

IN THE CIRCUIT COURT OF WILLIAMSON COUNTY, TENNESSEE

Kent and Regina Smith, et al,)
 Plaintiffs)
 Vs.)
 ANONYMOUS BLOGGER and)
 RAFAEL MARTINEZ,)
 Defendants)

Case # 06648

FILED
 FEB 23 2007
 Debbie McMillan Barrett
 Circuit Court

RESPONSE TO MOTION TO DISMISS COMPLAINT

The Motion to Dismiss the Complaint filed by Defendant Martinez should be denied.

Defendant Martinez asserts that the Complaint does not allege that Defendant Martinez made any defamatory statements with knowledge that the statements were false. (¶ 6, Motion to Dismiss). Actually reading the Complaint as a whole, the Defendant is clearly on notice of this allegation. First, the statement is referred to as "a lie" which implies Martinez had knowledge of the falsehood in Paragraph 7 of the First Amended Complaint. Second, and more significantly, Paragraph 18 states that the defamatory statements were made intentionally and willfully thus encompassing a knowledge of falsehood.

Knowledge of the falsehoods that comprise the defamation is clear and the Defendant's response shows they are on notice of the nature of this lawsuit. Defendant Martinez would have litigants return to the days of fact pleading with hyper technical scrutiny of the language than notice pleading. Should the a clearer statement be needed, then amendment of the Complaint would be the proper course to prevent an unfair dismissal of the lawsuit on mere technicality.

Paragraph 6 of the First Amended Complaint sets forth the essence of the defamation. It reads as follows:

Defendant, Rafael Martinez, published one or more written false statements that were intended to impeach Plaintiffs' honesty, integrity, virtue, and/or reputation. The false statements expose the Plaintiffs to hatred, contempt, and ridicule. The defamatory statements include, but are not limited to the following and have the same objective as the aforementioned (sic) website of the Anonymous Blogger:

- a. "She won't tell you about the marriages that have ended, the children who have been starved and the family relationships dissolved directly due to her application of "God's Rules."
- b. "Furthermore, Remnant Fellowship teachings are dangerous and destructive. Over the past five years, Remnant members have lost dangerous amounts of weight, with extreme fasting often advocated (even 14-21 day fasts). Family relationships are often damaged because any family member who tries to convince a Remnant Fellowship member to leave the group is cut off."
- c. "The most disturbing development of Remnant Fellowship's teachings include its advocacy over the past couple of years of extreme discipline for children raised in the movement, included repetitive and harsh spankings and whippings for children who disobey and do not maintain emotional control."

Each of these statements by Defendant Martinez is a lie and a falsehood.

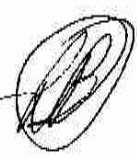
Paragraph 6 makes it clear that the statements are directed at members of Remnant Fellowship. The Complaint makes it clear that Plaintiffs are members of Remnant Fellowship. The innuendo of these defamatory statements is that each Plaintiff is a member of a cult that Defendant Martinez claims, *inter alia*, starves and harshly beats children. While Defendant Martinez can freely express his opinion, rightly or wrongly, about the cult status of Remnant Fellowship, when he interwove factual allegations about members engaging in what would be criminal activity, if true, i.e. child abuse, he is not offering opinion but making a factual claim.

The Complaint clearly gives notice that these statements were knowing falsehoods intended to harm the members, i.e. the Plaintiffs, of Remnant Fellowship. The statements are directed at members and the Complaint specifically identifies these members.

Finally, the argument by Defendant Martinez that damages are not alleged with specificity must fail, or in the alternative, should the Court require a more definite statement then the Plaintiffs should be allowed to amend. The Complaint clearly alleges that the Plaintiffs have suffered damages to their reputations. Further challenge to this allegation might be more properly argued in a motion for summary judgment, but the Complaint does allege damages.

Respectfully submitted,

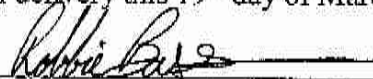




Samuel J. Harris, BPR #017392
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on the counsel for the Defendant, Rafael Martinez, G. Philip Anderson, 5409 Maryland Way, Suite 105, Brentwood, TN 37027, by personal delivery this 19th day of March, 2007.



Robbie Bass for Samuel J. Harris

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY
TENNESSEE

FILED

MAR 22 2007

Debbie McMillan Barrett
Circuit Court

KENT AND REGINA SMITH, CHRIS AND
BETH ANCONA, CLIFF AND LISA PETERS,
DAVID AND JENNIFER MARTIN, EIDON
AND SARA GORMSEN, BRANDON AND
ELIZABETH HANNAH, THOMAS AND DONNA
BASS, IVAN AND LINDA PEARSON, CHRIS
AND APRIL HERBST, LUKE AND HEATHER
HIGGINS, BLAKE AND RACHEL ZANONI,
ROBERT AND CATHERINE ZANONI,
LONZO AND TRACEY HERRON, GWEN
SHAMBLIN, CRAIG AND LORI ROGOSHESKE,
STEVE AND MARY MORNOUT, MICHAEL AND
ERIN SHAMBLIN, BOB AND RUTH BELD,
JEFF AND GINA GRAVES, DONALD FISCHER,
JOEL AND CARRIE BELD, JOHN AND JEAN
KURTZ, AL AND JAN VOORHIS, TEDD AND
CANDACE ANGER, LARRY AND KAREN SIMS,
RICH AND KELLY GADKE, DAVID AND
CATHERINE RECTOR, MARCUS AND
MARAYET FRANCIS, SANDY SHERIDAN,
JAMES AND LISA HENRY, JOSEPH AND
TERESA LANGSDON, GREG AND RENE
MAXWELL, MARC AND THERESE JOST,
ANDREW AND KERRY NISSAN,
GEORGE AND KRISTY MCHANEY,

Plaintiffs,

VS

ANONYMOUS BLOGGER AND
RAFAEL MARTINEZ,

Defendants.

Case No. 06648
JURY DEMAND

**DEFENDANT RAFAEL MARTINEZ'S MEMORANDUM OF LAW
IN SUPPORT OF HIS
MOTION TO DISMISS AND REPLY TO
THE PLAINTIFFS' RESPONSE**

Defendant, RAFAEL MARTINEZ, by and through counsel, submits this Memorandum of Law in Support of his Motion to Dismiss and Reply to Plaintiffs' Response.

FACTS

Plaintiffs, sixty-seven (67) individuals, thirty-four (34) females and thirty-three (33) males, (hereafter collectively "Plaintiffs") filed Complaint No. 06648 in this Court on November 6, 2006 ("Complaint"). The Complaint alleges three defamatory statements made by Martinez:

The FIRST STATEMENT is:

"She won't tell you about the marriages that have ended, the children who have been starved and the family relationship dissolved directly due to her application of God's Rules." (Complaint Paragraph 16 (a))

The SECOND STATEMENT is:

"Furthermore, Remnant Fellowship teachings are dangerous and destructive. Over the past five years, Remnant members have lost dangerous amounts of weight, with extreme fasting often advocated (even 14-21 day fasts). Family relationships are often damaged because any family member who tries to convince a Remnant Fellowship member leave the group is cut off." (Complaint Paragraph 16(b)).

The THIRD STATEMENT is:

"The most disturbing development of Remnant Fellowship's teachings include its advocacy over the past couple of years of extreme discipline or children raised in the movement, included repetitive and harsh spankings and whippings for children who disobey and do not maintain emotional control." Complaint Paragraph 16(c)).

ISSUE

Does the Complaint state a claim against Defendant Martinez for which relief can be granted?

ARGUMENT

The law requires that a Complaint shall contain "(1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief the pleader seeks." TRCP 8.01. The test for the sufficiency of a statement in a pleading can be found in TRCP 12.05; that is the pleading must not be so vague or ambiguous that a party cannot frame a responsive pleading. In a defamation suit the proper party to sue is the party defamed. Benton v. Knoxville News Sentinel Co., 130 S.W.2d 106; 174 Tenn 661 (1939).

In this case, it is impossible to determine who is the party defamed. If the "she" in the FIRST STATEMENT refers to Plaintiff Regina Smith, for example, then the other thirty-three (33) females have no cause of action against Defendant. Similarly, in the SECOND and THIRD STATEMENTS, the party allegedly defamed is Remnant Fellowship, a separate and distinct legal entity, which is not a party to this suit. The sixty-seven (67) individual Plaintiffs have no cause of action against the Defendant because of an alleged defamatory statement about the corporate entity Remnant Fellowship. Relief cannot be granted to an unidentified person or to a person or entity who is not a party to the suit. The Plaintiffs' Complaint is defective in that the Complaint does not allege any defamatory statement specifically against any of the Plaintiffs named in the Complaint.

ISSUE

Are the alleged defamatory statements opinion, and as such, not defamatory?

ARGUMENT

Statements of opinion, based on non-defamatory published facts are not defamatory and actionable. "It is now a matter of constitutional law that statements of opinion or characterizations based on disclosed non-defamatory facts are not defamatory even though they are stated in strong or abusive terms". Stone River Motors, Inc. vs Mid-South Pub. Co., 651 S.W.2d 713 at 721.

The Complaint does not state that Martinez reveals any facts or makes any statement that has not already been discussed in the public forum. Gwen Shamblin, as the Complaint admits, is a public person, and her teachings, including those with respect to the discipline of children, have been debated and reported in numerous newspapers and magazine articles, television programs and on various internet web sites and "blogs". The FIRST STATEMENT is merely a continuation of that debate and dialog.

ISSUE

Who has been damaged and how much?

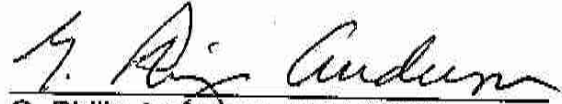
ARGUMENT

The Complaint prays for damages of Three Hundred Thousand Dollars and 00/100 (\$300,000.00) and punitive damages of Three Million Dollars and 00/100 (\$3,000,000.00), but does not indicate specifically which Plaintiffs have been damaged and how the damages are allocated to the Plaintiffs. The Defendant is forced to go on an expensive and burdensome fishing expedition into the financial history of all sixty-seven (67) individual Plaintiffs to discover their tax returns, property holdings, bank and security accounts, and in general, each individual Plaintiff's financial history.

CONCLUSION

The Plaintiffs' Complaint is insufficient in that it does not allege a defamatory statement against any identifiable Plaintiff, the alleged defamatory statements are, and have been, part of the public discussion, and the alleged defamatory statements are against a non-party.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion to Dismiss and Reply to the Plaintiffs' Response was sent, via U.S. Mail, postage prepaid, to Samuel J. Harris, attorney for the Plaintiffs, P.O. Box 689099, Franklin, Tennessee, 37068-9099, and by email to sjharrislaw@hotmail.com, this 22 day of March, 2007.


G. Philip Anderson