

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

PAUL ERIC HAWBECKER,

Plaintiff,

v.

MICHELLE MARIE HALL,

Defendant.

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Civil Action No. 5:14-CV-1010-XR

ORDER

On this date the Court considered Plaintiff’s Motion for Default Judgment (docket no. 29). For the following reasons, the Court GRANTS the motion as to liability.

I. BACKGROUND

Plaintiff Paul Eric Hawbecker filed his initial complaint on November 13, 2014, alleging that Michelle Marie Hall made a series of libelous and defamatory statements about him via the internet. (Docket no. 1). Hawbecker asserts that, sometime around April 2014, Hawbecker discovered that Hall had created a Facebook page and made numerous posts to that page indicating that Hawbecker sexually abused children, including Hall’s daughter. (Docket no. 1, at 4; Docket no. 1-1, at 2). The Facebook page also accused Hawbecker of taking pornographic photos of Hall’s daughter and other children. (Docket no. 1-1, at 2). The page encouraged others to spread the accusations against Hawbecker and indicated that Hall had already contacted or attempted to contact Hawbecker’s employer, Facebook friends, and others. (*Id.*) Hawbecker’s complaint alleges that Hall committed libel and defamation in violation of Texas Civil Practice & Remedies Code Section 73.001. Hawbecker, a resident of Texas, asserts that Hall, a resident of Colorado, caused him damages in the amount of \$251,020. (Docket no. 29, at

11).

Hall was originally served with the complaint on December 11, 2014. (*See* docket no. 18). Hall failed to answer the complaint by January 2, 2015, so Hawbecker moved for an entry of default on January 6, 2015. (Docket no. 10). The Clerk entered default on January 7, 2015. (Docket no. 11). However, on January 5, 2015, Hall, representing herself *pro se*, filed a Rule 12(b) motion to dismiss for lack of personal jurisdiction, improper service, and improper venue. (Docket no. 12). The Court denied Hall's motion with regard to venue and personal jurisdiction on February 19, but noticed that proof of service was defective because it incorrectly named the Defendant. (Docket no. 16). Therefore, the Court vacated the previous entry of default and ordered Hawbecker to provide proper proof of service. (*Id.*) Hawbecker provided that proof of service on April 1. (Docket no. 19).

Hawbecker again moved for entry of default on April 23, based on Hall's continued failure to file an answer. (Docket no. 21). The Court denied Hawbecker's motion, but ordered Hall to file an answer to the complaint by May 9, 2015. (Docket no. 22). Hall did not file an answer by that date (nor has she done so since). Based on Hall's continued failure to answer, Hawbecker filed a third motion for entry of default on May 14 (docket no. 27), which the Clerk granted (docket no. 28). Hawbecker then moved this Court to enter a default judgment on July 17. (Docket no. 29). Hawbecker's Motion for Default Judgment asks for \$251,020 in damages and for permanent injunctive relief. (*Id.* at 10).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 55(a) states a default judgment is proper “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” FED. R. CIV. P. 55(a). A defendant's failure to respond is an admission of the plaintiff's

well-pleaded allegations of fact as to liability, but not damages. *Jackson v. FIE Corp.*, 302 F.3d 515, 524–25 (5th Cir. 2002) (quoting *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). A default judgment “must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” FED. R. CIV. P. 54(c). A hearing to decide the amount of damages is unnecessary when that amount can be determined “with certainty by reference to the pleadings and supporting documents.” *James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993). However, when the amount of damages cannot be determined with such certainty, a hearing to determine damages is necessary. *Id.*

III. ANALYSIS

In Texas:

A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury.

TEX. CIV. PRAC. & REM. CODE § 73.001. In “libel . . . the issues are whether the utterance was made, if it was false, if it damaged the complainant and if the speaker had any privilege.” *Priester v. JP Morgan Chase Bank, N.A.*, 708 F.3d 667, 678 (5th Cir. 2013) (citing *Peshak v. Greer*, 13 S.W.3d 421, 426 (Tex. App.—Corpus Christi 2000, no pet)). There are two types of libel – libel per se and libel per quod. *Hancock v. Variyam*, 400 S.W.3d 59, 63 (Tex. 2013) (“Defamation is delineated into defamation per se and per quod.”). A statement is “defamatory per se only if it falls within one of the following categories: (1) imputation of a crime; (2) imputation of a loathsome disease; (3) injury to a person's office, business, profession, or calling; or (4) imputation of sexual misconduct.” *Downing v. Burns*, 348 S.W.3d 415, 424 (Tex. App.—Houston [14th Dist.] 2011, no pet.). “[T]he law presumes the existence of some actual damages

in cases involving libel per se.” *First State Bank of Corpus Christi v. Ake*, 606 S.W.2d 696, 702 (Tex. App.—Corpus Christi 1980, writ ref’d n.r.e.). “Such damages are purely personal and cannot be measured by any fixed rule or standard.” *Id.*

Because default was entered against Defendant, the Court accepts all factual allegations relating to liability as true. *Jackson*, 302 F.3d at 524–25. The Court therefore finds that: (1) Hall created the Facebook page in question; (2) on that Facebook page, Hall accused Hawbecker, in writing, of sexually assaulting Hall’s child and other children and of taking pornographic photos of Hall’s child and other children; (3) the allegations on the Facebook page imputed a crime to Hawbecker; (4) Hall’s allegations against Hawbecker are false; (5) Hall invited others to view the Facebook page and attempted to disseminate the page to others, including Hawbecker’s family, friends, and employer; (6) Hall’s false allegations have exposed Hawbecker to public hatred, contempt, and ridicule; (7) Hall made her statements and pursued her course of action with malice; and (8) no circumstances exist giving Hall any form of privilege to make her statements.

Because Hall’s admittedly false allegations imputed a crime to Hawbecker, they constitute libel per se. *Downing*, 348 S.W.3d at 424. In libel per se cases, actual damages may be presumed. *Ake*, 606 S.W.2d at 702. Based upon these admitted allegations and other supporting documentation, the Court concludes that the Motion for Default Judgment should be granted as to liability.

The only remaining issue is the amount of damages to award to Hawbecker. Hawbecker requested \$251,020 in damages and injunctive relief in his Motion for Default Judgment. However, in libel per se cases, “damages are purely personal and cannot be measured by any fixed rule or standard.” *Ake*, 606 S.W.2d at 702. The damages in this case cannot be determined

“with certainty by reference to the pleadings and supporting documents.” *James*, 6 F.3d at 310. Therefore, a hearing is necessary to determine appropriate damages and injunctive relief. *See id.*

IV. CONCLUSION

Plaintiff’s Motion for Default Judgment (docket no. 29) is GRANTED as to liability. The Court will conduct an evidentiary hearing to determine the proper amount of damages on **Wednesday, August 26, 2015 at 9:30 a.m.**

It is so ORDERED.

SIGNED this 4th day of August, 2015.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE