

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.: 12012447-CI-011

vs.

GAWKER MEDIA, LLC, *et al.*,

Defendants.

**DEFENDANTS' BENCH MEMORANDUM REGARDING
AVAILABILITY OF NOMINAL DAMAGES FOR PUBLICATION
OF PRIVATE FACTS AND INTRUSION UPON SECLUSION**

Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio respectfully submit this Bench Memorandum regarding the need for an instruction explaining to the jury that it is permitted to award only nominal damages for Plaintiff's claims for Publication of Private Facts and Intrusion Upon Seclusion. It is well-established in Florida that nominal damages may be awarded where a plaintiff demonstrates invasion of privacy by publication of private facts or intrusion upon seclusion, but does not demonstrate that actual harm occurred. Accordingly, Defendants Proposed Jury Instruction No. 48 proposes that the jury be instructed on that aspect of the applicable law.

Pursuant to Florida law, a plaintiff alleging a claim for publication of private facts or for intrusion upon seclusion need not allege or prove actual damages in order to state a claim. *Cason v. Baskin*, 20 So.2d 243 (Fla. 1944); *Kush v. Lloyd*, 616 So. 2d 415, 422 (Fla. 1992). If plaintiff fails, however, to demonstrate any actual damages, then the jury is permitted to award only nominal damages. 19A Fla. Jur. 2d Defamation and Privacy § 232 (“[W]here no actual or

compensatory damage is shown in an invasion of privacy action, and the plaintiff is not entitled to punitive damages, nominal damages will be awarded.”) (citation omitted). This is consistent with “the general rule in this state . . . that where a plaintiff shows the invasion of a legal right, he may recover at least nominal damages.” *King v. Saucier*, 356 So. 2d 930, 931 (Fla. 2d DCA 1978) (citations omitted).

In several cases, Florida courts have determined it was reversible error where the jury was not permitted to consider nominal damages for invasion of privacy. In the seminal case of *Cason*, 30 So. 2d at 637, which recognized the common law “invasion of privacy” tort in Florida, the Florida Supreme Court addressed just this issue. There, the defendant published a memoir in which she recounted stories and anecdotes about plaintiff. The Court held that plaintiff had established “a wrongful invasion of her right of privacy.” *Id.* at 640. Plaintiff failed, however, to show she suffered any real harm as a result: “Her health has not been impaired ... [t]here was no mental anguish – no loss of friends or respect in the community – no injury to character or reputation. The evidence fails to show . . . that plaintiff has sustained any substantial injury.” *Id.* Because she had failed to show any substantial injury, she was not “entitled to any actual or compensatory damages.” *Id.* However, the Supreme Court ruled that the trial court erred in finding that plaintiff had failed to state a claim because she had not proven damages. Instead, the Court directed that plaintiff was entitled to recover nominal damages and costs and remanded on that basis. *Id.*; *see also Doe v. Beasley Broad. Grp., Inc.*, 105 So. 3d 1, 2-3 (Fla. 2d DCA 2012) (plaintiff who failed to prove actual damages as a consequence of invasion of privacy was still entitled to seek nominal damages and it was reversible error where “the trial court erred in preventing the issue from going to the jury”).

Accordingly, the jury should be instructed that it may award Plaintiff only nominal damages for his claims for Publication of Private Facts and Intrusion Upon Seclusion.

February 22, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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