

April 8, 2009

Via Courier

Mr. Jason Charles Ciarochi
Ciarochi & Associates, PLLC
800 East Campbell Road, Suite 121
Richardson, Texas 75081

Re: *Darnell vs. Dobrott*
Cause No. 08-06317; 193rd Judicial District Court; Dallas County, Texas

Mr. Ciarochi:

Enclosed is Defendant's Motion for Sanctions. Please note that this Motion is set for hearing on **Monday, April 20, 2009 at 9:45 a.m.**



Matthew J. Kita

cc: Ms. Ira Rhone
193d Judicial District Court
600 Commerce Street, 8th Floor
Dallas, Texas 75202

Mr. James H. Moody III / firm

CAUSE NO. 08-06317

FILED
09 APR -8 PM 2:02

TIM DARNELL,

Plaintiff

v.

HEATHER DOBROTT,

Defendant

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IN THE 193rd JUDICIAL DISTRICT COURT

DALLAS COUNTY, TEXAS

DEFENDANT'S MOTION FOR SANCTIONS

Defendant Heather Dobrott asks this Court to impose appropriate sanctions against Plaintiff Tim Darnell and his attorney Jason Charles Ciarochi, and would respectfully show this Court the following:

I. FACTS

1. On June 16, 2008, Plaintiff, through his counsel of record, Jason Charles Ciarochi, initiated this Cause by filing an Original Petition and Request for Temporary Restraining Order. Therein, Plaintiff sought injunctive relief and damages against Defendant on theories of defamation, business disparagement, negligence, tortious interference, and invasion of privacy.

2. In her Original Answer, Defendant generally denied the allegations and also asserted a counterclaim for sanctions under Texas Rule of Civil Procedure 13.

3. According to the section in Plaintiff's Original Petition titled "Factual Allegations," his claims arose out of "defamatory and untrue statements regarding Plaintiff" that Defendant allegedly posted "on various websites."¹ In a written discovery request, Defendant asked Plaintiff to identify the statements that formed the basis of his defamation claim. Plaintiff

¹ Pl's Orig. Pet. and Application for Injunctive Relief, p. 2 ¶ 8.

responded, “the affidavit in support of Plaintiff’s Application for Temporary Restraining Order provides Defendant with notice of the offending remarks and their effects.”² None of the statements attached to Plaintiff’s Application for Temporary Restraining Order contain objectively verifiable false statements of fact, which is a required element of Plaintiff’s claims for both defamation and business disparagement.

4. The “Factual Allegations” section of Plaintiff’s Original Petition also claimed that Defendant made “many threats to Plaintiff and his family, including threats to confront Plaintiff’s minor daughters at their schools.”³ At his deposition, however, Plaintiff admitted that Defendant never threatened him or any of his family members.⁴

5. This Court denied Plaintiff’s request for a temporary injunction, noting, “prior restraints on speech are presumptively unconstitutional.”⁵

6. Although Defendant’s counsel spent dozens of hours reviewing thousands of documents to respond to Plaintiff’s written discovery requests, Plaintiff did not produce a single document in response to Defendant’s written discovery requests.

7. On February 23, 2009, Defendant filed a Motion for Summary Judgment on all of Plaintiff’s causes of action and set the motion for hearing on March 17, 2009 at 9:00 a.m.

8. The following day, Defendant’s counsel sent a letter to Plaintiff’s counsel offering to non-suit her counterclaim for sanctions if Plaintiff would agree to dismiss all of his claims, with prejudice. The condition of this offer, however, was that Plaintiff had to file the Agreed Notice and Order of Nonsuit with the Court “by next Monday.”⁶

² See Ex. A, p. 4.

³ Pl’s Orig. Pet. and Application for Injunctive Relief, p. 3 ¶ 9.

⁴ See Ex. B, p. 119 ll. 17–24.

⁵ See Ex. C, p. 76, ll. 9–17.

⁶ See Ex. D.

9. In response, Mr. Ciarochi called Defendant's counsel and informed him that he had no desire to non-suit the claims and instead, noticed Defendant's deposition for March 5, 2009. At this deposition, Plaintiff did not identify any additional statements by Defendant that contained any objectively verifiable false statements of fact.

10. The particularly contentious nature of this deposition did not give Defendant's counsel any reason to believe that Plaintiff intended to non-suit his claims.

11. On a daily basis following Defendant's deposition, Defendant's counsel checked the District Clerk's online database to inquire as to whether Plaintiff filed a Response to the Motion for Summary Judgment. Defendant's counsel also made the same inquiry to this Court's coordinator several times prior to the scheduled hearing date. Both sources reflected that Plaintiff never filed any documents with the Court whatsoever. Moreover, Defendant's counsel did not receive any documents from Plaintiff's counsel by personal deliver, U.S. mail, or facsimile.

12. Neither Plaintiff nor his counsel attended the hearing on March 17, 2009. Accordingly, this Court entered an Order awarding a take-nothing judgment for Defendant.

13. On March 26, 2009, Plaintiff's counsel contacted Defendant's counsel for the first time since Defendant's deposition three weeks earlier, claiming to have filed the Agreed Notice and Order of Nonsuit on March 9, 2009. Plaintiff's counsel also claimed that copies of these documents were faxed to Defendant's counsel's office that same day.

14. All incoming faxes to Defendant's counsel's office arrive at and are stored on a central server. Defendant's counsel has meticulously reviewed all incoming faxes to this server, which reveals that no documents were received from Plaintiff's counsel between March 3, 2009 (the notice of Defendant's deposition) and March 26, 2009.

15. On April 6, 2009. Plaintiff's counsel filed a "Motion for Entry of Correct Judgment, Motion for Judgment Nunc Pro Tunc, and Motion for New Trial." In that document, although Plaintiff's counsel admits that he was aware that the documents were not properly filed, he claims that this Court was not aware of the alleged non-suit "because of a clerical error outside the control of the parties."⁷

16. In responding to the allegations in Plaintiff's Original Petition and the "Motion for Entry of Correct Judgment, Motion for Judgment Nunc Pro Tunc, and Motion for New Trial," Defendant has incurred tens of thousands of dollars in costs and attorneys' fees.

III. ARGUMENTS & AUTHORITIES

A. Ground for Sanctions: Texas Rule of Civil Procedure 13

17. Under Texas Rule of Civil Procedure 13, this Court can impose sanctions on a party or a person who signed a pleading if it was groundless and brought in bad faith or for the purpose of harassment. A groundless pleading is one that has no basis in law or fact and is not warranted by a good-faith argument for the extension, modification, or reversal of existing law.⁸

18. The standard for reviewing whether a pleading is groundless is objective: Did the parties and attorneys make a reasonable inquiry into the legal and factual basis of the claim? The reasonableness of the inquiry is judged by the facts available and the circumstances present at the time the party filed the pleading.⁹

19. If this Court finds that sanctions are appropriate, it may impose any sanction permitted under Texas Rule of Civil Procedure 215.2(b), including charging "all or any portion of the expenses of discovery or taxable court costs or both" against a party or his attorney.

⁷ See Pl's Mot., p. 4.

⁸ TEX. R. CIV. P. 13; GTE Comm. Sys. Corp. v. Tanner, 856 S.W.2d 725, 730 (Tex. 1993); Trimble v. Itz, 898 S.W.2d 370, 373 (Tex. App.—San Antonio 1995, writ denied).

⁹ Tarrant Cty. v. Chancey, 942 S.W.2d 151, 155 (Tex. App.—Fort Worth 1997, no writ).

B. Ground for Sanctions: Texas Civil Practice and Remedies Code, Section 10.001

20. Under section 10.001 of the Civil Practice and Remedies Code, this Court can impose sanctions on a party or a person who signed a frivolous pleading. A pleading is frivolous if:

- (a) It is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (b) A claim contained therein is not warranted by existing law or a nonfrivolous argument for the extension, modification, or reversal of existing law, or the establishment of new law; or
- (c) Each allegation does not have evidentiary support.¹⁰

21. If this Court finds that sanctions are appropriate under this section, it may award Defendant the reasonable expenses and attorneys' fees it incurred in presenting the motion. Moreover, if it finds that Plaintiff failed to perform due diligence, it may also award Defendant all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.¹¹

C. Plaintiff's Pleadings That Are Subject to Sanctions

1. Plaintiff's Original Petition

22. A cursory review of the law on defamation and business disparagement reveals neither claim is actionable unless the Plaintiff can show evidence of an objectively verifiable false statement of fact.¹² Not only were several of the statements on which Plaintiff's based their allegations factually true—which is an ultimate defense to claims of defamation and business disparagement¹³—both the Supreme Court of the United States and the Texas Supreme Court

¹⁰ TEX. CIV. PRAC. & REM. CODE § 10.001.

¹¹ TEX. CIV. PRAC. & REM. CODE § 10.002.

¹² See, e.g., *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990); *Bentley v. Bunton*, 94 S.W.3d 561, 583 (Tex. 2002).

¹³ *Musser v. Smith Prot. Servs.*, 723 S.W.2d 653, 655 (Tex. 1987)

have held that the First Amendment protects statements of opinion,¹⁴ statements incapable of being proved “true” or “false,”¹⁵ and those involving “rhetorical hyperbole” or “vigorous epithets”¹⁶ and therefore, they cannot form the basis of a defamation claim. As all of the statements of which Plaintiff complained fell into these categories, Mr. Ciarochi should have known at the time he filed Plaintiff’s Original Petition that he did not have a good faith basis for asserting claims of defamation and business disparagement. Additionally, their claims are not warranted by existing law, nor can they present a nonfrivolous argument for the extension, modification, or reversal of existing law, or the establishment of new law.

23. Moreover, the Texas Supreme Court has also held that these courts have also held that a Plaintiff cannot recover for non-defamation claims that are based on the same alleged publications as the defamation claims.¹⁷ Accordingly, because Plaintiff’s Original Petition did not identify any other actionable conduct other than the allegedly-defamatory statements, Mr. Ciarochi should have known at the time he filed this pleading that he did not have a good faith basis for asserting claims of negligence, tortious interference, or invasion of privacy. Once again, these claims are not warranted by existing law, nor can Plaintiff or his counsel present nonfrivolous arguments for the extension, modification, or reversal of existing law, or the establishment of new law.

24. Finally, Plaintiff has admitted that his Original Petition contains a patently false statement, namely, that Defendant made “many threats to Plaintiff and his family, including

¹⁴ See, e.g., *Milkovich*, 497 U.S. at 19; *Bentley*, 94 S.W.3d at 580.

¹⁵ See, e.g., *Harvest House Publ’rs v. Local Church*, 190 S.W.3d 204, 211–12 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

¹⁶ See, e.g., *New Times v. Isaacks*, 146 S.W.3d 144, 154–55 (Tex. 2004) (citing *Letter Carriers v. Austin*, 418 U.S. 264, 282–83 (1974); *Greenbelt Co-op Pub. Ass’n v. Bresler*, 398 U.S. 6 (1970)).

¹⁷ *Channel 4, KGBT v. Briggs*, 759 S.W.2d 939, 942 (Tex. 1988).

threats to confront Plaintiff's minor daughters at their schools."¹⁸ Both Plaintiff and Mr. Ciarochi should have known at the time that this pleading was filed that there was no good faith basis for making this assertion because it had no factual support whatsoever.

25. Finally, the facts of this case establish that the sole purpose of this lawsuit was to inconvenience Defendant and her counsel in hopes that they could persuade her to voluntarily refrain from participating in a public debate. As such, Plaintiff's Original Petition was filed for purposes of harassment.

26. Because Defendant has established that the allegations in Plaintiff's Original Petition violated both Texas Rule of Civil Procedure 13 and section 10.001 of the Civil Practice and Remedies Code, this Court should sanction both Plaintiff and Mr. Ciarochi for their conduct.

2. Plaintiff's "Motion for Entry of Correct Judgment, Motion for Judgment Nunc Pro Tunc, and Motion for New Trial"

27. The entire basis for Plaintiff's "Motion for Entry of Correct Judgment, Motion for Judgment Nunc Pro Tunc, and Motion for New Trial" is his assertion that he (a) filed an Agreed Notice and Order of Nonsuit Notice of Non-Suit with this Court; and (b) served a copy of these documents on Defendants' counsel. As discussed above, neither of these statements is true. Accordingly, as a matter of law, the motion is groundless, brought in bad faith, and frivolous.

28. Because Defendant has established that the allegations in Plaintiff's "Motion for Entry of Correct Judgment, Motion for Judgment Nunc Pro Tunc, and Motion for New Trial" violated both Texas Rule of Civil Procedure 13 and section 10.001 of the Civil Practice and Remedies Code, this Court should sanction both Plaintiff and Mr. Ciarochi for their conduct.

¹⁸ Compare Pl's Orig. Pet. and Application for Injunctive Relief, p. 3 ¶ 9 with Ex. B, p. 119 ll. 17-24.

IV. CONCLUSION

Plaintiff and his counsel, Mr. Ciarochi, should be sanctioned for their repeated efforts to use this proceeding and this Court to coerce Defendant into giving up her Constitutionally-protected right to freely discuss a public issue. Defendant respectfully requests this and all other relief to which this Court finds her to be justly entitled.

Respectfully submitted,



JAMES H. MOODY III
State Bar No. 03820050

MATTHEW J. KITA
State Bar No. 24050883

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (phone) / (214) 871-2111 (fax)

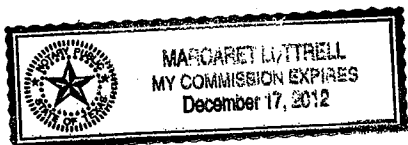
ATTORNEYS FOR DEFENDANT

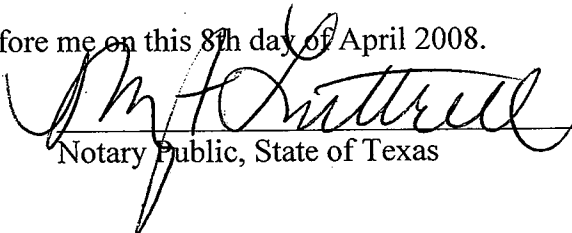
VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared Matthew J. Kita, personally known to me, who, swore upon his oath that he is an attorney and counsel for Defendant in this matter, that he is authorized to make this verification on behalf of his client, and that the statements contained in this Motion for Sanctions are true and correct in all respects.


MATTHEW J. KITA

SUBSCRIBED AND SWORN to before me on this 8th day of April 2008.





Notary Public, State of Texas

CERTIFICATE OF CONFERENCE

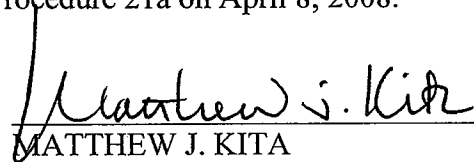
Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion and despite best efforts the counsel have not been able to revolve those matters presented.

Certified to the 8th day of April, 2008.


MATTHEW J. KITA

CERTIFICATE OF SERVICE

The undersigned certifies that copy of this document was served on Plaintiff's counsel of record in accordance with Texas Rule of Civil Procedure 21a on April 8, 2008.


MATTHEW J. KITA

A

CAUSE NO. 08-06317

TIM DARNELL	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	193 RD DISTRICT
	§	
HEATHER DOBROTT	§	
Defendant.	§	DALLAS COUNTY, TEXAS

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

TO: Defendant, by and through its attorney of record, Matthew J. Kita, at Quilling
Selander Cummiskey & Lownds, P.C., 2001 Bryan Street, Suite 1800, Dallas, TX 75201.

GENERAL OBJECTIONS

Plaintiff objects that Defendant's interrogatories and subcomponents exceeded the number of interrogatories permitted under the Texas Rules of Civil Procedure. Subject to this objection, Plaintiff responds below.

INTERROGATORIES

- (1) Please identify the following information:
- a. Plaintiff's full name;
 - b. Any aliases or other names Plaintiff uses or has used;
 - c. Any titles Plaintiff uses or has used (e.g., Reverend, Pastor, Doctor, etc.)
 - d. Plaintiff's present address;
 - e. Plaintiff's date of birth;
 - f. Plaintiff's Social Security number;
 - g. Plaintiff's Texas driver's license number.

RESPONSE:

- a. Timothy Spencer Darnell
- b. Unknown
- c. Unknown
- d. 1513 Home Park in Allen, Texas.

- e. Plaintiff to supplement.
- f. Objection: interrogatory designed to harass, will provide subject to execution of Rule 11 Agreement relating to privacy.
- g. Plaintiff to supplement.

(2) Please identify all business entities (including-but not limited to-sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and corporations) in which Plaintiff serves as an owner, partner, director, member, manager, or other officer, as well as the specific title that Plaintiff holds therein.

RESPONSE:

Plaintiff objects to the scope of this interrogatory. Subject to that objection, Plaintiff responds that for the past several years, he has been and is the CEO and President of Advantage Conferences, LLC and that prior to that, he was an officer in All-Star Entrepreneur prior to third parties owning 100% of the entity.

(3) Please identify all business entities (including-but not limited to-sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and corporations) in which Plaintiff owns a controlling interest.

RESPONSE:

Plaintiff that this interrogatory is not likely to lead to the discovery of admissible evidence. Subject to this objection, Plaintiff does not know of other organizations where he has a majority interest.

(4) Please identify all business entities (including-but not limited to-sole

proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and corporations) in which the controlling interest is owned by a business entity identified as a response to Interrogatory No. 2.

RESPONSE:

Plaintiff objects that this interrogatory is not likely to lead to the discovery of admissible evidence. Subject to this objection, Plaintiff does not know of any organizations that fit within this category.

(5) For each employer Plaintiff has had in the past fifteen years, please identify:

- a. the employer's name;
- b. the employer's address;
- c. the employer's phone number;
- d. Plaintiff's job title(s) with the employer;
- e. a description of Plaintiff's work-related responsibilities;
- f. the total amount of compensation received by Plaintiff during each such year.

RESPONSE:

Plaintiff objects to the scope of this interrogatory, whereas Defendant has only known of Plaintiff for less than two years and whereas Defendant has only disparaged Plaintiff's current business. Plaintiff objects that this interrogatory is not likely to lead to the discovery of admissible evidence. Additionally, Plaintiff objects that his compensation is not reasonably calculated to lead to the discovery of admissible evidence regarding Defendant's remarks. Subject to this objection, Plaintiff has been self-employed at Advantage Conferences at the Home Park address and that generally, he organizes and holds conferences with motivational speakers who network with entrepreneurs.

(6) Please identify each allegedly defamatory, disparaging, or negligently-made statement for which Plaintiff seeks damages and for each one, please also identify:

- a. the date on which it was made;
- b. the manner in which it was published;
- c. the person, persons, or entities to whom it was published;
- d. if the publication is included in Plaintiff's responses to Defendant's Request for Production, the specific page or Bates number(s) on which the publication appears;
- e. whether Plaintiff had an existing contract with the person, persons, or entities to whom it was published at the time it was published;
- f. the damages Plaintiff allegedly suffered as a result of the alleged publication;
- g. the actions Plaintiff undertook to mitigate the alleged damages.

RESPONSE:

Plaintiff objects that this request is overly broad. The affidavit in support of Plaintiff's Application for Temporary Restraining order provides Defendant with notice of the offending remarks and their effects. Plaintiff refers to all statements made by Defendant that reference Plaintiff, including postings on scam.com and advantageconferencestruth.com; those postings typically bear a time and IP (internet location) stamp. Defendant should be able to provide data on the websites that she controls. Whereas Plaintiff did not know who Defendant was when Defendant made the vast majority of her vitriolic statements and whereas Plaintiff is not in the habit of stopping to bother any random person who defames him, Plaintiff rarely confronted Defendant directly; it is hard to respond to someone that one cannot even identify out of a crowd. After Plaintiff attempted to stop speakers from attending one of Plaintiff's conferences with his work, Plaintiff tried to reassure third parties. Plaintiff also refers to statements on file with the trial court that Defendant has acknowledged where Defendant states that she will stop the conference that Plaintiff's business was putting on.

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Defendant did make statements to individuals with obligations to speak at or attend conferences for the benefit of Plaintiff's business, as Defendant has acknowledged on the witness stand, but only Defendant has access to that information.

(7) Please identify all the publications of which Plaintiff is aware, which includes-but not limited to-internet, print media, and broadcast media-that have quoted Plaintiff or attributed statements to Plaintiff in the past five years.

RESPONSE:

Plaintiff objects that this interrogatory is vague (it is not clear if it is designed to elicit information about Plaintiff's other comments or if it is an error and seeks responses related to statements by Plaintiff). Plaintiff responds that Plaintiff has routinely made statements on the website Advantageconferences.com. Plaintiff responds that Defendants' communications have made attributions and misattributions to Plaintiff.

(8) Please identify all advertisements of any type, including-but not limited to-internet, print media, and broadcast media, that have published or broadcast statements at the request of Plaintiff, or at the request of a commercial entity identified in response to Interrogatory Nos. 2, 3, or 4.

RESPONSE:

Plaintiff objects that this interrogatory is vague and overly broad. Subject to this objection, Plaintiff states that he generally makes statements through his website, Advantageconferences.com or his Footsteps of Faith Messenger.

(9) Please identify the hyperlink address for the home page of all internet

"message boards", "discussion forums", "bulletin-board sites", or other similar forums through which Plaintiff has contributed textual or graphic material that relate to the statements identified in Plaintiff's response to Interrogatory No. 6.

RESPONSE:

Plaintiff refers to scam.com and searches for comments by "SoapBoxMom" and AdvatageConferencestruth.com.

(10) With regard to Plaintiff's responses to Interrogatory No. 9, please identify all usernames, "handles", or other aliases that identify Plaintiff's contributions.

RESPONSE:

Plaintiff is not an individual who routinely watches or post messages on message boards. It is believed that Plaintiff attempted to post a message on one or two occasions, but that Plaintiff was not able to do so. Plaintiff will investigate his records and follow up with this response.

(11) Please identify each allegedly-invasive act for which Plaintiff seeks damages and for each, please also identify

- a. the date of the alleged invasion;
- b. the location of the alleged invasion;
- c. the means by which Defendant committed the invasion;
- d. the damages Plaintiff allegedly suffered as a result of the alleged invasion;
- e. the actions Plaintiff undertook to mitigate the alleged damages.

RESPONSE:

Plaintiff objects to the level of description required in the interrogatory as overly specific and burdensome. Subject to that objection, Plaintiff notes that the web postings made by Defendant were time stamped and were made to whomever viewed the communication; all were believed to be via internet or email, excepting the individual

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

phone calls or statements made by Defendant prior to an Advantage Conferences event. Defendant actively encouraged third parties to not honor commitments to speak at Advantage Conferences events and/or to not attend the event. This affected the revenue from the conference and other sales. In general, Plaintiff complains that just as it would be inappropriate for Plaintiff to speculate on the wellbeing of Defendant's child, Defendant should not be discussing Plaintiff's family and her plans to confront them or how she humiliated the family at Allen High School.

(12) If Plaintiff is seeking recovery of medical expenses for his own personal injuries, please identify the following for each whose services will be included in his damages model:

- a. the name, address, and phone number of the medical practitioner, hospital clinic, or institution;
- b. the date(s) on which the service(s) were rendered; and
- c. the dollar amount charged by the medical practitioner, hospital, clinic, or institution for the service(s) provided
- d. the total dollar amount paid by Plaintiff to the medical practitioner, hospital, clinic, or institution for the service(s) provided;
- e. the total dollar amount paid to the medical practitioner, hospital, clinic, or institution by an insurer or other third-party for the service(s) provided;
- f. the total dollar amount that is currently owed to the medical practitioner, hospital, clinic, or institution for the service(s) provided;
- g. the total dollar amount that is currently owed to an insurer or other third-party for the service(s) provided.

RESPONSE:

Although most individuals could understand how one may have adverse health consequences from another person obsessing over one person for more than a year and posting thousands of comments as if there was a personal relationship between the two parties, it is not believed that Plaintiff is seeking medical damages at this time.

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Respectfully Submitted,

CIAROCHI AND ASSOCIATES, PLLC

800 E. Campbell Rd.

Ste. 121

Richardson, TX 75081

Telephone: 214-393-6861

Facsimile: 214-466-6297

By: 

Jason Charles Ciarochi

State Bar No. 24012424

ATTORNEY FOR PLAINTIFF

TIM DARNELL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served pursuant to the relevant rules of civil procedure on all counsel of record on September 12, 2008, via facsimile:

Mr. Matthew J. Kita
2001 Bryan Street, Suite 1800
Dallas, TX 75201
Telephone: 214-871-2100
Facsimile: 214-871-2111


Jason Charles Ciarochi

B

A P P E A R A N C E S

FOR THE PLAINTIFF:

JASON CHARLES CIAROCHI
Ciarochi & Associates, P.L.L.C.
800 E. Campbell Road, Suite 121
Richardson, Texas 75081
(214) 393-6861
(214) 466-6297 (Fax)

FOR THE DEFENDANT:

JAMES H. MOODY, III
MATTHEW J. KITA
Quilling, Selander, Cummiskey & Lownds, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100
(214) 871-2111 (Fax)

ALSO PRESENT:

HEATHER DOBROTT - Defendant

WITNESS' ADDRESS:

1513 Home Park Drive
Allen, Texas 75002

1 idea of just soaking up all of the search engine space
2 and being there every time our names are mentioned.
3 She's there. That's Internet stalking.

4 Q. Okay. And do you accuse her of any other form
5 of stalking?

6 A. She's been to our conferences and taken
7 pictures of conferences, and very smug about her stealth
8 and ability to come in and do that and how cool she is
9 doing that. And she's gone to our hotels and delivered
10 past documentation in order to discredit me with the
11 hotels that we're contracting our business with. And --
12 I don't know. I don't know what she's capable of after
13 the -- I didn't think anybody would be capable of the
14 high school incident. And when we found out that that
15 actually happened, we got greatly alarmed about this
16 person.

17 Q. Have -- has she ever directly threatened you
18 with physical harm?

19 A. No. She has discussed incessantly bringing
20 down my business, in all of her posts, constantly. And
21 the derogatory, vile language is unbelievable.

22 Q. Has she ever threatened physical harm to any of
23 your family members?

24 A. No. But what happened was in her threads we
25 heard about a death threat with Jack Weinzierl. And

CAUSE NO. 08-06317

TIM DARNELL,

Plaintiff

V.

HEATHER DOBROTT,

Defendant

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IN THE 193RD DISTRICT COURT

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DALLAS COUNTY, TEXAS

REPORTER'S CERTIFICATE
DEPOSITION OF TIM DARNELL
JANUARY 12, 2009

I, Brandy Cooper, a Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, TIM DARNELL, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
January 14, 2008 to the witness or to the attorney for
the witness for examination, signature and return to me
by February 6; 2009

1 That the amount of time used by each party at the
2 deposition is as follows:

3 Mr. Moody - 4 hours, 11 minutes,

4 Mr. Ciarochi - 0 hours, 14 minutes;

5 That pursuant to information given to the
6 deposition officer at the time said testimony was taken,
7 the following includes counsel for all parties of
8 record:

9 FOR THE PLAINTIFF:

10 JASON CHARLES CIAROCHI

Ciarochi & Associates, P.L.L.C.

11 800 E. Campbell Road, Suite 121

Richardson, Texas 75081

12 (214) 393-6861

(214) 466-6297 (Fax)

13
14 FOR THE DEFENDANT:

15 JAMES H. MOODY, III

MATTHEW J. KITA

16 Quilling, Selander, Cummiskey & Lownds, P.C.

2001 Bryan Street, Suite 1800

Dallas, Texas 75201

17 (214) 871-2100

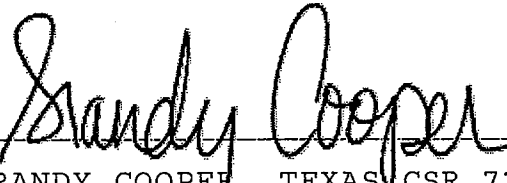
(214) 871-2111 (Fax)

18
19 I further certify that I am neither counsel for,
20 related to, nor employed by any of the parties or
21 attorneys in the action in which this proceeding was
22 taken, and further that I am not financially or
23 otherwise interested in the outcome of the action.

24 Further certification requirements pursuant to Rule
25 203 of TRCP will be certified to after they have

1 occurred.

2 Certified to by me this 14th day of
3 January, 2009.

4 
5
6

BRANDY COOPER, TEXAS CSR 7211

7 Certification Expires 12-31-2010

Firm Registration No. 343

8 5910 N. Central Expressway, Suite 100

Dallas, Texas 75206

9 (214) 741-6001

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was ____ was not X
returned to the deposition officer.

If returned, the attached Changes and Signature
page contains any changes and the reasons therefor;

If returned, the original deposition was delivered
to Mr. Matthew Kita, Custodial Attorney;

That \$3,470.73 is the deposition officer's
charges to the Defendant for preparing the original
deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance
with Rule 203.3, and that a copy of this certificate was
served on all parties shown herein and filed with the
Clerk.

Certified to by me this 13th day of
February, 2009.

Brandy Cooper

BRANDY COOPER, TEXAS CSR 7211

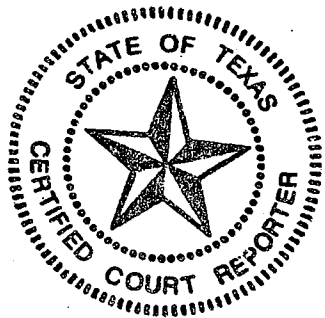
Certification Expires 12-31-2010

Firm Registration No. 343

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. DC-08-06217-L

TIM DARNELL,) IN THE 193RD
Plaintiff,)
vs.) JUDICIAL DISTRICT COURT
HEATHER DOBROTT,)
Defendant.) DALLAS COUNTY, TEXAS

TEMPORARY INJUNCTION HEARING

ORIGINAL

On the 23rd day of June, 2008, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable CARL H. GINSBERG, Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by computerized stenotype machine.

APPEARANCES

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I N D E X
VOLUME 1
(TEMPORARY INJUNCTION HEARING)

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PLAINTIFF'S WITNESSES	DIRECT	CROSS	V.DIRE	VOL.
TIMOTHY DARNELL	10,59	24,60	--	1
HEATHER DOBROTT	62	--	--	1

1 officers and the principals, period, one time. I never have
2 to go there again, that's resolved. They have no idea that
3 there's any stalking.

4 MR. CIAROCHI: Your Honor, we'll pass the
5 witness.

6 THE COURT: Before you do that, other than
7 this witness, though, you have no --

8 MR. CIAROCHI: That's right, Your Honor.

9 THE COURT: Prior restraints on speech are
10 presumptively unconstitutional, and I have not heard
11 anything that would -- in support of the application to
12 indicate why the relief requested would take it out of that
13 presumption.

14 Therefore, the Court is going to deny the
15 temporary injunction, dissolve the temporary restraining
16 order, and order that the bond posted be turned over to the
17 defendant.

18 All right. Thank you all.

19 MR. CIAROCHI: Thank you.

20 MR. FOSTER: Thank you, Your Honor.

21 *(Proceedings adjourned)*

22

23

24

25 STATE OF TEXAS)

D

February 25, 2009

Via Courier

Mr. Jason Charles Ciarochi
Ciarochi & Associates, PLLC
800 East Campbell Road, Suite 121
Richardson, Texas 75081

Re: *Darnell vs. Dobrott*
Cause No. 08-06317; 193rd Judicial District Court; Dallas County, Texas

Mr. Ciarochi:

Enclosed is Defendant's Designation of Expert Witnesses.

Also enclosed is Defendant's Second Request for Production.

Third, without withdrawing our objections, enclosed are documents responsive to Plaintiff's Requests for Production Nos. 5, 7, and 8.

Fourth, in your responses to Defendant's First Request for Production, you indicated that you would supplement your responses to Requests Nos. 2, 3, 4, 5, 6, 21, 22, 23, 24, and 25. Moreover, at your client's deposition last month, your client indicated that he does, in fact, have documents responsive to our Requests Nos. 13, 14, 15, 16, 17, 18, 19, and 20. As you well know, if you believe that a protective order is needed when responding to a discovery request, it is your duty to pursue one; the Rules do not permit you to withhold documents based on your own unsubstantiated belief as to whether our client should or should not have access to said documents. Long story short: if we do not receive complete responses to all of these requests by Monday, March 9, 2009, we will file a Motion to Compel their production and seek recovery of our attorneys' fees.

Finally, for your convenience, I have prepared an Agreed Notice and Order of Nonsuit and Dismissal for all of your claims against my client, as well as our counter-claim for Rule 13 sanctions against you and your client. Of course, should you sign and file this document by next Monday, your review and response to all of the above will not be necessary.

Respectfully,


Matthew J. Kita

cc: Mr. James H. Moody III / firm