IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 08-CA-24573

ZENAIDA GONZALEZ,

Plaintiff,

vs.

CASEY ANTHONY,

Defendant.

_____/

PLAINTIFF'S RESPONSE TO DOMINIC CASEY'S MOTION TO STRIKE PLAINTIFF'S MOTION FOR CONTEMPT, MOTION FOR PROTECTIVE ORDER, AND MOTION FOR ATTORNEY'S FEES

Plaintiff, ZENAIDA GONZALEZ, by and through the undersigned counsel, files this Response to Dominic Casey's Motion to Strike Plaintiff's Motion for Contempt, Motion for Protective Order, and Motion for Attorney's Fees and would show unto the Court the following:

Dominic Casey is not a party to this lawsuit. He is merely a witness who has been subpoenaed for deposition. Rather than follow proper procedures, appear for deposition and raise any legitimate privilege objection to specific questions at that time, he is trying to duck his deposition entirely. He cloaks this attempt to avoid being questioned in hyperbole and rhetoric. He attacks the lawsuit, the lawyers, invokes Orwell and Clockwork Orange, then suggests the integrity of the entire legal system in Florida hinges on whether or not he must attend a deposition. As the court is aware, witnesses have no standing to attack the lawsuit. The rationale for keeping witnesses out of the business of the lawsuit itself is that they are not

involved directly in the facts nor the law. This misguided, misinformed motion provides a classic example of why witnesses should leave litigation to the litigants.

The witness spends much of his motion pontificating on behalf of Casey Anthony, going to great lengths to argue about her alleged qualified privilege to defame Zenaida Gonzalez. First of all, questions involving any qualified privilege that Casey Anthony might try to claim have nothing to do with this witness. Additionally, if Mr. Casey was actually involved in the case, he would know that the qualified privilege does not work here. Casey Anthony cannot escape accountability based on this technical excuse. Qualified privilege has no application whatsoever to the defamation that was made directly to the public, rather than via law enforcement. When shown a photograph of the Plaintiff, Casey Anthony told investigators, that is not the Zenaida Gonzalez who allegedly took Caylee. That exchange with law enforcement could have cleared Plaintiff from the start. However, Casey Anthony turned around and sent her mother out to tell the public a very different story. When Cindy Anthony confronted her daughter with the fact that investigators had shown her the photograph (apparently questioning the validity of the whole Zenaida Gonzalez story), Casey Anthony denied having looked at any such picture of the Plaintiff, thereby denying that she had cleared her. Instead Casey Anthony authorized her mother, Cindy Anthony, to speak to the media and announce that Casey had not cleared Plaintiff by looking at a picture of the "lady the police questioned in Kissimmee". In other words, rather than exonerate Plaintiff (as she had done behind the scenes), Casey Anthony publically placed the target of suspicion squarely on her back. Qualified privilege has absolutely no application to this outrageous defamatory act.

Dominic Casey misses this point entirely, which reflects a fundamental lack of knowledge about the fact, law and pleading regarding the case. It is not surprising that Dominic

Casey is unaware of this part of the case because he is not a party to the lawsuit. Mr. Casey's lack of basic knowledge about the case is further evidence by matters he states as factual which are not remotely close to being correct. For instance, Mr. Casey states in his motion that

> "[o]ur particular Zenaida Gonzalez was questioned by law enforcement because she was the only person with a similar name they could find with any tangential connection to the apartment complex, **having signed a guestbook there three months prior to the child's disappearance**."

The undisputed facts are that that Zanaida did not "sign a guest book", rather Sawgrass Apartments employee Harry Garcia completed an apartment guest card for Plaintiff. More importantly, Zenaida Gonzalez visited the apartment on June 17, 2008, approximately 24 hours after Caylee was last seen alive, not "3 months prior to the disappearance." These are the kind of mistakes that occur when a witness over steps boundaries and tries to act as an advocate for one side.

To make matters worse, Mr. Casey uses his motion to launch an unfounded personal attack on Plaintiff's counsel and their motives. Mr. Casey's ranting about alleged grandstanding seems particularly odd, given the theatrical embellishment employed in his motion. For example, his motion contains lines such as these:

> "The entirety of this litigation is a cynical and frivolous exploitation of a family's tragedy. To even treat this as a legitimate piece of litigation is an Orwellian task."

or

> "Considering the continuing toll on the reputation of each and every lawyer in the state, the grinding away at what is left of the public's respect for our system of justice, and the Clockwork Orange effect these cases are having on the good sense of everyone related therein, this Court should do our community the service of getting to the merits of the pending Motion to Dismiss and putting a halt to continued questionable discovery until it can do so. This is a family tragedy and a death that has lead to a death penalty prosecution; it should never have been co-opted as a marketing plan."

Unfortunately, these types of attacks have become a common practice in this case, as evidenced by the instant motion and various court filings by Casey Anthony. If the personal attacks are not promptly and formally withdrawn from the motion, counsel will have no choice but to ask the Court to intervene. The court has warned against this kind of conduct and apparently some are not listening. This base practice is proving to be contagious. It is time to put a stop to it.

The amount of stonewalling that has taken place in the discovery phase of this lawsuit by both the defendant and some of the witnesses is extraordinary. The proper procedure is for a witness to attend their deposition and raise any privilege objection on question by question basis, then let the Court rule on such matters. The witness does not get to decide what is relevant nor rule on his own privilege objections, those are matters for the court to determine. Imagine if every properly subpoenaed witness could decide if they have to show up at all and unilaterally determine whether they have relevant or discoverable information. The Court's valuable time should not be taken up compelling attendance of witnesses who are properly served to appear and answer questions. Mr. Casey needs to show up for his deposition as witnesses do every single day. If counsel is forced to attend a hearing to compel attendance, sanctions will be requested. At that time, the matter of improper attack on Plaintiff's counsel shall be addressed with the Court (assuming they are not immediately voluntarily withdrawn). Hopefully, Dominic Casey will reconsider his tactics without the need of a Court Order compelling him to follow the rules.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 19th day of June, 2009 to Jonathan Kasen, Esq., 633 S.E. 3rd Avenue, Suite #203, Ft. Lauderdale, FL 33301 and to Diana M. Tennis, Esq., 636 W. Yale Street, Orlando, FL 32804.

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