

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY
TENNESSEE

FILED 1-22-2007 M

ENTERED BOOK _____ PAGE _____
DEBBIE McMICHAEL BARRETT

KENT AND REGINA SMITH, CHRIS AND
BETH ANCONA, CLIFF AND LISA PETERS,
DAVID AND JENNIFER MARTIN, EIDON
AND SARA GORMSEN, BRANDON AND
ELIZABETH HANNAH, THOMAS AND DONNA
BASS, IVAN AND LINDA PEARSON, CHRIS
AND APRIL HERBST, LUKE AND HEATHER
HIGGINS, BLAKE AND RACHEL ZANONI,
ROBERT AND CATHERINE ZANONI,
LONZO AND TRACEY HERRON, GWEN
SHAMBLIN, CRAIG AND LORI ROGOSHESKE,
STEVE AND MARY MORNOUT, MICHAEL AND
ERIN SHAMBLIN, BOB AND RUTH BELD,
JEFF AND GINA GRAVES, DONALD FISCHER,
JOEL AND CARRIE BELD, JOHN AND JEAN
KURTZ, AL AND JAN VOORHIS, TEDD AND
CANDACE ANGER, LARRY AND KAREN SIMS,
RICH AND KELLY GADKE, DAVID AND
CATHERINE RECTOR, MARCUS AND
MARAYET FRANCIS, SANDY SHERIDAN,
JAMES AND LISA HENRY, JOSEPH AND
TERESA LANGSDON, GREG AND RENE
MAXWELL, MARC AND THERESE JOST,
ANDREW AND KERRY NISSAN,
GEORGE AND KRISTY MCHANAY,

Plaintiffs,

VS

ANONYMOUS BLOGGER AND
RAFAEL MARTINEZ,
Defendants.

Case No. 06648
JURY DEMAND

**DEFENDANT RAFAEL MARTINEZ'S
MOTION TO DISMISS THE COMPLAINT**

Defendant, RAFAEL MARTINEZ, by and through counsel, pursuant to Tenn.R.Civ.P.7.02 and 12.02(6), moves this Court for an Order Dismissing the Complaint of the Plaintiffs for failure to state a claim upon which relief can be granted.

As grounds for this Motion, defendant RAFAEL MARTINEZ (hereafter, "Defendant" or "Martinez") would show the Court the following:

1. Plaintiffs, sixty-seven (67) individuals, (hereafter collectively "Plaintiffs") filed Complaint No. 06648 in this Court on November 6, 2006 (the Complaint is titled "First Amended Complaint" however, upon inquiry to the Court no original complaint is filed and Defendant treats this amended Complaint as the original Complaint which shall hereafter be referred to as "Complaint").

2. The defendants in the Complaint are an individual identified as "Anonymous Blogger" and Martinez. The Anonymous Blogger is unknown to Martinez and presumably unknown to the Plaintiffs.

3. To establish a claim for defamation of a private person under Tennessee law, a plaintiff must establish that: 1) a party published a statement; 2) either with knowledge that the statement is false and defaming to the other; 3) with reckless disregard for the truth of the statement; or (4) with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Memorial Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999).

4. If the alleged defamed party is a public person, Tennessee follows Section 580(a) of the Restatement of Torts, and the defendant must know the statement to be false, that the statement defames the other person, or the defendant acts in reckless disregard of these matters. The plaintiff must allege actual malice. *Press, Inc. v. Verran*, 569 S.W.2d 435.

5. Damages cannot be presumed, and the Complaint does not contain sufficient allegations of actual damages and injury to the sixty-seven (67) Plaintiffs from the alleged defamatory words.

THE COMPLAINT MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND FOR FAILURE TO ALLEGE ACTUAL DAMAGES SUFFERED BY THE PLAINTIFFS.

6. The Complaint does not allege that Defendant's statements were made with the knowledge that the statements are false and defaming to the sixty-seven (67) named defendants nor does the Complaint allege that Defendant's statements were made with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. The Complaint alleges only three defamatory statements made by Martinez.

7. The first statement is:

"She won't tell you about the marriages that have ended, the children who have been starved and the family relationship dissolved directly due to her application of God's Rules." (Complaint Paragraph 16 (a)).

8. The alleged defamed party "She" in this statement is not identified by name and the Plaintiffs do not allege which of the sixty-seven (67) plaintiffs this statement defames. Relief cannot be granted to an unidentified party.

9. In the Complaint, the Plaintiffs allege that Plaintiff Gwen Shamblin is a public figure. (Complaint Paragraph 11). If the "She" referred to in Complaint paragraph 16(a) is Gwen Shamblin, Plaintiffs must allege actual malice by the Defendant against Gwen Shamblin when the alleged defamatory statement was made and published. The Plaintiffs have not alleged facts which show the statement was made with actual malice.

10. The second statement is:

"Furthermore, Remnant Fellowship teachings are dangerous and destructive. Over the past five years, Remnant members have lost dangerous amounts of weight, with extreme fasting often advocated (even 14-21 day fasts). Family relationships are often damaged because any family member who tries to convince a Remnant Fellowship member leave the group is cut off." (Complaint Paragraph 16(b)).

11. The third statement is:

"The most disturbing development of Remnant Fellowship's teachings include its advocacy over the past couple of years of extreme discipline or children raised in the movement, included repetitive and harsh spankings and whippings for children who disobey and do not maintain emotional control." Complaint Paragraph 16(c)).

12. As to the second and third statements, Remnant Fellowship is a Tennessee nonprofit corporation, a separate entity, and is not a party to this suit. The second and third statements do not refer to any of the sixty-seven (67) individual Plaintiffs, and no allegation is made as to how such a statement defamed any of the individual Plaintiffs. The allegations relate to a non-party and therefore no relief can be granted.

13. All three statements are merely opinion and a discussion of facts already in the public domain. "One may not recover in actions for defamation merely upon the expression of an opinion which is based upon disclosed, nondefamatory facts, no matter how derogatory it may be." *Windsor v. Tennessean*, 654 S.W.2d 680, 685 (Tenn Ct, App., 1983).

14. The Plaintiffs' Complaint alleges only that the Plaintiffs "have suffered damages to their reputations and potential incomes", but they make no allegations of how their reputations were damaged or how and to what extent their potential incomes will be damaged.

CONCLUSION

The Plaintiffs' Complaint is insufficient in that:

1. The Complaint fails to allege that Defendant Rafael Martinez made the alleged defamatory statements quoted in the Complaint with the knowledge that these statements were false and defaming to the named Defendants;

2. The Complaint fails to allege that the statements were made with either reckless disregard for the truth of the statements or that Defendant failed to ascertain the truth of the statements;

3. The Complaint fails to allege that "actual malice" was used by the Defendant in making alleged defamatory statements against a public person; and

4. All alleged defamatory statements set out in the Complaint are opinion and therefore not actionable.

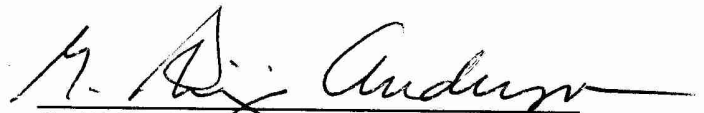
WHEREFORE, Defendant Rafael Martinez asks the Court:

1. That an Order of Dismissal be entered in this case, dismissing with prejudice all claims against Rafael Martinez.

2. That costs be charged to the Plaintiffs.

3. For such other and further relief as the Court deems proper.

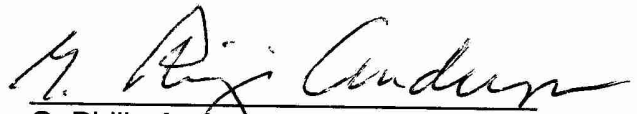
Respectfully submitted,



G. Philip Anderson, BPR #3279
5409 Maryland Way
Suite 105
Brentwood, TN 37027
615/377-9370

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion to Dismiss the Complaint was sent, via U.S. Mail, postage prepaid, to Samuel J. Harris, attorney for the Plaintiffs, P.O. Box 689099, Franklin, Tennessee, 37068-9099, this 22 day of January, 2007.



G. Philip Anderson

IT IS ANTICIPATED THAT THIS MOTION WILL BE HEARD ON THE 12TH DAY OF FEBRUARY, 2007, BEGINNING AT 9:00 A.M.