

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

RONALD FEDERICI }
Plaintiff, } Civil No. 10-1418
VS. } March 4, 2011
MONICA PIGNOTTI, et al., }
Defendants. }

REPORTER'S TRANSCRIPT

MOTIONS HEARING

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: DOMINGO J. RIVERA, ESQ.

FOR THE DEFENDANT: COCHRAN & OWEN
BY: KRISTEN ZECH, ESQ.

CARR MALONEY PC
BY: SARAH BAGLEY, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR
U.S. District Court
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3 THE CLERK: 1:10 civil 1418, Ronald F.
4 Federici versus Monica Pignotti, et al.

5 Would counsel please come forward and state
6 your appearances for the record.

7 MR. RIVERA: Good morning, Your Honor.
8 Domingo Rivera for plaintiff, Ronald Federici.

9 THE COURT: Good morning.

10 MS. BAGLEY: Good morning, Your Honor. Sarah
11 Bagley. I'm here on behalf of ACT, Charly Miller, Larry
12 Sarner and Linda Rosa.

13 THE COURT: Good afternoon. It's now 12:01.

14 MS. ZECH: Good afternoon, Your Honor.
15 Kristen Zech of Cochran and Owen. I'm here on behalf of
16 defendants. Jean Mercer and Monica Pignotti.

17 THE COURT: Pronounce your name one more time
18 for me.

19 MS. ZECH: Kristen Zech.

20 | THE COURT: Z-E-C-K?

21 MS. ZECH: Z-E-C-H, Your Honor.

THE COURT: Thank you. I'm ready.

23 MS. BAGLEY: Your Honor, good morning or good
24 afternoon as it is now.

As I stated, I'm here of behalf of ACT,

1 Mr. Sarner and Mrs. Rosa and Miller.

2 This case is, from our position baseless, but
3 more importantly, it's in the wrong place. These
4 defendants have zero contact with this jurisdiction.

5 THE COURT: So what is the issue?

6 MS. BAGLEY: There is no personal
7 jurisdiction over those defendants in this court, and
8 additionally service has not been properly made because
9 the Long-Arm Statute is not satisfied, and therefore the
10 method of service attempted by the defendant is
11 deficient.

12 There is simply no contact to support a tort
13 being committed by my clients within the jurisdiction.

14 THE COURT: This is a case involving postings
15 on the Internet of information allegedly about
16 Mr. Federici; is that right?

17 MS. BAGLEY: That's correct, Your Honor.

18 THE COURT: What acts, if any, demonstrate
19 purposeful availment of Virginia law by your clients?

20 MS. BAGLEY: Your Honor, I would argue that
21 there are no acts that demonstrate a purposeful
22 availment.

23 Their goal is actually to communicate on a
24 much broader level to anybody who has access and interest
25 in these issues. They do not advertise to, you know,

1 Virginia consumers. They do not seek out subscribers or
2 donations. They do not run advertisements for their
3 website in Virginia publications. They don't perform
4 interviews in the state.

5 THE COURT: Well, Virginia residents can
6 access the Internet and read those postings, can't they?

7 MS. BAGLEY: Certainly they can, but so could
8 anyone anywhere, which is the beauty, in a way, of the
9 Internet is that it's an easy way to access everyone.

10 And as the *Young* case that actually was not
11 cited in my brief, Your Honor, but was cited in the
12 co-defendant's brief, *Young v. New Haven*, it's a great
13 case on point --

14 THE COURT: Is that the case involving the
15 warden in Virginia?

16 MS. BAGLEY: It is, Your Honor.

17 THE COURT: And the newspapers in New Haven
18 publishing information about the jail?

19 MS. BAGLEY: They were. And they, obvious,
20 you know, had jurisdiction and published a paper in New
21 Haven. But their Internet postings, just like the
22 Washington Post or anything else, is accessible by people
23 anywhere.

24 It does not make people that read the Post in
25 California -- you know, suddenly the Washington Post has,

1 you know, personal jurisdiction out there in California.

2 The same thing is true here. Without
3 demonstrating that they reached out to Virginia, that
4 they had some particularized interest in this state and
5 tried to establish, you know, stream of communication or
6 a stream of commerce, there's nothing that targeted this
7 forum. Rather --

8 THE COURT: Well, what about that *Jones* case
9 in California where the person was writing an article
10 about this -- I guess it was an actress or actor who
11 lived in California, and the publication I think was the
12 National Inquirer or some other --

13 MS. BAGLEY: Well, they've been right about a
14 few things recently, so I wouldn't want to dismiss them.

15 But the significant difference here is, with
16 this particular case, with Dr. Federici --

17 THE COURT: There was no Internet back then,
18 was there?

19 MS. BAGLEY: Well, no. Maybe Al Gore can
20 better attest to that, but no.

21 THE COURT: All right. Well, that would be a
22 distinction between *Calder versus Jones* and this case and
23 that is in that case you're talking about a newspaper
24 publication in California about an actress in California
25 and it's distinct from somebody publishing something on

1 the Internet.

2 MS. BAGLEY: Exactly. I mean I think it's
3 significantly distinguished, well, for several reasons.

4 They're not targeting -- they knew that she
5 was there and that she lived there and that potentially
6 would impact her reputation there.

7 Conversely, my clients are trying to
8 communicate to anyone anywhere on these types of
9 information.

10 The fact that this one doctor of many who
11 they addressed happens to be located here does not mean
12 that he is their target. It does not mean that that's
13 their target audience. It means that's where he happens
14 to be. He could move to another state.

15 You know, I'm also not implying, Your Honor,
16 that my clients are somehow above the law simply because
17 they communicate via the Internet.

18 There is obviously personal jurisdiction that
19 exists over them where they act. So, you know, by
20 posting on the Internet, they're not placing themselves
21 outside of civil torts.

22 THE COURT: Well, can you tell from this
23 complaint what defendant did what?

24 MS. BAGLEY: Exactly. I mean this is exactly
25 the problem, Your Honor. How could --

1 THE COURT: What is the problem?

2 MS. BAGLEY: The problem is that we have, on
3 the jurisdictional point -- and to be clear, Your Honor,
4 we're here today, you know, primarily on the
5 jurisdictional point.

6 How can we even tell what acts would
7 theoretically underlie jurisdiction since repeatedly all
8 the complaint says is defendants, defendants. Defendants
9 admitted this act. Defendants said these items. You
10 need to point to at least one act per witness.

11 THE COURT: Well, I think that I understand
12 your position. Let me hear from plaintiff's counsel.

13 MS. ZECH: Excuse me, Your Honor, just a
14 moment. May I speak on behalf of the defendants
15 before --

16 THE COURT: Yes.

17 MS. ZECH: -- unless the Court --

18 THE COURT: Yes, you can. Come on up,
19 Ms. Zech.

20 MS. ZECH: Thank you, Your Honor. And I
21 apologize for interrupting.

22 THE COURT: Oh, you're not interrupting. I
23 think the issues are the same in both cases, aren't they?

24 MS. ZECH: They are, Your Honor. In this
25 particular case, defendants Mercer and Pignotti have also

1 raised 12(b)(6) defenses, and if the Court would like to
2 briefly address those, I will add those in.

3 THE COURT: Sure, go ahead.

4 MS. ZECH: Just to speak very briefly on the
5 jurisdictional issue as to my defendants, the defendants
6 that I'm here on behalf of, neither of these defendants
7 are advertising in Virginia. They are both academics.

8 Dr. Mercer is a professor emerita in New
9 Jersey. She does not teach in Virginia. She has never
10 taught in Virginia.

11 Dr. Pignotti resides in Florida. She does
12 not work in Virginia. She has never worked in Virginia.

13 Under the circumstances their only contact at
14 least as plaintiff alleges with Virginia is the fact that
15 there were Internet postings.

16 And I would commend the case of *Mealer versus*
17 *GMAC* which is out of the District Court of Arizona but is
18 very similar in this case for the Court's consideration.

19 And what the Court said there is if putting
20 something on the Internet, and we adopt that theory, then
21 somebody is subject to jurisdiction anywhere, and that
22 simply can't be the case.

23 Your Honor, and I'm happy to address any
24 concerns the Court may have as to the jurisdictional
25 issue without going further on that.

1 THE COURT: I do. Well, plaintiff says that
2 they sufficiently allege interference with contract
3 because two appointments were canceled by potential
4 patients who said they canceled them because of things
5 they read on the Internet.

6 Would that be sufficient to state a claim for
7 tortious interference with contract for business
8 expectancy?

9 MS. ZECH: Your Honor, we would submit that
10 it's not. First of all, I think there is some
11 inconsistency as to what's being alleged.

12 There are appointments noted for a very
13 limited period of time, I believe a week, and another
14 random appointment out there. We don't know whether
15 those were contracts that had been entered into, whether
16 they were expectancies.

17 It's just too vague, Your Honor, in our
18 perspective to actually assert a claim for tortious
19 interference with contract.

20 We have a total of \$300,000 and, you know,
21 I'm not expecting plaintiffs to itemize contract by
22 contract, but there's no name. There's no indication of
23 what's going on in connection with these tortious
24 interference claims. There is no specificity at the end
25 of the day.

1 THE COURT: Well, Dr. Pignotti also
2 challenges the allegations of libel, and I think I have
3 up here one of these exhibits where she is talking about
4 Dr. Federici contacting her via the school.

5 MS. ZECH: That's correct, Your Honor.

6 THE COURT: Does she appear to be responding
7 to something that she says that Mr. Federici did?

8 MS. ZECH: Yes, Your Honor. And I believe
9 what becomes clear in looking at the statements that were
10 allegedly made of which plaintiffs complain is they can
11 be really divided into three categories. And this is
12 just speaking to Dr. Pignotti.

13 THE COURT: This is Exhibit H.

14 MS. ZECH: Yes, that's correct. And just for
15 the record, Your Honor, Dr. Mercer, there's nothing in
16 the complaint that connects Dr. Mercer to any of these
17 statements. And for that reason we don't see any --

18 THE COURT: There's no allegation that
19 Dr. Mercer did anything.

20 MS. ZECH: That's correct.

21 THE COURT: Other than she's listed as a
22 defendant.

23 MS. ZECH: Correct. And if the Court should
24 proceed pass the issue of personal jurisdiction which we
25 again submit has not been satisfied here, we would ask

1 that the case be completely dismissed as to Dr. Mercer.

2 As to Dr. Pignotti, all four of the postings
3 that have been attributed to Dr. Pignotti we think can be
4 divided into three categories, statements in which she is
5 responding to personal accusations, which certainly she
6 is able to do. She has the ability to defend her
7 character and reputation. And that was similar to the
8 *Schnare* case which is out of the Fourth Circuit and cited
9 in our brief.

10 The second is really her comments and her
11 opinions on the therapeutic methods that are advocated by
12 Dr. Federici as well as other practitioners who are
13 advocating similar methods.

14 THE COURT: So if someone criticizes
15 someone's method of treatment, that does not necessarily
16 constitute libel?

17 MS. ZECH: Correct, Your Honor. And I would
18 refer the Court to *Arthur versus Offit* which is actually
19 out of this very court. And what the Court basically
20 said -- and that was a case involving the mandatory
21 vaccination of children. This is an academic debate.
22 This is not an issue for the Court to resolve.

23 There are differences of opinion, but that's
24 an academic debate. That is not an issue that should be
25 before the Court, and that's a similar ruling in the

1 *Schnare* case which involved the breed standards for
2 Labrador retrievers.

3 And then the third category of documents, I'm
4 sorry, statements that Dr. Pignotti's postings can be
5 categorized into are really statements where she's
6 commenting upon the process that has occurred.

7 As the Court can see from the postings and
8 the prior pleadings in this case, there has been some
9 interaction between the two camps on this issue for a
10 period of time here. Dr. Pignotti's simply commenting
11 upon that.

12 Again --

13 THE COURT: Well, is Mr. Federici a public
14 figure?

15 MS. ZECH: Your Honor, we would assert that
16 he is. The way that he has touted himself not only in
17 his pleading as is clear to the Court in terms of him
18 being internationally renown, but also a very quick visit
19 to his website demonstrates that he is traveling around
20 the world, that he is speaking throughout the United
21 States and abroad.

22 His most recent -- well, I shouldn't say most
23 recent, but his post in January of 2011 on his own blog
24 indicated that he is now traveling now around the country
25 to treat children in their own homes.

1 A brief search on Lexus revealed two cases,
2 not only the *Salvetti* case where he was treating an
3 individual from North Carolina but also a case out of New
4 Hampshire where the family actually traveled to Virginia
5 to be treated by Dr. Federici.

6 Your Honor, this also goes to the Court's
7 earlier point about whether Virginia was the targeted
8 focus of any actions of these --

9 THE COURT: My intentions was not activity
10 expressly aimed at Virginia.

11 MS. ZECH: Correct.

12 THE COURT: And I think the *Care First* case
13 and there are other Fourth Circuit cases like the New
14 Hampshire case that say that posting someone on the
15 Internet in and of itself is not sufficient.

16 MS. ZECH: Correct, Your Honor, we agree.
17 And we believe that the circumstances here demonstrate
18 that Dr. Federici has -- does not have just the Virginia
19 audience as he has maintained but that his audience is
20 much more widespread, both domestically and abroad.

21 THE COURT: Hold on just one second.

22 MS. ZECH: Certainly, Your Honor.

23 THE COURT: I've asked you the questions that
24 I have. I want to ask Ms. Bagley additional questions.

25 MS. ZECH: Thank you, Your Honor.

1 THE COURT: Yes, I want to ask Ms. Bagley a
2 question.

3 I have a transcript here from the General
4 District Court in Fairfax. Were you involved in that
5 case?

6 MS. BAGLEY: I was not, Your Honor.

7 THE COURT: Was -- were any of your clients
8 present or represented in that case?

9 MS. BAGLEY: ACT -- to be clear, the three
10 defendants in the General District Court matter were ACT,
11 Charly Miller and Ms. Mercer.

12 May I invite Ms. Zech to correct me if that's
13 inaccurate.

14 MS. ZECH: That is correct, Your Honor.

15 If I may, Ms. Bagley, Ms. Mercer did appear
16 and she was present at that time.

17 THE COURT: Right.

18 MS. BAGLEY: Now, with regard to ACT and
19 Ms. Miller, both of them filed special appearances
20 challenging jurisdiction with the Court.

21 Ms. Miller filed a request for a continuance
22 and a challenge to jurisdiction. There's a portion in
23 the transcript where the General District Court judge
24 acknowledged I've received that. I'll take it under
25 advertisement. And then ultimately he granted favor --

1 judgment in favor of all the defendants in that matter
2 effectively --

3 THE COURT: So what happened to the motion to
4 challenge jurisdiction?

5 MS. BAGLEY: Well, ACT filed a demur
6 challenge -- filed a special appearance to challenge
7 jurisdiction.

8 Ms. Mercer appeared, and as the transcript
9 sort of unfold you can see that the General District
10 Court judge just sort of dove into things and started
11 taking testimony on the matter, although he had stated
12 early on, here's how we will do this. I'll hear your
13 motions, I'll hear your motions, then we'll get going.
14 Then he sort of plowed right in.

15 Ms. Mercer at the end did attempt to point
16 out to the judge, Your Honor, I had intended to argue
17 jurisdiction. He said, well, I'm going to rule in your
18 favor anyway. That's that.

19 My position on it, Your Honor, is that none
20 of that matters. I mean, I'll be honest with you.

21 THE COURT: What happens with the Fairfax
22 Circuit Court of Appeal? Was it appealed?

23 MS. BAGLEY: It was appealed and the appeal
24 was nonsuited, and the nonsuit re-filing period expired
25 on the second of this month, so two days ago.

1 So our position is -- and I have case law to
2 support this -- that that entire action is a nullity.
3 The General District Court transcript and the rulings
4 there were appealed de novo. So we would have had a
5 whole new trial.

6 We would have again -- we did file -- ACT and
7 Ms. Miller did file special appearance via demurrer to
8 challenge jurisdiction, and that's where that case was at
9 when it was nonsuited, not refiled. It makes the entire
10 matter a nullity.

11 So I don't believe there's been any waiver as
12 to our personal jurisdiction argument or that there's
13 been any dispositive ruling that would in anyway bind
14 this Court.

15 THE COURT: All right, thank you.

16 I'm ready now, Mr. Rivera.

17 MR. RIVERA: Yes, Your Honor. Your Honor,
18 was concerned about purpose of availment of Virginia as a
19 forum. Well this defendant, although they say they're
20 just giving out general information, that does not appear
21 to be true.

22 Looking just at the first exhibit in the
23 complaint, the term "Virginia" appears at least 89 times.
24 And, it appears significantly more. There's hardly any
25 other states that's even mentioned other than Virginia.

1 THE COURT: Well, Dr. Federici's practice is
2 based here in Virginia; is that right?

3 MR. RIVERA: Yes, Your Honor. His practice
4 is based here.

5 THE COURT: Well, help me with your view. Is
6 it sufficient if someone posts on the Internet comments
7 or criticism of Dr. Federici knowing that he practices in
8 Virginia, is that expressly aiming activity at Virginia?

9 MR. RIVERA: That is part of what is
10 considered. I think we have more than that here.

11 We also have a defendant that actually
12 registered a domain name through a company based in
13 Virginia. That is Network Solutions, also utilized
14 Network Solutions services which has an agreement that
15 says that any disputes that come from the use of that
16 domain name, which is what we have in this case, are to
17 be resolved in the U.S. District Court for the Eastern
18 District of Virginia in Alexandria.

19 THE COURT: Network Solutions is not a party
20 to this case, are they?

21 MR. RIVERA: No, Your Honor, but they have
22 agreed to be bound to Virginia if there is any dispute,
23 not only with Network Solutions. It says any disputes.
24 It says something about third party complaints, also,
25 that need to be addressed in the -- in either Alexandria

1 or where the party resides. But Alexandria is obviously
2 given there. They agreed to that.

3 They have used the Network Solutions --

4 THE COURT: So, under your view of the
5 Network Solutions' domain name registration contract, any
6 party who has a domain name registered with Network
7 Solutions and they have a dispute with a third party of
8 any kind, they could bring it into federal court in
9 Virginia?

10 MR. RIVERA: Not by itself, Your Honor. I
11 think it's part of the -- since the Court is looking at
12 the fairness of the entire situation --

13 THE COURT: I'm not looking at the fairness.
14 I'm looking at personal jurisdiction under the Long-Arm
15 Statute.

16 I'm trying to -- if your basis is they had a
17 contract or doing business in Virginia, that's one thing.
18 But you agree they're not doing business here; is that
19 right?

20 MR. RIVERA: That is correct, Your Honor.

21 THE COURT: Well, help me with your theory
22 that posting criticism of Dr. Federici on the Internet is
23 an availment of Virginia law or expressly aiming activity
24 at Virginia. Help me with that.

25 MR. RIVERA: Yes, Your Honor.

1 Number one, they have, like I mentioned
2 Virginia many times which is no surprise that they would
3 be hailed to court here.

4 They have also solicited people actively.
5 They have provided information on how to file complaint
6 against Dr. Federici with Virginia Board.

7 They have also indicated that they have been
8 researching Dr. Federici's qualifications, and they don't
9 believe he's even a doctor at all.

10 They have provided clear content that they
11 knew would be targeted and that would have its effect
12 mostly in Virginia.

13 Dr. Federici, he did as counsel indicated.
14 He has handled cases outside Virginia. That is a very
15 small part of his practice. He is a Virginia --

16 THE COURT: Well, does he have a website,
17 too?

18 MR. RIVERA: Yes, Your Honor.

19 THE COURT: And does he post on that website
20 information about his practice and his ways of treating
21 children? Is that on his website?

22 MR. RIVERA: I do not know the answer to
23 that.

24 THE COURT: Have you looked at his website?

25 MR. RIVERA: Yes, Your Honor, I have.

1 THE COURT: All right. Well, is he
2 presenting himself there as an expert of some kind in the
3 treatment of children?

4 MR. RIVERA: Yes, Your Honor.

5 THE COURT: Then, why wouldn't he be a public
6 figure? He hands himself out to the whole world on the
7 Internet as some kind of an expert. Why wouldn't he be a
8 public figure?

9 MR. RIVERA: He might be a limited public
10 figure where it relates exactly to what his posting on
11 his website and what he's telling the world his practice
12 is about.

13 The issue here --

14 THE COURT: Hasn't he been on television and
15 in the news as well?

16 MR. RIVERA: Yes, Your Honor. Yes, Your
17 Honor.

18 THE COURT: Well, how much time does he have
19 to spend on television and in the news to become a public
20 figure, Mr. Rivera?

21 MR. RIVERA: He would -- to answer that
22 direct answer to --

23 THE COURT: I would like a direct answer if
24 you would give me one.

25 MR. RIVERA: I wouldn't know how to quantify

1 if one appearance is enough or many.

2 THE COURT: He's had more than one.

3 MR. RIVERA: Yes, Your Honor. He's had more
4 than the average person. So --

5 THE COURT: Well, if I accept he's a public
6 figure, then the standard on libel and slander is
7 different, isn't it?

8 MR. RIVERA: Yes, Your Honor. I do believe
9 that we can also meet the standard of malice, although in
10 this case given this individual is not only on the
11 Internet. They actually have called and made complaints
12 about Dr. Federici to the board of -- Dr. Federici's
13 licensed with the Board of Psychology, and they have even
14 called and made complaints that Dr. Federici assisted in
15 the -- in the killing of a child. And they have actually
16 not only put this online, they have actually reached out
17 to the Virginia Board to actually make the same false
18 complaints. All of them obviously have been --

19 THE COURT: Well, this is not a lawsuit about
20 the false complaint, not yet. It is defamation, tortious
21 interference with contract, tortious interference with
22 business expectations and conspiracy. There is no
23 allegation of making false complaints to Virginia
24 authorities, is there?

25 MR. RIVERA: No, Your Honor.

1 THE COURT: All right. Help me then with the
2 issue of the tortious interference with contract rights
3 and business expectancy here. What you've alleged is
4 basically that two clients -- potential clients canceled
5 because of things on the Internet.

6 MR. RIVERA: Yes, Your Honor.

7 THE COURT: You don't focus on Dr. Pignotti
8 or Mercer or ACT, do you?

9 MR. RIVERA: Well, Your Honor, all the -- all
10 this negative things comes from these defendants. They
11 are tied together to this organization called ACT. We
12 doesn't know who is a member. We got one defendant who
13 appeared to be a member and represented being a member
14 then they go and file an affidavit in this court saying
15 I'm not a member. I have nothing to do with it.

16 Then we have counsel asking for the charges
17 to be -- for the case to be dismissed based on the
18 corporation cannot conspire with itself. But at the same
19 time, one of those people is saying I'm not a member of
20 the corporation. So, then they can conspire with this
21 person.

22 THE COURT: Well, that brings up another
23 point that I wanted to bring to your attention and that
24 is that as I read your complaint, there are numerous
25 references to defendants, plural, but there's no

1 specification of acts by individual defendants.

2 That makes it very difficult for us to
3 determine what your claim is against an individual
4 defendant. And with respect to libel and slander, we
5 would need what the exact words were and when they were
6 made because there's a statute limitation of one year, is
7 that right, one year statute of limitation?

8 MR. RIVERA: Yes, Your Honor.

9 THE COURT: So we can't tell when these
10 statements were made and what statements you think were
11 made by ACT or made by Dr. Mercer or Pignotti.

12 MR. RIVERA: Well, Your Honor, the majority
13 of these websites are controlled by the defendants. So
14 they are the one who have the information such as IP
15 addresses, who made the comments.

16 THE COURT: Let me make sure you understand
17 what I'm saying here. I think that your complaint
18 suffers from what I would call group pleading. All the
19 allegations say defendants, plural. It does not specify
20 what a particular defendant did, said, that you claim was
21 libelous and when the statement was made which I think is
22 a pleading requirement under Virginia law for libel or
23 slander. Do you see what I'm trying to tell you?

24 MR. RIVERA: Yes, Your Honor. And the reason
25 they are grouped together is that they are kind of one

1 big operation. They are not just each individual
2 standing alone. We know that the websites are controlled
3 by members of ACT. That's kind of a loose term.

4 But looking at Ms. Mercer who appeared in the
5 General District Court, she referred that -- and on the
6 transcript shows that ACT, that's me, and I am such and
7 such. We have another one who has this occupation. We
8 have another one who has this occupation.

9 So, part of the issue here is that the
10 defendants themselves have worked as a unit somewhat
11 disguising each individual part of that unit.

12 Now, that will bear out in discovery if
13 something is on the ACT website.

14 THE COURT: Well, I'm not going to let you go
15 but so far with this if we can't figure out who has made
16 what statements, at least some idea of what statements
17 you say are libelous.

18 Now, what allegations do you have about what
19 Dr. Mercer did? How could I tell what Dr. Mercer did
20 from your complaint?

21 MR. RIVERA: Yes. Dr. Mercer has indicated
22 that she made admissions even at the General District
23 Court that she was a member of ACT and that she has
24 authored some posts regarding to what she refers as
25 information she wants the public to know about Dr.

1 Federici. So she has a --

2 THE COURT: I understand that. But just to
3 say, well, she's criticized Dr. Federici in general is
4 too broad for me to figure out just what allegation you
5 say is libelous, I mean, because criticism is allowed.
6 You can criticize somebody on the Internet, can't you?

7 MR. RIVERA: Yes, Your Honor. And we're not
8 referring to any criticisms. We're actually referring to
9 factual statements that can be verified. Either Dr.
10 Federici is licensed or he's not. Either he assisted in
11 the killing of a child or he did not.

12 THE COURT: Well, when I see those
13 allegations set forth in a separate paragraph with a date
14 and time and a speaker, I'll be able to address that.

15 I think I've asked you the questions I have.

16 What -- your theory of conspiracy is that
17 they all criticized Dr. Federici, so they were all
18 working together. Is that your theory of the conspiracy?

19 MR. RIVERA: It's a little bit more than
20 that, Your Honor. It's planned criticism. The only
21 thing they have in common is that they criticize Dr.
22 Federici, and they do it as a unit and they talk to each
23 other and plan these attacks as opposed to just people
24 who happen to criticize him.

25 They know each other. They claim to belong

1 to the same organization. They claim to share ideas and
2 they talk to each other frequently and plan what they're
3 going to do against different people.

4 There was another case in Texas where they
5 did the same thing to another doctor and a judgment was
6 entered in favor of that doctor there.

7 THE COURT: All right. I've asked you the
8 questions that I have and I have read the briefs that
9 have been submitted. Thank you.

10 MR. RIVERA: Thank you, Your Honor.

11 MS. ZECH: Your Honor, may I make a few quick
12 responses to that?

13 THE COURT: You could but I'm prepared to
14 rule now.

15 MS. ZECH: Thank you, Your Honor.

16 THE COURT: Thank you.

17 This matter is before the Court on the
18 defendant's motion to dismiss the complaint, and the
19 record should reflect that the motion's made by the
20 defendant ACT, Miller, Sarner, Linda Rosa, Dr. Jean
21 Mercer and Dr. Monica Pignotti.

22 These all deal with a complaint filed by Dr.
23 Ronald Federici against these individuals for matters
24 that Dr. Federici asserts were posted about him in
25 criticizing him and his ideas about treatment of children

1 on the Internet. And that as plaintiff's counsel's
2 pointed out, there are numerous reference to Dr. Federici
3 being in Virginia, practicing in Virginia and Virginia
4 authorities not taking any action against him for
5 techniques that they have criticized on the Internet.

6 And, the question presented is whether or not
7 the plaintiff has shown that there's personal
8 jurisdiction against these defendants in Virginia.

9 I think the precise issue was whether the
10 Court should dismiss the complaint for lack of personal
11 jurisdiction because the plaintiff cannot show that these
12 postings on the Internet were expressly aimed at
13 Virginia, and they were not the focal point of any
14 tortious activity under the effects test.

15 Let me say at the outset that the complaint
16 suffers from several deficiencies. The first is group
17 pleading, and we really can't tell what allegations are
18 made against each individual defendant. And that is a
19 problem that the whole complaint suffers from.

20 And because of that, it is really not clear
21 what the plaintiff asserts each defendant did and when
22 and what false statements were made that are libelous,
23 what was the statement, what was the date of it.

24 And even if we go beyond that, the question
25 is a matter of what express -- what activity expressly

1 aimed these matters at Virginia.

2 In dealing with personal jurisdiction, I have
3 to look at the Long-Arm Statute under 8.01328.1. And
4 we're dealing with electronic communications. We have to
5 look at whether an out-of-state citizen has intentionally
6 entered the state through the Internet.

7 And the Fourth Circuit has adopted the *Zippo*
8 *Manufacturing* test which both parties have briefed, and
9 I'll cite the *ALS Scan versus Digital Service Consultants*
10 case which sets forth the standard.

11 And, the Fourth Circuit in that case looked
12 at *Calder versus Jones* having to do with whether or not a
13 California court had personal jurisdiction over a Florida
14 resident who wrote a libelous article in a publication
15 which I think was the National Inquirer about an actor in
16 California and articulated the effects test.

17 And they cite the Fourth Circuit *Care First*
18 *of Maryland*. That case is important for a couple of
19 reasons.

20 First of all in that case, it says that
21 merely posting something on the Internet is an
22 insufficient basis for personal jurisdiction. And that's
23 in the body of the opinion.

24 The defendant's site is passive. It merely
25 makes information available. The site cannot render him

1 subject to personal jurisdiction in foreign court.

2 And what we're looking in *Zippo* is whether or
3 not the person expressly aimed activity at Virginia.

4 Counsel cited *Young versus New Haven*
5 *Advocate*, a Fourth Circuit case, very similar facts to
6 this one where a warden in Virginia complained that two
7 New Haven newspapers published articles criticizing him
8 and his activities in the prison in Virginia in
9 connecting newspapers that were also posted on the
10 Internet. And the Court held that the Virginia court
11 could not exercise constitutional jurisdiction because
12 the plaintiffs -- the defendants did not manifest an
13 intent to aim their websites or post their articles at a
14 Virginia audience.

15 I think that case is dispositive of the
16 motion here. So the Court will grant the motion to
17 dismiss for lack of personal jurisdiction on that ground
18 alone.

19 With respect to the motion to dismiss as it
20 relates to ACT and Mercer, ACT and Mercer have not waived
21 their objection to personal jurisdiction by participating
22 in the General District Court case. That case was
23 appealed, and as I understand Virginia law, when a matter
24 is appealed to Circuit Court then the judgment in General
25 District Court becomes a nullity.

1 So they have not waived their right to assert
2 personal jurisdiction. So again the motion is granted as
3 to ACT, Mercer, Miller, Sarner, Rosa and Pignotti.

4 The ACT contract with Network Solutions
5 concerning a domain name would not be a sufficient basis
6 to exercise personal jurisdiction. And the *Christian*
7 *Science Board versus Nolan* case from the Fourth Circuit,
8 again the fact that the server is located here is not
9 enough to pursue personal jurisdiction.

10 The fact that there is a contract between
11 Network Solutions and the domain name registrant is not a
12 sufficient basis to give jurisdiction -- personal
13 jurisdiction in a dispute involving parties unrelated to
14 the Network Solutions contract.

15 And I decline to follow the magistrate
16 judge's rulings to the contrary.

17 With respect to conspiracy, there's not
18 enough here in terms of facts to demonstrate a
19 conspiracy. And again, the fact that the plaintiff here
20 is engaged in group pleading makes it impossible to tell
21 what agreement plaintiff claims was entered into by which
22 defendants at what time to do what against Dr. Federici.

23 The fact that they all have criticized Dr.
24 Federici does not mean they've entered into an agreement
25 sufficient to support a claim for conspiracy.

1 The defamation claim, there's a motion to
2 dismiss filed by Pignotti and Mercer that does not state
3 a claim for defamation or tortious interference with
4 contract rights or business expectancy.

5 I'm going to grant that motion for several
6 reasons. First of all, as it relates to the statements
7 themselves, I do not think that plaintiff has set forth
8 sufficient facts connecting Mercer with any actionable
9 statements.

10 And as it relates to Pignotti, I do not think
11 that plaintiff has set forth sufficient facts to
12 demonstrate a claim that would meet the requirements of
13 libel under Virginia law and the *Chapin versus*
14 *Knight-Ridder* case.

15 The words specifically claimed are not set
16 forth. They're not set forth with any specificity. The
17 dates are not set forth. They're insufficient to state a
18 claim.

19 And looking at them as a matter of substance,
20 some of them -- Exhibit H, appears to be Dr. Pignotti
21 responding what she believes to be actions taken by Dr.
22 Federici on her website. These matters would not be --
23 they would be opinion. They would not be sufficient to
24 state a claim for libel.

25 And I think without making a judgment now

1 that plaintiff's counsel would have to agree that there's
2 a question here to be decided at some point, maybe not
3 today, about whether or not -- what standard would apply
4 to plead a libel or slander against Dr. Federici and
5 whether or not he's a public figure or limited public
6 figure given that he advertises on the Internet and on
7 television and all these others.

8 But I don't have to decide that now. But if
9 that issue were to come up, it does appear that there
10 would be some challenge presented to Dr. Federici to
11 credibly assert he's not a public figure or at least a
12 limited public figure.

13 I'm going to grant the motion to dismiss as
14 it relates to tortious interference with contract rights
15 and expectancy because he's not proffered sufficient
16 facts to demonstrate that Mercer or Pignotti
17 intentionally interfered with any contracts.

18 The fact that he is a practicing psychologist
19 does not in and of itself give notice to anyone else that
20 he has contracts with particular clients or that he
21 communicated with those particular clients.

22 And the complaint as set forth alleges that
23 two -- I believe it was two potential clients canceled
24 their appointments because of things that they read on
25 the Internet, not necessarily matters that were set forth

1 by Dr. Pignotti or Dr. Mercer.

2 And finally, with respect to conspiracy to
3 injure in trade business reputation under 18.2499, this
4 complaint does not come close to meeting the requirements
5 of *Ashcroft versus Iqbal* in terms of setting forth facts
6 that plead conspiracy in more than just conclusory terms.

7 So for those reasons, the motion to dismiss
8 will be granted for the reasons just stated.

9 Thank you.

10 MS. ZECH: Thank you, Your Honor.

11 MS. BAGLEY: Thank you, Your Honor.

12 MR. RIVERA: Thank you, Your Honor.

13 THE COURT: It's granted without prejudice,
14 obviously, as it relates to the 12(b)(6) aspects of it.
15 But the motion to dismiss personal jurisdiction is
16 granted.

17 MS. ZECH: Thank you.

18 THE COURT: Thank you.

19 (Proceeding concluded at 12:38 p.m.)

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1 CERTIFICATE OF REPORTER
2

3 I, Renecia Wilson, an official court
4 reporter for the United State District Court of Virginia,
5 Alexandria Division, do hereby certify that I reported by
6 machine shorthand, in my official capacity, the
7 proceedings had upon the motions in the case of Ronald
8 Federici vs. Monica Pignotti, et al.

9 I further certify that I was authorized and
10 did report by stenotype the proceedings and evidence in
11 said motions, and that the foregoing pages, numbered 1 to
12 34, inclusive, constitute the official transcript of said
13 proceedings as taken from my shorthand notes.

14 IN WITNESS WHEREOF, I have hereto subscribed
15 my name this 25th day of March, 2011.

16
17 _____ /s/
18 Renecia Wilson, RMR, CRR
19 Official Court Reporter
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