



**IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA**

**ROBERT R. RILEY, JR., an individual** )  
 )  
 **Petitioner,** )  
 )  
 **v.** )  
 )  
 **ROGER SHULER, as an individual and** )  
 **in his capacity as owner and operator of** )  
 **THE LEGAL SCHNAUZER, a website,** )  
 **and CAROL T. SHULER, an individual and in** )  
 **her capacity as an administrator of and** )  
 **contributor to THE LEGAL SCHNAUZER,** )  
 **a website,** )  
 )  
 **Respondents.** )

**Civil Action No.: 2013-236**

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**LIBERTY DUKE, an individual** )  
 )  
 **Petitioner,** )  
 )  
 **v.** )  
 )  
 **ROGER SHULER, as an individual and** )  
 **in his capacity as owner and operator of** )  
 **THE LEGAL SCHNAUZER, a website,** )  
 **and CAROL T. SHULER, an individual and in** )  
 **her capacity as an administrator of and** )  
 **contributor to THE LEGAL SCHNAUZER,** )  
 **a website,** )  
 )  
 **Respondents.** )

**Civil Action No.: 2013-237**

**ORDER ON PETITIONS FOR PRELIMINARY INJUNCTION**

On September 30, 2013, the Court held a hearing on Petitioner Robert R. Riley, Jr.'s Petition for Preliminary Injunction and Petitioner Liberty Duke's Petition for Preliminary Injunction. Petitioners and their respective counsel attended the hearing. Respondents, who were both served and provided notice of the hearing on September 29, 2013, did not attend the hearing. As to Respondents failure to appear at the hearing, Lieutenant Mike Dehart, a deputy sheriff with the Shelby County Sheriff's Office, testified that Respondents were finally served on

September 29, 2013 after multiple attempts to serve Respondents earlier in the week.<sup>1</sup> Lieutenant Dehart testified that the Court's September 20, 2013 Temporary Restraining Order (the "TRO") – which included the date, time, and location of the hearing on Petitioners' respective Petitions for Preliminary Injunction – was included with the service papers. Lieutenant Dehart further testified that the section of the TRO that stated the date, time, and location of the hearing on Petitioners' respective Petitions for Preliminary Injunction was flagged when Respondents were served with it, which should have drawn Respondents' attention to the TRO and the date of the hearing on the Petitions for Preliminary Injunction. Lieutenant Dehart testified that Respondents discarded the services papers, including the TRO, by throwing them out of their car window after they were served and that Respondents did not retrieve said papers.<sup>2</sup>

To be entitled to a preliminary injunction, a plaintiff must show four things: "(1) that without the injunction the plaintiff will suffer immediate and irreparable injury; (2) that the plaintiff has no adequate remedy at law; (3) that the plaintiff is likely to succeed on the merits of the case; and (4) that the hardship imposed upon the defendant by the injunction would not unreasonably outweigh the benefit to the plaintiff." Barber v. Cornerstone Community Outreach, Inc., 42 So.3d 65, 78 (Ala. 2009) (internal quotations omitted). Injunctive relief can be an appropriate and effective remedy to repeated and ongoing defamatory speech. South v. City of Mtn. Brook, 688 So.2d 292 (Ala. Crim. App. 1996).<sup>3</sup> In the same way, the right to conduct one's business without the wrongful interference of others is a valuable property right which will be protected, if necessary, by injunctive process. Carter v. Knapp Motor Co., 243 Ala. 600 (1943). Moreover, libelous speech enjoys no First Amendment protection. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571-572 (1945) ("There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include . . . the libelous . . .").

Upon consideration of the testimony and evidence presented at the September 30, 2013 hearing, the Court finds that Petitioners are entitled to a Preliminary Injunction. The testimony and evidence clearly show that Respondents have published false, defamatory, and libelous

<sup>1</sup> The Court also notes that one or more of the Respondents posted statements on their website, "Legal Schnauzer," since the entry of the September 20, 2013 Temporary Restraining Order and before September 29, 2013, including statements and video posted on September 27, 2013, that strongly suggest that Respondents were aware that the Shelby County Sheriff's Office was attempting to serve legal papers at their home and that Respondents were purposefully avoiding being served.

<sup>2</sup> In an October 1, 2013 post on "Legal Schnauzer," Respondents admit that after being served, "[they] pulled away and threw [the] f-----g papers out the window."

<sup>3</sup> See also Cochran v. Tory, 2003 WL 22451378 (Cal. Ct. App. 2003), vacated on other grounds by Tory v. Cochran, 544 U.S. 734 (2005); Balboa Island Village Inn, Inc. v. Lemen, 156 P.3d 339 (Cal. 2007); North America Recycling, LLC v. Texamet Recycling, LLC, 2012 WL 3283380 (S.D. Ohio 2012); American University of Antigua College of Medicine v. Woodward, 837 F. Supp. 2d 686 (E.D. Mich. 2011); Bluemile, Inc. v. Yourcolo, LLC, 2011 U.S. Dist. LEXIS 62178 (S.D. Ohio June 10, 2011); Eppley v. Iacovelli, 2009 WL 1035265 (S.D. Ind. Apr. 17, 2009); Int'l Profit Associates, Inc. v. Paisola, 461 F. Supp. 2d 672, 679-80 (N.D. Ill. 2006); Evans v. Evans, 2007 WL 5490538 (Cal. Sup. Ct. May 25, 2007), rev'd, 76 Cal. Rptr. 3d 859 (Cal. App. 4th 2008); Griffis v. Luban, 2002 WL 338139 (Minn. Ct. App. 2002); Apex Technology Group, Inc. v. Doe, No. MID-L-7878-09, Order (N.J. Superior Ct., Law Division, Middlesex County Dec. 23, 2009); Bat World Sanctuary v. Cummins, No. 352-248169-10 (Dist. Ct., Tarrant Cty. Tex. May 4, 2011); Cullum v. White, 2010 WL 3333056 (Ct. App. Tex., Aug. 25, 2010).

statements concerning Petitioners on their website, "Legal Schnauzer." These false statements include statements that Petitioners had an extramarital affair, that Petitioner Duke was impregnated as a result of said affair, that Petitioner Duke had an abortion to terminate said pregnancy, and that Petitioner Riley paid or otherwise arranged to pay Petitioner Duke to have the abortion and to keep quiet about the affair. The Court finds that these statements subject Petitioners to immediate and irreparable injury, including ongoing damage to their business reputations<sup>4</sup> and the threat of potential physical harm.<sup>5</sup> The Petitioners have no adequate remedy at law: there is no way to quantify the damage that Respondents' false statements cost Petitioners in terms of lost clients, lost opportunities, or lost revenues. The Petitioners are likely to succeed on the merits of their case: Respondents' false statements constitute libel and libel *per se*. Finally, any hardship imposed on Respondents would not unreasonably outweigh the benefit to Petitioners: libelous speech does not enjoy any First Amendment protection; there is no "journalistic" harm since the statements about Petitioners are not news, much less breaking news; removal of the statements will not damage Respondents in any financial manner; and the statements constitute on-going damage to Petitioners' personal and business reputations.

Based on the foregoing, Respondents are ordered to cease and desist immediately from publishing (including oral publication to any third party), posting online, or allowing to be posted online any defamatory statement about Petitioners, including, but not limited to, any statement that Petitioners had an extramarital affair, that Petitioner Riley fathered a child out of wedlock with Petitioner Duke or anyone else, that Ms. Duke had an abortion, that Petitioner Riley paid or was in any way involved in paying to Ms. Duke or anyone else any monetary funds from any source related to said alleged extramarital affair or abortion, that any such funds were paid by Petitioner Riley or anyone acting on his behalf in exchange for Ms. Duke having an abortion or were in any way related to an affair or an abortion and/or as part of an effort to conceal an abortion, and that Petitioner Duke received any such funds. The Respondents are ordered to take all efforts to ensure that the subject information is taken off any and all websites that they enable, host, own and/or operate and that said information is not allowed to be posted or in any way published pending further Order of this Court. These efforts shall include, but not be limited to, taking the subject information off of the website known as "Legal Schnauzer," taking the subject information off all Twitter accounts that any Respondent maintains, and removing the subject information from all video-sharing and video-posting websites including, but not limited to, Youtube.

In an effort to further limit the dissemination of Respondents' libelous statements, this Court has previously ordered that all filings, pleadings, and exhibits filed in these cases shall be filed under seal and that their contents shall not be published – either in writing or orally – in any medium to any third party. Accordingly, Respondents shall not publish or cause to be published

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<sup>4</sup> Petitioner Riley is an attorney and Petitioner Duke is a lobbyist. Success in both of those professions depends, in large part, on a person's credibility and ability to gain and retain clients. Respondents' false statements about Petitioners undermine that credibility. Moreover, Respondents' false statements damages Petitioners' ability to gain new clients. We live in an age where it is common to run on-line searches to get information about a professional that one may want to hire, and the Respondents' false statements about Petitioners are one of the first things that appear when one performs an on-line search of either Petitioner.

<sup>5</sup> Some people in Alabama have very strong opinions about the ethics of abortion, and false statements about the Petitioners and abortion could subject Petitioners to ire, a physical altercation, or serious bodily harm.

in any medium – either in writing or orally – this Order, any filings, pleadings, and exhibits filed in these cases, or the contents of said filings, pleadings, and exhibits.

In entering this Preliminary Injunction, the Court is mindful that Respondents have, as of the date of the hearing on the respective Petitions for Preliminary Injunction, not complied with the TRO. The Court is also mindful that Respondents re-published the libelous and defamatory statements about Petitioners on “Legal Schnauzer” on October 1, 2013. The Respondents are forewarned that the Court will not tolerate non-compliance with its orders.

The Court hereby sets Petitioners’ Petitions for Permanent Injunction for hearing on November 7, 2013 at 10:00 A.M. at the Shelby County Courthouse in Columbiana.

DONE and ORDERED this the 1<sup>st</sup> day of October, 2013.

*Claud D. Neilson*  
Retired CIRCUIT JUDGE

Cc: Counsel for Petitioners  
Respondent Roger Shuler  
Respondent Carol T. Shuler

*Assigned by the Alabama Supreme Court*