

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

RICHARD LEE HAMMETT, D.V.M.,)

Plaintiff,)

v.)

ANDREA SIEG,)

Defendant)

Case No. 5:09cv00024

**REPORT AND
RECOMMENDATION**

By: Hon. James G. Welsh
U.S. Magistrate Judge

**I
Statement of the Case**

This civil action was initially filed in the Circuit Court of Shenandoah County, Virginia, by Richard Hammett, appearing *pro se*. Seeking money damages and a printed “retraction,” the plaintiff alleged that the defendant, Andrea Sieg , had wilfully and maliciously defamed him and undertaken to injure him in his reputation and profession by, among other things, alleging in a letter to the Virginia Department of Health Professionals (“VDHP”) that he suffered from significant mental illness and committed acts of cruelty to animals. (Doc #1, Part 2.) Appearing by counsel, the defendant filed a timely responsive pleading and, on the basis of diversity, removed the case to ths court. (Doc #1, Parts 1 and 3.)

In her answer, the defendant admitted to having filed what she described as a “confidential and privileged report with a appropriate state agency,” and she admitted that the subsequent VDHP investigation had closed “with a finding of no violation.” (Docket # 1, Part 3.) In addition to denying malice and the other substantive allegation in the plaintiff’s complaint, she asserted several

specific defenses, including “truth,” a failure by the plaintiff to state the date of any alleged defamation, a statute of limitations bar, and “good faith.” (*Id.*) The parties were previously husband and wife, and both are veterinarians.

Shortly after the removal of this matter to this court, defendant’s counsel moved for leave to withdraw on the grounds that he had been directed . . . to cease” representation. (Doc #6.) This motion was granted (Doc #7); additionally the court’s order provided defendant to be “*pro se*” until such time as she retained new counsel, and it set forth a specific address in Jackson, SC, for notices of any proceedings in this matter to be provided to her. (Doc #7.)

As part to the court’s subsequently entered Scheduling Order, this case was referred pursuant to 28 U.S.C. § 636(b)(1)(a) for pretrial management. It comes now before the undersigned for a pretrial status report and for recommended disposition of certain pending motions.

II The Plaintiff’s Claim

This case confirms once again that a decree of divorce may end the parties’ matrimony, but it all too often fails to end their acrimony. Each is apparently embittered by what he or she perceives to have been personal spite and animus of the other. (*See e.g.*, Docket #1, Part 1, and Docket #32, Exhibits B and C.) To the undersigned, it also apparent that each has chosen to ignore the Biblical injunction that “Vengeance is mine,” sayeth the Lord.”¹

¹ Romans 12:19; *see also* Hebrews 10:30 and Leviticus 19:18.

In a nutshell, the plaintiff 's claim in this case is for defamation *per se*. Apparently embittered by what she perceived to have been an unfair treatment by the plaintiff and the state court during the divorce proceedings, including her failure to get a particular horse she contended not to be marital property, in July 2008 she filed a false, malicious, defamatory and unfounded complaint with the VDHP in which portrayed the plaintiff as professionally unfit, inept, unethical and lacking in integrity. For this alleged wrong, the plaintiff seeks compensatory damages in the amount of \$100,000.00 for his attendant embarrassment, humiliation and injury to his professional standing.

III Summary of Non-dispositive Pretrial Proceedings

Contending that the defendant was “attempt[ing] to thwart” his discovery efforts, by refusing to participate in a Rule 26(f) discovery conference despite his good faith efforts, the plaintiff on June 10, 2009 filed a motion requesting the court to convene a discovery conference, leave to initiate written discovery, and sanctions. (Doc #9.) Thereafter, Roseboro and hearing notices were given to the defendant. (Doc #10 and #12.) Pursuant to this motion, a detailed order was entered *inter alia* scheduling a status for a July 16, 2009, directing the parties to be prepared to discuss a range of enumerated discovery-related issues, and directing that “[a]ll parties must appear . . . either in person or by counsel.” (Doc #11.)

In response the plaintiff’s motion, the defendant filed “Counter-Affidavits” which in substance reiterated her previous answer and affirmative defenses, and which provided certain, albeit incomplete, Rule 26(a) information and associated documentation. (Doc #13.) At the scheduled status conference on July 16, 2009, the plaintiff appeared in person; the defendant, however, neither appeared nor provided the court with an explanation for her failure to do so. (Doc #14 and #18.)

Pursuant to the plaintiff's written and oral motions, an order was entered the following day. (Doc #18.) Therein, the provisions of the court's Scheduling Order were reaffirmed without change, leave was given for the parties to initiate discovery pursuant to Rules 26, 29 and 37, the defendant's deposition was scheduled for a date and place certain, and the parties' were reminded of their various discovery obligations. (*Id.*)

After the defendant failed to respond to the plaintiff's written discovery and failed to attend her scheduled deposition in Virginia, the plaintiff filed a second motion seeking sanctions and to compel discovery. Basically, his motion alleged that the defendant was "thwarting" his discovery efforts and was wilfully failing to comply with her discovery obligations. (Doc #19.)

After issuance of another *Roseboro* notice (Doc #22.) and the scheduling of a hearing on the plaintiff's second discovery-related motion for September 22, 2009, a notice of hearing was issued which contained a specific provision permitting the defendant to appear by telephone. (Doc #20.) At the scheduled time, the plaintiff appeared in person, and the defendant appeared by telephone. (Doc #24.)

Based on the defendant's admission that she had received the plaintiff's written discovery and had knowingly failed to respond either to the written interrogatories or the requests for admission, because "[she] was busy with more important things to do," and upon a finding that her failure was unjustified, it was ordered pursuant to Rule 32 that the facts designated in the plaintiff's

sixty-three numbered admission requests (Doc #19, Part 2, pages 3- 8) were deemed established, and pursuant to Rule 37(b)(2)(A)(ii) the defendant was prohibited from supporting or opposing any defenses or claims referenced or otherwise described in the plaintiff's six numbered interrogatories. (Doc #19 Part 2, pages 1-2.) (Doc #25.)

Among other things, this ruling established the following facts: (1) the parties separated in April 2005; (2) during the next several months the parties dealings with one another were generally amicable; (3) the defendant's complaint to the VDHP about the defendant was not filed until July 2008, more than three years after the parties has had separated and ceased having any no-court-related contact with one another; (4) the filing of the complaint with VDHP was preceded by the defendant's threat to file same in a letter to the defendant's brother; (5) contrary to the defendant's statement in her VDHP complaint, the plaintiff does not have a bipolar disorder; (6) contrary to the defendant's statement in her VDHP complaint, the plaintiff did not treat in a cruel or otherwise negligent manner a certain horse that was in his custody and care;² and (7) during the course of the parties' divorce proceeding, the defendant perjured herself, fabricated evidence, secreted evidence, engaged in purposeful obfuscation, and was found to be in contempt of court.

Based on the defendant's contention that she was "busy" with babies, that she felt she was "being harassed" by her ex-husband in this matter, that she was the subject of an outstanding state court arrest warrant and that she was willing to give a telephone deposition, by court order a procedures for such a deposition was outlined. (Doc #25 ; *see also* Doc #24.) Nevertheless, the defendant failed to assist and cooperate with the scheduling of her deposition, and she thereby

² It appears form the record that the plaintiff claimed, and continues to claim, that this animal was not marital property and hers by right.

continued to exhibit a willful failure to comply with her discovery obligations. (Docs #28, #29, #30.) Likewise, the defendant has failed to answer or otherwise respond to the plaintiff's most recent pretrial efforts to obtain documents and information from the defendant. (Doc #32, Exhibit D.)

IV Pending Motions

The following motions and related filings remain pending before the Court: (1) plaintiff's motion for default judgment filed 09/08/2009 (Doc # 1); (2) plaintiff's motion filed on 10/19/2009 seeking date for hearing on default judgment motion (Doc # 27); (3) plaintiff's motion with attached affidavit, seeking entry of a "rule to show cause" based on her failure to comply with the court's discovery-related orders (Docs # 28, #29); and (4) the defendant's motion to dismiss³ (Doc #30) and the plaintiff's response in opposition. (Doc #32.)

V Proposed Findings

Based on a careful and thorough review of the entire record in this case and as supplemented by the above summary, the following formal findings, conclusions and recommendations are made:

1. Throughout the pendency of this case, the defendant knowingly and willfully failed, neglected, and persistently refused to fulfill her pretrial discovery obligations;
2. The defendant's persistent discovery-related misconduct and failure to comply with related court orders are willful violations of Rules 37 and 11 and warrant the imposition of sanctions;
3. Based on the defendant's conduct entry of a default judgment as to liability for compensatory⁴ damages is the only sanction which is sufficient to deter repetition of this conduct or comparable conduct in the future;

³ *Roseboro* notice sent on 10/30/2009.

⁴ The plaintiff's Complaint does not seek exemplary or other compensatory damages.

4. Assuming *arguendo* that a lesser sanction than entry of a default judgment would be sufficient, the evidence in this case, including the defendant's admissions in a light most favorable to the defendant and drawing all reasonable inferences in her favor,⁵ established the plaintiff's claim of *per se* defamation;
5. The plaintiff has established by clear and convincing evidence that the defendant's complaint to the VDHP contained statements about the plaintiff that were false;
6. The plaintiff has established by clear and convincing evidence that the defendant made the statements concerning his mental health and his professionalism which she either knew to be false or made so recklessly as to amount to a willful disregard for the truth, that is with a high degree of awareness that the statements were probably false; and
7. The evidence in the record fails to establish that the plaintiff has sustained any actual injury to his personal or professional reputation, any loss or injury to his business, or any other compensable damage.⁶

VI Recommended Disposition

For the foregoing reasons, it is RECOMMENDED that an order be entered GRANTING the plaintiff's motion for a partial default judgment, and DENYING the defendant's motion to dismiss..

The clerk is directed to mail a copy of this Report and Recommendation to all parties.

DATED: 13th day of November 2009.

/s/ James G. Welsh
United States Magistrate Judge

⁵ Although Virginia law provides immunity from civil liability to any person making a report concerning the conduct or competency of a health care practitioner to the VDHP, this immunity does not protect persons making such reports "in bad faith or with malicious intent." Va. Code Ann § 54-2400.8 (1950, as amended)

⁶ See *Micro Resources, Inc., v. Jackson*, 271 Va. 29, 624 S.E.2^d 63 (2006)