

Grant - w/o President

other woman

3/11/01

Domestic Violence

RRR
FEB 09 2009
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 12 2009

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13 Attorneys for Defendant Thomas Redmond

more certain if knew about other?
Did Δ have sex with these other women?

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE - INDIO BRANCH

11 **PATRICIA BEHR**, an individual,
12)
13) Plaintiff,
14)
15) vs.
16)
17) **THOMAS REDMOND**, an
18) individual, and DOES 1 - 30,
19) Inclusive,
20)
21) Defendants.
22)

Case No. INC 052881
[Assigned for all purposes to Hon. Randall White, Dept. 2J]
NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE TESTIMONY ABOUT OR REFERENCE TO VARIOUS TOPICS RELATING TO DEFENDANT'S SOCIAL ACTIVITIES
Complaint filed: August 17, 2005
Trial Date: January 12, 2009

20 TO PLAINTIFF ABOVE NAMED AND HER COUNSEL OF RECORD:
21 PLEASE TAKE NOTICE that just prior to the commencement of the trial herein, or at such
22 other time as the Court may designate, Defendant will move this Court for an order in limine to
23 exclude any questions about, reference to or documents concerning the following persons or topics:
24 1. Tai Tran, Amy Bojarski, Christy Schaefer and Yu Mai Lee.
25 2. Gifts, flowers, trips or social outings given to or shared with females other than plaintiff.
26 3. Any implication that defendant had any obligation of support whatever to plaintiff.

1 4. The following deposition exhibits, questions and answers¹:

2 A. Deposition of Kristi Sindt

3 All exhibits are irrelevant and should be expunged. The following questions and
4 answers should be redacted from the deposition:

5 Page 9, line 4 through page 11, line 15

6 Page 12, line 10 through page 16, line 10

7 Page 18, line 23 through page 21, line 4

8 Page 18, lines 9-14 and lines 17-23

9 Page 22

10 Page 24, line 9 through page 32, line 15

11 Page 32, line 19 through page 35, line 4

12 Page 39, line 23 through page 55, line 6

13 Page 55, line 21 through page 79, line 19

14 B. Deposition of Barbara Grizzle

15 All exhibits are irrelevant and should be expunged. The following questions and
16 answers are the *only* relevant exchanges, and all other questions and answers should be expunged:

17 Page 51 through page 54, line 11

18 Page 76, line 19 through page 78, line 14

19 Page 83, line 11 through page 84

20 C. Deposition of Dino LoPesio

21 The following questions and answers are the *only* relevant exchanges, and all other
22 questions and answers should be expunged:

23 Page 17, line 4 through page 20, line 19

24

25 _____
26 ¹The following deposition exhibits and citations all have reference to relationships between
defendant Redmond and women other than plaintiff. The deposition pages have not been included
because of their volume.

- 1 Page 63, line 10 through page 67, line 9
- 2 Page 89, line 25 through page 96, line 4
- 3 Page 109, line 20 through page 111, line 21
- 4 Page 112, line 15 through page 113, line 3
- 5 Page 114, line 5 through page 123, line 25
- 6 Page 138, line 5 through page 141, line 12
- 7 Page 145, line 16 through page 146, line 13

8 D. Deposition of Thomas Redmond

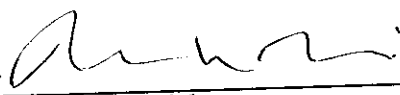
9 Exhibits 3, 5 and all emails are irrelevant and should be expunged. The following
10 questions and answers should be redacted from the deposition:

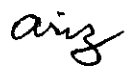
- 11 Page 8, line 1 through page 10, line 17
- 12 Page 17, lines 3-14
- 13 Page 20, line 21 through page 21, line 10
- 14 Page 64, line 16 through page 85, line 21
- 15 Page 96, line 12 through page 97
- 16 Page 143, line 19 through page 145, line 15
- 17 Page 147, line 9 through page 154, line 24

18 This Motion will be based upon this Notice, the attached Memorandum of Points and
19 Authorities, the complete files and records in this action, and any further oral or documentary
20 evidence as may be presented at the hearing on this Motion.

21 Dated: December 18th, 2008

22 FRISBEE & BOSTOCK, PLC

23 By 
24 Robert M. Frisbee
25 Attorneys for Defendant Redmond

26 

1 December 10, 11, 12 and 13, 2003. She says that Redmond told her that he had Herpes on February
2 12, 2004, at his home in Scottsdale, Arizona, and that they could not have sex because he thought
3 he was having an outbreak. He then told her that he was mistaken and that it was not a problem, so
4 the two had sex on February 13 and 14, 2004.

5 Behr thinks that she first had an outbreak of Herpes in March, 2004, but did not seek medical
6 attention and did not tell Redmond about it. In April, 2004, Redmond treated Behr to a trip to Spain,
7 where the two had sex every day for about two weeks. She did not tell Redmond she thought he'd
8 given her Herpes.

9 In about the same time frame, Redmond was funding a start-up furniture design business for
10 Behr through a jointly owned LLC called Redbehr. In May, 2004, he advanced \$30,000 for the
11 purpose. And as it turned out, the last time the two had sex was in Spain, for on July 9, 2004,
12 Redmond sent Behr an Email stating, "Now that we are business partners, our relationship will
13 change, I do not mix personal relationships with business . . ."

14 Between March, 2004, and April, 2005, Behr sent Redmond over thirty Emails and they had
15 numerous telephone conversations. There was no mention of Behr's claim of sustaining Herpes from
16 Redmond.

17 On February 11, 2005, Behr went to Dr. Daniel Lopez complaining of a rash on her right leg
18 and thigh, itchy and spreading. On February 16, 2005, she complained to Dr. Lopez of a recurrent
19 itchy lesion in her privates. On February 19, 2005, a lab made a blood test diagnosis of Herpes
20 Simplex Virus Type II.. After February 11, Behr sent another ten or so Emails to Redmond or his
21 office. No mention of Herpes.

22 Then, on April 27, 2005, Redmond wrote a letter to Behr which terminated further funding
23 for Redbehr. The letter said, in pertinent part:

24 As I said in my last correspondence with you, June 1st I am done with the project. I just don't
25 think it'll float so I'm not throwing good money after bad.

26 \\\

1 So far I have invested \$100,000² in the project and loaned you my car. If you become
2 successful, you can repay me the money, but it's voluntary. The car you can return or buy
3 before July 1st, the furniture you can keep.

3 On May 31, 2005, Behr executed an authorization to obtain medical records from her prior
4 doctor on which she wrote "TO SHOW THERE WAS NO FINDINGS OF BEING INFECTED
5 WITH HERPES." She commenced this lawsuit on August 17, 2005. The suit was the first time she
6 accused Tom Redmond of giving her Herpes.

7 **II. THE *IN LIMINE* ISSUES**

8 Even though Behr and Redmond were never engaged, much less married, throughout
9 discovery Behr's counsel asked numerous questions regarding gifts made by Redmond to women
10 other than Behr, trips on his private jet with women other than Behr, parties at his house which were
11 attended by other women, and other topics intended to imply that Redmond was a cavalier, lying
12 playboy.

13 In an attempt to resolve the looming dispute prior to trial, and fulfilling the obligation to
14 confer about potential motion issues, Redmond's counsel wrote to Behr's counsel stating in part:

15 I have continuously objected to your various questions regarding dates, trips, gifts,
16 etc. involving women other than your client. I am unaware of any authority that supports a dating
17 "contract." If I am wrong, I would be pleased to be directed to such authority. Moreover, I know of
18 no authority prohibiting one from being a "player," in the words of your client. Again, I would
19 appreciate being directed to such.

18 Her counsel's response was:

19 [T]he testimony concerning other women and gifts, trips, etc. related to them is not
20 intended to demonstrate a dating contract. As you know, Mr. Redmond being HSV positive, had a
21 legal duty to inform Ms. Behr that he had HSV and he also had a duty not to negligently or
22 intentionally increase her risk of contracting the disease. Ms. Behr was unaware of Mr. Redmond's
23 activities with the other referenced women and by his own testimony he admitted that he never told
24 Ms. Behr about them. According to Ms. Behr, Mr. Redmond assured her that he was not seeing other
25 women. That was important to her, and had she known he was seeing these women, she would have
26 made different choices in her relationship with Mr. Redmond, thereby reducing her risk of
27 contracting the disease from him. Thus, the evidence regarding Mr. Redmond's relationship with
28 these women during the time he was seeing Ms. Behr *is not to prove that he cheated on her* or broke
29 a "dating contract," but that *by lying to her he increased her risk of contracting the virus* and it is
30 therefore evidence of either his negligence or intentional conduct.

26 ²It actually turned out to be a total of \$128,925.60.

1 Apparently Behr believes that Redmond was obligated to forswear *any* contact with any other
2 woman from the moment of their first date, or at least their first sex. Whatever her expectation, there
3 is *no* evidence that Redmond had sexual relationships with any of the other women to whom he gave
4 gifts or shared time, much less that they had Herpes. Therefore, the whole evidentiary premise is
5 faulty. If the evidence “is not to prove that he cheated on her,” then it is simply irrelevant. It is self-
6 evident that “not cheating” cannot increase the risk of transmitting an STD from another woman.
7 Similarly, if he wasn’t having sex with other women, then “lying” by not telling Behr about them
8 cannot have “increased her risk of contracting the virus.” The burden of proof is Behr’s, and she
9 cannot fulfill it with nothing more than innuendo.

10 The evidence of gifts and trips is irrelevant under the Evidence Code. Section 352 allows
11 the court in its discretion to exclude evidence if its probative value is substantially outweighed by
12 (a) the time that will be consumed considering it, or (b) substantial danger of undue prejudice,
13 confusion of issues, or misleading the jury. This evidence is offered only to prejudice the jury
14 against a millionaire bachelor who enjoyed his hard earned wealth sometimes in the company of
15 pretty women, and to imply that he somehow took advantage of Behr, i.e. she was just another toy.
16 The disputed evidence also requires the assumption that Redmond was prohibited from being in the
17 company of any women other than Behr under any circumstances, a totally ridiculous proposition
18 under the circumstances.

19 Behr lived in Palm Springs, Redmond had homes in Minnesota, Colorado and Nevada.
20 According to Behr, she and Redmond had sex 10 times in late 2003, all in Minnesota, and twice in
21 Minnesota and several times in Spain in April, 2004. From April, 2004 to August, 2005, a period
22 of fifteen months, the two had *no* sexual relationship and Behr didn’t even tell Redmond she thought
23 he’d given her Herpes.

24 Section 788 states that (except a felony conviction) “evidence of specific instances of his
25 conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support
26 the credibility of a witness.” Clearly, the “other women” evidence is offered solely for the purpose

1 purpose of attacking Redmond's general credibility and character.

2 Section 1101 provides that evidence of a defendant's prior bad acts or bad character is
3 generally inadmissible to prove a propensity or disposition to engage in conduct on a specified
4 occasion. Indulging the ridiculous assumption that enjoying one's wealth with pretty women
5 amounts to "bad acts" or displays "bad character," the evidence would still be inadmissible. As is
6 said at 1 Witkin, Cal. Evidence (3d ed. 1986) Circumstantial Evidence, § 385:

7 "Section 1101 excludes evidence of character to prove conduct in a civil case for the
8 following reasons. *First*, character evidence is of slight probative value and may be very
9 prejudicial. *Second*, character evidence tends to distract the trier of fact from the main
10 question of what actually happened on the particular occasion and permits the trier of fact
11 to reward the good man and to punish the bad man because of their respective characters.
12 *Third*, introduction of character evidence may result in confusion of issues and require
13 extended collateral inquiry."

14 Allowing the "other women" evidence into this case would produce exactly what Witkin
15 warns against. There would be side trials on the nature of the relationship with, gifts given to, and
16 trips taken with several other women. Without a scintilla of proof that any sexual relationship
17 existed, or that it was in any way improper, nevertheless there would be a "where there's smoke there
18 must be fire" inquisition. All such side trials would do is confuse the jury and prejudice it toward
19 the defendant.

20 Even in trials involving sexual harassment and assault evidence of similar acts is usually
21 excluded. See, e.g., *Frank v. County of Hudson*, 924 F.Supp. 620 (1996)(evidence of molestation
22 of stepdaughter by defendant excluded in civil rights action against sheriff), and *United States v.*
23 *Guardia*, 955 F.Supp. 115 (D.N.M. 1997)(evidence of defendant doctor's similar fondling of
24 gynecological patients excluded).

25 Certainly if evidence of egregious sexual conduct is inadmissible then evidence of no sexual
26 conduct at all should also be excluded.

24 III. CONCLUSION

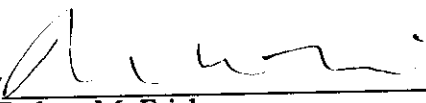
25 As one experienced trial judge noted, "If the court can rule on the admissibility of evidence
26 before the jury is sworn and the trial begins, it is less likely that the jury will hear inadmissible and

1 prejudicial evidence, thus rendering reversible error less likely.” *Effective Use of Motions In Limine*,
 2 Judge George P. Schiavelli, Judge of the United States District Court for the Central District of
 3 California, p.2. As is evident from the issues under consideration, there is great potential in this case
 4 for emotional and prejudicial questioning and evidence. Moreover, “motions in limine permit
 5 counsel to avoid [constant objections and repeated sidebar conferences] by having the issues
 6 determined before the jury is seated and when the court has specifically allowed for time to consider
 7 the issues.” *Id.*

8 Defendant’s motion should be granted and the evidence of gifts given to and trips taken with
 9 women other than plaintiff should be excluded.

10 December 18th, 2008.

11
 12 FRISBEE & BOSTOCK, PLC

13
 14 By 
 15 Robert M. Frisbee
 Attorneys for Defendant Redmond

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PROOF OF SERVICE

STATE OF ARIZONA, COUNTY OF MARICOPA

I am a resident of the County of Maricopa, State of Arizona. I am over the age of 18 years and not a party to the within action; my business address is 1747 Morten Avenue East, Suite 108, Phoenix, Arizona 85020.

On December , 2008, I served the foregoing document described as **NOTICE OF MOTION AND MOTION IN LIMINE** with the Clerk of this Court and on all interested parties in this action by placing a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Clerk of Riverside County Superior Court
Civil Division
46-200 Oasis Street
Indio, CA 92201

Sean Murphy, Esq.
SLOVAK BARON & EMPEY LLP
1800 East Tahquitz Canyon Way
Palm Springs, California 92262
Tel: (760) 322-2275
Tel: (760) 322-2107


(BY MAIL) I am "readily familiar" with my firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U. S. Postal Service on that same day with postage thereon fully prepaid in Phoenix, Arizona in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Affidavit.

(BY OVERNIGHT MAIL) I caused such envelopes to be delivered via UPS, Next Day Air, to the offices and addresses listed above.

(BY FACSIMILE TRANSMISSION) I caused such document to be transmitted by fax to the persons on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18th, 2008, at Phoenix, Arizona.



Robert M. Frisbee