

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

TERRY HOBBS,

Plaintiff,

v.

NATALIE PASDAR, *et al.*,

Defendants.

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CV NO.: 4-09-CV-0008BSM

**DEFENDANT NATALIE PASDAR'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant Natalie Pasdar ("Pasdar") files her Motion for Summary Judgment and for same, respectfully shows as follows:

SUMMARY JUDGMENT EVIDENCE

In support of her Motion for Summary Judgment, Pasdar files her First Appendix of Summary Judgment Evidence, which is incorporated fully herein and which contains the following Exhibits.

First Appendix of Summary Judgment Evidence

- A. Exhibit 1: Excerpts from the deposition of Terry Hobbs ("Hobbs Dep. ___")
- B. Exhibit 2: Declaration of Natalie Pasdar ("Pasdar Dec. ¶ ___")
- C. Exhibit 3: Website Letter
- D. Exhibit 4: MySpace Letter
- E. Exhibit 5: Rally transcript
- F. Exhibit 6: Declaration of Lorri Davis, wife of Damien Echols ("Davis Dec. ¶ ___")
- G. Exhibit 7: Excerpts from the deposition of Ross Sampson, spokesperson for Terry Hobbs ("Sampson Dep. ___")
- H. Exhibit 8: Declaration of Dennis Riordan, Habeas counsel for Damien Echols ("Riordan Dec. ¶ ___")

- I.** Exhibit 9: Declaration of Alice Leeds, publicist for Damien Echols (“Leeds Dec. ¶ ___”)
- J.** Exhibit 10: Declaration of David Jacoby, friend and alleged alibi witness for Terry Hobbs (“Jacoby Dec. ¶ ___”)
- K.** Exhibit 11: Declaration of Simon Renshaw, manager for the Dixie Chicks, including Natalie Pasdar (“Renshaw Dec. ¶ ___”)
- L.** Exhibit 12: Echols Defense Team Press Release (also referred to as Summary of New Evidence) (“Press Release”)
- M.** Exhibit 13: Press Conference transcript
- N.** Exhibit 14: Hobbs’ Complaint in this lawsuit (“Compl.”)
- O.** Exhibit 15: Hobbs’ Supplemental Answers to Interrogatories of Pasdar (“Hobbs’ Supp. Ans. No. ___”)
- P.** Exhibit 16: Hobbs Dimension Films contract
- Q.** Exhibit 17: Hobbs Dimension Films interview
- R.** Exhibit 18: Hobbs WMPD Interview and attached police file (“Hobbs WMPD Interview (HOBBS ___)”)
- S.** Exhibit 19: J. Cody Hiland’s, counsel for Hobbs, press release regarding the instant lawsuit (“Hiland Press Release”)
- T.** Exhibit 20: ARKANSAS TIMES article, “New Evidence in West Memphis Murders,” 7/19/07
- U.** Exhibit 21: COMMERCIAL APPEAL article, “Step Dad Queried in Boys’ Slaying,” 7/19/07
- V.** Exhibit 22: ARKANSAS MATTERS article, “DNA Status Report Released,” 7/19/07
- W.** Exhibit 23: WMCTV ACTION 5 NEWS article, “Court Documents Reveal New Evidence,” 7/20/07
- X.** Exhibit 24: CRITTENDEN COUNTY TIMES article, “Hobbs: This Isn’t How,” 7/24/07
- Y.** Exhibit 25: CNN’s *Anderson Cooper 360* transcript, 11/7/07
- Z.** Exhibit 26: COMMERCIAL APPEAL article, “Familiar Face,” 11/27/07
- AA.** Exhibit 27: ARKANSAS DEMOCRAT-GAZETTE article, “Reputation is Ruined,” 2/3/08
- BB.** Exhibit 28: ARKANSAS DEMOCRAT-GAZETTE article, “Retrial Sought,” 5/31/08

- CC.** Exhibit 29: WMCTV ACTION 5 NEWS article, “Step-father of a West Memphis Three Victim Writing a Book,” 8/8/08
- DD.** Exhibit 30: MY FOX MEMPHIS article, “Hobbs’ Attorney Unconcerned,” 10/31/07
- EE.** Exhibit 31: WM3.VOX.COM blog post of WMCTV ACTION NEWS 5 article, “New West Memphis 3 Evidence to be Outlined at News Conference,” 11/01/07
- FF.** Exhibit 32: Leeds-Riordan-Horgan and Skahan email dated October 30, 2007 re: the Press Release (PASDAR 1459-1464) (“Leeds Press Release Email”) (including the Draft Press Release)
- GG.** Exhibit 33: Davis-Pasdar emails re: CNN program on WM3 and plans to raise awareness about the WM3 (DAVIS 013-015; SAM 003-004) (“Pasdar WM3 Emails”)
- HH.** Exhibit 34: Davis-Pasdar emails re: “Summary of Talking Points” (DAVIS 016-018) (“Davis Summary Email”) (including the Summary of New Evidence)
- II.** Exhibit 35: Pasdar-her management team emails re: the Letters, (PASDAR 022-028, SAM 370-375) (“Pasdar Editing Emails”)
- JJ.** Exhibit 36: Pasdar-Davis emails re: Letters, (DAVIS 024-026) (“Pasdar Letter Emails”)
- KK.** Exhibit 37: Pasdar-Davis emails re: Pasdar’s donation (DAVIS 001-002) (“Pasdar Donation Email”)
- LL.** Exhibit 38: Pasdar-Davis emails re: Rally (DAVIS 034-035) (“Davis Rally Emails”)
- MM.** Exhibit 39: Leeds-Pasdar email re: Rally “Summary of Message Points” (SAM 159-161) (“Leeds Rally Email”)
- NN.** Exhibit 40 Declaration of Brandon Muse, brother-in-law of Pam Hobbs (“B. Muse Dec. ¶ ___”)
- OO.** Exhibit 41: Declaration of Sheila Hicks Muse, sister of Pam Hobbs (“S. Muse Dec. ¶ ___”)
- PP.** Exhibit 42: Declaration of Pam Hobbs, ex-wife of Terry Hobbs (“P. Hobbs Dec. ¶ ___”)
- QQ.** Exhibit 43: Declaration of Jo Lynn McCaughey, sister of Pam Hobbs (“McCaughey Dec. ¶ ___”)
- RR.** Exhibit 44: Declaration of Marie Hicks, mother of Pam Hobbs (“Hicks Dec. ¶ ___”)
- SS.** Exhibit 45: Declaration of Judy Sadler, sister of Pam Hobbs (“Sadler Dec. ¶ ___”)

- TT. Exhibit 46: Second Declaration of Pam Hobbs, ex-wife of Terry Hobbs (“P. Hobbs Second Dec. ¶ ____”)
- UU. Exhibit 47: Declaration of John Mark Byers, father of Robin Hood Hills murder victim, Christopher Byers (“Byers Dec. ¶ ____”)
- VV. Exhibit 48: Declaration of Mildred French, former neighbor of Terry Hobbs (“French Dec. ¶ ____”)

Pasdar also files herewith her Second Appendix of Summary Judgment Evidence (FILED UNDER SEAL), which contains the following Exhibit.

Second Appendix of Summary Judgment Evidence

- A. Exhibit 49: Excerpts from Terry Hobbs’ Journal (“Hobbs Journal (HOBBS ____”)

PASDAR’S MOTION FOR SUMMARY JUDGMENT

On May 5, 1993, three eight-year old boys were murdered in West Memphis, Arkansas (the “Murders”). Three teenagers, dubbed the West Memphis 3 (“WM3”), were subsequently convicted of the Murders. A substantial contingent of the public, however, believes the WM3 are innocent and did not receive a fair trial. In her efforts to raise awareness of and money for the WM3, Pasdar caused a letter soliciting support and money for the WM3 to be posted on the Dixie Chicks website (“Website Letter”), posted a similar letter on the Dixie Chicks’ MySpace blog (“MySpace Letter”) (together, the “Letters”) and made remarks at a WM3 support rally (“Rally”).

In his Complaint, Terry Hobbs (“Hobbs”) asserts three causes of action arising out of Pasdar’s alleged actions: defamation, false light portrayal and outrage. Each of Hobbs’ causes of action should be dismissed as a matter of law pursuant to Federal Rule of Civil Procedure 56. Pasdar engaged in free, truthful speech on a public controversy, fundamentally protected by the First Amendment of the United States Constitution, and even Hobbs admits she did not do what he once claimed, accuse him of the Murders. For these reasons, as well as those more

specifically set forth below and in the accompanying Memorandum in Support of Defendant Natalie Pasdar's Motion for Summary Judgment, each of Hobbs' causes of action fail and Pasdar is entitled to judgment as a matter of law.¹

I.

HOBBS' DEFAMATION CLAIMS FAIL AS A MATTER OF LAW

Hobbs' defamation claims fail as a matter of law because: (1) Pasdar's statements are not capable of defamatory meaning (Hobbs admits that Pasdar did not accuse him of the Murders); (2) Hobbs, who is clearly a public figure, cannot present any evidence (much less clear and convincing evidence) that Pasdar made the statements with actual malice, reckless disregard for the truth, and, alternatively, Hobbs cannot show that Pasdar was negligent; (3) Pasdar's statements are true; (4) Pasdar's statements are protected by the fair report privilege; and (5) Hobbs' slander claim is barred by Tennessee's statute of limitations.

A. Pasdar's statements are not defamatory as a matter of law

None of Pasdar's statements made the basis of Hobbs' claims are reasonably capable of defamatory meaning. The Letters, as admitted by Hobbs in his deposition, do not accuse Hobbs of committing the Murders, whether read *in toto* or by looking at the specific statements individually. Furthermore, most of the statements in the Letters and in Pasdar's Rally remarks do not refer to Hobbs and are therefore not capable of defaming him.

B. Hobbs cannot prove actual malice or negligence as a matter of law

Pasdar's statements are Constitutionally protected by the First Amendment. Pasdar's statements addressed an ongoing issue of public (and national) concern and controversy, and Hobbs is a public figure with regard to that public controversy. As such, Hobbs must, yet he

¹ Pasdar Incorporates by reference, the same as if set forth at length herein pursuant to Federal Rule of Civil Procedure 10(c), the Memorandum in Support of Defendant Natalie Pasdar's Motion for Summary Judgment.

cannot, prove by clear and convincing evidence that Pasdar made her statements with actual malice. Hobbs has not, and cannot, produce any evidence showing Pasdar possessed any subjective doubt as to the veracity of her statements. Furthermore, Ms. Pasdar's abundance of caution in consulting reliable sources, relying upon the Echols defense team's press release ("Press Release") and reciting that Press Release almost verbatim, shows that Pasdar took reasonable and substantial measures to insure the Letters were as accurate a rendering of the new evidence in the Echols case as possible. Even if this Court applies the negligence standard, Hobbs still cannot meet his burden to survive summary judgment based on the record before the Court. Pasdar's caution with regard to the truth of the Letters reveals that she had no reason to doubt the veracity of their contents; therefore, Hobbs' cannot even prove Pasdar was negligent, much less that she acted with actual malice.

C. The statements in the Letters' post-script are substantially true as a matter of law

Hobbs defamation claim should also be dismissed because Pasdar's statements in the Letters' post-script evidence summary – the only statements which refer to Hobbs – (1) are literally and substantially true and (2) do not accuse Hobbs of committing the Murders.

D. Pasdar's post-script statements concerning Hobbs are protected speech under the fair report privilege

Pasdar's statements are also protected by the fair report privilege. The post-script evidence summary was a report on an official proceeding – the Echols murder case and the continuing efforts to obtain post-conviction relief for the WM3 – and Pasdar's report provided an accurate and fair abridgment of the new evidence in that case that the Echols defense team had publicly filed and publicized via the written press release and a major press conference ("Press Conference"). Furthermore, Hobbs cannot establish that Pasdar acted with actual malice or negligence, which is required to recover under both Tennessee and Arkansas law.

E. Hobbs' claims related to the Rally are barred by Tennessee's statute of limitations as a matter of law

Finally, Hobbs' slander claims related Pasdar's remarks at the Rally (in addition to the reasons set forth above and in the Memorandum) are barred under Tennessee's statute of limitations, which is applicable in this case under Arkansas' choice of law rules. As such, all of Hobbs' claims related to the Rally should be dismissed.

II.

HOBBS' FALSE LIGHT INVASION OF PRIVACY CLAIM FAILS AS A MATTER OF LAW

Hobbs' false light claim fails as a matter of law because (1) regardless of whether Hobbs is considered a public figure (which he obviously is), he cannot prove that Pasdar acted with actual malice as required for any false light claim; and (2) Hobbs has in fact admitted that Pasdar did not accuse him of murder or portray him in a false light.

III.

HOBBS' OUTRAGE CLAIM FAILS AS A MATTER OF LAW

Hobbs' outrage claim fails as a matter of law because (1) there is no evidence that Pasdar intended to cause Hobbs emotional distress; (2) Pasdar's conduct was not extreme and outrageous as required by the case authority; and (3) Hobbs did not suffer severe emotional distress as a result of Pasdar's statements.

IV.

HOBBS' CLAIMS ALL FAIL BECAUSE HE HAS NOT BEEN DAMAGED AS A MATTER OF LAW

Each of Hobbs' claims also fail because he has failed to demonstrate (and cannot demonstrate) that he has suffered any damage caused by Pasdar's actions.

CONCLUSION

For the foregoing reasons as more fully discussed in the accompanying Memorandum in Support, all of Hobbs' claims fail as a matter law. Accordingly, Defendant Natalie Pasdar respectfully requests, pursuant to Federal Rule of Civil Procedure 56, that this Court enter a final

judgment that Terry Hobbs take nothing on his claims asserted herein, dismissing this case with prejudice and awarding Pasdar her costs and all other and further relief to which she may be justly entitled.

Dated: August 21, 2009

Respectfully submitted,

/s/ Dan D. Davison

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the following counsel of record in accordance with the Federal Rules of Civil Procedure, on this 21st day of August, 2009.

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