

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

MAUREEN TOFFOLONI,
as Administrator and Personal
Representative of the ESTATE
OF NANCY E. BENOIT,

Plaintiff,

vs.

LFP PUBLISHING GROUP, LLC,
d/b/a Hustler Magazine, et al.,

Defendants.

CASE NO. 1:08-cv-00421-TWT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant LFP Publishing Group, LLC (“LFP”) and respectfully moves this Honorable Court for the entry of summary judgment in its favor on Plaintiff’s right of publicity claim or, in the alternative, on Plaintiff’s request for punitive damages, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1. In support of its Motion, LFP relies on its Brief in Support, filed herewith, and its LR 56.1B Statement of Undisputed Material Facts and Appendix of Evidence to be manually filed under seal pursuant to the Court’s December 22, 2009 Protective Order, Docket Index 70.

LFP's motion for summary judgment respectfully asks the Court to revisit the Eleventh Circuit's analysis of the "newsworthiness" privilege with the benefit of a factual record fully developed through discovery and, in the alternative, to grant summary judgment to LFP on Plaintiff's request for punitive damages should her underlying right of publicity claim survive this motion. The fully developed factual record reveals that Plaintiff's claims must fail because they are subject to the "newsworthy" exception to the Georgia common law right of publicity.

As a matter of settled law, the Eleventh Circuit's ruling on LFP's Rule 12(b)(6) motion to dismiss did not and could not address the factual merits of Plaintiff's claim, or the application of the "newsworthy" exception thereto, which matters may only be decided on a sufficiently developed factual record. Because there is no genuine issue with respect to the material fact that LFP's publication of the images of Nancy Benoit was part of an exclusive entertainment news story typical of the nature and subject matter of news and entertainment reporting pervasive in mainstream American media, summary judgment for LFP is appropriate. The undisputed record is also clear that, given the context described above, no reasonable jury could conclude that the publisher and editor of *Hustler* did not act in the sincere and reasonable belief that publication of the Benoit images was constitutionally-protected. Because the record provides no basis from

a which a jury could conclude that LFP acted with the requisite malice and intent necessary to support an award of punitive damages under Georgia law, even if *Hustler's* publication of the Benoit images was not constitutionally-privileged, summary judgment to LFP is appropriate on Plaintiff's claim for punitive damages.

WHEREFORE, LFP respectfully prays that this Court inquire into and sustain this Motion, and enter judgment in its favor on Plaintiff's right of publicity claim or, in the alternative, on Plaintiff's claim for punitive damages.

Respectfully submitted this 30th day of July 2010.

/s/ S. Derek Bauer

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CERTIFICATION OF COUNSEL

Pursuant to N.D. Ga. Local Rule 7.1D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1B.

/s/ S. Derek Bauer
S. Derek Bauer
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CERTIFICATE OF SERVICE

This is to certify that I have this day filed the within and foregoing DEFENDANT’S MOTION FOR SUMMARY JUDGMENT via the CM/ECF system which will automatically send notification to Plaintiff’s attorneys of record, who are participants in the CM/ECF system.

This 30th day of July 2010.

/s/ S. Derek Bauer
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