

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY**

MILLIN A. NOBREGAS,

Plaintiff,

CASE NO.: 11-05755-CA 32

v.

VIRGINIA HADAD GONZALEZ,

Defendant.

**PRETRIAL CATALOGUE PURSUANT TO
FLORIDA RULE OF CIVIL PROCEDURE 1.200**

COMES NOW, Defendant VIRGINIA HADAD GONZALEZ (hereinafter “Ms. Hadad”), and files her pre-trial catalogue.

1. A concise statement of the factual basis for the cause of action or defense pled.

A. Facts

Ms. Gonzalez was a medical doctor in her native country of Argentina, before immigrating to the United States. In an effort to continue her career, she obtained a certificate from the University of Miami to allow her to offer counseling as a substance abuse counselor. Unbeknownst to her, she was not eligible to offer such counseling with the certification she obtained.

Mr. Nobregas sought counseling from Ms. Gonzalez, at his ex-girlfriend’s recommendation and disclosed to her confidential information about his mental health and drug addiction. Then, when his child was subject to several legal proceedings regarding his safety, Ms. Hadad testified in support of the mother receiving custody of the child for the child’s welfare.

Mr. Nobregas feels that he was misled as to Ms. Gonzalez’s credentials and that Ms. Gonzalez disclosed privileged information that he shared with her privately. These contentions serve as the basis for his suit.

B. Defenses

QUALIFIED IMMUNITY

Ms. Gonzalez only disclosed information that she believed was necessary to protect the health and safety of the young child. Florida Statute § 39.204 provides, in pertinent part, that “the

privileged quality of communication between...any professional person and his or her patient or client, and any other privileged communication...shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect....”

Abuse is defined as any “willful act or threatened act that results in any physical, mental or sexual abuse, injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.” Fla. Stat. § 39.01(2). The abrogation of the privilege against disclosure is so important in cases of potential abuse that a dependency court even allowed discovery of parents’ psychiatric histories for the period of time before the child was born. *See I.T. v. State, Dep’t of Health & Human Rehabilitative Servs.*, 532 So. 2d 1085, 1088 (Fla. 3d DCA 1988).

CONDUCT WAS NOT EXTREME OR OUTRAGEOUS

Ms. Gonzalez’s conduct was neither extreme nor outrageous. “It is not enough that the intent is tortious or criminal; it is not enough that the defendant intended to inflict emotional distress; and it is not enough if the conduct was characterized by malice or aggravation which would entitle the plaintiff to punitive damages for another tort.” *State Farm Mut. Auto. Ins. Co. v. Novotny*, 657 So. 2d 1210, 1213 (Fla. 5th DCA 1995).

Outrageous conduct is conduct that, when described to an average member of the community, would make him exclaim “outrageous!” *Smith v. Telophase National Cremation Society, Inc.*, 471 So. 2d 163, 166 (Fla. 2d DCA 1985) (quoting Restatement (Second) of Torts § 46 (1995)). (For example, a court found extreme and outrageous conduct when police officers displayed autopsy photos and videos of the plaintiffs’ brother and son, both at a dinner party and at the chief of police’s desk. *See Williams v. City of Minnesota*, 575 So. 2d 683, 691 (Fla. 5th DCA 1991).)

NO PUBLICATION OF PRIVATE FACTS

In Florida, except in cases of physical invasion, the tort of invasion of privacy must be accompanied by publication to the public in general or to a large number of persons. *See Kautz v. Residence Inn by Marriott, LLC*, 2014 WL 4416012, *3 (M.D. Fla. Sept. 5, 2014). Ms. Hadad did not publish to the public or any group of people any information.

Publication of facts of public concern do not give rise to invasion of privacy claim. *See Woodward v. Sunbeam Television Corp.*, 616 So. 2d 501, 503 (Fla. 1993).

CONTRIBUTORY NEGLIGENCE

Plaintiff’s contributory negligence serves to diminish the recovery of damages through principles of comparative negligence, by apportioning defendant’s degree of negligence against that of the plaintiff. *Hoffman v. Jones*, 280 So. 2d 431, 436 (Fla. 1973); *Melton v. Century Arms, Inc.*, 2017 WL 1063449, at *4 (S.D. Fla. March 20, 2017). *See also* § 768.81, Fla. Stat.

GOOD SAMARITAN

Good Samaritans are immune from civil liability. § 768.13, Fla. Stat.

SUPERSEDING CAUSE

Plaintiff's injuries resulted from an intervening, superseding cause. *See Golden Gate Homes, LC v. Levey*, 59 So.3d 275, 281 (Fla. 3d DCA 2011); see also, Restatement (Second) of Torts §§ 440, 441 (1965).

ELEMENTS OF CLAIM CANNOT BE PROVEN BY PLAINTIFF

The Plaintiff cannot establish evidence to satisfy the elements of his claims.

FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT DOES NOT COMPEL AWARD OF ATTORNEYS FEES

FDUTPA claim does not entitle Plaintiff to attorney's fees since the FDUTPA statute says "may" award attorney's fees to the prevailing party as opposed to "shall."

2. Defendant's Witness List.

- A. Virginia Hadad Gonzalez, c/o 2601 Biscayne Boulevard, Miami, FL 33137. Ms. Hadad will testify to the allegations in Plaintiff's Complaint and her defenses.
- B. Veronica Fazzio, 1185 Marseilles Dr. #211, Miami Beach, FL 33141. Ms. Fazzio is the mother of Mr. Nobregas's child.
- C. Doris Amaya, 6625 NW Miami Lakes Drive, Suite 224, Miami Lakes, FL 33014, Ms. Amaya is a professor of Ms. Nobregas from the University of Miami.
- D. Any and all witnesses that may be called by Plaintiff.
- E. Any and all impeachment and rebuttal witnesses.
- F. Defendant reserves the right to amend this witness list.

3. A specification of the damages claimed by each party seeking relief in this matter.

Pursuant to Florida's FDUPTA statute, it is Ms. Hadad's understanding that Plaintiff is seeking damages of \$10,000, (See 501.2075 Civil penalty) and attorney's fees and costs, based on the prevailing party attorney fee provision in Florida's FDUPTA statute, section 501.2105.

Ms. Hadad denies "willfulness" in her violation under FDUPTA, and seeks prevailing party attorney's fees and costs pursuant to the same section.

4. Reasonable Stipulations.

- A. Ms. Hadad is not a licensed physician in Florida.
- B. Mr. Nobregas engaged Ms. Gonzalez for counseling services in 2007.
- C. Ms. Gonzalez was recommended to Mr. Nobregas based on a recommendation from Mr. Nobregas' then girlfriend, Veronica Fazzio.
- D. Ms. Gonzalez and Mr. Nobregas' ex-girlfriend, Ms. Fazzio, were acquaintances during this time.
- E. Ms. Gonzalez had offered counseling to Ms. Fazzio.
- F. The counseling sessions lasted from approximately May 7, 2007 to June 7, 2008.
- G. Mr. Nobregas disclosed sensitive information about himself and his family during these sessions to Ms. Gonzalez.
- H. Ms. Fazzio gave birth to Mr. Nobregas's child in March, 2010.
- I. The situation between Mr. Nobregas and Ms. Fazzio deteriorated, and she filed a petition for sole custody of their son in September, 2010.
- J. Ms. Gonzalez supported the mother's petition for sole custody of the child.

5. Settlement.

The attorneys for the parties have discussed settlement and good-faith settlement attempts have been made. The parties remain hopeful that settlement in this matter will be reached.

6. Defendant's Exhibit List.

- A. All documents produced by both Plaintiff and Defendant or any other non-party or witness during discovery, in response to request for productions and provided as exhibits in support of pleadings and motions.
- B. Florida Department of Health File.
- C. Medical records produced by Plaintiff.
- D. Hearing transcript from February 13, 2013 hearing, case no. 10-25425.
- E. Final Judgment in case no. 10-25425.
- F. Any and all pleadings filed in this matter.

G. Any and all exhibits that may be used by Plaintiff.

H. Defendant reserves the right to amend this exhibit list.

7. Length of trial, and associate of the firm who will try the case.

Ms. Hadad estimates that it will take approximately two days to try this case. The parties have demanded a jury trial. The attorneys who will try the case for Ms. Hadad are: Jane W. Muir, Esq., and Francisco Cieza, Esq.

8. Discovery.

Discovery is complete and no additional information is required.

Respectfully submitted,

By: Jane W. Muir
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished pursuant to Florida Rule of Judicial Administration 2.516 this 3 August 2018 to the parties listed below.

By: Jane W. Muir
Jane W. Muir

SERVICE LIST

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