

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:14-CV-2620-JLK

BENJAMIN RADFORD,

Plaintiff,

v.

KAREN STOLLZNOW

Defendant.

STIPULATED SCHEDULING AND DISCOVERY ORDER

1. DATE OF CONFERENCE

The initial scheduling conference took place on November 25, 2014. Attending telephonically were:

On behalf of the Plaintiff Benjamin Radford, John W. Boyd, 20 First Plaza, Suite 700, Albuquerque, NM 87102; phone (505) 842-9960; email – jwb@fbdlaw.com

On behalf of the Defendant Karen Stollznnow, Edward W. Shepherd and Christopher P. Winters, 4801 Lang NE, Albuquerque, NM 87109; phone (505) 341-0110; emails – nsheperd@allenlawnm.com and cwinters@allenlawnm.com

2. STATEMENT OF CLAIMS AND DEFENSES

a. **Plaintiff(s)' statement:** Plaintiff Benjamin Radford alleges that the defendant, Karen Stollznnow, defamed him by falsely and publicly accusing him of having sexually harassed and sexually assaulted her by posting her allegations on her “guest blog” on Scientific American’s website. In addition, she interfered with Radford’s contractual

relations by making the same allegations to his employer and committed fraud by falsifying the dates of emails provided to Radford's employer to make it appear that Radford had harassed her when he had not.

Plaintiff's complaint is thus for defamation (per se and/or per quod), interference with contractual relations, fraud and intentional infliction of emotional distress. Plaintiff seeks damages for harm to his reputation, loss of income, lost opportunities and emotional distress as well as punitive damages.

b. **Defendant's statement:** Defendant Stollznaw does not deny that that she authored the blog post in question which discusses sexual harassment and assault she experienced by an unnamed person. However, she denies her statements were defamatory and denies that she is liable. Defendant Stollznaw asserts that the statements made in the blog post were true, and, under Colorado law, Defendant Stollznaw cannot be held liable for speaking the truth. *Barnett v. Denver Pub. Co.*, 36 P.3d 145, 147 (Colo. App. 2001) ("A party asserting truth as a defense in a defamation action is not required to justify every word of the alleged defamatory matter. It is sufficient if "the substance, the gist, the sting, of the matter is true") (internal citations omitted). Defendant Stollznaw further states that while she did communicate with Mr. Radford's employer (Center for Inquiry) about his sexual harassment and other conduct towards her, she denies making any defamatory and/or fraudulent statements. Ms. Stollznaw further states that she fully cooperated with the Center for Inquiry ("CFI") investigation and did not falsify any records provided to the CFI investigator. Defendant further denies that she can be liable under a theory of intentional infliction of emotional distress. Telling Plaintiff's employer about truthful conduct perpetrated by Plaintiff and against Defendant cannot be deemed

extreme and outrageous, nor can authoring a truthful blog post about an unnamed person. Further, Defendant denies that going to Plaintiff's employer to tell the truth about his conduct and authoring a blog post, in which Plaintiff is never named, was not done with any "intent of causing the plaintiff severe emotional distress." *Green v. Qwest Servs. Corp.*, 155 P.3d 383, 385 (Colo. App. 2006). Defendant believes that Plaintiff will also not be able to get past a threshold ruling by this Court on whether Defendant's conduct constituted outrageous conduct as a matter of law. *See id.* (stating that "[s]uch liability can be found only if the defendant's conduct toward another is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'"). There is also no evidence supporting an award of punitive damages. Defendant Stollznaw further contends that a punitive damages claim is barred or limited under the law. Finally, Defendant Stollznaw reserves the right to assert counter-claims against Plaintiff at a time and in a manner authorized under the Rules.

3. UNDISPUTED FACTS

The following facts are undisputed: None at this time.

4. COMPUTATION OF DAMAGES

Radford's professional reputation and standing in his professional community was harmed in an amount in excess of \$500,000 as general damages under Colorado law, which allows for general damages when the statement is defamatory per se. In addition, plaintiff will seek compensation for two weeks loss of salary of approximately \$1,600.00, loss of business opportunities in an amount not yet calculated, and an amount to compensate the plaintiff for

emotional suffering, which plaintiff estimates at \$500,000. Because of the nature of the damages sought (reputational harm and emotional distress, the calculation is not formulaic at this time).

**5. REPORT OF PRE-CONFERENCE DISCOVERY &
MEETING UNDER Fed. R.Civ. P. 26(f)**

- a. Date of Rule 26(f) meeting: October 22, 2014 by telephone
- b. Names of each participant and each party represented: John W. Boyd, attorney for Plaintiff; and Edward Shepherd, attorney for Defendant.
- c. Proposed changes, if any, in timing or requirement of disclosures under Fed.R.Civ.P. 26(a)(1): None.
- d. Statement as to when Rule 26(a)(1) disclosures were made or will be made: The parties agreed to November 19, 2014. Both parties have provided timely disclosures.
- e. Statement concerning any agreements to conduct informal discovery:

The parties anticipate voluntary exchange of all relevant documents. The parties have no other agreements at this time, but have agreed, in general terms, to cooperate in discovery, which may entail some informal discovery as may be appropriate.
- f. Statement concerning any agreements or proposals regarding electronic discovery:

The parties do not believe this case involves extensive electronically stored information, as they understand the import of that phrase.

- g. Statement concerning any other agreements or proposals to reduce discovery and other litigation costs:

The attorneys for the parties agree that early mediation may be appropriate and are prepared to recommend it to their clients.

The parties have agreed to request all witnesses residing outside New Mexico (with the exception of the defendant) to voluntarily come to New Mexico for their depositions, where both counsel for plaintiff and counsel for defendant maintain their practices. Counsel for the parties have agreed to limit their depositions to those deemed reasonably necessary. In addition, both parties are amenable to telephonic depositions where in-person depositions are not reasonably required.

- h. Statement regarding use of the unified exhibit numbering system:

The parties will use a unified exhibit numbering system.

- i. Each party shall set forth its anticipated costs of conducting this litigation, itemizing costs including travel and attorney fees for taking depositions, paralegal expenses, costs of preparations, costs of drafting written discovery, anticipated motions and costs of complying with discovery requests.

Plaintiff's estimates for conducting litigation:

Travel costs for 3 out-of-town depositions: \$2,000.

Time for out-of-town depositions including travel:

40 hours @ \$375/hour: \$15,000

Time for depositions in-town: 6 @ 5 hours each (average):

30 hours @ \$375/hour: \$11,250

Deposition transcripts: \$4,500

Motions practice unknown at this time, but estimated at 30 hours: \$11,250

Written discovery requests: 3 hours: \$1,125

Paralegal expenses: 50 hours @ \$100/hour: \$5,000

Complying with discovery requests: Unknown, but speculate that they will be minimal given cooperation between counsel. Perhaps 5 hours attorney time

@\$375/hour: \$1,875

TOTAL: \$52,000 (Plaintiff's counsel recognizes that this is a conservative estimate if the case does not settle early in the litigation).

Defendant's estimates for conducting litigation:

Travel costs for 6 out-of-town depositions: \$4,000.

Time for out-of-town depositions including travel: \$12,000

Time for depositions in-town, including deposition preparation: \$15,000

Motions practice unknown at this time: \$16,000

Written discovery requests: \$2,000

Paralegal expenses: \$5,000

Complying with discovery requests: Unknown, but speculate that they will be minimal given cooperation between counsel. \$2,500.00

Other: case investigation and analysis including case reports: \$12,500

TOTAL: \$69,000

6. CASE PLAN AND SCHEDULE

The plan and schedule must include the following items:

- a. **Deadline for Joinder of Parties -- January 9, 2015**
- b. **Deadline to Amend Pleadings**

Plaintiff has filed an Amended Complaint on November 17, 2014 (Doc. 17). Counsel for the parties have conferred and agreed that defendant should file an answer to the Amended Complaint on December 10, 2014.

c. Discovery Cut-off – May 25, 2015

d. Dispositive Motion Deadline – June 24, 2015

e. Expert Witness Disclosure

(1) Statement regarding anticipated fields of expert testimony, if any: Damages, computer and internet forensics, and gender harassment.

(2) Statement regarding any limitations proposed on the use or number of expert witnesses:

None, although the parties do not anticipate extensive use of experts.

(3) Plaintiff shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before February 25, 2015. Defendant shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before March 25, 2015.

(4) The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before April 25, 2015.

(5) All designations of experts shall include a statement describing the methodology to be used by the particular expert. *Daubert/Kumho Tire* motions challenging any proposed methodology may be considered before

the expert is deposed. Such a motion does not preclude the filing of any subsequent motions. The aim is to cut off faulty methodology before undertaking extensive discovery and may result in amended designation with either a new expert, a revised methodology or both.

- (6) Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2), no exception to the requirements of the rule will be allowed by stipulation of the parties unless the stipulation is approved by the court.

f. Deposition Schedule

Name of Deponent	Date of Deposition	Time of Deposition	Expected Length of Deposition
Benjamin Radford			Two days
Karen Radford			Two days
Beth Gramigna			One day
Ron Lindsay			One day
P.Z. Myers			Half day
Matthew Baxter			One day
Pat Henry			Two hours
Jeff Wagg			Half day
David Gorsky			Half day
Arvada Police Officers			Two hours
Blake Smith			Half day
Barry Karr			One day
Lisa Hutter			Half day
Sarah Jordan-Coates			Half day
Melody Hensley			Half day
Nokolas Kovacevic			Two hours
Brian Bonner			Two hours
Joe Anderson			Half Day
DJ Grothe			Half Day
Elliot Cantor			Two hours
Megan Connors			Half Day
Amy Davis Roth			Two hours
Jenna Marie Lam			Two hours
Jennifer Lawrason			Two hours

g. Interrogatory Schedule

Service completed thirty days before end of discovery – April 25, 2015

h. Schedule for Request for Production of Documents

Service completed thirty days before end of discovery – April 25, 2015

i. Discovery Limitations

- (1) Any limits any party proposes on the length of any deposition: The parties have agreed to exceed the seven-hour limitation imposed under Rule 30(d) for the depositions of the plaintiff and defendant.
- (2) Any modifications any party proposes on the presumptive numbers of depositions or interrogatories contained in the federal rules: None.
- (3) Any limitations any party proposes on the number of requests for production of documents and/or requests for admissions: None.

j. Other Planning or Discovery Orders

7. SETTLEMENT

The parties certify that, as required by Fed. R. Civ. P. 26(f) they have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution.

The parties have discussed a desire for an early mediation in this case. The parties have not yet reached a decision on whether this will occur prior to Plaintiff's and Defendant's depositions, or after. However, we have agreed to use a private mediator for the early mediation.

8. OTHER SCHEDULING ISSUES

- a. Statement of those discovery or scheduling issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement:

- b. Statement of anticipated motions-to be filed, by whom, estimated time of filing, and any proposed briefing schedule: Plaintiff: Unknown. Defendant anticipates filing Motions in limine and dispositive motions as appropriate.
- c. Statement whether trial is to the court or jury. If a mixed trial, e.g. declaratory judgment and damages, specify which claims are to tried to a jury and which to the court.

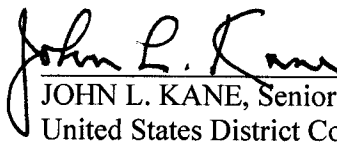
The parties are requesting that each be allowed to defer a decision on whether this case will be a jury trial or a bench trial until after initial discovery has been undertaken.

9. AMENDMENTS TO DISCOVERY AND SCHEDULING ORDER

This Stipulated Scheduling and Discovery Order may be altered or amended only upon motion showing good cause and order entered thereon. As stated elsewhere herein, I will almost always grant stipulated motions for extensions of time and changes in deadlines up to and including the signing of a pretrial order. If the parties cannot agree on such extensions, my inclination is, the absence of abuse, to be permissive. On the contrary, I am not permissive or lenient in changing trial dates.

DATED this 25 day of November, 2014

BY THE COURT:



JOHN L. KANE, Senior Judge
United States District Court

**STIPULATED SCHEDULING AND
DISCOVERY ORDER APPROVED:**

/s/ John W. Boyd

John W. Boyd
Amber Fayerberg
Freedman Boyd Hollander
Goldberg Urias & Ward, PA
20 First Plaza, Suite 700
Albuquerque, NM 87102
(505) 842-9960
jwb@fbdlaw.com
af@fbdlaw.com
Attorneys for Plaintiff

/s/ Christopher P. Winters

Edward W. Shepherd
Christopher P. Winters
Allen Shepherd Lewis & Syra, PA
4801 Lang Avenue NE, # 200
Albuquerque, NM 87109-4475
(505) 341-3434
nshepherd@allenlawnm.com
cwinters@allenlawnm.com
Attorneys for Defendant