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

GAWKER MEDIA, LLC, *et al.*,

Defendants.

DEFENDANTS' MOTION *IN LIMINE* RE: RELIANCE ON PRIOR RULINGS

Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio hereby move *in limine* to permit them to advise the jury that, in deciding not to remove the challenged video, they were acting consistently with, and relying on, judicial determinations by a federal judge.

During the trial, plaintiff's counsel repeatedly chastised defendants for not removing the video from Gawker's website following a cease and desist letter from plaintiff's counsel, David Houston. It was featured during the testimony of Mr. Houston as well as in plaintiff's opening statement and closing argument.

Despite this testimony and argument, the jury was not allowed to be told that defendants' decision to leave the video posted on the Gawker.com website was in reliance on the rulings by the Honorable James D. Whittemore concluding that the video was related to a matter of public concern, and that, as speech protected under the First Amendment, it need not be removed from Gawker's website. Judge Whittemore issued four separate rulings, each of which reached the same conclusion:

1. By order dated October 22, 2012, the Court denied plaintiff's motion for a temporary injunction. *See* Ex. A (citing, *inter alia*, *Zidon v. Pickrell*, 338 F. Supp. 2d 1093 (D.N.D. 2004) (denying a TRO motion to "shutter" a website));
2. By order dated November 14, 2012, following a full hearing, the Court denied plaintiff's motion for a preliminary injunction. *See Bollea v. Gawker Media, LLC*, 2012 WL 5509624 (M.D. Fla. Nov. 14, 2012) (Ex. B). The Court started with the premise that "'speech on matters of public concern . . . is at the heart of the First Amendment's protection,'" and that the arguably "'inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.'" *Id.* at *2 (quoting *Snyder v. Phelps*, 562 U.S. 443, 451 (2011), and *Rankin v. McPherson*, 483 U.S. 378, 378 (1987)). The Court then explained that the "privilege to publish facts of legitimate public concern extends beyond the dissemination of news 'to information concerning interesting phases of human activity' even when the individuals thus exposed did not seek or have attempted to avoid publicity." *Id.* at *2 n.3 (noting that protection extended to speech regardless of whether purpose was for "purposes of education, amusement or enlightenment") (citations omitted). Applying these principles, the Court reasoned that "Plaintiff's public persona, including the publicity he and his family derived from a television reality show detailing their personal life, his own book describing an affair he had during his marriage, prior reports by other parties of the existence and content of the Video, and Plaintiff's own public discussion of issues relating to his marriage, sex life, and the Video all demonstrate that the Video is a subject of general interest and concern to the community." *Id.* at *3.

3. After plaintiff appealed that ruling (an appeal he ultimately dismissed), he moved for a preliminary injunction pending appeal. By order entered December 4, 2012, the federal court denied that motion as well for the same reasons. *See* Ex. C.
4. Finally, by order dated December 21, 2012, the Court denied plaintiff's motion for a preliminary injunction to enjoin copyright infringement. *See Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (M.D. Fla. 2012) (Ex. D). In addressing the issue of fair use, the Court quoted its earlier November 14, 2012 Order, *see id.* at 1329 n.3, and further expounded on it, stating: "in this case, Gawker Media posted an edited excerpt of the Video together with nearly three pages of commentary and editorial describing and discussing the Video in a manner designed to comment on the public's fascination with celebrity sex in general, and more specifically Plaintiff's status as a 'Real Life American Hero to many,' as well as the controversy surrounding the allegedly surreptitious taping of sexual relations between Plaintiff and the then wife of his best friend—a fact that was previously reported by other sources and was already the subject of substantial discussion by numerous media outlets." *Id.* at 1328-29.

We believe that this Court's decision preventing defendants from being able to explain that their conduct relied on the repeated rulings of a federal judge has resulted in substantial and unfair prejudice to defendants. Now that the jury will be asked to award damages to punish defendants for their conduct and to deter them from engaging in such conduct in the future, we respectfully submit that the jury should be allowed to know that defendants were engaging in conduct that a federal judge had ruled was protected by the First Amendment, as well as relying on those determinations.

CONCLUSION

Defendants respectfully request that this Court grant this motion *in limine* and enter an order allowing defendants to inform the jury that their conduct in leaving the video posted on Gawker.com was in reliance on the repeated rulings of a federal judge.

March 21, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March 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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