

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
DOCKET NO. 1477CV00487

ROBERT M.A. NADEAU,)
)
 Plaintiff)
 v.)
)
 NANCY MADORE PRATT,)
)
 Defendant)

**PLAINTIFF’S MOTION TO STRIKE
PORTIONS OF THE DEFENDANT’S
STATEMENT OF CLAIMS TO BE TRIED**

NOW COMES the Plaintiff, Robert M.A. Nadeau, pro se, with the concurrence of his co-counsel, and objects to and moves to strike the Defendant’s Statement of Claims to Be Tried¹. In support of this motion the Plaintiff states as follows:

1. As the Court is aware, the Plaintiff’s claims awaiting trial involve three counts—invasion of privacy (Count II), defamation (Count III] and interference with advantageous relations (Count IV)². The areas of testimony and evidence that the Plaintiff intends to submit at trial consist of two discreet issues addressed only in two stand-alone portions of [Nancy Madore’s] book and related internet promotional publications purportedly about the Plaintiff, namely:

a. Whether [Madore] truthfully published the contents, including diagnoses and description of the Plaintiff's 2007 Southern Maine Medical Center ("SMMC") records and whether she had and has the Plaintiff’s permission to do so; and,

¹ The Defendant's statement of claims to be tried is most recently styled as “Defendant’s Corrected Statement of Claim to Be Tried.” [DE 97].

² The Court has previously ruled that Count I of the Complaint seeking injunctive relief on specific performance grounds may not be litigated further at the trial court level as against the Defendant [Madore] [DE 14 & 53].

b. Whether [Madore] truthfully reported the facts concerning the Plaintiff's competence as an attorney in connection with her description of the Plaintiff's handling of the legal representation of [Madore's] brother, (referred to in [Madore's] publications concerning the Plaintiff as "Daddy").

2. A plain reading of the Defendant's Corrected Statement of Claims to Be Tried clearly reveals that it is her intent to offer into or allege in evidence matters beyond the above-described, limited scope of the Plaintiffs claims. In effect, therefore, she seeks to burden the jury and the Court with substantial alleged evidence that will not only be irrelevant but also, to the extent that it might even be deemed to remotely have any probative value, will be substantially outweighed by the danger of unfair prejudice, confusion of the limited issues before the jury, misleading the jury, undue delay, or wasting time, any one or more of those circumstances being in contravention of Massachusetts Guide to Evidence ("MGE") §§ 401 and 403, if not also excludable under §§ 602 (lack of personal knowledge) and 801 (hearsay). She should not be permitted to proceed in such a manner.

3. Despite the limited scope of the case, [Madore], in her proposed "Corrected Statement of Claims to Be Tried", forecasts her intention to drift into her perspective and alleged facts regarding other matters concerning the Plaintiff not responsive to the Plaintiff's claims regarding those aforementioned two categories of alleged defamatory and invasive publications. In effect, she intends to do what MGE §§401 and 403, if not also 602, 801 and other evidentiary provisions, are intended to avoid.

4. For example, as to Count II (invasion of privacy), the Court is in independent possession of the Plaintiffs SMMC records [Madore] claims she reviewed in

2007 and thereafter relied upon for support of her publications that the Plaintiff was diagnosed as a "narcissist", "sociopath", "psychopath", and more. The Court obtained those very records from SMMC pursuant to [Madore's] own request, utilizing a release authorization form [Madore], herself. drafted and required the Plaintiff to sign, to directly obtain those records, certified. by SMMC, expressly for the purpose of enabling [Madore] to prove the truth of those publications.

5. However, now that even [Madore] knows, from her review of the records the Court received from SMMC, that the records do not in fact support her *per se* defamatory published claims of "truth" regarding the alleged contents of those records, she has decided to take different course. Specifically, she forecasts in her "Corrected Statement" that she proposes to have the Court read to the jury that she intends to offer alleged evidence regarding other matters not responsive to the question of whether the Plaintiff was indeed diagnosed as she claimed in her publications and whether she had and has the Plaintiff's permission to publish the alleged diagnoses and related SMMC information anyway. This is the kind of stuff that MGE §§401, 403, 602 and 801, and probably other evidentiary rules and basic protocols regarding the presentation of evidence, are intended to avoid.³

6. Specifically, despite the Court's possession of a certified copy of the SMMC records in question now clearly disproving [Madore's] published assertions, despite failing to produce any alleged different copy of the SMMC records that could somehow

³ Pratt does not deny, either, the truth of her alleged co-author, [Maryann's], sworn affidavit filed in this proceeding, wherein [Maryann], herself, confirmed that the SMMC records and the information contained therein were ordered by a York (Maine) District Court judge in the relevant 2007 proceeding, in [Madore's] presence and with [Madore's] knowledge, to be sealed and thereby not published in any manner without the Plaintiff's consent—a fact also confirmed by that Court's very order containing the explicit "sealing" language, a copy of which is already in evidence in this case and not denied by [Madore].

discredit those certified records and instead corroborate the “truth” of [Madore’s] published assertions regarding the Plaintiff’s alleged diagnose, and despite failing identify any justification for why [Madore] has published (and why she apparently continues to falsely publish) about the alleged diagnoses without the Plaintiff’s past, or at least ongoing, permission concerning the Plaintiff, [Madore] clearly indicates that she would now like to digress into arguing that her publications about the Plaintiff’s diagnoses, whether false or not, should nevertheless be deemed to be outside the scope of the Plaintiff’s privacy rights anyway because in her view they are somehow:

- a. “...relevant to the behavior that the Defendant is describing in The Book” –even though the allegations contained in all other chapters of [Madore’s] book and in her related internet publications (with the exception of the chapter involving the other issue being tried, namely, the issue concerning the Plaintiff’s legal representation of [Madore’s] brother in a lawsuit) are not being litigated by the Plaintiff;
- b. “...what’s more, this behavior relates directly to the Plaintiff’s positions as an elected official, a probate judge, an attorney offering his services to the public and an officer of the court—and takes place in public courtrooms where he is violating the rules...with impunity!”⁴; and,
- c. “...A public figure *behaving this way* in our public courtrooms is a matter of public concern. But this Plaintiff is also *using his public position* as an elected official and judge to abuse the system and terrorize people. In fact, the judicial committee in Maine has just cited him with this very thing!

⁴ While assertions such as this, and the alleged evidence [Madore] seems to wish to present, would also be proper subjects of a pretrial motion *in limine*, the fact is that [Madore] fails in her broad-brush statement she would like the jury to hear and to be prejudiced by, to acknowledge that the very SMMC records that she cites are in the Court’s possession and do not support her diagnostic claims. The issue before the jury is simply whether the records she cites do indeed contain the specific diagnoses and descriptions she attributes to them and whether she had the past and continuing right to publish them even if her diagnostic assertions had been so documented and accurate. Aside, also, from the issues of how some type of allegedly diagnosed “behavior” of a private medical patient “relates” to his separate avocational work, whether as a private attorney or as a judge, and in any as-yet unspecified (and certainly not identified in [Madore’s] publications) “public courtroom”, the issue is not [Madore’s] perceptions about the Plaintiff’s “behavior” from her perspective but, rather, whether the records she specifically claims in her publications indeed contained the diagnoses she asserted and whether she had any permission and the continuing permission of the Plaintiff to publish them in violation of his privacy.

Therefore, when taken in context, it is clear that The Book absolutely does not violate the Plaintiff's privacy."⁵

7. Assertions and tangents such as those cited above will not enable a jury to determine whether it is more probable than not that the Plaintiff's SMMC records contained the diagnoses and other information that [Madore] has published as "truth" in her book and they will, therefore, be of no assistance in enabling the jury to determine whether those diagnoses indeed are contained in those records, much less that [Madore] had the Plaintiff's past and continuing permission to publish them as MGE §§401 contemplates. Indeed, also, such assertions or alleged "evidence" not speaking directly to those issues has very insubstantial—in fact, no—probative value to enable the jury to decide what the contents of those records were and to decide the issue of permission. On the contrary, therefore, [Madore's] above-quoted, proposed "Corrected Statement" assertions regarding Count II reveal a very obvious and inappropriate danger of unfair prejudice, confusion of issues, misleading of the jury, undue delay or waste of time that MGE §§401 is intended to prevent.

8. The same is so with respect to portions of [Madore's] proposed "Corrected Statement" concerning the Plaintiff's Count III (Defamation). Rather than focusing on the two above-specified issues for the jury to adjudicate, [Madore], while at least confirming

⁵ Italics are supplied by the undersigned Plaintiff for emphasis. Again, these quoted excerpts from [Madore's] proposed "Corrected Statement of Claims" have nothing to do with whether her publications regarding the Plaintiff's alleged SMMC diagnoses were accurate and were, or even remain, authorized by the Plaintiff. The Plaintiff is not litigating [Madore's] perceptions about "behaving this way" (whatever "this way" is), much less in any unspecified "public courtrooms". Further and again, the Plaintiff's claims involve two discreet aspects of [Madore's] publications, namely, his alleged SMMC diagnoses and the quality of his legal representation of [Madore's] brother, NOT [Madore's] perceptions about "behavior" that may or may not have been addressed in other parts of her publications and NOT about any alleged post-publication matters she now seeks to allege that are in no way addressed in or could possibly have occurred prior to the appearance of her publications at issue.

that her criticisms relate to the Plaintiff as an attorney, forecasts her intention to digress from those issues and to instead address a host of other alleged “facts”⁶ not germane to them. The introduction of such evidence would also clearly violate the purposes of Evidence §§410, 403 and probably also 602 and 801, and should not be permitted by any reference of her proposed statement to the jury.

9. For the same reasons described above, the portion of [Madore’s] “Corrected Statement” in response to Count IV (Interference with Advantageous Relationships) of the Plaintiff’s lawsuit, wherein she asserts that “The Plaintiff is not entitled to recourse for consequences he may suffer because of his wrongful behavior”, should not be read to the jury. This is so because it, too, sidestep the focus of the Plaintiff’s litigation, which is on two discreet issues as identified above. The focus of the case should be directed to those two issue accordingly, not to a protracted rant of a detour into [Madore’s] perceptions about alleged “wrongful behavior” irrelevant to those issues.

WHEREFORE, the Plaintiff respectfully requests that the above-referenced portion of [Madore’s] “Corrected Statement of Claims to be Tried” should be stricken

⁶ [Madore] indicates in her “Corrected Statement” that which is not in dispute for purpose of this litigation and which is not relevant to the two areas of inquiry for the jury. She therefore asks the Court to read to the jury her position statement that “the overall theme of the book is that the Plaintiff is unethical.” While [Madore] is entitled to her opinion on that score, her opinion on that issue and her alleged supporting evidence or her alleged “documented facts” concerning alleged matters not involving [Madore’s] brother such as “...the Plaintiff regularly violating the attorney client privilege”, “...attempting to use information he received from a client to try and gain an advantage against (a) client...”, “...contacting the opposing party in a former client’s case and offering to assist that opposing party in the same matter he was representing that client in...”, “...offering \$31,000.00 to a witness who was testifying against him... while strongly urging her not to tell her attorneys about it...”, “...intercepting tape recordings of private conversations of a former client and giving that information to men he believed she might be dating, and using \$70,000.00 in client funds to pay his law firm expenses...” even if true, are not responsive to the simple question before the jury regarding whether [Madore’s] publications regarding the Plaintiff’s SMMC diagnose are true and regarding the quality of the Plaintiff’s legal representation of [Madore’s] brother was marked by material negligence as she asserts in her book. None of the things quoted above that she asks the Court to read to the jury speak to either of those two simple issues.

prior to reading the balance of her statement to the jury, and that such other and further relief as is just shall be granted.

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