

CAUSE NO. 06-08-17998-CV

ANNA DRAKER	§	IN THE DISTRICT COURT OF
	§	
VS.	§	MEDINA COUNTY, TEXAS
	§	
BENJAMIN SCHREIBER, a minor,	§	
LISA SCHREIBER, RYAN TODD,	§	
a minor, LISA TODD, and STEVE TODD	§	38TH JUDICIAL DISTRICT COURT

**PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Anna Draker, Plaintiff, files this original petition complaining of Benjamin Schrieber, a minor, Lisa Schreiber, Ryan Todd, a minor, Lisa Todd and Steve Todd, Defendants, and in support thereof would show the following:

**I. DISCOVERY LEVEL 2**

Due to the nature of this action and the amount in controversy, Plaintiff states that this case will be conducted under Level 2 Discovery as that is defined in the Texas Rules of Civil Procedure.

**II. PARTIES**

Anna Draker is an individual residing in Medina County, Texas.

Benjamin and Lisa Schreiber are individuals and can be served at their place of residence, 11827 Gallery View, San Antonio, Texas 78249.

Ryan, Lisa and Steve Todd are individuals and can be served at their place of residence, 6815 Willow Oak, San Antonio, Texas 78249.

### **III. JURISDICTION AND VENUE**

This is an action for defamation, negligence and gross negligence. As such this Court has jurisdiction to hear the claims under Texas Law. Venue is proper in this County under §15.017 of the Texas Civil Practice and Remedies Code as this is the County of the Plaintiff's residence.

### **IV. FACTS**

Anna Draker is an assistant principal at Clark High School in San Antonio, Texas. Benjamin Schreiber and Ryan Todd were students attending Clark High School during the 2005-06 school year.

On April 19, 2006 the Academic Dean of Clark High School approached Ms. Draker and showed her a printout of a web page that was posted on MySpace.com a public, free access web site. This web page contained a picture of Ms. Draker and contained her name. The web page was filled with lewd, defamatory and obscene comments, pictures and graphics. Further, the web page indicated by implication and by direct statement that Ms. Draker is a lesbian, which she is not. The academic dean told Ms. Draker that another teacher, Jennifer Johnson, brought this to her attention.

The content and allegations contained on the web page were so shocking and lewd that Ms. Draker was devastated. On the web page were instant messages from other users of MySpace.com. Some of these were students, but a few were individuals Ms. Draker did not recognize, that lived near Clark High School, and had made suggestive, lewd and obscene comments based on the content of the web page.

Ms. Draker, who is married and has small children, has had many sleepless nights and worried days regarding this web page and the people who attempted to contact her through the web page.

On April 26, Benjamin Schreiber, gave Ms. Draker a letter, attached as Exhibit 1, admitting to making the web page. He also indicated that he did not make this web page alone.

The “about me” section of the web page was identical to Ryan Todd’s about me section on his web page also posted on MySpace.com. The format of the web page was downloaded from Ryan Todd’s page and posted onto the page created regarding Ms. Draker. Ryan also admitted that his computer was used to access the Draker web page and that Benjamin Schreiber was the person who created the web page. According to records subpoenaed by the local police department from MySpace.com, the computers used to create and update the web page were located at Benjamin Schreiber’s home and Ryan Todd’s home.

It is clear that other students were involved in making the web page but those names are unconfirmed at the time of this petition but the investigation is ongoing.

## **V. CAUSES OF ACTION**

### **A. DEFAMATION AND LIBEL PER SE**

As more fully set forth above, Benjamin Schreiber and Ryan Todd made defamatory statements about Ms. Draker which were untrue, and disparaged, and therefore damaged, the reputation of Ms. Draker and caused other damages. The defamatory language was clear and reasonably capable of only one meaning. The defamatory language was for no purpose other than to injure Ms. Draker’s reputation, expose her to public hatred, contempt or ridicule, impeach her honesty, integrity, virtue or reputation and to cause her harm.

In reaction to the defamatory statements by Benjamin Schreiber and Ryan Todd, Ms. Draker has been harassed by others accessing the web page, she has been emotionally devastated and suffered anxiety, worry, sleeplessness and other physical manifestations of emotional distress. Further, Ms. Draker is a member of a small community, a mother of young children,

and in a position of authority at the very high school attended by these Defendants and as such these statements have caused her great unnecessary emotional pain and mental suffering.

Defendants' statements were not privileged in any way. Further, statements regarding Ms. Draker's sexuality are considered *libel per se* under Texas law. The statements were published on MySpace.com in a non-private web page and was therefore accessible to anyone in the world. As a direct and proximate result of Defendants' defamatory statements, Ms. Draker has been damaged and such damages were proximately caused by Defendants' libel.

Further, Defendants' malicious and intentional acts against Ms. Draker impose liability for punitive damages as they were performed with malice and with knowledge of the actual truth.

#### B. NEGLIGENCE AND NEGLIGENT SUPERVISION

Lisa Schreiber, Lisa Todd and Steve Todd, (collectively, the "Parents") as parents of Benjamin Schreiber and Ryan Todd respectively, owe a duty to Ms. Draker to supervise the activities of their children as they access the Internet. The Parents have knowledge of, consent to, sanction and participate in their children's activities, including allowing the use of their computer to create web pages on the Internet. Further the Todd Parents are well aware of numerous past dealings with Ms. Draker at Clark High School as Ms. Draker has had to discipline Ryan for numerous school and legal infractions. As a result, the Todd Parents are well aware of their children's animosity towards their assistant principal, Ms. Draker. Lisa Schreiber is aware of Benjamin's friendship with Ryan and his own problems with discipline at Clark High School as well. Further, the Parents furnished the instrumentality utilized by their children to create the MySpace.com web page, namely, their personal computer. Allowing access to the Internet, unsupervised and without restraint poses an obvious and unreasonable danger that such children would utilize the Internet for illicit purposes such as the ones alleged above.

Due to numerous problems with discipline at Clark High School regarding Ryan and Benjamin, both sets of Parents were on notice that their children had tendencies to act out in an inappropriate manner and certainly had notice of their feeling of anger towards Ms. Draker.

As a direct and proximate cause of the Parents' breach of their duty to supervise their children and their breach of their duty to warn Ms. Draker of the foreseeable harm and activities of their children, Ms. Draker has been damaged in an amount within the jurisdictional limits of this court.

Benjamin Shreiber and Ryan Todd owed a duty not to publish false statements about Ms. Draker on a web page accessible by anyone in the world. Both defendants breached that duty and as a direct and proximate cause of such breach, Ms. Draker was damaged in an amount within the jurisdictional limits of this court.

C. GROSS NEGLIGENCE

Both Benjamin Schreiber and Ryan Todd were aware of the risk of harm from their publication of false statements about Ms. Draker on a public web site. Although aware of the risk of harm, they acted with conscious indifference to that risk and with malice toward Ms. Draker and nevertheless continued to publish the false statements. As a direct and proximate cause of their actions, they are liable to Ms. Draker for punitive damages and Ms. Draker seeks such damages against Benjamin Schreiber and Ryan Todd.

**VI. REQUEST FOR JURY TRIAL**

Ms. Draker hereby requests a trial by jury and has paid the jury fee in conjunction with the filing of this lawsuit.

## VII. CONCLUSION AND PRAYER

As a direct and proximate cause of the actions of the Defendants as outlined above, Ms. Draker has suffered damages. Those damages include but are not limited to, lost wages, out of pocket medical expenses, emotional distress and mental anguish and the maximum amount of damages sought by Ms. Draker is within the jurisdictional limits of this Court. Therefore, Ms. Draker prays that the Defendants be cited to appear herein, that upon trial by a jury, the Defendants be held liable for the causes of action pled and a judgment be entered against them awarding Ms. Draker all of the following:

1. Actual damages;
2. Consequential damages;
3. Lost wages;
4. Damages for emotional distress and mental anguish;
5. Exemplary damages;
6. Pre- and post-judgment interest;
7. Costs of Court; and
8. Any other damages or relief she may show herself to be justly entitled.

Respectfully submitted,

***McGinnis, Lochridge & Kilgore, L.L.P.***

By: \_\_\_\_\_

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