

VIRGIE ARTHUR, Plaintiff,	§	IN THE DISTRICT COURT OF
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vs.	§	
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HOWARD K. STERN, BONNIE STERN, LYNDAL HARRINGTON, ART HARRIS, NELDA TURNER, TERESA STEPHENS, LARRY BIRKHEAD, HARVEY LEVIN, and TMZ PRODUCTIONS, INC., Defendants.	§	HARRIS COUNTY, TEXAS
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	§	
	§	280TH JUDICIAL DISTRICT

**DEFENDANT NELDA TURNER'S MOTION FOR
LEAVE TO DESIGNATE RESPONSIBLE THIRD PARTIES**

Defendant Nelda Turner files this motion for leave to designate responsible third parties.

A. Introduction

1. Plaintiff is Virgie Arthur.
2. The persons and entities named as Defendants in Plaintiff's Second Amended Original Petition are Howard K. Stern, Bonnie Stern, Lyndal Harrington, Art Harris, Nelda Turner, Teresa Stephens, Larry Birkhead, Harvey Levin, and TMZ Productions, Inc.
3. The proposed responsible third parties are CBS Studios, Inc., Art Harris, and Larry Birkhead.¹

¹ Art Harris and Larry Birkhead, though named as defendants in the Second Amended Original Petition, are designated here as responsible third parties because they might take the position that certain allegations detailed in that Petition and in this Motion are barred by limitations. This Motion should moot that point under CPRC sec. 33.004(e). Under former law, a responsible third party was defined, in pertinent part, as a person who "could have been, but was not, sued by the claimant." That part of the definition was abolished by amendment in 2003 and no longer appears in the definition.

4. Plaintiff sued Defendants for defamation and civil conspiracy to commit defamation.
5. This case is set for trial on June 1, 2009.

B. Facts

6. Defendant files this motion on January 30, 2009, at least 60 days before the date for trial.

7. Plaintiff is the mother of Vicky Lynn Marshall, known publicly as Anna Nicole Smith. Plaintiff alleges that there was a conspiracy among the Defendants to defame her and that the Defendants did defame her.

8. There are various publications alleged in this defamation and conspiracy case. One of the allegations centers on an interview of Larry Dale Hart by Defendant Art Harris in May 2007. Hart, a relative of the Plaintiff, was incarcerated in a Texas prison at the time of the interview. Excerpts from the prison interview were broadcast by CBS Studios, Inc. on its "Entertainment Tonight" syndicated television program in May 2007. In the prison interview, Defendant Harris focused on an allegation of childhood sexual assault that Ms. Marshall had made in a different CBS interview in the fall of 2006. Specifically, Ms. Marshall had claimed that Plaintiff Virgie Arthur was complicit in childhood sexual assault of Ms. Marshall. The broadcast of the prison interview began with a close-up of Ms. Marshall's face and the sound of her saying the word "rape." CBS previously had decided not to air the sexual assault accusation, because of CBS's serious doubts about the truth or falsity of the accusation. Defendant Harris, in the prison interview, asked Hart whether he had sexually assaulted Ms. Marshall, and, when met by a vigorous denial, Harris said that, "people will question that answer." Plaintiff has alleged that the prison interview broadcast was calculated to and did in fact injure her reputation.

9. Another of Plaintiff's defamation allegations arises out of an article Larry Birkhead allegedly sent to TMZ Publications, Inc., through its Executive Producer/Managing Editor, Harvey Levin, allegedly falsely accusing Plaintiff of marrying her step-brother and bearing a son with him. TMZ published a story on its website with those accusations. Plaintiff has alleged that the accusations were designed to and did in fact harm her reputation.

10. Plaintiff pleads that the prison interview broadcast and the TMZ story were part of a broader conspiracy among the Defendants and that each Defendant is jointly and severally liable for the damages flowing from the prison interview broadcast and the TMZ step-brother story.

C. Argument & Authorities

11. CBS Studios, Inc. and Art Harris, are responsible third parties within the meaning of Texas Civil Practice & Remedies Code Section 33.011(6) because they allegedly caused or contributed to the harm for which recovery of damages is sought by Plaintiff, *i.e.* they conducted and broadcast the allegedly defamatory prison interview. Larry Birkhead is a responsible third party within the meaning of Texas Civil Practice & Remedies Code Section 33.011(6), because he allegedly sent a defamatory step-brother story to TMZ as part of a conspiracy with Harvey Levin, Howard K. Stern, and others to defame the Plaintiff.

12. If the undersigned Defendant is held liable as part of the alleged conspiracy or defamation (which she specifically denies), two of the overt acts of which allegedly were the Entertainment Tonight broadcast of the Harris-Dale prison interview and the TMZ step-brother story, then CBS Studios, Harris, and Birkhead are also, and should be held,

liable as responsible third parties for conspiracy and defamation in connection with the prison interview broadcast and the TMZ story.

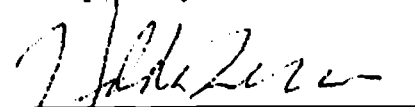
13. If the prison interview and TMZ article are deemed defamatory (which undersigned Defendant specifically denies), then CBS Studios, Art Harris, and Larry Birkhead are culpable of publishing false statements, presented as facts, which were defamatory in nature. In that event, either they were negligent or they published the statements with malice, *i.e.* with knowledge or recklessness as to their falsity.

14. If undersigned Defendant is held liable for exemplary damages (which she specifically denies), then CBS Studios, Art Harris, and Larry Birkhead are liable as well, for having acted with malice as defined by state statute and by federal constitutional law.

PRAYER

For these reasons, Defendant Nelda Turner asks the Court to grant her motion for leave to designate responsible third parties.

Respectfully submitted,


NELDA TURNER

Defendant Pro Se

CERTIFICATE OF SERVICE

On the 30th of January, 2009, the undersigned *pro se* Defendant served this Motion for Leave to Designate Responsible Third Parties on all counsel of record and *pro se* defendants as follows.

Mr. Harry Susman
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
Houston, Texas 77002
Via Email and Fax

Ms. Teresa Stephens

Via Email and Certified Mail, RRR

Ms. Bonnie Stern

Mr. L. Lin Wood
Mr. John Patton
Mr. Luke Lantta
Powell Goldstein
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Via Email and Fax


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Mr. Art Harris
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278 15th Street NE, Unit 4
Atlanta, GA 30309-3594
Via Certified Mail, RRR

Mr. Neil McCabe
The O'Quinn Law Firm
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Via Email and Fax

Ms. Lyndal Harrington

Via Certified Mail, RRR


NELDA (ROSE) TURNER

NO. 2008-24181

VIRGIE ARTHUR,
Plaintiff,

vs.

HOWARD K. STERN, BONNIE STERN,
LYNDAL HARRINGTON, ART HARRIS,
NELDA TURNER, TERESA STEPHENS,
LARRY BIRKHEAD, HARVEY LEVIN, and
TMZ PRODUCTION, INC.,
Defendants.

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ORDER

The Court, having considered Defendant Nelda Turner's Motion for Leave to Designate Responsible Third Parties, is of the opinion that the motion should be and hereby is GRANTED in all things. Therefore, Art Harris, CBS Studios, Inc., and Larry Birkhead are DESIGNATED as responsible third parties.

SIGNED on _____, 2009.

HON. TONY LINDSAY
Presiding Judge