

EXHIBIT
"HCA TRANSCRIPT TI"

EXHIBIT
Court Reporter
Transcript of TI
Hearing, Jan. 9, 2023.

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 2022-68307

MARK BURKE,) IN THE DISTRICT COURT
Plaintiff)
)
vs.) HARRIS COUNTY, TEXAS
)
KPH CONSOLIDATION, INC.)
(d/b/a HCA HOUSTON)
HEALTHCARE KINGWOOD),)
Defendant) 234TH JUDICIAL DISTRICT

TEMPORARY INJUNCTION

On the 9th day of January, 2023, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable LAUREN REEDER, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

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APPEARANCES

Mark Burke
State of Texas Pro Se
46 Kingwood Greens Dr.
Kingwood, Texas 77339
Telephone: (281) 812-9591
Pro Se Litigant

Benjamin 'Ben' Hamel
SBOT NO. 24103198
Madison Johanna Addicks
SBOT NO. 24132017
SERPE ANDREWS, PLLC
2929 Allen Parkway, Suite 1600
Houston, Texas 77019
Telephone: (713) 432-4460
Attorneys for Defendant

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VOLUME 1

TEMPORARY INJUNCTION

January 9, 2023

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EXHIBITS OFFERED BY THE DEFENSE

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	VOL.
1	Kingwood Hospital 1/8/23 68 pgs	13	13	1
2	Kingwood Hospital 12/9/22 40 pgs	13	13	1
3	Kingwood Hospital 1/6/23 150 pgs	13	13	1

1 (*Temporary Injunction at 1:10 p.m.*)

2 *THE COURT:* All right. You ready,
3 Norma?

4 *COURT REPORTER:* Yes, Judge.

5 *THE COURT:* All right. We're on the
6 record in Case No. 2022-68307 **Mark Burke versus KPH**
7 **Consolidation, Inc. d/b/a HCA Houston Healthcare**
8 **Kingwood.**

9 The record will reflect that plaintiff
10 Mark Burke who is a self-represented litigant is not
11 present today in the courtroom. The Court will put
12 on more on the record related to prior context with
13 Mr. Burke.

14 But in the mean time, would counsel
15 for defense please make their appearances for the
16 record?

17 *MR. HAMEL:* Yes, Your Honor. Benjamin
18 Hamel and Madison Addicks on behalf of the defendants
19 HCA.

20 *THE COURT:* All right. We're here
21 today on defendant's temporary -- request for a
22 temporary injunction on counterclaims filed by
23 defendant.

24 Prior to this hearing, Mr. Burke did
25 have notice of this hearing. And has had multiple

1 e-mail correspondences with the lead clerk of this
2 Court, Ms. Shannon North. Many of those e-mail
3 correspondences did include defense counsel.

4 And since then, all of those e-mail
5 correspondences have been added to the Court's file.
6 And the Court will take judicial notice of its file.

7 Mr. Burke stated he believed that this
8 hearing should be canceled based on what he believes
9 is an automatic abatement of the case when he filed a
10 plea in abatement. And, therefore, also indicated to
11 my clerk that he would not be appearing for this
12 hearing.

13 He also stated that even if the Court
14 determined that this hearing should proceed, that it
15 should not be in person. But it should, instead, be
16 a remote hearing in accordance with the emergency
17 order of the Texas Supreme Court.

18 The Court will also notice that
19 there's nothing in the Texas Supreme Court's prior or
20 most current order that requires remote hearings.
21 It, instead, only states that a Court may allow or
22 require parties to appear remotely.

23 However, the Court will also note that
24 for this, which is a temporary injunction which is an
25 evidentiary hearing, the Court may not require

1 testimony be taken outside or by remote means over
2 the objection of the parties.

3 Nevertheless, prior to this hearing,
4 my clerk attempted to call Mr. Burke at the only
5 number that is on his pleadings, to which we received
6 a busy cell phone signal.

7 The Court was going to allow him to
8 appear by Zoom. The Court will also note that on the
9 Court's website, which Mr. Burke is aware of because
10 he has posted on his website things related to this
11 Court's procedures. And I believe has included them
12 as exhibits in many of his pleadings. That the Court
13 allows remote proceedings, and in fact has the link
14 to the Zoom on it.

15 Mr. Burke is not present on the Zoom
16 today, nor is he present in the courtroom; which is
17 no surprise, because he stated my clerk that he would
18 not be appearing.

19 Mr. Hamel, you may proceed with
20 presenting your evidence in support of your temporary
21 relief sought.

22 MR. HAMEL: Yes, Your Honor, thank
23 you.

24 Would you prefer that we address the
25 Court standing or from --

1 *THE COURT:* Standing, please.

2 *MR. HAMEL:* Standing.

3 Would a brief recitation of the facts
4 be beneficial for the Court?

5 *THE COURT:* It would be. And it would
6 be -- certainly be beneficial for the record.

7 *MR. HAMEL:* Understood, Your Honor.

8 Just briefly, litigation was initiated
9 by Mr. Burke against HCA Houston Healthcare Kingwood,
10 the substance of which relates to a period of time
11 that he was receiving treatment there.

12 The general gravamen of Mr. Burke's
13 complaints are that impostor physician, who has not
14 been identified by the facility or otherwise, was
15 apparently or allegedly given access to the full slew
16 of his medical records. Spoke with him regarding his
17 medical records. Spoke with him regarding potential
18 treatment.

19 However, Mr. Burke alleges that
20 whoever that individual was, is an impostor; is not a
21 physician. He filed a police report to that effect.
22 The end result of which we're not aware of.

23 But, generally, he alleges that this
24 was a violation of the standard of care of the
25 facility. And has filed a medical malpractice action

1 under Chapter 74 seeking relief for that.

2 Related to Mr. Burke's allegations he
3 started what, I believe, is commonly referred to as a
4 gripe website. Where he posted his various
5 allegations, other news articles related to HCA and
6 HCA's attorneys.

7 The basis -- excuse me, related to
8 that, we have filed a counterclaim for harassment,
9 stocking, and tortious interference with contract.
10 And are seeking a temporary injunction today
11 specifically related to various postings on that
12 website, which show the personal address and
13 photographs of the homes of various individuals
14 involved in the litigation from our firm, as well as
15 their parents and other family members.

16 As I'm sure the Court is aware, a
17 temporary injunction does not determine any of the
18 underlying merits of litigation, simply preserves the
19 status quo between the parties. As such, during the
20 pendency before the determination can be made
21 regarding our harassment claim, we believe that a
22 temporary injunction is necessary to maintain the
23 status quo.

24 Specifically, given that the
25 harassment statute provides a cause of action if a

1 person with the intent to harass, annoy, alarm,
2 abuse, torment or embarrass another publishes on an
3 Internet website, including a social media platform,
4 repeated electronic communications in a manner
5 reasonably likely to cause emotional distress, abuse,
6 or torment.

7 Based on that, we're seeking a
8 temporary injunction against Mr. Burke to have him
9 remove the postings from his website related to the
10 personal addresses and photographs of the homes of
11 the unrelated attorneys from our firm and their
12 family members.

13 On the basis that during the pendency
14 of this litigation, before we can determine whether
15 harassment has actually occurred, that those
16 individuals have a right to be free from annoyance of
17 use, an intent to harass, and in this specific
18 instance the potential harm to their personal safety.

19 *THE COURT:* And before you put on your
20 evidence of those postings, Mr. Burke had filed a
21 response either in opposition to the temporary
22 injunction or in one of his other filings. That,
23 again, the Court has taken notice of its file with
24 some case law about prior strike on speech.

25 Could you address those issues as well

1 as talk to me about the modification of the temporary
2 injunction that you're seeking and the relief, and
3 any case law to support the relief that you're
4 seeking today?

5 *MR. HAMEL:* Yes, Your Honor.

6 So to -- to clarify, and I think our
7 original order that was attached to our injunction
8 was unclear.

9 We are not seeking to have any prior
10 restraint on any speech from Mr. Burke. Rather, we
11 are seeking mandatory injunctive relief to have the
12 posts that have already been made that show various
13 individual's homes and their personal addresses and
14 other financial information, to have those posts
15 removed.

16 So we're not seeking -- we're not
17 seeking to restrain any potential future speech from
18 Mr. Burke, just the postings that have already been
19 made. So --

20 *THE COURT:* And nor are you seeking a
21 removal -- a wholesale removal of his website or any
22 of the postings related to filings in this Court. Or
23 I believe he's filed -- he basically kind of put the
24 entire record on his -- the website.

25 *MR. HAMEL:* Correct.

1 *THE COURT:* Based on my reading of
2 the -- the -- the filings.

3 And you're not -- and as well as maybe
4 some news articles, you're not seeking removal of
5 that or taking down of this website.

6 *MR. HAMEL:* Correct, Your Honor.

7 We're not seeking removal of anything
8 related to the pleadings of this case or anything
9 like that. Just, specifically, the photographs of
10 individual's homes and their personal addresses,
11 which given the entire --

12 *THE COURT:* Uh-huh.

13 *MR. HAMEL:* -- you know, context of
14 the website, our position is that based on the
15 objective standard for the harassment statute is
16 clearly intended to annoy, abuse, or harass the
17 individuals involved in this litigation.

18 *THE COURT:* Okay. You may proceed
19 with putting on your evidence.

20 *MR. HAMEL:* Yes, Your Honor.

21 So, first, we'd just like the Court to
22 take judicial notice of Exhibits A through X, which
23 were attached to Defendant's original counterclaim
24 and application for temporary injunction and
25 permanent injunction filed on November 23rd, 2022.

1 *THE COURT:* All right. The Court will
2 take judicial notice of Exhibits A through X, which
3 were attached to that filing.

4 *MR. HAMEL:* And in addition to that,
5 Your Honor, we have three more exhibits that I
6 believe were filed subsequently, which we will mark
7 as Exhibits 1, 2, and 3, excuse me, Defendant's
8 Exhibits 1, 2, and 3 as part of the hearing today.

9 *THE COURT:* All right. Defendant's
10 Exhibits 1 through 3 are admitted for purposes of
11 this hearing.

12 *MR. HAMEL:* Permission to approach,
13 Your Honor?

14 *THE COURT:* Yes.

15 *MR. HAMEL:* And to clarify, Your
16 Honor, we are not seeking to have the entirety of
17 these postings removed, just the portions that we
18 discussed that contain personal information,
19 photographs of individual's homes, and other
20 financial information for individuals who are have no
21 involvement in this litigation.

22 I'd like to direct the Court's
23 attention, if I may, Your Honor --

24 *THE COURT:* Uh-huh.

25 *MR. BURKE:* -- to a case that we

1 believe is on point from the First Court of Appeals
2 that was argued in 2019. Caption is ***Bui, B-u-i v***
3 ***Dangelas, D-a-n-g-e-l-a-s***. Currently, I believe the
4 only citation available is the Westlaw citation which
5 is 2019 WL 7341671.

6 In this matter, which was a defamation
7 case, so slightly different than the one that's
8 before the Court. The 152nd Court, and ultimately
9 the First Court of Appeals, determined in instances
10 such as these injunctive relief related to personal
11 addresses -- I think the specific context of that
12 case was someone was alleged to be related to the
13 Viet Cong posting on Facebook.

14 And the Court determined that ordering
15 the defendants to remove those Facebook postings
16 during the pendency of the underlying litigation,
17 that provided personal addresses and things of that
18 nature did not violate any constitutional implication
19 to free speech.

20 *THE COURT:* Can you give me that
21 Westlaw site again?

22 *MR. HAMEL:* Absolutely, Your Honor.
23 It's 2019 WL 7341671. I have a copy for the Court,
24 if you'd like it.

25 *THE COURT:* Okay. I'll take it.

1 MR. HAMEL: May I approach?

2 THE COURT: You may. Do you happen to
3 have a copy or a cite for the Trial Court Case No. in
4 that case? Is it on there? Out of the 152nd.

5 MR. HAMEL: Yes, Your Honor, Trial
6 Court Cause No., excuse me, Case No. 2018-55787.

7 THE COURT: Thank you. Okay.

8 MR. HAMEL: Just generally, Your
9 Honor, relying on the authority from that case and
10 the language of the harassment statute itself, we
11 feel that these posts by Mr. Burke are not related to
12 the underlying litigation in any way, shape, or form.

13 And are solely to -- to clarify, the
14 statute doesn't require that it be solely for the
15 purpose of. But -- or solely for the purpose of, and
16 made with an intent to harass, annoy, alarm, abuse,
17 and torment the individuals whose personal
18 identifying information is contain within these
19 posts.

20 And on that basis, we would request
21 injunctive relief from the Court during the pendency
22 of the underlying litigation, until such time as the
23 merits of the counterclaim can be determined.

24 THE COURT: And do you have a copy of
25 the proposed order that you would like to enter?

1 MR. HAMEL: Yes, I do, Your Honor.

2 THE COURT: May I see it?

3 MR. HAMEL: Yes. Primary language
4 would be on the back page.

5 THE COURT: Have you filed this?

6 MR. HAMEL: We have not, Your Honor.
7 However, I'm happy to supplement it as soon as we get
8 done --

9 THE COURT: Okay.

10 MR. BURKE: -- with the hearing.

11 THE COURT: (Reading) Is there
12 anything else that you would like to put on the
13 record?

14 MR. HAMEL: No, Your Honor.

15 THE COURT: All right. Let's go off
16 the record.

17 *(We adjourned at 1:23 p.m.)*

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Certificate
January 9, 2023

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3
4 I, Norma Alicia Thieme, Official Court Reporter
5 in and for the 234TH District Court of Harris, State
6 of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription
8 of all portions of evidence and other proceedings
9 requested in writing by counsel for the parties to be
10 included in this volume of the Reporter's Record in
11 the above-styled and numbered cause, all of which
12 occurred in open court or in chambers and were
13 reported by me.

14 I further certify that this Reporter's Record of
15 the proceedings truly and correctly reflects the
16 exhibits, if any, offered by the respective parties.

17 I further certify that the total cost for the
18 preparation of this Reporter's Record is \$144.00 was
19 paid by MARK BURKE.

20
21 /s/NORMA ALICIA DUARTE

22 Norma Alicia Thieme, CSR
23 Texas CSR 7751
24 Official Court Reporter
25 234TH District Court
Harris County, Texas
201 Caroline, Room 1304
Houston, Texas 77002
Telephone: (832) 927-2227
Expiration: 12/31/25