

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

A.D.,)
)
 Plaintiff,)
)
 v.) No. 21-0951-I
)
 DIVINE OGBONNAYA and)
 KIONTE GRAY,)
)
 Defendants.)

No. 21-0951-I

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MEMORANDUM AND FINAL JUDGMENT

This matter came before the Court on January 25, 2022, for an evidentiary hearing to determine Plaintiff A.D.’s damages following entry of a default judgment against Defendant Kionte Gray. Participating in the hearing were Attorney Daniel Horwitz, representing Plaintiff, and Defendant Kionte Gray, representing himself.

I. BACKGROUND

Plaintiff filed this lawsuit on September 22, 2021, and was granted leave to proceed under a pseudonym. Plaintiff alleges she and Defendant Kionte Gray had a romantic relationship a few years ago, which ended. During their relationship, Mr. Gray recorded sexually explicit videos of Plaintiff and Mr. Gray. She alleges Defendant Gray and his subsequent girlfriend, Defendant Divine Ogbonnaya, invaded her privacy and caused her emotional distress by sending to third parties, without her permission, the sexually explicit videos of Plaintiff and Defendant Gray in August or September 2021.

At the time of filing her complaint, Plaintiff sought a restraining order against both defendants, which the Court granted, restraining and prohibiting them “from publishing or disseminating to any person or entity any sexually explicit videos, photographs, or other images

of Plaintiff. *See* Sept. 22, 2021 Order. On October 6, 2021, Plaintiff and Ms. Ogbannaya entered into an Agreed Order and Consent Judgment. *See* Oct. 6, 2021 Order. Ms. Ogbonnaya stipulated to her liability and consented to entry of a monetary judgment of \$1,500.00 and a permanent injunction, prohibiting her from publishing or disseminating sexually explicit videos, images, or photographs of Plaintiff. *Id.* Ms. Ogbonnaya was required to provide an affidavit under the terms of the consent judgment. She did so, stating she had received no more than three sexually explicit videos of Plaintiff from Mr. Gray, who sent them to her via text message on August 29, 2021, and admitted sending those videos to five other individuals and provided their names. She also confirmed that she has destroyed all of the explicit videos in her possession.

Plaintiff pursued a temporary injunction only against Mr. Gray. A hearing was conducted on October 5, 2021, based on the verified complaint and affidavits. Mr. Gray appeared with his mother for the hearing, representing himself but stated he intended to retain an attorney. Mr. Gray did not oppose Plaintiff's request to convert the restraining order into a temporary injunction during the pendency of the lawsuit, which the Court issued on October 25, 2021. The temporary injunction prohibited Mr. Gray from "publishing or disseminating to any person or entity, or directing any other person or entity to publish or disseminate, any sexually explicit videos, photographs, or images of Plaintiff." *See* Oct. 25, 2021 Order.

Plaintiff later moved for a default judgment against Mr. Gray for failure to answer the verified complaint. Mr. Gray, who had not retained an attorney, did not file a response in opposition to the motion.¹ On November 18, 2021, the Court entered a default judgment against

¹ Self-represented litigants are entitled for fair and equal treatment by the courts and are given certain leeway with their pleadings and briefs, taking into account their lack of legal training and unfamiliarity with the legal system. They are expected, however, to comply with the same substantive and procedural rules that represented parties must observe. *See Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003) (citations omitted).

Mr. Gray on the issue of his liability to Plaintiff for her claims of invasion of privacy and intentional infliction of emotional distress. *See* Nov. 18, 2021 Order. The Court also permanently enjoined Mr. Gray, prohibiting him from “publishing or disseminating to any person or entity, or directing any other person or entity to publish or disseminate, any sexually explicit videos, photographs, or images of the Plaintiff.” *Id.* The Court set a damages hearing for January 10, 2022, which was rescheduled for January 25, 2022.²

II. FINDINGS OF FACT

At the damages hearing on January 25, 2022, Plaintiff, her mother, and Mr. Gray testified. One exhibit, consisting of a single printed page of a text message, was introduced as Trial Exhibit 1. The Court makes the following findings of fact as required under Rule 52.01 of the Tennessee Rules of Civil Procedure.

Plaintiff is the former girlfriend of Mr. Gray. During their relationship, Mr. Gray recorded videos of their sexually intimate activity. Plaintiff was aware of the recording of the videos. Mr. Gray provided Plaintiff with a copy of the videos. Plaintiff and Mr. Gray’s relationship later ended. Plaintiff did not give permission for Mr. Gray to share the videos with others.

Mr. Gray subsequently shared one or more of videos of Plaintiff with his then current girlfriend, Ms. Ogonnaya on August 29, 2021. Ms. Ogonnaya, in turn, shared the videos she received from Mr. Gray with five other individuals. One of the sexually explicit videos was posted on social media and sent to one or more of Plaintiff’s family members.

When Plaintiff became aware that the videos had been sent to others, she was embarrassed, humiliated, and felt betrayed by Mr. Gray for having shared the videos without her permission.

² On the morning of January 10, 2022, the Court received a message from Mr. Gray that his mother was ill and he was without transportation to travel to Nashville from Murfreesboro, Tennessee to attend the hearing. The Court continued the evidentiary hearing, over the objection of Plaintiff’s counsel, and reset the hearing for January 25, 2022.

Plaintiff has seen a therapist who charges \$100 per hour. Plaintiff plans to continue with her therapist for about 15 additional sessions. Plaintiff has missed work on two occasions for court hearings.

Plaintiff has not received any settlement offer from Mr. Gray. She believes he should be punished for his conduct.

Plaintiff's family is suffering from additional trauma caused by the murder of her brother in April 2018. Plaintiff's mother described her daughter as hurt mentally and emotionally by Mr. Gray, in addition to suffering from pre-existing trauma caused by the murder of her brother. Plaintiff and her brother were two years apart and were close. Plaintiff's mother was scared her daughter would hurt herself and encouraged her to get help. She described Plaintiff as embarrassed in front of her family and friends.

At the damages hearing, Mr. Gray denied posting the videos on social media and denied sending the videos to Plaintiff's family. He believes Ms. Ogbonnaya sent the videos. He would never have sent those videos to Plaintiff's family and never wanted to hurt her or her family. Mr. Gray apologized to Plaintiff several times during the hearing.

Mr. Gray acknowledged he and Plaintiff were in the videos, and Plaintiff had a copy of the videos that he had sent to her at the time.

Mr. Gray admitted he later sent the videos to Ms. Ogbonnaya by text message because she asked him to. He described his decision to send the videos to Ms. Ogbonnaya as a stupid choice, a mistake, and he did so without thinking. He was uncertain how many videos were made, but admitted there were less than five. Mr. Gray deleted the videos and text messages with Ms. Ogbonnaya from his devices.

After the videos were published, Mr. Gray admitted exchanging text messages with Ms. Ogbannyo in September 2021. In an excerpt of those messages, he stated he did not have anything

to say to Plaintiff [or her mother], did not “have s**t to say to Plaintiff,” and had “done nothing to her at all.” Trial Ex. 1.

Mr. Gray admitted he did not previously tell Plaintiff he was sorry because he was under a restraining order and did not think he could talk to her. He admitted he did not contact Plaintiff’s attorney and did not see the emails sent to him by Plaintiff’s attorney during the lawsuit. He admitted he did not offer to settle with Plaintiff.

Mr. Gray has been out of work since early January and has just gone back to work. He did not have money to pay for transportation to the courthouse on January 10, 2022, and his driver’s license is suspended. A friend of Mr. Gray brought him to the courthouse on January 25, 2022.

III. ANALYSIS

The issues to be determined are the amount of compensatory damages and the amount of punitive damages, if any, to be awarded to Plaintiff. Neither Plaintiff nor Mr. Gray suggested an appropriate amount of damages to be awarded.

A. Compensatory Damages.

Invasion of Privacy. The tort of invasion of privacy is a violation of the right to be let alone and be free from unwarranted publicity. *Langford v. Vanderbilt Univ.*, 287 S.W.2d 32, 38 (Tenn. 1956). Relying on the *Restatement (First) of Torts* (1939), the Tennessee Supreme Court has recognized:

A person who unreasonably and seriously interferes with another’s interest in not having his affairs known to others or his likeness exhibited to the public is liable to the other Liability exists only if the defendant’s conduct was such that he should have realized that it would be offensive to persons of ordinary sensibilities. It is only where the intrusion has gone beyond the limits of decency that liability accrues.

Marin v. Senator, Inc., 418 S.W.2d 660, 663 (citation omitted). A party who has established invasion of her privacy is entitled to recover damages for: (i) the harm to her interest in privacy resulting from the invasion; (ii) her mental distress proved to have been suffered if it is of a kind

that normally results from such invasion; and (iii) special damage of which the invasion is a legal cause. *West v. Media General Coverage, Inc.* 53 S.W.3d 640, 68 (Tenn. 2001) (citing *Restatement (Second) of Torts* (1977)).

Intentional Infliction of Emotional Distress. The elements of the tort of intentional infliction of emotional distress are: (i) intentional or reckless conduct; (ii) the conduct is so outrageous that it is not tolerated by a civilized society; and (iii) the conduct resulted in serious mental injury. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). Tennessee does not require expert medical proof of a serious mental injury for a plaintiff to maintain a claim for intentional infliction of emotional distress, although it may be helpful. *Miller v. Willbanks*, 8 S.W.3d 607, 616 (Tenn. 1999). Defendant's conduct, however, must be "extreme and outrageous"; it is not enough that defendant acted with an intent that is tortious, criminal, or malicious. *Lane v. Becker*, 334 S.W.3d 756, 763 (Tenn. 2010) (citations omitted).

Plaintiff seeks compensatory damages for loss of income, loss of personal property, mental anguish, and emotional distress. Plaintiff testified she feels broken, humiliated, and in pain as a result of the posting of the videos. She has seen a therapist and plans to continue those therapy sessions, but no medical bills or treatment plans were offered into evidence. Plaintiff testified about having given up "personal property," but gave no specifics. She states she has missed work, but offered no evidence establishing the amount of lost wages. Plaintiff and her mother acknowledge that they are suffering from pre-existing mental and emotional trauma involving the murder of her brother in April 2018, and his death has deeply affected her. Plaintiff's mother described Plaintiff as embarrassed in front of her family and friends, was worried Plaintiff might hurt herself, and encouraged her to get help. Plaintiff has returned to school and work. Plaintiff's mother does not know who has the videos.

There was no proof of any actual economic damages, such as medical expenses, lost wages, or loss of property. Plaintiff was aware of the videos and had copies of the videos when made. Mr. Gray later sent copies of the videos to Ms. Ogbonnaya, who in turn republished the videos to five other persons. Ms. Ogbonnays consented to a monetary judgment of \$1,500.00. The Court notes it is difficult to differentiate between the mental anguish and emotional distress Plaintiff has suffered as a result of Mr. Gray's conduct in this case from the pre-existing mental and emotional trauma and distress Plaintiff and her family have suffered as a result of her brother's murder.

Defendant did not contest liability and allowed a default judgment to be entered against him on Plaintiff's claims of invasion of privacy and intentional infliction of emotional distress. He appeared for and testified at the damages hearing. He denied sending the videos to Plaintiff's family or to anyone other than Ms. Ogbonnaya. He expressed remorse and stated he never intended to hurt Plaintiff. There was no proof of wider dissemination of the videos.

Based on the testimony at the damages hearing and the foregoing analysis, the Court finds, in its discretion as the trier of fact, that Plaintiff should be awarded compensatory damages in the amount of \$5,000.00.

B. Punitive Damages.

Plaintiff also seeks punitive damages. Where there is clear and convincing proof that a defendant's actions were "malicious, intentional, fraudulent, or reckless," a plaintiff may be entitled to punitive damages. Tenn. Code Ann. § 29-39-104(a)(1); *Hodges v. Toof*, 833 S.W.2d 896, 901 (Tenn. 1992). While compensatory damages serve to "make the plaintiff whole," punitive damages are meant "to punish the wrongdoer" and to deter similar bad acts in the future. Tenn. Code Ann. § 29-39-104(a)(4). The punitive damages statute does not, however, create a right to an award. *Id.*, § 29-39-104(b). A punitive damage award cannot exceed twice the amount of compensatory damages, or \$500,000, whichever is greater, subject to certain exceptions not

applicable here. *Id.*, § 29-39-104(a)(5); §29-39-104(a)(7). “Punitive damages are to be awarded only in the most egregious of cases” and the decision to award punitive damages is within the trier of fact’s discretion. *Hodges*, 833 S.W.2d at 901-02; *see also Huckeby v. Spangler*, 563 S.W.2d 555, 558 (Tenn. 1978) (citations omitted) (punitive damages “not recoverable as a matter of right”).

“Intentional” conduct reveals “the person’s conscious objective or desire to engage in the conduct or cause the result.” *Hodges*, 833 S.W.2d at 901 (citation omitted). “Fraudulent” conduct includes the misrepresentation of existing material facts in order to mislead or obtain an undue advantage, coupled with injury to another who reasonably relies on the misrepresentation. *Id.* (citation omitted). “Malicious” conduct is “motivated by ill will, hatred, or personal spite.” *Id.* And “recklessness” involves awareness, but conscious disregard, of substantial and unjustifiable risks.” *Id.* (citation omitted).

The Court finds based on the facts of this case that punitive damages are warranted based on the default judgment entered against Mr. Gray establishing his liability for invasion of privacy and intentional infliction of emotional distress. Thus, the intentional and reckless nature of Mr. Gray’s conduct is admitted. The factors to be considered in making a punitive damages award and the Court’s analysis as to each factor follows:

First, defendant’s financial condition and net worth. Plaintiff offered no proof as to this factor. Mr. Gray has been unemployed since early January and had just gone back to work. He was not asked about the nature of his employment or rate of pay. He did not have money to pay for his transportation to court earlier in January. He depends on his mother and friends for transportation. The Court finds Mr. Gray has limited financial resources.

Second, the nature and reprehensibility the defendant’s wrongdoing. In making this determination, the trier of fact is to consider (1) whether plaintiff’s harm was physical or economic;

(2) whether the defendant demonstrated “indifference to or reckless disregard of” plaintiff’s health or safety; (3) whether plaintiff was financially vulnerable; (4) whether the defendant’s misconduct “involved repeated actions or was an isolated incident;” and (5) whether the harm resulted from “intentional malice, trickery or deceit, or mere accident.” *McLemore ex rel. McLemore v. Elizabethton Med. Investors, Ltd. P’ship*, 389 S.W.3d 764, 785 (Tenn. Ct. App. 2012) (citing *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003)).

Plaintiff knew Mr. Gray recorded sexually explicit videos of them, and she had copies. She did not, however, give him permission to share those videos with others. Mr. Gray, through the default judgment, admits posting one video on social media, and admits sending the videos to Ms. Ogonnaya. At the hearing, he denied sending videos to Plaintiff’s family and did not intend to hurt Plaintiff or her family. By sending the videos to Ms. Ogonnaya, Mr. Gray embarrassed and hurt Plaintiff. Mr. Gray admits making a bad decision. The Court finds his misconduct was intentional and reckless for purposes of punitive damages, but was not repeated.

Third, the impact of defendant’s conduct on plaintiff. Plaintiff testified that she is humiliated and hurt as a result of the publication of the videos, and feels betrayed by Mr. Gray. Plaintiff has seen a therapist and plans to continue those sessions. Plaintiff’s family also is suffering from trauma involving the earlier murder of her brother, which has deeply affected her. The Court cannot differentiate between the impact of Mr. Gray’s conduct on Plaintiff from the pre-existing trauma caused by her brother’s murder.

Fourth, the relationship of the parties. Plaintiff and Mr. Gray had a prior romantic relationship, which ended before the events of this lawsuit.

Fifth, the defendant’s awareness of the amount of harm being caused and the motivation in causing such harm. Defendant is aware of the harm he has caused, and he testified several times that he was sorry and did not intend to hurt Plaintiff or her family. He admitted making a bad

decision to send the video to Ms. Ogbonnaya. He is embarrassed to know that the video was sent to Plaintiff's family. Mr. Gray admitted both he and Plaintiff were in the videos, and he had sent them to Plaintiff. Mr. Gray later sent the videos, without Plaintiff's permission, to Ms. Ogbonnaya when she asked him to do so. After the videos were published, Ms. Ogbonnaya and Mr. Gray exchanged text messages, in which he initially said had done nothing and had nothing to say to Plaintiff (Trial Ex. 1). He admitted and apologized for his conduct.

Sixth, the duration of the defendant's misconduct and attempts to conceal it. Mr. Gray admitted his misconduct in sending the videos to Ms. Ogbonnaya. He did not repeat the misconduct; however, once digital content is shared, it can easily be republished and is difficult to prevent further dissemination. After sending the videos to Ms. Ogbonnaya, he deleted the videos and his text messages with Ms. Ogbonnaya.

Seventh, the expenses borne by plaintiff in attempts to recover the losses. Plaintiff offered no proof as to this factor.

Eighth, the defendant's profit from the actions and, if so, should any punitive award be in excess of that profit to deter similar future behavior. Plaintiff offered no proof as to this factor.

Ninth, any previous punitive damage awards against the defendant based on the same wrongful conduct and, if so, the extent of such award. Plaintiff offered no proof as to this factor.

Tenth, any remedial action taken by defendant or attempt to make amends by offering a prompt and fair settlement for actual harm caused. Mr. Gray did not offer to settle with Plaintiff. Mr. Gray apologized during the hearing, and explained he did not do so before the hearing because he was subject to a restraining order and temporary injunction and believed he was not allowed to contact Plaintiff.

Finally, other circumstances that bear on determining a proper amount of punitive damages. Plaintiff offered no proof as to this factor.

Based on the foregoing factors, the Court finds that punitive damages are warranted based on the intentional and reckless misconduct of Mr. Gray. The Court finds, in its discretion as the trier of fact, and based on the limited proof offered that punitive damages in the amount of \$5,000.000 should be awarded.

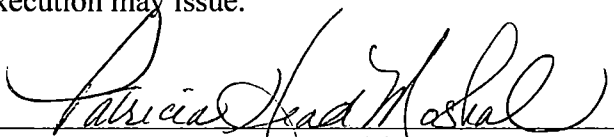
IV. CONCLUSION

It is, therefore, ORDERED, ADJUDGED, and DECREED that Plaintiff is AWARDED compensatory damages of \$5,000.00 and punitive damages in the amount of \$5,000.00, for a total damages award of \$10,000.00 against Defendant Kionte Gray.

It is further ORDERED, ADJUDGED, and DECREED that Defendant Kionte Gray is PERMANENTLY ENJOINED and prohibited from publishing or disseminating to any person or entity, or directing any other person or entity to publish or disseminate, any sexually explicit videos, photographs, or images of Plaintiff.

It is further ORDERED, ADJUDGED, and DECREED that the Clerk & Master is directed to enter final judgment in this matter pursuant to Rule 58 of the Tennessee Rules of Civil Procedure.

It is further ORDERED, ADJUDGED, and DECREED that the costs of this cause are TAXED to Defendant Kionte Gray, for which execution may issue.



PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class, postage pre-paid, to the parties or their counsel named below.

Daniel Horwitz
Lindsay E. Smith
HORWITZ LAW, PLLC
4016 Westlawn Drive
Nashville, TN 37209
daniel@horwitz.law
lindsay@horwitz.law

Mark T. Freeman
FREEMAN & FUSON
2126 21ST Avenue, South
Nashville, TN 37212
mark@freemanfuson.com

Mr. Kionte Gray
4124 Empire Maker Way
Murfreesboro, TN 37128
graykionte@gmail.com
graykionte01@icloud.com



Deputy Clerk & Master

4/18/22

Date