

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

GWEN SHAMBLIN and TEDD ANGER,)
)
 Plaintiffs,)
)
 v.) Case No. 09476
) JURY DEMAND
 RAFAEL MARTINEZ,)
)
 Defendants.)

REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

The Defendant's Motion for Summary Judgment should be granted, for the reasons set forth in the Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment (the "Defendant's Memorandum"), and for the further reasons as set forth below. The "Statement" is defined in the same way as it is defined in Defendant's Memorandum. The relevant portions of the Depositions of Plaintiffs Gwen Shamblin and Tedd Anger are filed contemporaneously herewith in support of this Reply (see Notice of Filing).

I. THE PLAINTIFFS HAVE EFFECTIVELY CONCEDED THAT THEY HAVE NO CAUSE OF ACTION AGAINST THE DEFENDANT.

First, the Plaintiffs concede that they are public figures. (See Defendant's Supplemental Statement of Stipulated and Undisputed Material Facts, Number 1.) As public figures, the Plaintiffs must meet an almost impossible standard to prove that they have been defamed. The standard is set forth in Defendant's Memorandum.

Second, the Plaintiffs concede that the matters discussed in the Statement are matters of public debate and concern, and they concede that they have participated in that public debate, thereby assuming the awkward position that *they* should be allowed to voice their opinions on certain issues but that Reverent Martinez should be silenced. (See Defendant's Supplemental Statement of Stipulated and Undisputed Material Facts, Number 2.)

Third, the Plaintiffs correctly concede that it is not actionable in any way to be called a cult or a cult-leader. (See Defendant's Supplemental Statement of Stipulated and Undisputed Material Facts, Number 3.)

Fourth, the Plaintiffs concede that the following announcement was made during the Smith criminal trial by Sonya Smith's attorney, John Hesmer,¹ as reflected in the trial transcript:

John Hesmer: Also, there has been a lot of publicity on this case in Tennessee in regard to the church and we are attempting to limit the involvement of the church. We have an agreement with the D.A. that we're not going to intentionally bring in that aspect of the case other than when necessary and so we would just object on those grounds that we don't think any more publicity about this case is necessary at this point.

(See **Exhibit 3**, page 4 to the Deposition of Gwen Shamblin, and the discussion thereof at page 117 of the deposition, lines 23-25 and page 118, lines 1-2.)

Fifth, the Plaintiffs concede that the evening news reported that Remnant had made a deal with prosecutors to limit its involvement in the case. (See Deposition of Tedd Anger, page 86, lines 15-25; page 87, lines 1-25; page 88, lines 1-2; and see Tedd Anger's Responses to

¹ The Plaintiffs testified that Remnant paid the defense fees for Joseph and Sonya Smith.

Defendant's Request for Admission Number 29, which is attached to Defendant's Supplemental Statement of Stipulated and Undisputed Material Facts as Exhibit C.)

Sixth, the Plaintiffs concede that certain portions of the Statement are matters of personal opinion and are therefore not actionable—e.g., the portion that calls Tedd Anger a “sycophant” (see Gwen Shamblin's Response to Request for Admission Number 88 and Tedd Anger's Response to Request for Admission Number 49, which are attached to the Defendant's Supplemental Statement of Undisputed Material Facts as Exhibits B and C.)

Seventh, the Plaintiffs concede that in the wake of the Smith criminal trial, the Plaintiffs' interview with a reporter from News Channel 5, and the adverse media coverage they were receiving, they wanted to sue News Channel 5, but they were told by their counsel that their claim “was not actionable.” (See Deposition of Gwen Shamblin, page 109, lines 17-25; page 110, lines 1-20.)

After considering all of these concessions, which would seem to render the Plaintiffs' entire Complaint moot, one is inclined to ask why they filed their lawsuit in the first place. Apparently, judging from their Response to the Motion for Summary Judgment (the “Plaintiffs' Response”), the Plaintiffs have now whittled their grievance down to one line in the Statement, wherein Reverend Martinez wrote (this line shall hereinafter be referred to as the “Sentence”):

An equally dangerous cult called Remnant Fellowship found itself under scrutiny when two of its members were arrested, tried and convicted of murdering one of their children when they followed the child-rearing directions of the cult's leadership, self-anointed “prophetess” Gwen Shamblin and her sycophant lieutenant Tedd Anger.

II. THE STATEMENT, AND THE SENTENCE, ARE TRUE.

The Sentence is not actionable in any way. In Plaintiffs' Response, the Plaintiffs argue that the Sentence states that they ordered the murder of young Josef Smith in such a direct way as

to be criminally responsible for his death (see Plaintiff's Response, p. 15-16). In fact, the Sentence says no such thing. It does not say that the Plaintiffs "ordered" or "instructed" the Smiths to kill their son. Rather, it says that the Smiths followed the child-rearing directions of the Plaintiffs, which the Plaintiffs admit to be true.²

Since the Plaintiffs admit all of the component parts of the offending sentence to be true—specifically, Remnant *did* find itself under scrutiny, the Smiths *were* members of Remnant, the Smiths *were* arrested for killing their child, the Smiths *were* tried and convicted, the Smiths *did* follow the child-rearing advice of the Plaintiffs, Gwen Shamblin *is* sometimes referred to as a prophetess—it is difficult to understand how the sentence as a whole can be defamatory. A reasonable reader would interpret the sentence as describing Reverend Martinez's belief that Remnant's teachings on child discipline are dangerous and that Remnant's teachings create an atmosphere that can lead to negative outcomes. This interpretation appears to be shared, *at a minimum*, by former Remnant member Adam Brooks, whose television news interview said substantially the same thing (see **Exhibit B** to Reverend Martinez's Affidavit), and News Channel Four, whose television anchor led into the story about the Smiths by saying that "perhaps they were influenced by church philosophy" (see **Exhibit H** to Reverend Martinez's Affidavit).³

² Interestingly, although Mr. Martinez stated in his deposition that he felt as if the Smiths must have exceeded the advice given to them by the Plaintiffs, the Plaintiffs themselves take a slightly different stance. When asked if the Smiths exceeded the instructions that he gave them, Tedd Anger replied that he does not "believe what the D.A. presented" and he does not "believe that they exceeded." See Deposition of Tedd Anger, page 73, lines 1-6.

³ As noted in the Defendant's Memorandum, the hearsay rule does not preclude the consideration of these statements since they are not offered for the truth of the matter asserted, but instead, are offered to show the nature of the public discussion that Reverend Martinez heard and viewed prior to making the Statement.

Furthermore, this broader interpretation is supported by Sonya Smith's statements, in which she reveals that but for the teachings of Tedd Anger, she would have had to "go to the world" about her son Josef (see **Exhibits A** and **B** to Reverend Martinez's Affidavit).

Maybe Mrs. Smith should have "gone to the world" when her child allegedly tried to choke his sibling, began playing with fire, and started referring to himself by the name "Legion." (See **Exhibit B** to Reverend Martinez's deposition; see Deposition of Gwen Shamblin, page 75, lines 4-25 and page 76 lines 1-7; and see Deposition of Tedd Anger, page 76-77.) Perhaps she should have gone to a pediatrician, or to a child psychologist, or to the police, or to all three. If she had taken these steps, perhaps young Josef would still be alive today. Reverend Martinez does not believe that either of the Plaintiffs wanted Josef to die, as he made perfectly clear in his deposition. But he does take great issue with various aspects of Remnant's teachings and control over its members, and he is entitled to voice his opinions, whether the Plaintiffs find them flattering or not.

III. THE SENTENCE IS NOT ACTIONABLE FOR THE REASONS SET FORTH IN THE DEFENDANTS' MEMORANDUM. IN ADDITION, ANY CLAIM RELATING TO THE SENTENCE IS BARRED BY THE "INNOCENT CONSTRUCTION RULE."

The "innocent construction rule" has been adopted by the Sixth Circuit, and provides as follows:

Even so, as construed by Ohio courts, the innocent construction rule does require that a statement reasonably susceptible to both a defamatory and an innocent meaning must be construed, as a matter of law, to have an innocent meaning. It matters not that the defamatory meaning is the more obvious one. So long as the statement may reasonably be read to have an innocent meaning, the innocent construction rule commands that the statement be deemed non-defamatory.

See *New Olde Village Jewelers, Inc. v. Outlet Communications, Inc.*, 200 U.S. App. LEXIS 785 at *13 (attached hereto as **Exhibit A**).

In order to argue their case for defamation, the Plaintiffs are now attempting to impute the most sinister, and unreasonable, meaning possible to the Sentence, forgetting that many other interpretations are more reasonable. There is no language in the Statement to suggest to a reader that Reverend Martinez has some “smoking gun evidence” or inside knowledge that would reveal that the Plaintiffs ordered the murder of Josef Smith. No reasonable reader would view the Statement, or the Sentence, to mean that the Plaintiffs literally ordered the murder of Josef Smith.

Rather, a reasonable reader of the Statement and the Sentence would conclude that Reverend Martinez was stating his strongly-held views on public figures—Gwen Shamblin and Tedd Anger—and matters of public debate—the Smith case, Remnant’s controversial teachings on child-rearing, and Remnant’s perceived status as a cult. A reasonable reader might conclude that Reverend Martinez finds cults to be dangerous. Or that he thinks that Remnant should not be dispensing quite so much child-rearing advice to its members. Or that he thinks that Remnant’s degree of control over its members is dangerous, and creates an atmosphere where bad outcomes are likely. Or that Sonya Smith should have “gone to the world” rather than relying exclusively on Remnant’s leadership to advise her how to deal with her troubled son. Since the Sentence is susceptible to multiple interpretations, the “innocent construction rule” demands that the least offensive interpretation be adopted by the Court.

IV. CONCLUSION

The Plaintiffs must know that they have no cause of action against Reverend Martinez. After all, they elected not to sue the mainstream media outlets that subjected them to unfavorable coverage after being told that their claims were “not actionable.”

Since they filed the lawsuit, they have slowly conceded that the bulk of the Statement is either opinion, or is not actionable, or is the truth. For example, they now admit that News Channel 4 did, in fact, report that Remnant had made a deal with prosecutors, something they initially denied (See **Exhibit G** to Reverend Martinez's Deposition at 1:23-1:48; See Deposition of Tedd Anger, page 86, lines 15-25; page 87, lines 1-25; page 88, lines 1-2; and see Tedd Anger's Responses to Defendant's Request for Admission Number 29, which is attached to Defendant's Supplemental Statement of Stipulated and Undisputed Material Facts as **Exhibit C.**)

However, the Plaintiffs continue to cling to the notion that the Sentence is defamatory, despite the fact that they are public figures and despite the fact that what it says is true. By filing this lawsuit, they seek to deny Reverend Martinez the right to comment on matters that they admit are matters of public debate and public concern.

Interestingly, the Plaintiffs have not hesitated to offer their own opinions about young Josef's death. They have participated in setting up a web site proclaiming that the young boy was not abused at all, but that he died from a staph infection brought on by his chronic eczema. (See Depositions of Gwen Shamblin and Tedd Anger, where the Plaintiffs discuss their beliefs as to the cause of death at length, and see **Exhibit 4** to the depositions.) The Plaintiffs would have their web site readers ignore the physical evidence presented at the criminal trial, the heart-wrenching testimony of witnesses, the various admissions by Mr. and Mrs. Smith themselves, the good faith determinations of the prosecutors, the rulings by the Judge, and the findings of the jury. In short, they would not hesitate to call all of these people wrong and to imply that they have mishandled the case. These criticisms even extend to the Smiths' criminal attorneys (who Remnant paid for) who Tedd Anger has felt free to criticize, saying in his deposition that Mr. Arora did not "do a proper job in the defense" and saying that the defense attorneys did not "do a

proper job and follow through.” (See Deposition of Tedd Anger, page 51, lines 8-23.)

Apparently, in the Plaintiffs’ view, their opinions and their statements are protected⁴ and the opinions and the statements presented by the television news are protected⁵, yet the opinions and statements of Reverend Martinez on the same subject matter are not protected, and should be silenced.

The law does not support this view, and the law should not countenance the Plaintiffs’ attempts to silence Reverend Martinez’s protected speech. For these reasons, Reverend Martinez respectfully submits that his Motion for Summary Judgment should be granted.

⁴ Even their unfounded opinions about a young boy’s cause of death—opinions which implicitly malign any number of individuals involved in Georgia’s legal system.

⁵ Gwen Shamblin herself concedes that her attorney told her claims against News Channel 5 would not be “actionable.” (See Deposition of Gwen Shamblin, page 109, lines 17-25; page 110, lines 1-20.)

Respectfully submitted,

By:

Phil Anderson

*by John O. Belcher
w/ permission*

G. Philip Anderson, Esq. (BPR# 003279)
Anderson & Rankin
155 Franklin Road, Suite 120
Brentwood, TN 37027
(615) 377-9370 (office)
(615) 377-9616 (facsimile)
Co-Counsel for Defendant

By:

John O. Belcher

John O. Belcher, Esq. (BPR #018335)
Catherine L. Butcher, Esq. (BPR #027767)
Lassiter, Tidwell, Davis, Keller & Hogan, PLLC
150 Fourth Avenue North, Suite 1850
Nashville TN 37219-2408
(615) 259-9344 (office)
(615) 242-4214 (facsimile)
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent to the following individual via facsimile (931) 854-0281, email sjharrislaw@hotmail.com, and U.S. Mail, on the 19th day of March 2010:

Samuel J. Harris, Esq.
320 East Broad Street #200
Cookeville, TN 38501

John O. Belcher

John O. Belcher