

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

ENTERED

JACQUE DAUGHTRY,
Plaintiff,

vs.

CIVIL ACTION NO. 92-01737

STANLEY BOOTH and
RANDOM HOUSE, INC.,
Defendants.

ORDER

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CLERK OF SUPERIOR COURT
GLYNN COUNTY, GEORGIA

This case is before the Court on Defendants' motion for summary judgment. After consideration of said motion and Plaintiff's response thereto, and all pleadings, affidavits, and depositions of record, and the argument of counsel, the Court finds as follows:

Plaintiff's claim for defamation, as set out in her Complaint, as amended, alleges Defendants published a book, Rythm Oil, "which contained statements relating to Plaintiff's alleged sexual conduct with one James Brown which were false and which by their nature constitute libel per se." In Plaintiff's deposition testimony of April 20, 1993, she denied ever having had sexual relations with Mr. Brown, an entertainer who was characterized in a contract (since rescinded) between Plaintiff

and the publisher of Penthouse magazine as "Soul Brother No. 1." By affidavit of February 7, 1994, Plaintiff alleged she "never engaged in consensual sexual relations" with Mr. Brown. Plaintiff opposes Defendants' motion for summary judgment on the defamation count on the ground Mr. Booth's report of what Plaintiff told him about a particular incident failed to clearly state that what allegedly occurred was "rape," leaving open the possibility readers of the literary work might wrongfully conclude Plaintiff had voluntarily consented to having sexual relations with Mr. Brown.¹

Defendant Booth tape recorded some of his interviews with Plaintiff. His affidavit in support of the motion for summary judgment, which included transcriptions of excerpts of the tapes, has not been controverted by Plaintiff. The transcription related to the incident

1 The report of that event in Rythm Oil included the following: Wheeling away from the expressway into dense pine woods, Brown bounced the van off trees, knocking the back doors off, getting stuck as night fell. "He had a sawed-off shotgun pointed at me," Daughtry said. * * * He didn't know who I was. * * * He told me to get in the back. What would you have done? I got in the back. I thought if I could make love to him I could get him calmed down. Rythm Oil [UK Ed.], pg. 240-241.

allegedly constituting the rape of Plaintiff by Mr. Brown includes the following:

Daughtry: But I was so glad to get out of that van alive and so exhausted and so tired.

Booth: I'm sure you didn't think about it.

Daughtry: No, I didn't, Stanley. I really, I, I couldn't believe that something like that had happened. I couldn't. And you know, I felt, Stanley, and in many ways, and this is terrible to say, in parts of it I knew he was making love to me and parts of it I wasn't so sure. I almost felt like he was violating me. And that's terrible to say.

Booth: Well did you find that, um, unpleasant or pleasant?

Daughtry: No, I mean, I loved him. So, but, I mean, you know, every woman likes to feel that no matter if she's getting f----- or if she's made love to, either way, she wants to know that what is on top of her loves her. Does that make sense?

When combined with Plaintiff's disclosure of Mr. Brown's alleged statement he could not understand Plaintiff's "unbelievable" sexual needs, a characterization she acknowledged, the reference in Rythm Oil to Plaintiff and Mr. Brown as "lovers," offered without inclusion of the rather graphic basis Plaintiff provided for such a conclusion, merely reflects the substance of what the writer was told by Plaintiff. Plaintiff's

deposition testimony and affidavit were inconsistent on the question of her sexual relationship with Mr. Brown, but she has not controverted the accuracy of the transcripts of the conversations with Mr. Booth set out in his affidavit. The Court therefore finds that Defendant Booth accurately reported what he was told by Plaintiff, that is, she and Mr. Brown had sexual relations but there was some ambivalence as to whether she consented to do so, or was coerced into doing so by Mr. Brown's allegedly erratic and dangerous behavior.

The Court finds the evidence of record establishes that Plaintiff voluntarily became involved in a public controversy, the allegedly unfair treatment of James Brown by the criminal justice system. She signed a contract to disclose what she knew about that issue with Penthouse Magazine, and she alleges she had an oral contract with Defendant Booth as to the same issue. She thus became a limited public figure as to her relationship with Mr. Brown. Brewer v. Rogers, 211 Ga. App. 343, 347 (1993). This means anything about Plaintiff which relates to that issue can be made public by anyone with relevant knowledge, and the person making the disclosure is protected by the First Amendment as long as the boundaries established by the law of defamation are not

crossed. Plaintiff's allegation the man she considered a victim of unfairness lost touch with reality, and had sexual relations with her under conditions when her consent was questionable, is a matter subject to disclosure under the protection afforded by the First Amendment.

To recover for defamation, a person who is a limited public figure has the burden of producing evidence of actual malice, by clear and convincing evidence, and this rule applies to summary judgment proceedings. Stange v. Cox Enterprises, 211 Ga. App. 731, 733 (1994). Plaintiff's contention actual malice is shown by Mr. Booth's assertion of a consensual sexual relationship between her and Mr. Brown in Rythm Oil is negated by what Plaintiff herself told him. The other alleged ground for actual malice on the part of Mr. Booth, Plaintiff's potential cooperation with law enforcement authorities in an investigation involving one of his friends, is without merit for two reasons. Plaintiff has not included evidence in the record which affirmatively shows the alleged threats of retaliation by Mr. Booth pre-dated the first (British) publication of Rythm Oil. She also has not provided evidence that she did, in fact, engage in the conduct which was supposed to result in

efforts by Mr. Booth to discredit her. Therefore, notwithstanding the Court's finding the publication at issue was not false as a matter of law, Plaintiff may not recover damages for defamation on the additional ground she has not meet her burden of producing clear and convincing evidence of actual malice on the part of either Defendant. The Court finds Plaintiff cannot recover against either Defendant under Count VIII of her Complaint.

Plaintiff seeks to recover damages from Defendant Random House on the ground it breached an obligation to verify that Mr. Booth was authorized to publish disclosures about Plaintiff's private life. A publisher is not chargeable with actual malice for failure to make an independent investigation of a literary work. Stange v. Cox Enterprises, supra at 783. As shown by the affidavit of Erroll McDonald, Random House had no actual knowledge of any alleged collaborative relationship between Plaintiff and Mr. Booth. There is no basis for recovery by Plaintiff against Defendant Random House on the legal theory alleged in Count VII of her Complaint.

Counts III, IV, and V of the Complaint allege invasion of Plaintiff's right of privacy. The concept of invasion of privacy embraces four

distinct torts: (1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness. Cabaniss v. Hipsley, 114 Ga. App. 367, 370 (1966). As shown above, what was revealed about Plaintiff was information she gave to Defendant Booth, a journalist. According to Plaintiff, her intention in making that disclosure was to get some of the information she gave to Mr. Booth published in a magazine with nationwide circulation. She entered into a contract with the publisher of Penthouse Magazine to reveal the same facts, although the contract was dissolved by mutual consent. Plaintiff asserts her privacy was violated because Defendant Booth's publication went beyond what she expected him to reveal about her relationship with James Brown.

While a party can allege multiple legal theories for recovery, they may allege only one version of the relevant facts. Plaintiff has elected to pursue a claim based on an affirmative contractual right to share in the proceeds from the disclosure of her relationship with James Brown. To support this claim, she has acknowledged by affidavit and in her

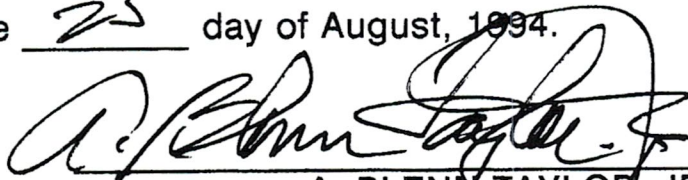
deposition testimony that she did reveal private facts about their relationship to a person known to her as a professional writer engaged in a project involving Mr. Brown. Under these circumstances, the release of facts about what Plaintiff described as her "life with James Brown" could support a claim for breach of the alleged contract. But a release of what Plaintiff herself sought to have made public cannot support claims for invasion of privacy, since Plaintiff's right of privacy was waived by her entry into a contract for disclosure of her relationship with Mr. Brown. See McQueen v. Wilson, 117 Ga. App. 488, 490, rev'd on other grounds 224 Ga. 420 (1968). The Court thus concludes that Plaintiff is not entitled to recover under Counts III, IV, and V of the Complaint.

Defendant Booth contends Plaintiff cannot recover for breach of contract under Counts I, II, and VI of the Complaint, because the contract, which was not to be performed within a year, was subject to the Statute of Frauds, O.C.G.A. § 13-5-30(5). Under O.C.G.A. § 13-5-31, performance by one party to an oral contract takes the case out of the Statute. The Court finds jury questions to be presented on the issues of whether there was an oral contract between Plaintiff and Defendant

Booth. If there was such a contract, the jury will determine whether Plaintiff performed her obligations thereunder, so as to avoid the bar of the Statute of Frauds.

Summary judgment is GRANTED to Defendant Random House on all counts, and this action is dismissed as to that Defendant. Summary judgment is GRANTED to Defendant Booth on Counts III, IV, V, VII, and VIII of the Complaint, and DENIED as to Counts I, II, and VI of the Complaint.

SO ORDERED, this the 25th day of August, 1994.


A. BLENN TAYLOR, JR.,
CHIEF JUDGE, SUPERIOR COURTS
BRUNSWICK JUDICIAL CIRCUIT