IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

ROBERT R. RILEY, JR., an individual

Petitioner,

v.

ROGER SHULER, as an individual and in his capacity as owner and operator of THE LEGAL SCHNAUZER, a website, and CAROL T. SHULER, an individual and in her capacity as an administrator of and contributor to THE LEGAL SCHNAUZER, a website,

Respondents.

Civil Action No.: 2013-236

LIBERTY DUKE, an individual

Petitioner,

v.

ROGER SHULER, as an individual and in his capacity as owner and operator of THE LEGAL SCHNAUZER, a website, and CAROL T. SHULER, an individual and in her capacity as an administrator of and contributor to THE LEGAL SCHNAUZER, a website,

Respondents.

Civil Action No.: 2013-237

FINAL ORDER

On November 14, 2013, the Court held a hearing on Petitioner Robert R. Riley, Jr.'s Petition for Permanent Injunction and Petitioner Liberty Duke's Petition for Permanent Injunction. The Petitioners had requested a permanent injunction as the final relief for their claims against Respondent Roger Shuler and Respondent Carol T. Shuler. Accordingly, the hearing on the Petitions for Permanent Injunction served as a trial on the merits. Petitioners and their respective counsel attended the hearing. Respondent Roger Shuler also attended the

hearing. Respondent Carol Shuler did not attend the hearing even though she received notice of it. In fact, Respondent Carol Shuler has not attended any hearings in these cases.

"To be entitled to a permanent injunction, a plaintiff must demonstrate success on the merits, a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and that granting the injunction will not disserve the public interest." *Classroomdirect.com, LLC v. Draphix, LLC*, 992 So.2d 692, 702 (Ala. 2008) (internal citations omitted).

Petitioners have demonstrated success on the merits, namely that Respondents have committed libel. To establish libel, "the plaintiff must show that the defendant was at least negligent . . . in publishing a false and defamatory statement to another concerning the plaintiff . . . which is either actionable without having to prove special harm (actionable per se) or actionable upon allegations and proof of special harm (actionable per quod)." *Butler v. Town of Argo*, 871 So.2d 1, 16 (Ala. 2003) (internal citations omitted). "In cases of libel, if the language used exposes the plaintiff to public ridicule or contempt, though it does not embody an accusation of crime, the law presumes damage to the reputation, and pronounces it actionable per se." *Id.* (internal citations omitted). Just as it did at the September 29, 2013 hearing on the Petitions for Preliminary Injunction, the Court finds that Petitioners have demonstrated that the Respondents have published false, defamatory, and libelous statements concerning Petitioners on Respondents' website, "Legal Schnauzer." Specifically, Respondents have published the following false, defamatory, and libelous statements: that Petitioners had an extramarital affair, that Petitioner Duke was impregnated as a result of said affair, that Petitioner Duke had an abortion to terminate said pregnancy, and that Petitioner Riley paid or otherwise arranged to pay Petitioner Duke to have the abortion and to keep quiet about the affair.[1] Respondents' statements are actionable per se.

Petitioners have demonstrated a substantial threat of irreparable injury if the injunction were not granted. Respondents' statements, which are actionable per se, subject Petitioners to immediate and irreparable injury, including ongoing damage to their business reputations[2] and

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[1] At the September 29, 2013 hearing on the Petitions for Preliminary Injunction, the Court heard testimony and received evidence that Respondents have published those statements, that the statements were false, that the Petitioners informed the Respondents the statements were false, and that the statements were published (or, in some cases, re-published) anyway. That testimony and evidence is part of the record for the purposes of the hearing on the Petitions for Permanent Injunction. *See* Ala. R. Civ. P. 65(a)(2). Respondent Roger Shuler testified at the hearing on the Petition for Permanent Injunction about his belief that the Court lacks jurisdiction over him and his belief that the Preliminary Injunction constituted a "prior restraint" in violation of his First Amendment rights. Respondent Carol Shuler, as mentioned above, did not attend the hearing and did not provide any testimony or evidence. The Court has previously ruled that Respondents were properly served and that it does have jurisdiction over them.

[2] Petitioner Riley is an attorney and Petitioner Duke is a lobbyist. Success in both of those professions depends, in large part, on a person's credibility and ability to gain and retain clients. Respondents' false statements about Petitioners undermine that credibility. Moreover, Respondents' false statements damage Petitioners' ability to gain new clients. We live in an age where it is common to run on-line searches to get information about a professional that one may want to hire, and the Respondents' false statements about Petitioners are one of the first things that appear when one performs an on-line search of either Petitioner.

the threat of potential physical harm.[3] Moreover, there is no adequate remedy at law since there is no way to quantify the damage that Respondents' false statements cost Petitioners in terms of lost clients, lost opportunities, or lost revenues.

The threatened injury to the Petitioners outweighs any harm the injunction may cause the Respondents. This permanent injunction simply requires Respondents to remove specific statements the Court has found to be false, defamatory, and libelous. These statements do not enjoy any First Amendment protection. *See Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-572 (1945) ("There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include . . . the libelous[.]); *see also Linn v. United Plant Guard Workers of Am.*, 383 U.S. 53, 63 (1966) ("But it must be emphasized that malicious libel enjoys no constitutional protection in any context.").

Granting the injunction will not disserve the public interest. The injunction is limited in its scope and narrowly-tailored, which are important considerations given that the injunction is issued in the area of the First Amendment. *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 183 (1968) ("An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order. [] In other words, the order must be tailored as precisely as possible to the exact needs of the case."). Here, the injunction is issued with respect to specific statements the Court has determined to be false, defamatory, and libelous; no more and no less.

Based on the foregoing, the Court finds that the Petitions for Permanent Injunction are due to be granted. Respondents are ordered to cease and desist immediately from publishing (including oral publication to any third party), posting online, or allowing to be posted online the following statements about Petitioners: that Petitioners had an extramarital affair, that Petitioner Riley fathered a child out of wedlock with Petitioner Duke or anyone else, that Ms. Duke had an abortion, that Petitioner Riley paid or was in any way involved in paying to Ms. Duke or anyone else any monetary funds from any source related to said alleged extramarital affair or abortion, that any such funds were paid by Petitioner Riley or anyone acting on his behalf in exchange for Ms. Duke having an abortion or were in any way related to an affair or an abortion and/or as part of an effort to conceal an abortion, and that Petitioner Duke received any such funds. The Respondents are ordered to take all efforts to ensure that the subject information is taken off any and all websites that they enable, host, own and/or operate. These efforts shall include, but not be limited to, taking the subject information off of the website known as "Legal Schnauzer," taking the subject information off all Twitter accounts that any Respondent maintains, and removing the subject information from all video-sharing and video-posting websites including, but not limited to, Youtube.[4]

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[3] Some people in Alabama have very strong opinions about the ethics of abortion, and false statements about the Petitioners and abortion could subject Petitioners to ire, a physical altercation, or serious bodily harm.

[4] The Court previously issued a Preliminary Injunction, wherein it found that Respondents' statements about the alleged affair and its alleged aftermath were false, defamatory, and libelous. The Preliminary Injunction ordered Respondents to cease and desist from publishing those statements, which included removing the statements from their website, "Legal Schnauzer." The Respondents did not comply with the Preliminary Injunction and were found

Petitioners have requested attorneys' fees. The Court heard testimony and evidence that Petitioner Riley and Petitioner Duke have incurred attorneys' fees as result of this matter. Specifically, the Court heard testimony and evidence that Petitioner Riley has incurred $24,425.00 in attorneys' fees, that Petitioner Duke has incurred $9,450.00 in attorney's fees, and that those fees are usual and customary. Based on the testimony and evidence presented in support of their request for attorneys' fees, and based on the Court's equitable powers, the Court finds that Petitioners are entitled to an award of attorneys' fees in the following amounts: $24,425.00 for Petitioner Riley and $9,450.00 for Petitioner Duke.

Finally, the Court has previously ruled that all filings, pleadings, and exhibits filed in these cases shall be filed under seal and that their contents shall not be published – either in writing or orally – in any medium to any third party. The Court hereby orders that these cases are to be un-sealed effective November 14, 2013 and directs the Clerk's Office to take all necessary steps to that effect.

There being no just reason for delay, this order is a final order made pursuant to Ala. R. Civ. 54(b) as to all of Petitioner Robert R. Riley, Jr. and Petitioner Liberty Duke's claims against Respondent Roger Shuler and Respondent Carol Shuler.

DONE and ORDERED this the 14 day of November 2013.

Claud D. Nelson
CIRCUIT JUDGE

Cc: Counsel for Petitioners
Respondent Roger Shuler
Respondent Carol T. Shuler

Certified a true and correct copy
Date: 04.04.14
Mary H. Harris RHS
Mary H. Harris, Circuit Clerk
Shelby County, Alabama

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to be in contempt of court. Respondent Roger Shuler was thereafter arrested and is currently incarcerated based on that contempt of court. At the hearing on the Petitions for Permanent Injunction, the Court informed Respondent Shuler that he could rid himself of the contempt by simply removing the specified defamatory statements about the affair and its aftermath from his website(s). Respondent Shuler replied by saying that the Court had no jurisdiction over him, that he would not remove the statements, that the Court was "a joke," and that he was prepared to sit in jail "for fifty years." The Court has informed Respondent Shuler that he will stay in jail until he complies with the Court's order to remove the statements. The keys to the jail are in Respondent Shuler's hands; what he does with them is up to him.