Florida law has long approved the use of other wrongful conduct and/or prior similar acts to show scienter. *Einstein v. Munnerlyn*, 13 So. 926, 928 (Fla. 1893) (in action seeking attachment of debtor's property on the ground of fraudulent conveyance, evidence of other fraudulent conveyances made by the debtor admissible to show intent; reversing trial court's exclusion of evidence of other frauds); *West Florida Land Co. v. Studebaker*, 19 So. 176 (Fla. insurance company's intent in denying the plaintiff's claim); *Smithfield Foods, Inc. v. United Food and Commercial Workers International Union*, 586 F. Supp. 2d 632 (E.D.Va. 2008) (denying motion in limine to exclude evidence in extortion case of defendant's other acts of extortion; admissible to show defendant's motive); *Rinehart v. Shelter General Insurance Co.*, 261 S.W.3d 583, 591 (Mo. App. 2008) (affirming admission of evidence of insurance company's handling of other claims in bad faith evidence; evidence was relevant to issue of bad faith and also to intent element of punitive damages claim); *Johnson & Johnson Consumer Cos. v. Aini*, 540 F. Supp. 2d 374, 392 (E.D.N.Y. 2008) (judicially noticing six separate federal actions for trademark infringement filed against defendant as probative on issues of intent and bad faith in action for trademark infringement); *Brockman v. Regency Financial Corp.*, 124 S.W.3d 43, 50-51 (Mo. App. 2004) (affirming admission of evidence of other lawsuits brought by defendant in malicious prosecution action, to show malicious intent).

The evidence which Gawker Defendants complain of is, for the most part, articles marked for possible impeachment should Gawker witnesses deny that the acts described in the articles took place. The bad acts of Gawker described in the materials include falsely accusing a Hollywood star of rape and publishing a sex tape featuring a famous musician.

Further, there are a number of exhibits describing a controversy relating to the posting and later withdrawal of a story about a media executive that was alleged to have made a date with an escort and gay porn star, which led to substantial adverse publicity to Gawker. Gawker Defendants reacted to that controversy by making statements and taking actions indicating that they understood the norms of journalistic ethics that they had long flouted. Gawker Media LLC's CEO, Defendant Nick Denton, stated that this story had failed his editorial litmus test and that the removal of the article was partially due to this but also due to his fear that the posting would cause harm to the company's bottom line as advertisers withdrew their support for Gawker due to the criticism the company now faced. Those materials are admissible as well.<sup>1</sup>

For the foregoing reasons Gawker Defendants' motion in limine number 5 should be denied.

/s/ Kenneth G. Turkel

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<sup>1</sup> Gawker Defendants complain that some of the documents contain hearsay opinions regarding Gawker Defendants, but Mr. Bollea does not seek to admit the documents to prove the truth of such opinions.

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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 February, 2016 to the following:

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*/s/ Kenneth G. Turkel*

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