

Cause No. 2008-24181

VIRGIE ARTHUR
Plaintiff

v.

HOWARD K. STERN, BONNIE STERN,
LYNDAL HARRINGTON, ART HARRIS,
NELDA TURNER, TERESA STEPHENS
TMZ PRODUCTIONS, INC.,
Defendants

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In the District Court of

Harris County, Texas

280th Judicial District

**PLAINTIFFS' UNOPPOSED MOTION TO RECONSIDER ORDER
TRANSFERRING CASE FROM THE 190TH DISTRICT COURT
TO THE 280TH DISTRICT COURT**

TO THE HONORABLE ADMINISTRATIVE JUDGE:

Plaintiff Virgie Arthur files this her Plaintiffs' Unopposed Motion to Reconsider Order Transferring Case from the 190th District Court to the 280th District Court, and in support of the Motion, she shows as follows.

Background and Argument

On October 9, 2007, Plaintiff filed suit against Howard K. Stern, CBS Studios, Inc., and KPRC Houston, alleging defamation and conspiracy to defame, stemming from interviews of Plaintiff's daughter, Vickie Lynn Marshall, also known as Anna Nicole Smith (now deceased), which were broadcast on *Entertainment Tonight*, a television program.¹ The case immediately was removed to federal court in the Southern District of Texas, Judge Lee Rosenthal, presiding.

On March 14, 2008, Plaintiff moved for leave to amend the pleadings to add several new defendants, based on information obtained about alleged additional

¹ See Original Petition attached as Exhibit A.

defamation on the internet. While awaiting a decision on the motion for leave, Plaintiff filed suit in state court against the new defendants, in order to avoid any issue about the statute of limitations.² Judge Rosenthal denied the motion for leave to amend.³ In her Memorandum and Order Judge Rosenthal analyzed in detail the differences among the various parties and claims. She concluded that “the claims are based on different facts and events” and that the two lawsuits “will not significantly overlap.”⁴ Judge Rosenthal emphasized that the claims in the removed case “arise from the broadcast of the *Entertainment Tonight* interview with Marshall.”⁵ The claims against the proposed additional defendants arise from statements made in internet postings months later....[T]he two lawsuits arise out of different events that occurred at different times and involved different people.”⁶

The alleged purpose of the *Entertainment Tonight* interview was to push back against Plaintiff’s perceived suggestion in another television interview, that Howard K. Stern might have had something to do with the death of Plaintiff’s grandson, Daniel Smith. The alleged purpose of the later internet defamation was to impede Plaintiff’s quest for custody or guardianship of Plaintiff’s granddaughter, Dannielynn – a purpose that did not and could not have existed at the time of the *Entertainment Tonight* broadcast, which occurred while Ms. Marshall was still alive.

On September 19, 2008, this Court signed an order transferring the case from the 190th District Court, where it originally was filed, to the 280th District Court.⁷ Plaintiff

² See second Original Petition attached as Exhibit B.

³ See Memorandum and Order attached as Exhibit C.

⁴ *Id.* pg. 13.

⁵ *Id.*

⁶ *Id.*

⁷ See Order attached as Exhibit D.

believes that this Court ordered the transfer under Local Rule 3.2.2, because it appeared to this Court that “a previous filing involving substantially-related parties and claims” had been pending in the 280th District Court, prior to removal to federal court.

3.2.2 Prior filings. Any matter filed after a non-suit, dismissal for want of prosecution, or other disposition of a previous filing involving substantially-related parties and claims shall be assigned by the Administrative Judge of the Civil Trial Division to the court where the prior matter was pending.

Any reliance on Rule 3.2.2 is misplaced, however, because, as Judge Rosenthal already had determined, “the two lawsuits arise out of different events that occurred at different times and involved different people.” Plaintiff believes that, at the time of this Court’s transfer order, this Court had not been made aware of Judge Rosenthal’s ruling.

Prayer

Plaintiff respectfully asks this Court to reconsider the transfer order and to transfer the case back to the 190th District Court, in which this case originally was filed.

Certificate of Conference

Counsel for Plaintiff has conferred with L. Lin Wood of Powell Goldstein, counsel for Defendant Howard K. Stern; with Bill Ogden of Ogden, Gibson, Broocks & Longoria, counsel for Defendants Bonnie Stern, Lyndal Harrington, Art Harris, and Nelda Turner; and with pro se Defendant Teresa Stephens. Each of those Defendants is UNOPPOSED to this motion. Counsel for Plaintiff has conferred with Harry Susman of Susman Godfrey, counsel for Defendants TMZ Productions, Inc. and Harvey Levin. Mr. Susman has stated that his clients are neither opposed nor supportive of this motion.

Respectfully submitted,

THE O'QUINN LAW FIRM



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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of October, 2008, a true and correct copy of the foregoing Unopposed Motion to Reconsider Order Transferring Case from the 190th District Court to the 280th District Court was served on the following counsel via certified mail, return receipt requested.

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2007-62428

Cause No. _____

VIRGIE ARTHUR

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS

v.

HOWARD K. STERN,
CBS STUDIOS, INC.,
and KPRC HOUSTON

____ JUDICIAL DISTRICT

2007 OCT -9 PM 4:12
LITIGATION

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

VIRGIE ARTHUR, Plaintiff, complains of HOWARD K. STERN, CBS STUDIOS, INC. and KPRC HOUSTON, Defendants, and for cause of action would show:

I.

Plaintiff VIRGIE ARTHUR is an individual residing in Montgomery County, Texas.

Defendant HOWARD K. STERN ("STERN") is an individual resident of California and may be served with process at his residence at 2800 Nielson Way, Apt. 1609, Santa Monica, CA 90405-4044.

Defendant CBS STUDIOS, INC. ("CBS") is a Delaware corporation doing business in Texas and may be served with process by serving its registered agent, Corporation Service Company, 701 Brazos, Suite 1050, Austin, Texas, 78701.

Defendant KPRC HOUSTON ("KPRC") is a television station doing business in Houston, Harris County, Texas and may be served by serving its president and general manager, Larry Blackerby at 8181 Southwest Freeway, Houston, Texas, 77074.

II.

This case should be conducted in accordance with a tailored discovery control plan under Tex. R. Civ. Proc. 190.4.

III.

This is a case of defamation and conspiracy to defame.

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.

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

The death of Plaintiff's grandson, Daniel Smith, alarmed Plaintiff and caused her great concern about the safety of Ms. Marshall and her infant daughter, Dannielynn. Defendant STERN controlled all channels of communication with Ms. Marshall and effectively prevented Plaintiff from communicating with Ms. Marshall through normal channels. Plaintiff realized that Defendant STERN and Ms. Marshall were falsely claiming that STERN was the father of Dannielynn. Plaintiff knew that to be highly unlikely because of the type of person STERN is. Plaintiff recognized that Defendant STERN is a manipulative, deceitful, and dangerous person, and not the type of man who was likely to have been selected by her daughter as a sexual partner.

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

In retaliation, Defendant STERN 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 Plaintiff 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.

In the interview, Ms. Marshall accused Plaintiff, 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."

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.

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 Plaintiff 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 Plaintiff through distribution and publication of the interview.

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:

1. 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?"
2. Graphics of the words "HATRED" and "ALLEGATIONS OF ABUSE" were used to emphasize the gist of Ms. Marshall's statements.
3. Ms. Marshall was shown speaking the words, "All the beatings and whippings. That's my mother. That's my mom."
4. In answer to the CBS interviewer's question about the last time Ms. Marshall saw the Plaintiff, 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."
5. Ms. Marshall mischaracterized the statements Plaintiff had made in a televised interview and implied that Plaintiff had made false accusations against her, "I seen her on CNN, on CNN telling everyone that I killed my son...."
6. Ms. Marshall characterized Plaintiff 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:

1. "It is a desperate past from which she says she tried to escape, but never could."
2. "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."
3. "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."

These statements constitute libel, because they tended to injure Plaintiff's reputation and to expose the Plaintiff to public hatred, contempt, ridicule, and financial injury, and impeached her honesty and integrity. Additionally, the defamatory statements constitute defamation *per se* in that they suggest Plaintiff was guilty of criminal activities and sexual misconduct.

IV.

The defamatory statements set forth above are false. The truth is that Plaintiff VIRGIE ARTHUR loved and cared about Ms. Marshall and never harmed Ms. Marshall or knowingly allowed harm to come to Ms. Marshall.

Further, Plaintiff never accused Ms. Marshall of killing Daniel Smith. Plaintiff was alarmed about Daniel Smith's death and considered the circumstances surrounding his death to be suspicious. Plaintiff simply tried to warn Ms. Marshall to be careful and to avoid the same fate that her son, Daniel, had suffered.

V.

Defendants STERN, CBS and KPRC published and conspired to publish 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.

VI.

Plaintiff is entitled to exemplary damages from Defendant STERN because he acted with the malice required to support an award of exemplary damages under Texas law. Defendant STERN specifically intended to cause injury to Plaintiff or was consciously indifferent to Plaintiff's welfare. In particular, because Plaintiff had previously warned Ms. Marshall to be cautious of those around her, and Defendant STERN was Ms. Marshall's constant companion, Defendant acted with malice toward Plaintiff in order to discredit and harm her.

VII.

Plaintiff is entitled to exemplary damages from Defendant CBS STUDIOS because it acted with the malice required to support an award of exemplary damages under Texas law. Defendant CBS specifically intended to cause injury to Plaintiff or was consciously indifferent to Plaintiff's welfare. In particular, because CBS STUDIOS had entered into a conspiracy with Defendant STERN to portray him as supportive and protective of Ms. Marshall, rather than as the manipulative and dangerous individual that Plaintiff recognized him to be. At no time did CBS STUDIOS take an impartial approach to the reporting of the events surrounding the deaths of Ms. Marshall and her son. Instead, acting with malice, CBS STUDIOS took every opportunity to portray Defendant STERN in a positive light and to defame Plaintiff.

VIII.

Plaintiff is entitled to exemplary damages from Defendant KPRC because it acted with the malice required to support an award of exemplary damages under Texas law. Defendant KPRC specifically intended to cause injury to Plaintiff or was consciously indifferent to Plaintiff's welfare. In particular, because KPRC had entered into a conspiracy with Defendant STERN to portray him as supportive and protective of Ms. Marshall, rather than as the manipulative and dangerous individual that Plaintiff recognized him to be. At no time did KPRC take an impartial approach to the reporting of the events surrounding the deaths of Ms. Marshall and her son. Instead, acting with malice, KPRC took every opportunity to portray Defendant STERN in a positive light

and to defame Plaintiff.

IX.

Furthermore, Plaintiff is entitled to exemplary damages from Defendants KPRC and CBS because they ratified and approved the conduct of Defendant STERN and conspired with Defendant STERN to defame Plaintiff with full knowledge that STERN was acting with malice.

X.

Plaintiff had resided in Montgomery, Montgomery County, Texas for approximately 8 years at the time of the defamation. Prior to the publication of the defamatory statements described above, Plaintiff enjoyed a reputation as a caring, honest, and law-abiding retired peace officer.

XI.

As a direct and proximate result of the Defendants' publication of the defamatory statements, Plaintiff's reputation has been injured severely. The allegations contained in the defamatory statements have caused the Plaintiff to suffer extreme mental anguish, public humiliation, and embarrassment. Plaintiff is constantly treated with derision by those who do not know her. Plaintiff 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 Plaintiff, which threatens her ability to obtain rights to custody or visitation of her granddaughter, Dannielynn.

PRAYER

Plaintiff requests the Defendants be cited to appear and answer, and that on final trial the Plaintiff have the following:

1. judgment against Defendants for actual damages in a sum within the jurisdictional limits of the Court;
2. awards of exemplary damages against each Defendant in a sum determined by the trier of the fact;
3. Prejudgment and postjudgment interest as provided by law;
4. Costs of suit; and
5. such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

THE O'QUINN LAW FIRM



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