

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

**TERRY GENE BOLLEA professionally
known as HULK HOGAN,**

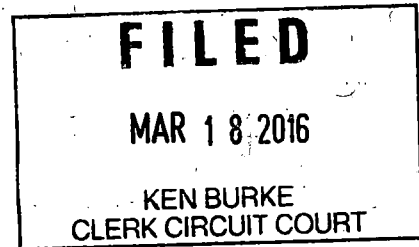
Plaintiff,

Case No. 12012447CI-011

vs.

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

Defendants.



JURY INSTRUCTIONS

Trial: March 7, 2016 – March 18, 2016

Presiding Judge:

**Pamela A.M. Campbell
Circuit Judge**

INSTRUCTION # 18

INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. You will recall at the beginning of the case I told you that if, at the end of the case I decided that different law applies, I would tell you so. These instructions are (slightly) different from what I gave you at the beginning and it is these rules of law that you must now follow. When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

INSTRUCTION # 19

BURDEN OF PROOF

The plaintiff must prove his claims for invasion of privacy based on publication of private facts, invasion of privacy by intrusion upon seclusion, invasion of privacy by misappropriation of the right of publicity, intentional infliction of emotional distress, and violation of Florida's Security of Communications Act by the greater weight of the evidence. If plaintiff proves his claims, then you will decide whether defendants proved by the greater weight of the evidence their affirmative defenses. If plaintiff proves any or all

of his claims, and defendants do not prove their defenses, you will then consider the issue of damages. I will now define some of the terms you will use in deciding this case.

INSTRUCTION # 20

GREATER WEIGHT OF THE EVIDENCE

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

INSTRUCTION # 21

FINAL OVERVIEW OF CLAIMS AND DEFENSES

I will now discuss each of the specific claims and defenses, and define some of the terms you will use in deciding this case.

Plaintiff has asserted five claims against Defendants. Each of these is a separate and independent claim which you will decide in this case. These claims are as follows:

Plaintiff's first claim is for invasion of privacy based upon the publication of private facts. That claim consists of the publication of truthful private information that a reasonable person would find highly offensive, and that does not relate to a matter of legitimate public concern.

Plaintiff's second claim is for invasion of privacy based on intrusion upon seclusion. That claim consists of the wrongful intrusion through physical or electronic means into a place in which Plaintiff had a reasonable expectation of privacy in such a

manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

Plaintiff's third claim is for invasion of privacy based on misappropriation of the right of publicity. That claim consists of the unauthorized use of Plaintiff's name or likeness for a commercial or advertising purpose.

Plaintiff's fourth claim is for intentional infliction of emotional distress. That claim consists of extreme and outrageous conduct by a defendant that causes severe emotional distress and was engaged in either with an intent to cause severe emotional distress or a reckless disregard of the high probability that it would cause severe emotional distress. Extreme and outrageous conduct is behavior which, under the circumstances, goes well beyond all possible bounds of decency and is regarded as shocking, atrocious, and utterly intolerable in a civilized community. Emotional Distress is severe when it is of such intensity or duration that no ordinary person should be expected to endure it.

Plaintiff's fifth claim is for violation of Florida's Security of Communications Act. That claim consists of the disclosure of oral communications in which Plaintiff had a reasonable expectation of privacy by one who knows or has reason to know that the communications were recorded without Plaintiff's knowledge or consent.

Defendants deny Plaintiff's claims. Defendants contend that the video, in the context of the accompanying report and commentary, was protected by the First Amendment because it related to a matter of public concern. They also deny specific parts of Plaintiff's claims. For example, the Defendants deny that they intruded physically or electronically into a private place. They also deny that they used Plaintiff's name or likeness for a commercial or advertising purpose. They further maintain that Plaintiff did not, in fact, suffer severe emotional distress as a result of their conduct. And they contend that they posted the video containing Plaintiff's oral communications on Gawker.com in good faith reliance on a good faith determination that their conduct was lawful.

INSTRUCTION # 22

PUBLICATION OF PRIVATE FACTS

The issues for you to decide on Plaintiff's claim for invasion of privacy for publication of private facts are:

- (1) Whether Defendants publicly disclosed private facts concerning Plaintiff by posting the video that is the subject matter of this lawsuit (defined herein as the "**VIDEO**") on Gawker.com; and, if so,
- (2) Whether posting the **VIDEO** on the website Gawker.com was highly offensive to a person of ordinary sensibilities; and, if so,

- (3) Whether the **VIDEO** was not related to a matter of legitimate public concern.

INSTRUCTION # 23

INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

The issues for you to decide on Plaintiff's claim for invasion of privacy based on intrusion are:

- (1) Whether the Defendants, in posting the **VIDEO**, wrongfully intruded into a place where plaintiff had a reasonable expectation of privacy; and, if so,
- (2) Whether posting the **VIDEO** would outrage or cause mental suffering, shame, humiliation or hurt feelings to a person of ordinary sensibilities.

INSTRUCTION # 24

INVASION OF PRIVACY BASED ON RIGHT OF PUBLICITY

The issues for you to decide on Plaintiff's claim for invasion of privacy based on common law right of publicity are:

- (1) Whether Defendants, in posting the **VIDEO** on Gawker.com, used Plaintiff's name or likeness for a commercial or advertising purpose; and, if so,
- (2) Whether Plaintiff gave his consent to Defendants to use his image or likeness.

INSTRUCTION # 25

ISSUES ON INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The issues for you to decide on Plaintiff's claim for intentional infliction of emotional distress are:

- (1) Whether the Defendants engaged in extreme and outrageous conduct in posting the **VIDEO** on Gawker.com; and, if so,
- (2) Whether the Defendants acted either with the intent to cause Plaintiff severe emotional distress, or acted with reckless disregard of the high probability of causing Plaintiff severe emotional distress; and, if so,
- (3) Whether Plaintiff in fact suffered severe emotional distress; and, if so
- (4) Whether that extreme and outrageous conduct was a legal cause of severe emotional distress.

I will now define some of these terms for you now:

Extreme and outrageous conduct is behavior, which, under the circumstances, goes well beyond all possible bounds of decency and is regarded as shocking, atrocious, and utterly intolerable in a civilized community.

Emotional distress is severe when it is of such intensity or duration that no ordinary person should be expected to endure it.

Legal cause generally:

Extreme and outrageous conduct is a legal cause of severe and emotional distress if it directly and in natural and continuous sequence produces or contributes substantially to producing such severe emotional distress, so that it can reasonably be said that, but for the extreme and outrageous conduct, the severe emotional distress would not have occurred.

Concurring cause:

In order to be regarded as a legal cause of severe emotional distress, extreme and outrageous conduct need not be the only cause. Extreme and outrageous conduct may be a legal cause of severe emotional distress even though it operates in combination with some other cause if the extreme and outrageous conduct contributes substantially to producing such severe emotional distress.

INSTRUCTION # 26

VIOLATION OF FLORIDA SECURITY OF COMMUNICATIONS ACT

The issues for you to decide on Plaintiff's claim for violation of Florida's Security of Communications Act are:

- (1) Whether the "oral communications" of Plaintiff contained on the **VIDEO** were recorded without his knowledge or consent; and, if so,
- (2) Whether Plaintiff had a reasonable expectation that his oral communications were not being recorded; and, if so,
- (3) Whether Defendants knew or had reason to know that those oral communications were recorded without his knowledge or consent; and, if so,
- (4) Whether the Defendants intentionally disclosed or used those oral communications; and, if so,
- (5) Whether Plaintiff suffered actual damages as a result of defendants' disclosure or use of the oral communications.

For a conversation to qualify as an "**oral communication**," the plaintiff must have an actual subjective expectation of privacy, and society must be prepared to recognize the expectation as reasonable under the circumstances. Where both elements are present, the statute has been violated whether the intercepted communication is private in nature or not. A significant factor in determining the reasonableness of the expectation of privacy is the location in which the conversation occurs.

INSTRUCTION # 27

BURDEN OF PROOF

If the greater weight of the evidence does not support Plaintiff's claims, your verdict should be for Defendants.

However, if the greater weight of the evidence supports Plaintiff's claims, then you shall consider the defenses raised by Defendants. If the greater weight of the evidence supports the defenses, your verdict should be for Defendants. However, if the greater weight of the evidence does not support the defenses, your verdict will be for Plaintiff and you will consider the issue of damages.

INSTRUCTION # 28

LEGITIMATE PUBLIC CONCERN

The issue of "legitimate public concern" or "newsworthiness" is an element of Plaintiff's claim for publication of private facts, as well as a First Amendment defense raised by Defendants to each of Plaintiff's claims. I will now define legitimate public concern.

The right of privacy and the right of freedom of the press are both fundamental rights, which must be balanced. The right to privacy can be outweighed if a publication relates to matters of legitimate public concern.

A matter of public concern is one that can be fairly considered as relating to any matter of political, social, or other concern to the community or that is subject to general interest and concern to the public. The mere fact that a publication contains arguably inappropriate content does not remove it from the realm of legitimate public interest.

In weighing this issue, you should take into account the content, context and form of the material at the time of publication to determine whether it relates to a matter of public concern. The line between the right to privacy and the freedom of the press is drawn where the publication ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he or she had no concern.

INSTRUCTION # 29

GOOD FAITH DEFENSE

Defendants have asserted a "good faith" defense which applies only to Plaintiff's claim under Florida's Security of Communications Act. If you find that the Defendants relied in good faith on a good faith determination that their conduct in disclosing the oral

communications of Plaintiff contained on the **Video** was lawful, then they have a complete defense to this claim.

INSTRUCTION # 30

DAMAGES: INTRODUCTION

If your verdict is for defendants, you will not consider the matter of damages. But if the greater weight of the evidence supports any of plaintiff's claims, you should determine and write on the verdict form, in dollars, the total amount of loss, injury, or damage which the greater weight of the evidence shows will fairly and adequately compensate plaintiff for his loss, injury, or damage.

INSTRUCTION # 31

DAMAGES

If you find for plaintiff, you should award plaintiff an amount of money that the greater weight of the evidence shows will fairly and adequately compensate plaintiff for such loss, injury or damage that was caused by the defendants' conduct.

There is no exact standard for fixing the compensation to be awarded on account of such damages. Any award should be fair and just in light of the evidence.

INSTRUCTION # 32

LIABILITY OF MULTIPLE TORTFEASORS

If you find for plaintiff against more than one of the defendants, you should assess plaintiff's damages in a single amount against the defendants whom you find to be liable to plaintiff.

INSTRUCTION # 33

MULTIPLE CLAIMS, NUMEROUS PARTIES, CONSOLIDATED CASES

In your deliberations, you will consider and decide five distinct claims. They include 1) Publication of Private Facts; 2) Intrusion Upon Seclusion; 3) Misappropriation of the Right of Publicity; 4) Intentional Infliction of Emotional Distress; and 5) violation of the Florida Security of Communications Act. Although these claims have been tried together, each is separate from the others, and each party is entitled to have you separately consider each claim as it affects that party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately.

INSTRUCTION # 34

PUNITIVE DAMAGES — BIFURCATED PROCEDURE

First stage of bifurcated punitive damages procedure:

There is an additional claim in this case that you must decide. If you find for the Plaintiff and against one of more Defendants, you must decide whether, in addition to compensatory damages, punitive damages are warranted as punishment to one or more of the defendants and as a deterrent to others.

The trial of the punitive damages issue is divided into two parts. In this first part, you will decide whether the conduct of the Defendants is such that punitive damages are warranted. If you decide that punitive damages are warranted, we will proceed to the second part of that issue during which the parties may present additional evidence and argument on the issue of punitive damages. I will then give you additional instructions, after which you will decide whether, in your discretion, punitive damages will be assessed and, if so, the amount.

Punitive damages for acts of an individual defendant:

Plaintiff claims that punitive damages should be awarded against defendants for intentionally or recklessly posting the **Video** on Gawker.com. Punitive damages are warranted against defendants if you find by clear and convincing evidence that they

were guilty of intentional misconduct which was a substantial cause of loss, injury or damage to plaintiff. Under those circumstances you may, in your discretion, award punitive damages against one or all of defendants. If clear and convincing evidence does not show such conduct by defendants, punitive damages are not warranted.

“Intentional misconduct” means that a defendant had actual knowledge of the wrongfulness of the conduct and there was a high probability of injury or damage to plaintiff and, despite that knowledge, defendant intentionally pursued that course of conduct, resulting in injury or damage.

“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive. As I have already instructed you, “greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

Direct liability for acts of managing agent, primary owner, or certain others:

Plaintiff claims that punitive damages should be awarded against Gawker Media, LLC for the acts of Nick Denton and A.J. Daulerio. Punitive damages are warranted against Gawker Media, LLC if you find by clear and convincing evidence that Nick-Denton

or A.J. Daulerio were personally guilty of intentional misconduct which was a substantial cause of loss, injury or damage to plaintiff. Under those circumstances you may, in your discretion, award punitive damages against Gawker Media, LLC. If clear and convincing evidence does not show such conduct by Nick Denton or A.J. Daulerio, punitive damages are not warranted against Gawker Media, LLC.

Vicarious liability for acts of employee:

Plaintiff claims that punitive damages should be awarded against A.J. Daulerio and Gawker Media, LLC for A.J. Daulerio's conduct. Punitive damages are warranted against A.J. Daulerio if you find by clear and convincing evidence that A.J. Daulerio was personally guilty of intentional misconduct which was a substantial cause of loss, injury or damage to plaintiff. Under those circumstances you may, in your discretion, award punitive damages against A.J. Daulerio. If clear and convincing evidence does not show such conduct by A.J. Daulerio, punitive damages are not warranted against either A.J. Daulerio or Gawker Media, LLC.

If you find that punitive damages are warranted against A.J. Daulerio you may also, in your discretion, award punitive damages against Gawker Media, LLC if you find from clear and convincing evidence that:

(A). Gawker Media, LLC actively and knowingly participated in such conduct of A.J. Daulerio; or

(B). the officers, directors or managers of Gawker Media, LLC knowingly condoned, ratified, or consented to such conduct of A.J. Daulerio; or

(C). Gawker Media, LLC engaged in conduct that constituted gross negligence and that contributed to the loss, damage or injury to plaintiff.

If clear and convincing evidence does not show such conduct by Gawker Media, LLC punitive damages are not warranted against Gawker Media, LLC.

INSTRUCTION # 35

WEIGHING THE EVIDENCE

In deciding this case, it is your duty as jurors to decide the issues, and only those issues, that I submit for your determination to answer certain questions I ask you to answer on a special form, called a verdict form. You must come to an agreement about what your answers will be.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that were admitted or agreed to by the parties.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that

were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

INSTRUCTION # 36

BELIEVABILITY OF WITNESSES

General considerations:

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Expert witnesses:

You have heard opinion testimony on certain technical subjects from persons referred to as expert witnesses. Some of the testimony before you was in the form of opinions about certain technical subjects.

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

INSTRUCTION # 37

CONCLUDING INSTRUCTION BEFORE FINAL ARGUMENT

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations. What the attorneys say is not evidence. The arguments are a final opportunity for the attorney to discuss the case and to persuade you to reach a verdict in favor of their clients. Each side has equal time. ***Mr. Turkel will go first. Mr. Sullivan will then make his argument. Finally, Mr. Turkel may make a rebuttal argument.*** Please pay close attention to their presentations. *(Closing Arguments)*

INSTRUCTION # 38

CLOSING INSTRUCTIONS

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials. Do not investigate the case or conduct any experiments. Do not visit or view the scene of any event involved in this case or look at maps or pictures on the Internet. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text

message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case.

If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as a foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if

you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you: ***(read form of verdict)***

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have agreed on your verdict and finished filling out the form, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict.