



Peter D. Kennedy
Board Certified, Civil Appellate Law
Texas Board of Legal Specialization

512.480.5764
512.536.9908 (fax)
pkennedy@gdhm.com

401 Congress Avenue, Suite 2700
Austin, TX 78701-3790

October 14, 2022

Mr. Stephen Casey
Casey Law Office, P.C.
P.O. Box 2451
Round Rock, Texas 78680

via email: stephen@caseylawoffice.us

Re: Your letter to Ken Martin of the *Austin Bulldog* dated October 11, 2022.

Dear Mr. Casey:

I represent Ken Martin of *The Austin Bulldog* regarding your letter to Mr. Martin dated October 11, 2022, sent on behalf of your clients, Don Zimmerman and Texans for Zimmerman. Please address any further communications to my client on the issues raised in your letter to me.

Your letter references an article published by *The Austin Bulldog* on October 9, 2014, and updated on October 15, 2014, entitled “Candidate Lost Custody Over Abuse” (“the Article”). As best I can understand, you are claiming that the Article, although published in 2014 and not changed in any way since that year, somehow now libels your client, and you demand a “correction” of that 2014 article based on a court order entered more than two years later, in January 2017. You threaten legal action, again, over the Article even though your client’s claim that the article libeled him was dismissed with prejudice and your client was sanctioned under the Texas Citizens Participation Act (“TCPA”) for having filed the lawsuit.

For multiple reasons, my client rejects your demand.

First, as you know, Mr. Zimmerman filed a libel lawsuit over the Article in 2014, and that lawsuit was dismissed with prejudice, and Mr. Zimmerman was ordered to pay my client’s attorney’s fees and additional sanctions under the TCPA. That order was not appealed, and Mr. Zimmerman eventually paid the judgment. Any claim by Mr. Zimmerman based on the Article is therefore barred by *res judicata*.

Second, even if Mr. Zimmerman’s claim was not barred by *res judicata*, it is barred by limitations. The limitation period for libel is one year, and it begins to run when an article is first published online. Continued availability of that article online is not a republication. The Texas Supreme Court definitively adopted the single publication rule as to internet publications in *Glassdoor, Inc. v. Andra Group, LP*, 575 S.W.3d 523, 528-29 (2019). The Article has been publicly available since 2014 and has not been materially altered since it was published, so limitations ran in October 2015, even if your client’s claims had not been dismissed with prejudice.

Third, even if Mr. Zimmerman's claims were not barred by *res judicata* and limitations, his request for a retraction is meritless. The entry of an Agreed Nunc Pro Tunc Order in 2017 that did not include language in an earlier order does not change history. As of the publication of the Article, Mr. Zimmerman, through counsel, had admitted that the allegations of abuse were true. The Article accurately reported that fact, and the document remains on file with the court, both in the divorce proceeding and in the libel lawsuit Mr. Zimmerman filed. Mr. Zimmerman's after-the-fact effort to hide what happened during a judicial proceeding does not create a libel claim for an article published in 2014.

Finally, note that the accusations of abuse did not come from Mr. Zimmerman's ex-wife. They were made by his daughter, by her doctor, and by her stepfather. So even if Ms. Bochenkova signed a document in 2017 that omitted Mr. Zimmerman's earlier admission, that was not a retraction of the allegations of abuse, since they were made by others, let alone establish that they were false. *The Austin Bulldog* reported the reports of abuse as allegations, and it fully reported Mr. Zimmerman's denials of that abuse, along with his attacks on his daughter's character. Therefore, even if Mr. Zimmerman's claims were not barred by *res judicata* and limitations, they would be barred by Section 73.005(b) of the Texas Civil Practice & Remedies Code, which precludes libel claims based on a publication's accurate report of third-party allegations regarding a matter of public concern, among other reasons.

If Mr. Zimmerman files suit, Mr. Martin will move to dismiss under the TCPA and will again seek fees and sanctions against Mr. Zimmerman. And, because Mr. Zimmerman's claims as to the Article are so clearly barred as a matter of law, Mr. Martin will seek sanctions under Rule 13 against any attorney filing suit on his behalf.

Sincerely,

GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation

By: /s/ Peter D. Kennedy
Peter D. Kennedy

PDK