

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VIRGIE ARTHUR,	§	
	§	
PLAINTIFF,	§	
	§	
v.	§	Civil Action No. 4:07-CV-03742
	§	(Jury)
HOWARD K. STERN, BONNIE STERN,	§	
ART HARRIS, NELDA TURNER,	§	
HARVEY LEVIN, CBS STUDIOS, INC.,	§	
KPRC HOUSTON, and	§	
TMZ PRODUCTIONS, INC.,	§	
	§	
DEFENDANTS.	§	

PLAINTIFF VIRGIE ARTHUR'S FIRST AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE LEE H. ROSENTHAL:

1. VIRGIE ARTHUR, Plaintiff, complains of HOWARD K. STERN, BONNIE STERN, ART HARRIS, NELDA TURNER, HARVEY LEVIN, CBS STUDIOS, INC., KPRC HOUSTON and TMZ PRODUCTIONS, INC., Defendants, and would show:

2. Plaintiff VIRGIE ARTHUR is an individual residing in Montgomery County, Texas. Virgie Arthur had resided in Montgomery, Montgomery County, Texas for approximately 8 years at the time of the defamation set out in this amended complaint. Prior to the publication of the defamatory statements described in this amended complaint, Arthur enjoyed a reputation as a caring, honest, and law-abiding retired peace officer.

3. Defendant HOWARD K. STERN ("STERN") is an individual resident of California and has appeared and answered in this case.

EXHIBIT H

4. Defendant BONNIE STERN ("BONNIE STERN") is a resident of the state of California and may be served with citation at

5. Defendant ART HARRIS ("HARRIS") is a resident of the state of Georgia and may be served with process at his place of business,

6. Defendant NELDA TURNER is a resident of the state of Texas and may be served with citation at

7. Defendant HARVEY LEVIN ("LEVIN") is a resident of the state of California and may be served with citation at his place of business, TMZ Productions, Inc. at 4000 Warner Blvd., Burbank, California, 91522.

8. Defendant CBS STUDIOS, INC. ("CBS") is a Delaware corporation doing business in Texas and has appeared and answered in this case.

9. Defendant KPRC HOUSTON ("KPRC") is a television station doing business in Houston, Harris County, Texas and has appeared and answered in this case.

10. Defendant TMZ PRODUCTIONS, INC. ("TMZ") is a California corporation and may be served with citation by serving its registered agent, CT Corporation System at 818 West 7th Street, Los Angeles, California, 90017.

11. This is a case of defamation and conspiracy to defame.

FACTUAL BACKGROUND

12. Plaintiff's daughter was Vickie Lynn Marshall, also known as Anna Nicole Smith, now deceased. Ms. Marshall lived with and entrusted her personal affairs to Defendant HOWARD K. STERN. Defendant STERN was Ms. Marshall's lawyer and

companion in the months preceding her death. Defendant STERN maintained tight control over Ms. Marshall's environment. For his own benefit, Defendant STERN isolated Ms. Marshall from her family and others who cared about her. Defendant STERN decided who could visit Ms. Marshall, who could speak to Ms. Marshall, what public appearances Ms. Marshall could make, and the content of those public appearances. Defendant STERN also influenced and controlled Ms. Marshall by providing her with prescriptions drugs, with some prescriptions obtained illegally in the name of Defendant STERN and other persons, but intended for Ms. Marshall.

13. Ms. Marshall's son, Daniel Smith, died of a massive dose of methadone on September 10, 2006, while visiting his mother, baby sister, and Defendant STERN in the Bahamas.

14. The death of Plaintiff's grandson, Daniel Smith, alarmed Virgie Arthur and caused her great concern about the safety of Ms. Marshall and Ms. Marshall's infant daughter, Dannielynn. Defendant STERN controlled all channels of communication with Ms. Marshall and effectively prevented Virgie Arthur from communicating with Ms. Marshall through normal channels. Virgie Arthur realized that Defendant STERN and Ms. Marshall were falsely claiming that STERN was the father of Dannielynn.

15. Arthur did not trust STERN when he told her that her daughter did not want to speak with Virgie about the death of her grandson, even after Ms. Marshall had telephoned her mother and left a message about the death. Virgie reached out to her daughter through the news media, which was the only way to contact her daughter. In a televised interview with Nancy Grace, Virgie Arthur warned Ms. Marshall to be cautious about the people who surrounded her.

16. In retaliation, Defendant Stern telephoned Ms. Arthur's niece, Melinda Hudson and told her to tell Virgie Arthur that, because of the Nancy Grace interview, neither Ms. Arthur nor any of her family would see or hear from Vickie Lynn Marshall again. Defendant STERN also arranged for Ms. Marshall to be interviewed by Entertainment Tonight, a television show produced and distributed by Defendant CBS STUDIOS, Inc. Defendant STERN conspired with Ms. Marshall and Defendant CBS to make defamatory comments about Arthur in the course of that interview. At that interview, Ms. Marshall appeared to be under the influence of drugs. The interviewer for Defendant CBS has been quoted as saying that, during the interview, Ms. Marshall would express a seemingly coherent stream of thought and then ramble. Defendant STERN accompanied Ms. Marshall to the interview, sat by her, put his arm around her, and urged and encouraged her to answer questions in a defamatory manner.

17. In the interview, Ms. Marshall accused her mother of being complicit in alleged physical and sexual abuse of Ms. Marshall as a child. Ms. Marshall stated as follows: "You want to hear all the things she did to me? You want to hear all the things she let my father do to me or my brother do to me? Or my sister?" "All the beatings and the whippin's and the rape? That's my mother. That's my mom."

18. In November 2006, Defendant CBS Studios broadcast portions of the interview through its Entertainment Tonight show. CBS distributed the interview to its affiliates. CBS also provided Defendant STERN with a tape of the interview and with a transcript of the interview. Defendant STERN distributed transcripts of the interview to the news media, with the result that the most defamatory portions of the interview were published worldwide.

19. Later, Defendant STERN played a videotape of the interview in televised court proceedings in Florida concerning the right to dispose of the remains of Ms. Marshall. That videotape was provided to STERN by CBS Studios/Entertainment Tonight, which conspired with STERN to defame Virgie Arthur for its own profit. By that time Defendant CBS STUDIOS had struck a deal with Defendant STERN to publish the inside story on the death of Ms. Marshall and its aftermath on its programs, Entertainment Tonight and The Insider. Defendant STERN and Defendant CBS STUDIOS conspired to defame Arthur through distribution and publication of the interview.

20. Additional portions of the interview were aired by Defendant KPRC to viewers in Houston and in the surrounding area on February 14, 2007. The broadcast began with the Entertainment Tonight logo and a boast that Entertainment Tonight is the "most-watched entertainment news program in the world." Defendant CBS STUDIOS produced that episode of Entertainment Tonight, a composite of two interviews Defendant CBS STUDIOS conducted with Ms. Marshall and Defendant STERN. The CBS production and the manner in which Defendant KPRC presented that production to the public had a distinctly defamatory tenor. Specific defamatory elements of that production include the following:

- The opening scene displayed a weeping Ms. Marshall saying, "You want to hear my child life? You want to hear all the things she did to me?"
- Graphics of the words "HATRED" and "ALLEGATIONS OF ABUSE" were used to emphasize the gist of Ms. Marshall's statements.
- Ms. Marshall was shown speaking the words, "All the beatings and whippings. That's my mother. That's my mom."
- In answer to the CBS interviewer's question about the last time Ms. Marshall saw Virgie Arthur, Ms. Marshall stated, "The last time I spoke

with her, or the last time she beat me? The last time I got a beating from my mother I think I was 21 years old, and before that was a big gap."

- Ms. Marshall mischaracterized the statements Arthur had made in a televised interview and implied that her mother had made false accusations against her, "I seen her on CNN, on CNN telling everyone that I killed my son...."
- Ms. Marshall characterized Virgie Arthur as "evil," a clearly defamatory term. "What can you tell someone who is so evil and who doesn't care and doesn't even care for her own child. You can't, you can't. There's nothing you can say to someone who's so evil."

Questions posed by the CBS interviewer were instrumental in drawing defamatory statements from Ms. Marshall and Defendant STERN. Further, the CBS interviewer reiterated and summarized Ms. Marshall's defamatory statements. Defamatory statements made by the CBS interviewer include the following:

- "It is a desperate past from which she says she tried to escape, but never could."
- "Anna may have left home, but she never really got away. Even though, to her fans, it seemed Anna had it all, her painful childhood would always lurk under the surface, leaving an emptiness that no amount of fame or money could ever fill."
- "It is Anna Nicole's stunning abuse allegations, revealing to me in this interview last October, she claims that she suffered abuse at the hands of her own mother."

21. The defamatory statements set forth above are false. The truth is that Virgie Arthur loved and cared about Ms. Marshall and never harmed Ms. Marshall or knowingly allowed harm to come to Ms. Marshall. Further, Arthur never accused Ms. Marshall of killing Daniel Smith. Virgie was alarmed about Daniel Smith's death and considered the circumstances surrounding his death to be suspicious. She simply tried to warn her daughter to be careful and to avoid the same fate that her son, Daniel, had suffered.

22. Unfortunately, Virgie's words of warning went unheeded. Following these events, Vickie Lynn Marshall died of a drug overdose. A custody battle ensued over the custodial rights to Marshall's infant daughter, Dannielynn. During this custody battle, Virgie Arthur opposed Defendant STERN'S false assertion that he was the biological father of Dannielynn and entitled to custody of the infant girl.

23. Defendant STERN was infuriated over this, and, working with others, expanded the conspiracy to destroy Virgie, and anyone else he perceived was standing in his way of gaining custody of Dannielynn – and the millions of dollars which might be hers one day. The members of this cabal are collectively referred to in this complaint as the "CONSPIRATORS."

24. Using the latest in electronic communication and jumping into the blogosphere, the CONSPIRATORS set out to "destroy" Virgie. The CONSPIRATORS spent hours in front of their computers, "desperate" to find what they considered "Virgie Arthur dirt." They would use anything they could find "to discredit her." They were unabashedly proud of what they did, stating that "when it came to digging up the dirt, no one had anything on" them. Their goal was simple and straightforward – to "destroy" "anyone that was opposed to HOWARD K. STERN or his interest."

25. When the CONSPIRATORS found what they believed they could spin as "dirt" or "skeletons" in Virgie Arthur's closet, they would publish these defamatory and false statements on blogs run by some of the CONSPIRATORS, such as "Rose Speaks," run by Defendant TURNER, or on a website called "The Bald Truth" run by Defendant HARRIS.

26. The CONSPIRATORS disseminated a defamatory article falsely alleging that Virgie Arthur bore a son that was fathered by Arthur's own stepbrother. The CONSPIRATORS sent this article to Defendant TMZ and to its Executive Producer/Managing Editor Defendant LEVIN. With no concern over whether the allegations were true or false, and wanting to assist the CONSPIRATORS in destroying Virgie, Defendants TMZ and LEVIN published the story on their website, entitled TMZ.com. The story ran under the title, "Virgie Has Son With Step-Brother." The story was sent to TMZ and LEVIN by the CONSPIRATORS with the sole purpose of holding Virgie Arthur up to public ridicule. TMZ and LEVIN published the story for the same reason. Not content that thousands of persons read the story, many accusing Virgie of incest, Defendants TMZ and LEVIN used their website to conduct "an opinion poll." Defendants TMZ and LEVIN published the results as follows:

Virgie boinking David is . . .

Creepy 85%

No problemo 15%

Total Votes: 115,403

27. When the Defendant CONSPIRATORS undertook these actions and when the Defendants TMZ and LEVIN published the article and the "poll" results, they were aware that the story related to a family tree in Texas, that Plaintiff resides in Texas, and that her reputation was centered in Texas. In fact, Defendant STERN has telephoned Virgie in Texas. Defendant STERN also watched an interview of Virgie conducted by Nancy Grace. During that interview, which Defendant STERN watched with interest, Grace

informed her audience, and STERN, that Virgie was speaking to Ms. Grace from Virgie's home in Montgomery, Texas.

**Count One
Defamation**

28. Plaintiff incorporates paragraphs 12 to 27 for purposes of Count One.

29. Defendants STERN, CBS, KPRC, BONNIE STERN, TURNER, HARRIS, LEVIN, and TMZ published factual statements that concerned Virgie Arthur and that were defamatory. While publishing these statements, Defendants STERN, CBS and KPRC were negligent regarding the truth of the statement. Alternatively, if it is shown that Virgie Arthur is a public figure, which Plaintiff does not admit but specifically denies, Defendants published the defamatory statements with malice, as defined in constitutional law, *i.e.* with substantial grounds for knowledge that they were false or with reckless disregard to falsity. They directed the defamation into Texas, where they knew Ms. Arthur lived. As a direct and proximate result of Defendants' publication of the defamatory statements, Virgie Arthur's reputation has been severely damaged. The allegations contained in the defamatory statements have caused her to suffer extreme mental anguish, public humiliation, and embarrassment. She is constantly treated with derision by those who do not know her. Virgie is a private person, who had no wish to be thrust into the public arena. Nevertheless, Defendants have created a very negative public perception of Ms. Arthur, which threatens her ability to obtain visitation of her granddaughter, Dannielynn. Ms. Arthur brings this case to recover a sum of money, as found by the trier of fact, which will compensate her for the damage caused by Defendants STERN, CBS, and KPRC.

**Count Two
Conspiracy**

30. Plaintiff incorporates paragraphs 12 to 29 for purposes of Count Two.

31. Defendants STERN, CBS, KRPC, BONNIE STERN, TURNER, HARRIS, LEVIN, and TMZ had a meeting of the minds and decided on a course of action to destroy the reputation of Virgie Arthur and hold her up to public ridicule. Defendants committed one or more unlawful, overt acts in furtherance of the conspiracy. Plaintiff was damaged as a proximate result of the conspiratorial activities of Defendants. Ms. Arthur brings this case to recover a sum of money, as found by the trier of fact, which will compensate her for the damage caused by Defendants.

Exemplary Damages

32. Defendants STERN, BONNIE STERN, TURNER, HARRIS, LEVIN, CBS, KRPC and TMZ were grossly negligent in undertaking the actions ascribed to them in paragraph 12 – 29. Alternatively, Defendants STERN, BONNIE STERN, TURNER, HARRIS, LEVIN, CBS, KRPC and TMZ undertook these actions with malice as defined under Texas law and with malice as defined under constitutional law, *i.e.* with knowledge of the falsity of the defamatory statements or with reckless disregard as to the falsity of the statements.. Plaintiff Virgie brings this case to recover a sum of money, as found by the trier of fact, which will serve as an example to other persons who may, in the future, be tempted to engage in similar conduct.

Plaintiff Virgie Arthur requests the Defendants BONNIE STERN, NELDA TURNER, ART HARRIS, HARVEY LEVIN, and TMZ PRODUCTIONS, INC. be

summoned to appear and answer, and that on final trial Plaintiff Virgie Arthur have the following:

- judgment against Defendants HOWARD K. STERN, BONNIE STERN, NELDA TURNER, ART HARRIS, HARVEY LEVIN, CBS STUDIOS, INC., KPRC HOUSTON and TMZ PRODUCTIONS, INC. for actual damages as found by the trier of fact;
- judgment against Defendants HOWARD K. STERN, BONNIE STERN, NELDA TURNER, ART HARRIS, HARVEY LEVIN, CBS STUDIOS, INC., KPRC HOUSTON and TMZ PRODUCTIONS, INC. for exemplary damages as found by the trier of fact;
- prejudgment and postjudgment interest as provided by law;
- Costs of suit; and
- such other and further relief to which Plaintiff Virgie Arthur may be justly entitled.

JURY DEMAND

Virgie Arthur demands a jury trial.

Respectfully submitted,

s/ Neil McCabe

Neil McCabe

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CERTIFICATE OF SERVICE

This is to certify that on the 10th day of April, 2008, a true and correct copy of the foregoing *Plaintiff Virgie's Arthur First Amended Complaint* was served upon the following counsel electronically via the CM/ECF system:

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s/ Neil McCabe