

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**DAVID ROBERTSON and
DANIEL RODNI,**

Plaintiffs,

v.

RYAN UPCHURCH,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. 3:23-cv-00770

District Judge William L. Campbell, Jr.

Magistrate Judge Barbara D. Holmes

PROPOSED INITIAL CASE MANAGEMENT ORDER

A. JURISDICTION: The court has jurisdiction pursuant to 28 U.S.C. § 1332.

B. BRIEF THEORIES OF THE PARTIES:

For Plaintiff:

Plaintiffs allege Defendant defamed them through the posting of various YouTube videos accusing them of participating in a scheme to fake the death of Kiely Rodni, the daughter of Plaintiff Rodni and the granddaughter of Plaintiff Robertson, whose disappearance became a viral international news story before she was ultimately found deceased in a tragic car accident. Plaintiffs further allege Defendant defamed them by asserting they were participating in a “scam” to raise money off of this tragedy on GoFundMe. Other causes of action include false light invasion of privacy and intentional and negligent infliction of emotional distress.

For Defendant:

This case involves statements Mr. Upchurch made in videos posted on YouTube from August 13, 2022 through September 13, 2022 and one additional video posted on December 22, 2022. The videos were related to the tragic disappearance, search, and death of a California

teenager, Kiely Rodni, whose disappearance became a public controversy. Plaintiff Daniel Rodni is her father, and Plaintiff David Robinson is her grandfather. The search and investigation for Ms. Rodni garnered worldwide attention from the press and the online community.

Mr. Upchurch only began posting after the disappearance “became a viral international news story.” Plaintiffs admit that Mr. Upchurch’s posts were made up of his “theories” about “what happened to Kiely Rodni.” During the two weeks Ms. Rodni was missing, the media—in particular, social media—was teeming, in real time, with participants in discussion of what happened to Ms. Rodni and whether she was ever at the party. Many, including Mr. Upchurch, took to YouTube to use internet sources, interviews, and local media coverage to try and aid in her return and find answers to the mystery of her disappearance. Of the hours of YouTube videos attached to the Amended Complaint, and of the excerpts highlighted in the Complaint, very few are “of and concerning” the Plaintiffs. All statements of Mr. Upchurch, including any “of and concerning” Plaintiffs, are opinion protected under the First Amendment, rather than statements of fact about the Plaintiffs.

Mr. Upchurch’s statements are all non-actionable opinion statements as evidenced by: the questioning, rhetorical, and hyperbolic language used; the facts disclosed in making the opinions; and the general context in which they were made.

C. ISSUES RESOLVED: Jurisdiction and venue.

D. ISSUES STILL IN DISPUTE: Damages and liability.

E. INITIAL DISCLOSURES: The parties shall exchange initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1), which must include copies (not descriptions) of responsive documents on or before **November 20, 2023**.

F. CASE RESOLUTION PLAN AND JOINT STATUS REPORTS: The parties are encouraged to make settlement efforts throughout the pendency of this case and must make at least one substantive attempt at resolution. By no later than **August 30, 2024**, the parties must file a joint case resolution status report confirming their substantive attempt at settlement. **The parties must have conducted enough discovery or otherwise exchanged enough information prior to this date to substantively evaluate and discuss settlement.** The parties' joint report **must state** the specific steps taken toward case resolution, including that an offer or demand was made and responded to and that counsel discussed the parties' positions and specific next steps to promote case resolution. In other words, the parties must "show their work" in creating a plan to facilitate successful settlement negotiations. The parties may mediate by agreement without the need of further order unless referral for pro bono mediation is requested (which must be made by motion). Any motion for pro bono mediation must include a statement as to why private mediation is not feasible. Any motion for a judicial settlement conference must state (i) the reasons why mediation is not feasible and why a judicial settlement conference is the preferable means of attempting to resolve the case; (ii) the parties' proposed timing for scheduling of the settlement conference; and (iii) any preference of a particular Magistrate Judge to conduct the settlement conference. The parties' compliance with this case resolution plan is not optional. **The fact that discovery is ongoing or that a dispositive motion is pending does not relieve the parties of their compulsory obligations under this case resolution plan.**

G. DISCOVERY: The parties must complete all written discovery and depose all fact witnesses on or before **August 30, 2024**. Written discovery shall proceed promptly (unless otherwise provided for herein). Discovery is not stayed during dispositive or other motions, unless ordered by the Court. The Court expects all parties and their counsel to cooperate in discovery and

to act courteously and professionally in the resolution of any discovery disputes. The Court may impose appropriate sanctions, including any of those authorized by Fed. R. Civ. P. 16(f) or 37(b)(2)(A), upon a finding of a failure to comply with this or any discovery order or upon a finding of other discovery misconduct. No discovery disputes may be brought to the Court for resolution before lead counsel for all parties have conducted an in-person meeting and made a good faith effort to resolve any dispute(s). Discovery disputes that cannot be resolved after the in-person meeting must be brought promptly to the attention of the Magistrate Judge by the filing of a joint discovery dispute statement and a joint motion for a discovery conference. It will be within the Magistrate Judge's discretion to allow filing of discovery-related motions, after counsel have scheduled and participated in a discovery conference. All discovery-related motions must be filed by no later than **July 31, 2024**, unless otherwise permitted by the Court. In connection with any discovery conference, the parties must file a joint discovery dispute statement, of no more than 3 pages per affected party per issue, which identifies and describes the specific discovery request(s) in dispute and details each party's position with supporting facts and legal authorities, including as to any proportionality considerations. The joint discovery dispute statement must certify that lead counsel for all parties conducted the required in-person meeting and made a good faith effort to resolve each discovery dispute presented in the statement. No discovery conference will be held until a compliant joint statement is filed. If the joint statement is sufficiently detailed, any party may adopt by reference the joint statement for purposes of Local Rule 7.01, but must clearly state in the filing made in accordance with the timing requirements of Local Rule 7.01 that the joint statement is adopted as the party's memorandum of law or response.

H. AMENDMENTS OR ADDITION OF PARTIES: Any motions to amend or to add parties must be filed by no later than **February 6, 2024**, and must comply with Local Rules 7.01

and 15.01. Failure to comply with local rules may result in summary denial of the motion. Amendments or addition of parties by written consent under Fed. R. Civ. P. 15(a)(2) must be filed by the deadline for amendment motions and must clearly and conspicuously state that the amendment is filed by written consent. Failure to clearly and conspicuously provide notice of the consent filing may result in the amended pleading being stricken.

I. DISCLOSURE AND DEPOSITIONS OF EXPERTS: The plaintiff must identify and disclose all expert witnesses and expert reports on or before **September 30, 2024**. The defendant must identify and disclose all expert witnesses and reports on or before **October 31, 2024**. Rebuttal experts and reports shall be permitted only by leave of court. Unless otherwise provided for in a separate pretrial order, supplemental expert disclosures, which specifically include, but are not limited to, any supplemental information to expert reports, must be made in accordance with Rule 26(a) and (e). Supplemental expert opinions or other expert disclosures not timely disclosed may be excluded at trial. See Local Rule 39.01(c)(5)(C). Expert depositions must be completed by **January 31, 2025**.

J. ANOTHER CASE MANAGEMENT CONFERENCE: The Court will no longer set second case management conferences or require the parties to file status reports as a matter of course in civil actions. The parties and their counsel are reminded of their responsibility to prepare this case according to the schedule set by this order. Failure to do so may result in any of the remedies authorized by Fed. R. Civ. P. 16(f). The Court will not provide reminders of case management deadlines and will not otherwise prompt the parties to give attention to this case. The parties may request that a case management conference be set by filing a joint motion for a case management conference, which must identify all issues to be discussed and detail the status of all case management events. If the purpose of the requested conference is to discuss extending case

management deadlines, the motion must comply with the requirements for modifications of the case management order as instructed below. The parties must also state whether they request an in-person or telephonic case management conference.

K. DISPOSITIVE MOTIONS: Any motions to dismiss under Fed. R. Civ. P. 12 shall be filed and briefed in accordance with that rule and Local Rule 7.01. All other dispositive motions must be filed by no later than **January 31, 2025**. Responses to dispositive motions must be filed within 28 days after the filing of the motion. Briefs or memoranda of law in support of or in opposition to a dispositive motion shall not exceed 25 pages. Optional replies may be filed within 14 days after the filing of the response and shall not exceed 5 pages. No motion for partial summary judgment shall be filed except by permission of the Court. Any party wishing to file such a motion shall first file a separate motion that gives the justification for filing a partial summary judgment motion in terms of overall economy of time and expense for the parties, counsel, and the Court. Before filing or responding to a summary judgment motion, attorneys are required to read and follow Judge Richardson's guidance in *McLemore v. Gumucio*, 619 F. Supp. 3d (M.D. Tenn. 2021), regarding what should (or should not) be included in the movant's "statement of undisputed material facts." Counsel must carefully draft the statement of undisputed material facts and responses to ensure that it is a narrow statement of facts (not opinions, argument, or legal conclusions) that are material to the outcome of the case and are undisputed as supported by the record.

L. ELECTRONIC DISCOVERY: The parties have reached an agreement that the default standards of Administrative Order No. 174-1 will apply. Any agreement between the parties to address the topics provided by Administrative Order No. 174-1 must be reduced to writing, signed by counsel, and, **within fourteen (14) days** of the initial case management conference, either: (1)

be filed as a stipulation of agreed-upon electronic discovery procedures; or, (2) if the parties request court approval, submitted as proposed agreed order with an accompanying motion for approval.

M. MODIFICATION OF CASE MANAGEMENT ORDER: Any motion to modify the case management order or any case management deadline must be filed at least seven (7) days in advance of the earliest impacted deadline. Unless a joint motion, the motion for modification must include a statement confirming that counsel for the moving party has discussed the requested modification or extension with opposing counsel and whether there is any objection to the requested modification or extension. The motion for modification must also include: (i) the trial date and all deadlines, even unaffected deadlines, so that it will not be necessary for the Court to review one or more previous case management orders in consideration of the motion and (ii) a statement of counsel that the requested extension will not cause any dispositive motion deadline, including response and reply briefs, to be later than 120 days in advance of the trial date. Motions for extensions must also detail the moving party's efforts at diligently complying with the originally scheduled deadline and the facts demonstrating good cause for modification of the deadline as required by Fed. R. Civ. P. 16(b)(4).

N. REQUESTS TO SEAL DOCUMENTS OR PORTIONS OF DOCUMENTS: Any party requesting that documents or portions of documents be sealed, including without limitation for use as exhibits at trial, must file a motion to seal in accordance with Section 5.07 of Administrative Order No. 167-1 (Administrative Practices and Procedures for Electronic Case Filing) and Local Rules 5.03 and 7.01, which demonstrates compelling reasons to seal the documents and that the sealing is narrowly tailored to those reasons. The motion to seal, even if unopposed, must specifically analyze in detail, document by document, the propriety of secrecy,

providing factual support and legal citations. Generally, only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence is typically enough to overcome the presumption of public access. Failure to comply with these procedures or to provide sufficiently compelling reasons may result in denial of the request to seal documents or portions of documents. Protective orders should not provide that documents produced in discovery and designated as “confidential” will be automatically sealed upon filing or if used at trial. Any such language in proposed protective orders will be stricken and may result in denial of the motion for entry of the proposed protective order.

O. ESTIMATED TRIAL TIME AND TARGET TRIAL DATE: The jury trial of this action is expected to last approximately 5 days. A trial date no earlier than **July 31, 2025**, is respectfully requested.¹ An order setting dates for trial and a pretrial conference, and detailing the parties’ pretrial obligations, will be entered separately by Judge Campbell.

It is so ORDERED.

BARBARA D. HOLMES
United States Magistrate Judge

¹ The parties were also reminded during the case management conference of their option to consent to final disposition by the Magistrate Judge pursuant to Fed. R. Civ. P. 73 and Local Rule 73.01. As discussed, if the parties wish to utilize this option, they may jointly complete and electronically file the form Notice, Consent and Reference of a Civil Action to a Magistrate Judge found on the Court’s website under the link for Forms. Not consenting will not result in any adverse consequences, and the Notice should be filed only if all parties consent to final disposition by the Magistrate Judge.

APPROVED FOR ENTRY:

David Randolph Smith & Associates

/s/ Christopher W. Smith

Christopher Smith, BPR #034450

David Randolph Smith, BPR #011905

Dominick R. Smith, BPR #028783

1913 21st Avenue South

Hillsboro Village

Nashville, TN 37212

T: (615) 742-1775

F: (615) 742-1223

Counsel for Plaintiffs David Robertson and Daniel Rodni

Sherwood Boutique Litigation, PLC

/s/ Cynthia A. Sherwood

Cynthia A. Sherwood, BPR #020911

Austin M. Correll, BPR #039561

414 Union Street

Suite 1110

Nashville, TN 37219

T: (615) 873-5670

F: (615) 900-2312

cynthia@sherwoodlitigation.com

austin@sherwoodlitigation.com

Counsel for Defendant Ryan Upchurch

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the following via the Court's CM/ECF system:

Christopher W. Smith
Law Offices of David Randolph Smith & Associates
1913 21st Avenue South
Hillsboro Village
Nashville, TN 37212
T: (615) 742-1775
F: (615) 742-1223
csmith@drsllawfirm.com

David Randolph Smith
Law Offices of David Randolph Smith & Associates
1913 21st Avenue South
Hillsboro Village
Nashville, TN 37212
T: (615) 742-1775
F: (615) 742-1223
drs@drsllawfirm.com

Dominick R. Smith
Law Offices of David Randolph Smith & Associates
1913 21st Avenue South
Hillsboro Village
Nashville, TN 37212
T: (615) 742-1775
F: (615) 742-1223
dom@drsllawfirm.com

on this the 1st day of November 2023.

/s/ Cynthia A. Sherwood