

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

TERRY HOBBS

PLAINTIFF

vs.

NO: 4-09-CV-008 BSM

NATALIE PASDAR, ET AL.

DEFENDANTS

**MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS MARTHA MAGUIRE,
EMILY ROBISON AND THE DIXIE CHICKS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants Martha Maguire, Emily Robison, and the Dixie Chicks, a *de facto* Texas partnership (herein collectively referred to as the “Dixie Chicks”), move for summary judgment that Plaintiff Terry Hobbs take nothing on his claims herein against them, or any of them, and awarding to them their costs. In support of this motion, the Dixie Chicks state:

**I.
Background**

A. The Crime

Three 8-year-old boys were reported missing to the West Memphis Police Department during the evening of May 5, 1993. Their bodies were found the next day in an area known as Robin Hood Hills, a small wooded area that bordered the boys’ West Memphis neighborhood. The bodies were submerged in approximately 30 inches of water in a drainage ditch, and each boy was tied with shoelaces taken from their tennis shoes—right hand to right ankle, left hand to left ankle. The victims were Plaintiff’s stepson, Stevie Branch, and two of his friends, Michael Moore and Chris Byers.

B. The Convictions

Within thirty days, the West Memphis Police Department secured a statement from 17-year-old Jessie Misskelley, Jr., that he participated in the murders with two other teens, 18-year-old Damien Echols and 16-year-old Jason Baldwin. The three, now collectively known as the West Memphis 3, were arrested on June 3, 1993, and formally arraigned on charges of three counts of capital murder the following day.

Mr. Misskelley's trial started in January 1994. Due to pre-trial publicity, including the premature release to the media of Mr. Misskelley's confession, the trial was moved from Crittenden County to Clay County. At trial, Mr. Misskelley's confession was admitted into evidence and again reported by the media. On February 4, the jury found him guilty of one count of first degree murder and two counts of second degree murder. He was sentenced to life imprisonment plus 40 years. His conviction and sentence were affirmed on direct appeal. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702, *cert. denied*, 519 U.S. 898 (1996). To date Mr. Misskelley has obtained no relief from his conviction for the murders.

The trial of Damien Echols and Jason Baldwin came next. Their trial was moved from Crittenden County to Craighead County and began less than four weeks after the verdict in Mr. Misskelley's trial.¹ Both youths were convicted of three counts of capital murder. Mr. Baldwin was sentenced to life imprisonment without the possibility of parole. Mr. Echols was sentenced to death by lethal injection. Their convictions and sentences were affirmed

¹ Echols and Baldwin were tried separately from Mr. Misskelley because Mr. Misskelley's confession was not admissible against them. See *Bruton v. United States*, 391 U.S. 123 (1968). The Jonesboro media provided extensive coverage of the Misskelley trial, including the contents of Mr. Misskelley's confession. During the Echols and Baldwin trial, a member of the West Memphis Police Department, Det. Bryn Ridge, testified that Mr. Misskelley had made a statement. In denying a motion for mistrial, Judge David Burnett, who presided at both trials, stated: "I suggest gentlemen, that there isn't a soul up on that jury or in the courtroom that doesn't know Mr. Misskelley gave a statement."

on direct appeal. *Echols v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996), *cert. denied*, 520 U.S. 1244 (1997). To date, neither has obtained relief from his conviction for the murders.

C. The Public Controversy

Who killed the three eight-year-old boys has been a matter of public concern since their bodies were discovered. The arrest and conviction of the West Memphis 3 did not end the concern, but, instead engendered a controversy. A sizable and growing segment of the public believes the West Memphis 3 were wrongfully convicted of murders they did not commit because they were different and poor; convenient scapegoats for public officials needing to resolve a horrible crime that was receiving national attention.

An organized, grass-root movement evolved to raise public awareness about the perceived miscarriage of justice and to fund efforts to secure the release of the West Memphis 3. This group wants their government to work properly. If it does so, this group believes the West Memphis 3 will be exonerated and released from prison, and, perhaps, the crime will be solved and the true killer(s) brought to justice. The rallying cry of this grass-root movement is FREE THE WEST MEMPHIS 3!

D. Plaintiff's Role in the Public Controversy

Plaintiff publically advocates the West Memphis 3 are guilty of the murders, and he has done so publically since their arraignment in June 1993. A new dimension to Plaintiff's role in the controversy emerged in the spring and summer of 2007, when DNA test results and other evidence implicated him in the murders. Rather than shrink from the challenges presented by this new and developing evidence, Plaintiff embraced his increased prominence in the public controversy, proactively seeking through the media to diminish the importance of the new evidence while continuing to advocate that the West Memphis 3 are the murderers. Plaintiff has

made known his position with respect to the FREE THE WEST MEMPHIS 3 movement, stating in an interview with KAIT-TV Jonesboro:

“It’s sad to see that there are people out here trying to get killers out of prison, that deserve, every one of them, to be hung by a rope.”

II. Grounds for Relief

Plaintiff brought this lawsuit to chill the rights of citizens to advocate for the release of the West Memphis 3. He swore to this fact in his deposition. This type of lawsuit is known as a SLAPP suit—an acronym for “strategic lawsuit against public participation.” A SLAPP suit is intended to intimidate and deter citizens with opposing views from participating in the debate on an issue of public concern. A SLAPP suit is against public policy and an anathema to the rights of the public to speak freely and petition the government for redress of grievances. *See e.g. Ark. Stat. Ann. §§16-63-501, et seq.*

Plaintiff’s SLAPP suit follows the traditional pattern. Ms. Pashar took a stand on a matter of public concern, soliciting the public to become involved in the efforts to secure the release of the West Memphis 3 by learning about the case, donating money, and letting their voices be heard. That is not what Plaintiff wants. He wants the case closed. To convince Ms. Pashar to “stay in Texas and mind her own business,” Plaintiff sued her and the music group of which she is a part for defamation, false light invasion of privacy and outrage. As explained in detail in Ms. Pashar’s Motion for Summary Judgment (Doc. #38) and Brief in Support (Doc. #39), each of which is incorporated herein by reference, Plaintiff has no right to relief against Ms. Pashar. For the same reasons and on the same grounds stated in Ms. Pashar’s Motion for Summary Judgment and Brief in Support, Plaintiff has no right to relief against the Dixie Chicks.

III.
Prayer for Relief

Wherefore, Defendants Martha Maguire, Emily Robison, and the Dixie Chicks pray this Court enter judgment pursuant to Fed. R. Civ. P. 56 that Plaintiff take nothing on his claims herein against them, or any of them, and awarding to them their costs of suit and all such other relief to which the Court may find them entitled.

Dated: August 24, 2009.

Respectfully Submitted,

/s/ Robert B. Wellenberger

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CHICKS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been forwarded to all counsel using the CM/ECF system on August 24, 2009.

/s/ Robert B. Wellenberger

Robert B. Wellenberger