

THE CIRCUIT COURT OF WILLIAMSON COUNTY, TENNESSEE

Gwen Shamblin and Tedd Anger,)
 Plaintiffs) Case # 0947C
)
Vs.)
)
Rafael Martinez,) JURY TRIAL DEMANDED
 Defendant)

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

The Plaintiffs hereby respond to the Motion for Summary Judgment set to be heard on March 22, 2010 as follows:

Any dispute over the facts are incorporated within the arguments set forth below.

SUMMARY OF ARGUMENT

The Defendant correctly states the law regarding the requirements of a prima facie case of defamation for public figures in that the Plaintiffs must prove that (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement. *See Memorandum in Support of Defendant's Motion for Summary Judgment*, p. 8 (citing *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005)). However, the Defendant mischaracterizes the facts, omits facts, and relies upon assumptions about

the facts contrary to the standard of review in this Court's evaluation of a motion for summary judgment.

In the present case, it is undisputed that on August 13, 2008, the Defendant published the following statements on several websites:

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. When the members, Joseph and Sonya Smith went to trial, however, Remnant was able to cop a deal with the prosecutors and avoid getting dragged into the murder trial.

Complaint, ¶ 5 (first paragraph only).

The gist of this defamatory statement is clear; the Plaintiffs Tedd Anger and Gwen Shamblin, gave directions on child-rearing that caused the murder of the Smith child. Indeed, if the Defendant is to be believed, the murder occurred "*when* they followed the child-rearing directions ... of ...Gwen Shamblin and ...Tedd Anger.

The Defendant recklessly disregarded the truth that neither Gwen Shamblin nor Tedd Anger had anything to do with the child's death. First, it is absurd to blame the Plaintiffs for offering standard child-rearing advice approving a spanking on the upper leg in February 2003 when the child died in October 2003.

Second, the Defendant was well aware the child had injuries to his back and head which could not have resulted from the Anger/Shamblin discussion of spankings; Defendant acknowledged in deposition that the Smiths “exceeded” rather than followed the Anger/Shamblin approval of spanking with an objective of loving discipline.

Third, as one who spent a significant amount of time on the matter, the Defendant was well aware that there was no mention of the Smiths having followed any teachings of Anger/Shamblin at the televised trial of the Smiths for the death of their son. For example, the State of Georgia presented evidence of the child being put in a box and the Defendant herein acknowledges that neither plaintiff ever so advised the parents to do so. The Defendant published the defamatory statements over 1.5 years after the trial and almost five years after the child death and was well aware that no other media had ever stated that the Smiths murdered their son when following the child-rearing directions of the Plaintiffs.

The Defendant Martinez published the defamatory statements without regard to the truth motivated by his long history of malice, ill will, spite, and religious bigotry toward the Plaintiffs.

DISCUSSION

There is no dispute that the requirements of a prima facie case of defamation for public figures¹ require the Plaintiffs prove that (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement. *See Memorandum in Support of Defendant's Motion for Summary Judgment*, p. 8 (citing *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005)).

A. Defendant Rafael Martinez published a defamatory statement on August 13, 2008 on various websites.

Plaintiffs can easily meet this requirement of establishing a prima facie case for defamation as the Defendant admits publication in paragraph 16 of his affidavit.

On August 13, 2008, I posted the following comment (the Statement) to an article on the Celebgalz.com web site regarding the death of another child due to the teachings of a religious cult in Baltimore, Maryland, called One Mind Ministries. The Statement now forms the basis of this litigation:

"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

¹ The Plaintiffs do not dispute that Gwen Shamblin and Tedd Anger are public figures for purposes of this litigation for all times relevant to this litigation.

the child-rearing directions of the cult's leadership, self-anointed "prophetess" Gwen Shamblin and her sycophant lieutenant Tedd Anger. When the members, Joseph and Sonya Smith went to trial, however, Remnant was able to cop a deal with the prosecutors and avoid getting dragged into the murder trial.

As the Church Lady would say "How conVEEEEenient."

So that twisted woman Gwen Shamblin to this day strolls around from coterie to coterie in her little Southern cult hothouse, blindly followed by about 1100 or so people, many of whom are children who are just as vulnerable to the practical lifestyle excesses Shamblin advances as "God's Way" ..and who likely have endured abuses that would make you swallow hard.

Sad that it's only when children die in the horrific ways that cults set up for them that this issue EVER pierces the national conscience.

After all, Britney Spears lack of underwear and the premiere of the next action flick installment at the metroplex are far more important.

Murderous ministries are afoot everywhere. They are as American and home grown as mom, apple pie and McDonalds. The problem is everyone forgets about them when they drop off the front page - except the victims of these cults and those very few activists and ministers who can't let this evil be forgotten and who do what we can to get people out of these groups and aid them in getting a firm foundation on reality again."²

² Throughout this Response, this statement, also set forth in Paragraph 5 of the Complaint, will be referred to as "the Statement."

Affidavit of Rafael Martinez, ¶16.

B. The Plaintiffs can prove by clear and convincing evidence that the Defendant made the statement with reckless disregard of whether it was false or not.

Rafael Martinez recklessly asserted that Gwen Shamblin and Tedd Anger had given child rearing directions leading to the death of child. The analysis below shows that Mr. Martinez ignored facts within his knowledge so that he might continue unabated in his objective to attack the Plaintiffs and their religious beliefs. Mr. Martinez, when confronted with what he actually wrote, acknowledges he believes the Smiths **exceeded** the directions of the Plaintiffs. This admission of course means the child was not murdered when the Smiths followed the directions of the Plaintiffs but rather because the Smiths went too far. Thus by the Defendant's own admission and by his knowledge and belief about the facts, Rafael Martinez knew the proposition in the Statement were not true, or at the very least he disregarded facts so that he could continue with his attacks on Plaintiffs motivated by religious bigotry.

1. The Defendant bases his ludicrous assertions in the Statement even though there is an intervening period of 8 months from the time Gwen Shamblin discusses child discipline with Sonya Smith until the death of the child.

On February 3, 2003, Gwen Shamblin acknowledges Tedd Anger's advice that spanking and grounding were acceptable manner for child discipline when Sonya Smith³ calls into a conference where the issue of child-rearing was raised. (See Exhibit A to the Affidavit of Rafael Martinez and Deposition of Rafael Martinez, p. 96-97). The discussion of child-rearing between Gwen Shamblin and Sonya Smith occurred eight months before the child's death in October, 2003. (Deposition of Rafael Martinez, p. 97). It is Shamblin's discussion of child discipline on February 3, 2003 with Sonya Smith that Martinez refers to in the Statement. (Id., lines 6-9).

This intervening period of eight months negates Martinez's assertion that the child was murdered *when* the Smiths followed the directions of Anger/Shamblin. Taken literally, the first sentence of the Statement would be interpreted as the directions being given at the time of the "murder" of the child. However, an 8 month intervening period also makes the child rearing advice so remote in time from the death of the child, that it is clearly reckless to suggest a connection.

Martinez's assertion that the child was murdered when his parents followed the child rearing directions of the Plaintiffs is analogous to

³ As general background for the Court, Sonya and Joseph Smith were convicted of manslaughter and aggravated child abuse in the death of their child, Josef Smith, in Cobb County, Georgia in February, 2007.

someone asserting that the death of a reckless driver, who dies while crashing his car at 90 mph, was caused by his driving school teacher's instructions given the year before. The lapse of time and the lack of a causal link make both assertions absurd. Common sense and logic should prevail in a courtroom if it is to prevail anywhere.

2. The Defendant was well aware the child had injuries to his back and head which would be unrelated to the Anger/Shamblin discussion of spankings on the back of the leg.

Rafael Martinez had made significant effort to be knowledgeable regarding the death of Josef Smith. Mr. Martinez followed the news coverage of the Smith Trial from 2004 to 2007. (Affidavit of Rafael Martinez, ¶ 14). He also watched a significant portion of the CourtTV coverage of the Smith Trial including testimony. (Deposition of Rafael Martinez, p. 84, 102). Rafael Martinez also provided the audiotapes, Exhibit A to his affidavit in this case to the detective working the case in Georgia. (Affidavit of Rafael Martinez, ¶ 13).

Rafael Martinez knew that, at trial, the State of Georgia accused the Smiths of thrusting the child into a box. (Deposition of Rafael Martinez, p. 87). Martinez knew that Anger or Shamblin never counseled the Smiths to put the child in the box as a form of child discipline. (Deposition of Rafael Martinez, p. 88).

Likewise, despite having viewed an autopsy report of Josef Smith that mentioned what appeared to be bruises on his back, the Defendant knew that the Plaintiffs never told the Smith to strike the child on the back.

(Deposition of Rafael Martinez, p. 100).

Rafael Martinez was also aware that despite a mention of head trauma, that the Plaintiffs had not advocated as a method of child discipline to strike a child in the head.

Q Did Tedd Anger ever say to anyone that it is appropriate childhood discipline to hit a child in the head?

A No, sir.

MR. BELCHER: Object to the form of the question. You still need to answer.

THE WITNESS: No, sir. No.

BY MR. HARRIS:

Q Do you know if Tedd Anger ever specifically told Sonya Smith to hit little Josef in the head?

A No, sir.

(Deposition of Rafael Martinez, p. 88-89).

Q. You don't know actually what Tedd said to Sonya Smith. What you know is what Sonya said Tedd said to Sonya Smith?

A Yes, sir, I do. That's exactly the way it is. Yes, sir.

Q Right. But did -- so let's go with what you relied upon. You relied upon Sonya Smith's statements on Exhibit A⁴, correct?

A Yes, sir.

Q Made eight or nine months before the death of the child.

A Yes, sir.

Q Does she say on there that Tedd Anger said to hit the child in the head?

A No, sir, not on that specific recording, no.

Q Are you aware that the State originally believed that the death of Josef Smith was due to head trauma?

A I may recall a detail like that. Sir, a lot of testimony has gone on. And again, I don't follow

(Deposition of Rafael Martinez, p. 104-105).

From the testimony of the Defendant, it is clear that Rafael Martinez knows the child suffered injury that goes far beyond the advice of the Plaintiffs which to paraphrase consisted of no more than loving discipline with grounding and spanking on the back of the leg as a last resort. (Exhibit A to the Affidavit of Rafael Martinez, recorded conference February 2003). Therefore, bruises/injuries on the back of the child or head trauma could not in any be result of advice related to a spanking on the back of the leg.

⁴ Exhibit A refers to the taped conversation between Gwen Shamblin and Sonya Smith in Exhibit A to the Affidavit of Rafael Martinez.

The Defendant even acknowledges that Gwen Shamblin and Tedd Anger advocate spanking as a last resort and as a teaching moment which is “same thing” the Defendant himself advocates. (Deposition of Rafael Martinez, p. 113).

Confronted with the logic of Martinez’s existing knowledge at the time, the Defendant acknowledges the following:

Did you write this statement because you believe that children, and in particular, Josef Smith, might have suffered -- might suffer unintended consequences because Gwen Shamblin and Tedd Anger advocate corporal punishment as an appropriate means of child discipline?

A I believe he suffered adverse and fatal circumstances because of the fact that **Joseph and Sonya Smith took it too far.**

Q Well, if they took it too far, then wouldn't they be exceeding the directions of Tedd Anger and Gwen Shamblin?

A Very likely.

Q Okay. So it's possible, even under your theory, as you understand what happened to Josef Smith, the Smiths, to have killed that child **exceeded the directions** of --

A Oh, yes, sir. **Absolutely.** I've never said anything different.

(Deposition of Rafael Martinez, p. 151-152) (emphasis added).

But the truth is Rafael Martinez did say something different. He published a statement accusing the Plaintiffs of having giving direction that

directly lead to the murder of a child. Taken in the context of Statement as whole, the Defendant said that Shamblin and Anger are criminals.

When one exceeds directions, then one logically can not be following directions. A cook who puts two cups of sugar in his batter for a recipe that calls for only one can not be said to be “following” the directions. The cook exceeds the directions, and the recipe is not responsible for the outcome.

If the Smiths did murder their son⁵, then it was not because of anything the Plaintiffs herein did or said regarding spankings or grounding. Martinez’s own belief is that Joseph and Sonya Smith exceeded rather than follow the general child rearing advice of the Plaintiffs regarding a spanking on the back of the leg. He recklessly disregards and ignores what he knows when he states that the Smiths were convicted of murdering their child when they followed the directions of the Plaintiffs.

3. The Defendant was also aware that there was no mention, at trial or in the media, of the Smiths having followed any teachings of Anger/Shamblin in the death of their child.

As established above, Rafael Martinez followed the Smith case closely. When he publishes the defamatory statement on August 12, 2008, a significant amount of time has passed since the trial in February 2007.

⁵ An alternative theory given little consideration by the ineffective defense counsel of the Smiths is that Josef Smith died from staph infection and that the injuries on his back were scratchings that became infected.

Martinez knows that a two week jury trial never mentioned any theory of Tedd Anger or Gwen Shamblin having given directions that were related to child's death in the trial. (Deposition of Rafael Martinez, p. 86-87).

Despite his reliance on a news media which he considers generally untrustworthy⁶ to show he did not recklessly disregard the truth in making the Statement, Martinez does not point to any source that supports the first sentence of the Statement, i.e. that the child was murdered when his parents followed the directions of Shamblin and/or Anger. If there is a media source Martinez relies upon for that outrageous, false, defamatory first sentence of the Statement, **what is the source?**

Martinez disingenuously takes the fact that the Smiths were members of Remnant, their child dies, the fact that Martinez himself first suggested to authorities his own self-created notion that Remnant Fellowship encourages child abuse⁷, and the fact that the Plaintiffs had discussed spanking on the legs months before the child's death to create the innuendo that somehow Shamblin and Anger were involved in the murder of the child. Martinez did much to link the Plaintiffs to the child's death in the media. Yet the media, which Martinez doesn't trust yet seeks for justifying his false statement, has never said the child was murdered when the parents followed the directions

⁶ See Deposition of Rafael Martinez, page 50-51.

⁷ See Affidavit of Rafael Martinez, ¶ 12 and 13.

of Gwen Shamblin and Tedd Anger. Martinez recklessly ignores the media's coverage and construes it to mean whatever he wants it to mean.

To ironically quote Martinez quoting the Saturday Night Live church lady, "How conVEEEEenient⁸."

Martinez hypocritically tries to get the Court to ignore what he has said in the Statement, and his claim that he relies on the media or even the testimony at the trial is belied by the fact that the media has never said anything to justify the defamatory statement that the child was murdered when the parents followed the directions of Shamblin or Anger.

C. The first sentence of the Statement conveys a clear defamatory meaning, i.e. the Plaintiffs gave directions that when followed caused the death of the child, and thus the Statement falsely conveys the message that Plaintiffs are criminally responsible for a child's death.

Libelous words must reasonably be construable as holding the plaintiff up to public hatred, contempt, or ridicule. The defamatory words must carry with them an element "of disgrace." *Stones River Motors, Inc. v. Mid-South Publ'g Co.*, 651 S.W.2d 713, 719 (Tenn. App. 1983). A communication is defamatory "if it tends so to harm the reputation of another as to lower him [or her] in the estimation of the community or to

⁸ Dana Carvey's church lady character used the phrase to imply that someone was interpreting or manipulating events in a self-serving manner, and thus the sarcasm of someone advancing a theory that happened to bail one out of trouble was a convenient but not necessarily true accounting of events.

deter third persons from associating or dealing with him [or her].” *Quality Auto Parts Co. v. Bluff City Buick Co.*, 876 S.W.2d 818, 820 (Tenn. 1994). Statements alleged to be defamatory “should be judged within the context in which they are made” and “read as a person of ordinary intelligence would understand them in light of the surrounding circumstances.” *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000).

The proper question is whether the *meaning* reasonably conveyed by the published words is defamatory, that is, “whether the libel as published would have a different affect on the mind of the reader from that which the pleaded truth would have produced.” *Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978) (quoting *Fleckenstein v. Friedman*, 193 N.E. 537, 538 (N.Y. 1937)).

Under Tennessee law where all the parties reside, the purported act of giving directions when a child is murdered would make the Plaintiffs criminally responsible, if true.⁹ Under Georgia law¹⁰ the Statement sets

⁹ Tenn. Code Ann. § 39-11-402 reads in part as follows (with emphasis added):

A person is criminally responsible for an offense committed by the conduct of another, if:

(1) Acting with the culpability required for the offense, the person causes or aids an innocent or irresponsible person to engage in conduct prohibited by the definition of the offense;

(2) Acting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the person solicits,

forth a factual basis to say the Plaintiffs were or should have been parties to the “murder” of the Smith child.

In the present case, the Statement conveys to the person of ordinary intelligence the false concept that the Plaintiffs were involved in criminal activities, namely, providing directions that lead to the murder of a child. The Statement as a whole conveys the message that Shamblin and Anger escaped justice by “cop[ping] a deal with the prosecutors and avoid[ing] getting dragged into the murder trial.” The mention of “endured abuses” and “[m]urderous ministries” were words selected by Martinez to convey and enhance a defamatory meaning that the Plaintiffs are child murderers. This defamatory meaning of the Plaintiffs being criminals harms their reputations. Being accused of directing a child’s murder is the very essence of what would constitute a defamatory statement.

directs, aids, or attempts to aid another person to commit the offense; or . . .
[Acts 1989, ch. 591, § 1.]

¹⁰ O.C.G.A. § 16-2-20(b)(4) states that a person is a party to as follows:

(b) A person is concerned in the commission of a crime only if he:

(4) Intentionally advises, encourages, hires, counsels, or procures another to commit the crime.

This meaning is consistent with the relentless hate speech motivated by religious bigotry that the Defendant has directed to Gwen Shamblin and the church known as Remnant Fellowship Church. Martinez has compared Gwen Shamblin to Charles Manson as treating people the same way. (Deposition of Rafael Martinez, p. 153-155).

Though he didn't think it was hateful, Martinez has said Gwen Shamblin was a neurotic little girl to whom people are nothing more than dolls she dresses up and sits around her. (Deposition of Rafael Martinez, p. 136).

Martinez will acknowledge that Jezebel is a universally bad figure and that Gwen Shamblin is a modern day Jezebel, yet he does not believe this is a disparaging remark directed to Mrs. Shamblin. (Deposition of Rafael Martinez, p. 64-65).

Despite never having met Gwen Shamblin at the time, Rafael Martinez stated that "[Gwen Shamblin] is a pathetic middle-aged woman delusionally believing her diet philosophy is the answer to the world's ills." (Deposition of Rafael Martinez, p. 25, 29).

Rafael Martinez has also disparaged by saying, "[Gwen Shamblin] is also an antichrist who denies any biblical truths." (Deposition of Rafael Martinez, p. 30-31).

Finally, Martinez, who knows Tedd Anger and Gwen Shamblin were not in Georgia at the time of the death of the child (Deposition of Rafael Martinez, p. 103), has made clear that he believes both Plaintiffs should have been charged with a crime. (Deposition of Rafael Martinez, p. 111, 117). The very gist or innuendo being asserted by his entire statement is that Shamblin and Anger are criminally responsible for the murder of the child through Martinez's imagined teachings of Remnant Fellowship.

Accordingly, the Defendant's argument that the Statement is not defamatory must fail.

D. Based on the foregoing, the false light claim for invasion of privacy should go forward.

Because, as shown above, Martinez acted with actual malice contra to Defendant's assertions in his Memorandum of Law in Support of Summary Judgment is without merit.

Recently the Court of Appeals in Secured Financial Solutions, LLC v. Peter Winer¹¹, stated the following with regards to a false light invasion of privacy claim:

The Tennessee Supreme Court has expressly recognized the tort of false light invasion of privacy. *West v. Media Gen.*

¹¹ See Secured Financial Solutions, LLC v. Peter Winer, No. M2009-00885-COA-R3-CV (January 28, 2010) (a copy of this opinion is filed herewith at an attachment to this response.)

Convergence, Inc., 53 S.W.3d 640, 645 (Tenn. 2001). The definition of false light invasion of privacy adopted by the Supreme Court appears in Section 652E of the RESTATEMENT (SECOND) OF TORTS:

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

(a) the false light in which the other was placed would be highly offensive to a reasonable person, and

(b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Id. at 643-44 (quoting RESTATEMENT (SECOND) OF TORTS § 652E (1977)). Unlike defamation, which involves injury to one's reputation, false light invasion of privacy involves "injury to [the] inner person." *Id.* at 645-46 (alteration in original) (quoting *Crump v. Beckley Newspapers, Inc.*, 320 S.E.2d 70, 83 (W. Va. 1984)).

Given Martinez's knowledge that the purported injuries leading to the death of the child i.e. putting the boy in a box, injuries to his back, and head trauma were unrelated to a spanking on the back of the leg or grounding a child to his room as well as Martinez's admissions that the Smiths went beyond any child discipline "directions" of the Plaintiffs, it is clear that Martinez acted in reckless disregard of the falsity of his statements linking Shamblin and Anger to the child's death.

CONCLUSION

In light of the foregoing argument, this Court should deny summary judgment on the defamation and invasion of privacy claims.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served by personal delivery and/or first class mail to John O. Belcher and Catherine I. Butcher, 150 Fourth Avenue North, Suite 1850, Nashville, TN 37219 and G. Philip Anderson, Ramparts Building, 155 Franklin Road, Suite 120, Brentwood, TN 37027, as well as by e-mail to jbelcher@lassiterlaw.com, cbutcher@lassiterlaw.com, and philip.anderson@gpalegal.com; this 15th day of March, 2010.

Samuel J. Harris