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Transcript of Hearing

Date: October 18, 2019
Case: Depp, II -v- Heard

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----X

JOHN C. DEPP, II,)

Plaintiff,)

-vs-)

NO. CL-2019-0002911

AMBER LAURA HEARD,)

Defendant.)

-----X

Hearing

BEFORE THE HONORABLE BRUCE D. WHITE

Fairfax, Virginia

Friday, October 18, 2019

10:49 a.m.

Job No.: 268360

Pages: 1 - 28

Reported by: Theresa R. Hollister, CCR

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Hearing held at:

Fairfax County Circuit Court
4110 Chain Bridge Road
Courtroom 5H
Fairfax, Virginia 22030
(703) 691-7320

Pursuant to notice, before Theresa R.
Hollister, Certified Court Reporter and Notary
Public for the Commonwealth of Virginia.

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A P P E A R A N C E S (cont.)

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P R O C E E D I N G S

(Court reporter duly sworn by the Court.)

MR. ROTTENBORN: Good morning, Your Honor. Ben Rottenborn from Woods Rogers here on behalf of Amber Heard.

THE COURT: Good morning.

MR. QUINN: Good morning, Your Honor. John Quinn from Kaplan Hecker, also for Ms. Heard.

THE COURT: Good morning.

MR. GILMORE: Good morning, Your Honor. Robert Gilmore from Stein Mitchell on behalf of plaintiff, Johnny Depp.

THE COURT: Good morning.

MR. CHEW: Good morning, Your Honor. Ben Chew for Johnny Depp.

THE COURT: Good morning. I'm ready when you all are.

MR. ROTTENBORN: We're here today on Ms. Heard's motion to compel discovery responses from plaintiff Johnny Depp. I'd like to start very briefly, Your Honor, with the discussion of what this case is about. So this case is a \$50 million

1 defamation case that stems from a 2018 op-ed that
2 Ms. Heard wrote in the Washington Post.

3 THE COURT: I've read your complaint.

4 MR. ROTTENBORN: And Your Honor saw in
5 the complaint that op-ed doesn't contain a word
6 about Mr. Depp. It talks about Ms. Heard being a
7 public figure and facing backlash so -- from
8 speaking out against domestic abuse. So what the
9 plaintiff does and the theory of plaintiff's case is
10 that they try to revive -- and they admit, they use
11 the word revive -- these 2016 allegations of
12 domestic abuse that Ms. Heard made about Johnny Depp
13 in obtaining a protective order in California state
14 court, a temporary restraining order against
15 Mr. Depp. 2016 allegations as cited in paragraph 2,
16 paragraph 3, paragraph 5, and paragraph 6 of the
17 complaint. I'd be happy to hand that up to, Your
18 Honor.

19 THE COURT: You don't need to hand me the
20 complaint. You can assume that I've read the
21 complaint. I may not have memorized it, but I've
22 done my best to familiarize myself with this case.

1 MR. ROTTENBORN: Thank you, Your Honor.
2 One thing I would ask, permission to hand up to the
3 court is Ms. Depp's -- or Ms. Heard's 2016
4 declaration that she filed in California because
5 that's what this case is really about.

6 Now, we have a motion for leave to file a
7 demurrer on the 2018 op-ed. And I know that's not
8 an issue in front of the court today, but we believe
9 that the 2018 op-ed standing alone, there's no way
10 it's defamatory.

11 So when what plaintiff has done is try to
12 bootstrap these comments that Ms. Heard made in a
13 sworn statement in 2016 and say all of those are
14 false. And with Your Honor's leave, I would just
15 like to just go through a few of those, because I
16 think that they frame all of the discussion about
17 the requests that are in dispute.

18 THE COURT: You all gave me a 20-minute
19 time limit. You've got 10 minutes to do it. Use
20 your 10 minutes how you'd like.

21 MR. ROTTENBORN: Thank you.

22 THE COURT: I'm sure you'll use it the

1 way you think is most efficient.

2 MR. ROTTENBORN: So as Your Honor can see
3 in that declaration, and I'll just hit a few
4 highlights. In paragraph 4, Ms. Heard says, "During
5 the entirety year of our relationship, Johnny has
6 been verbally and physically abusive to me."

7 Paragraph 5, she ties that abuse, that
8 physical abuse, that verbal abuse to Mr. Depp's
9 long-held and widely acknowledged public and private
10 history of drug and alcohol abuse. She says that
11 when he is high on drugs or drunk on alcohol or
12 both, as is often the case, according to Ms. Heard,
13 that that is when he is abusive. And not only is he
14 abusive, but he's destructive to property. So the
15 context of the statements that Ms. Heard made in
16 2016, that Mr. Depp is now suing her for \$50 million
17 on, are that -- is that when Mr. Depp was abusive to
18 Ms. Heard when he was on alcohol and drugs.

19 So as part of our discovery requests in
20 this case, we have asked for evidence of Mr. Depp's
21 alcohol and drug use. Mr. Depp brought this
22 lawsuit. Mr. Depp is suing Ms. Heard for \$50

1 million. Virginia law and this court's practices
2 grant defendants broad discovery into anything that
3 is relevant or might be relevant in the context of
4 the case. And as the Roanoke Memorial Hospital case
5 has said and held for 30 years, and many other
6 courts have said, the question of whether something
7 is relevant can't be determined in darkness. The
8 question of whether something is relevant must be
9 determined in the context of the case. And when
10 this case is about the truth or the falsity of these
11 statements that Ms. Heard made in 2016, alleging
12 that Mr. Depp was destructive to property, was
13 abusive to her when he was using drugs and alcohol,
14 that opens the door to discovery of his destruction
15 of property, of his abuse of drugs and alcohol. He
16 put that at issue. He opened the door to it. And
17 now Mr. Depp is trying to deny Ms. Heard the
18 evidence that she needs, in part, to prove that
19 those statements that she made in 2016 were true.

20 Now, all of defendant's -- plaintiff's
21 defenses to what we're seeking here go toward
22 admissibility. And that's another point, Your

1 Honor. Right now the standard is relevant or might
2 be relevant. The standard is not a motion in
3 limine. We believe that all the evidence that we're
4 seeking will ultimately be admissible, but that's
5 not the standard here.

6 What they're asking the court to do is to
7 hold, as a matter of law, essentially, that in a
8 case in which a defendant has accused a plaintiff of
9 being abusive when he was drunk or when he was high,
10 that she can't take evidence or discovery on his
11 drug or alcohol abuse. And that, that position is
12 just preposterous, Your Honor.

13 In addition, evidence of drug and alcohol
14 abuse, the State v. Woodson [sic] case we cite in
15 our brief talks about drug use was so intertwined
16 with the facts of the case, that it became part and
17 parcel of the entire case.

18 That's the same thing here. Drug use and
19 the destruction of property are so intertwined with
20 the allegations that Mr. Depp is claiming are false
21 and that Ms. Heard will prove are true, that they
22 are part and parcel of the entire case. And

1 plaintiff cannot put its head in the sand and deny
2 us discovery to that, to those pieces of
3 information.

4 Moving on, Your Honor, to the request 43
5 and 44 about this finger injury. Mr. Depp put this
6 finger injury, this graphic allegation regarding his
7 finger being severed, into his complaint. He says
8 in his declaration he filed in this case what his
9 doctor told him about it. And now he's refusing to
10 sign a HIPAA release to grant us access to the
11 records of what his doctor told him about it, or the
12 treatment of that, or other statements that he may
13 have made about Ms. Heard to his doctor.

14 He claims in his opposition that what the
15 doctor said isn't the most relevant evidence. Well,
16 as Your Honor well knows, that's not the standard
17 for discovery in Virginia. We're just at the
18 beginning of discovery. The standard is not let the
19 plaintiff decide which evidence is the most relevant
20 and allow them to give that. Virginia Code
21 8.1-399(B) says the physical or mental condition of
22 someone is at issue, it must be disclosed.

1 Now, what the plaintiff will say is,
2 well, it's not at issue, Your Honor. But it very
3 much is at issue and it very much was put at issue
4 by Mr. Depp. He could have written a short and
5 plain statement as is permitted in Virginia,
6 alleging defamation. And instead he larded up his
7 complaint with lots of allegations about both him
8 and about Ms. Heard and the relationship. Ms. Heard
9 deserves the right to test those allegations through
10 discovery and try to disprove those allegations.

11 Another category, Your Honor, that he put
12 at issue in the complaint, is he says he is not a
13 perpetrator of domestic violence. He says, I've
14 never abused Ms. Heard or any other woman. He said
15 that on page 2 of his declaration and in paragraph
16 23 of his complaint, he says he is not a perpetrator
17 of domestic violence. So we have requested
18 documents relating to Mr. Depp's commission of
19 domestic violence against other romantic partners.
20 They've have said, no, that's not relevant. Again,
21 it very much is relevant and it very much was put in
22 issue by Mr. Depp.

1 Same thing for his medical records, that
2 he -- communications with one of his doctors, this
3 guy, Dr. Kipper, who treated him, I believe he was
4 involved with the finger incident, but also treated
5 him for substance abuse. Mr. Depp says that those
6 are privileged. Well, the Hall versus Lashbrook
7 case that we cited talks about how evidence of abuse
8 of other romantic partners, Your Honor, is very
9 relevant to, to cases involving abuse.

10 Evidence of Mr. Depp's medication that he
11 may have been prescribed by this doctor that may
12 have interacted with drugs and alcohol in a way that
13 made him even more violent or that may have affected
14 his memory -- and that gets to another point, Your
15 Honor, the Via versus Commonwealth case. The
16 Virginia Supreme Court talks about evidence that
17 bears on a witness's memory is highly relevant. And
18 medical evidence that Mr. Depp may have from his
19 doctors is relevant to that question as well.

20 So not only the finger injury, but
21 communications with Dr. Kipper that mention
22 Ms. Heard or mention his other romantic partners is,

1 again, highly relevant, not because Ms. Heard put it
2 at issue, but because Mr. Depp put it at issue, by
3 saying that everything that she said in 2016 is
4 false and is a lie.

5 THE COURT: I've got you with about 2
6 minutes left.

7 MR. ROTTENBORN: Thank you, Your Honor.
8 I'll wrap up briefly.

9 THE COURT: I was willing to give you all
10 30 minutes and put you at the end of the docket, but
11 you all are the ones that wanted to do it, so.

12 MR. ROTTENBORN: Well, we think we can
13 cover it in this short amount of time.

14 Your Honor, just very quickly, payments
15 to other witnesses, that's highly relevant to their
16 credibility. Mr. Depp is refusing to say -- he said
17 in his complaint all these allegations about
18 witnesses being neutral and supporting his side of
19 the story. And now he's refusing to disclose
20 evidence about whether or not he paid them. Again,
21 that goes straight to his credibility.

22 Surveillance footage, again, he put in

1 his complaint that he has surveillance footage that
2 exonerates him. And now he's refusing to produce or
3 at least refusing to give us details about
4 surveillance footage at other properties that he and
5 Ms. Heard shared.

6 And so, for all of those reasons, all of
7 the things that we're seeking, Your Honor, are
8 issues that Mr. Depp put at issue in his complaint.
9 He's suing Ms. Heard for \$50 million and it is
10 improper --

11 THE COURT: You have mentioned that three
12 times. Is there a different standard I should apply
13 if someone sues for \$50 million instead of for
14 \$100,000?

15 MR. ROTTENBORN: Not at all, Your Honor,
16 but whether --

17 THE COURT: Then we probably shouldn't
18 dwell on that.

19 MR. ROTTENBORN: What I'm asking the
20 court to apply is Virginia's broad standard of
21 discovery related to relevance, especially on issues
22 that Mr. Depp put at issue. Thank you.

1 THE COURT: Okay. Thank you.

2 MR. GILMORE: Good morning, Your Honor
3 Robert Gilmore for Plaintiff Johnny Depp.

4 THE COURT: Good morning.

5 MR. GILMORE: Defendant's motion to
6 compel is a fishing expedition, plain and simple,
7 Your Honor. It's intended to harass Mr. Depp and
8 it's intended to distract the court, the parties,
9 the jury from what's the sole issue in this case.

10 THE COURT: It isn't distracting the jury
11 because this is discovery. It doesn't mean it's
12 admissible just because it is discovery.

13 MR. GILMORE: Well, discovery has to be
14 reasonably calculated to lead to the discovery of --

15 THE COURT: No, I've said that because
16 you said it's going to mislead the jury.

17 MR. GILMORE: I think --

18 THE COURT: Hold on. I think you are
19 telling me something that's not really an issue for
20 me today.

21 MR. GILMORE: Well, whether it's
22 admissible is, to some extent, an issue today,

1 because if there's no hope of the discovery that the
2 parties --

3 THE COURT: You and I are fencing over
4 words now that have no real impact on this, other
5 than when somebody makes a representation in court
6 that I don't think is right, I like to correct them
7 on it. When you say this ruling today is affecting
8 what happens to the jury, that really isn't correct
9 because we aren't at that stage yet. So you can
10 move on to your argument and I'll quit my diatribe.

11 MR. GILMORE: I understand. I'll move
12 on, Your Honor.

13 The sole issue in this case is whether
14 Amber Heard was lying when she claimed to be the
15 victim of domestic abuse by Mr. Depp. So the
16 categories of discovery are not -- that Ms. Heard
17 seeks -- are not relevant for that sole issue.

18 Let's start with the medical records
19 first. Virginia Code 8.01-399 says treatment
20 records and testimony from a treating physician are
21 not discoverable unless the treatment has been put
22 at issue. Mr. Depp, Mr. Depp's medical condition

1 has not been put at issue by him. This isn't a
2 personal injury case. Ms. Heard is trying to put at
3 issue his medical condition. She is the defendant.
4 A defendant can't put a plaintiff's medical
5 condition at issue as some sort of cause to then pry
6 open discovery into medical conditions and
7 treatment.

8 That's the holding of multiple cases that
9 we cite in our briefs. For instance, the Second
10 Circuit in the In Re Simms case, dealing with the
11 therapist/patient privilege that federal courts
12 recognize, cites the privilege is not overcome when
13 the plaintiff's mental state is put in issue only by
14 the defendant. And the D.C. circuit reached that
15 same conclusion in the Coke [sic] case that we also
16 cite.

17 But that's what Ms. Heard is trying to do
18 here. Ms. Heard points to no cases where a court
19 said an opposing party is allowed to put at issue
20 the medical condition of the opponent as the basis
21 for discovery. The only case that they cite, the
22 Pettis versus Godfrey [sic] case, that was a medical

1 malpractice case brought by the plaintiff. So, of
2 course, the plaintiff was putting his medical
3 condition at issue there.

4 It makes sense that an opposing party
5 isn't able to say, oh, I think that my opponent is
6 crazy, that allows me to investigate and get all of
7 his mental health records. If that were allowed,
8 litigants always would assert that there was some
9 physical or psychological condition of the opponent
10 that's at issue and then try and use that to open up
11 potentially sensitive or embarrassing discovery to
12 harass the opponent or even to deter them from
13 continuing with the case.

14 Let me address the documents about drug
15 or substance abuse. As my colleague, Mr. Chew, said
16 at our last hearing in front of Your Honor,
17 Mr. Depp, he's owned his past struggles in this
18 area. He has nothing to hide. But that's not the
19 issue in this case. The issue in this case is not
20 whether Mr. Depp was a drug or alcohol abuser. It's
21 about whether he abused Ms. Heard physically, as she
22 has falsely alleged. He did not.

1 The extent that any documents about
2 substance abuse involve medical treatment for
3 substance abuse, they are not subject to discovery
4 under Virginia Code 8.01-399. And even documents
5 that don't involve medical treatment still are not
6 subject to discovery, because they cannot yield
7 admissible evidence. Essentially, what Ms. Heard
8 wants to argue is that because Mr. Depp supposedly
9 did one bad thing, take drugs or abuse alcohol, he
10 is more likely to have hit her. But that is classic
11 propensity evidence that Rule 404 prohibits. And
12 that's the only kind of evidence, inadmissible
13 evidence, that this discovery could possibly yield.
14 That's why it is not discoverable because it is not
15 relevant, it's not reasonably calculated to lead to
16 discoverable evidence.

17 When you also consider that what would
18 this evidence be used for, it is not admissible. It
19 would be prejudicial, this kind of information would
20 only lead to prejudicial evidence that would not be
21 admitted.

22 We saw what happened at the last hearing.

1 Ms. Heard's lawyers tried to wave around what they
2 thought were embarrassing and salacious documents to
3 pressure us to accede to their position on the
4 motion for the protective order. We're worried that
5 they're going to try to do those tactics throughout
6 this case. And that's why we think that allowing
7 this kind of discovery is just going to feed into
8 that. They want to taint the jury, harass my
9 client, and distract from what's at in their case,
10 whether their client is lying. That's not a proper
11 purpose for discovery.

12 Finally, with respect to Mr. Depp's past
13 alleged acts, those are not discoverable, because it
14 is, again, the kind of classic propensity evidence
15 that Rule 404 does not allow.

16 The prior allegation, we're not aware of
17 any document, Mr. Depp having any document
18 reflecting an allegation by any of Mr. Depp's other
19 romantic partners.

20 THE COURT: Let me ask you a question.
21 Does your complaint say that your client avers that
22 he's not a domestic abuser and has never abused

1 anyone? If that is in the complaint, why aren't
2 they entitled to do discovery to find out whether
3 that's a truthful statement that your client has put
4 in the complaint?

5 MR. GILMORE: That is a truthful
6 statement. That is his claim.

7 THE COURT: Then why aren't they allowed
8 to do discovery to see whether it is truthful or
9 not? They don't just need to take his word for it,
10 do they?

11 MR. GILMORE: That statement is not
12 relevant to what is at issue in this case.

13 THE COURT: Well, somebody thought it was
14 relevant enough to put it in the complaint.

15 MR. GILMORE: Understood. There are many
16 reasons why things are said in complaints. Truthful
17 statements are made. But whether that is a relevant
18 issue for the case to allow open-ended discovery on,
19 is a wholly different matter, Your Honor. Mr. Depp
20 understood that this case, since the public op-ed,
21 is going to be in the public press. And so it's
22 important for him to say that. But what's at issue

1 is whether he abused Ms. Heard as she falsely
2 claims.

3 THE COURT: Say that again. That
4 Mr. Depp put that in his complaint because he knew
5 that this would be in the press and it was important
6 for him to put it in the press?

7 MR. GILMORE: Mr. Depp --

8 THE COURT: That's the motivation for
9 that being in the complaint? That's what you're
10 saying on the record?

11 MR. GILMORE: Much of this is to, as to
12 his character and his conduct, absolutely, Your
13 Honor. But it is important for him to have stated
14 that. He is facing a public op-ed that was leveled
15 at him by Ms. Heard. But the issue in terms of what
16 is defamatory is whether she had abused -- whether
17 he had abused Ms. Heard.

18 And so the kind of discovery Ms. Heard
19 tries to shoehorn her argument into some sort of
20 modus operandi argument. But that's a bogus
21 argument.

22 The Western Alliance Bank case that we

1 cite --

2 THE COURT: You have about 2 minutes left
3 as well. Thank you.

4 MR. GILMORE: Thank you, Your Honor.
5 Modus operandi refers to evidence so nearly
6 identical in method as to earmark them as the
7 handwork of the accused. Ms. Heard cannot seriously
8 argue that Mr. Depp engaged in some sort of
9 distinctive method of domestic abuse towards her
10 that would be proven by showing he engaged in a
11 similarly distinctive method of abuse. That would
12 be a non-sensible argument.

13 And the arguments that they make for
14 discovery into arrests that don't even involve
15 domestic abuse allegations, and that are decades
16 old, are similarly irrelevant and meritless, a
17 fishing expedition.

18 For all these reasons, Your Honor, we
19 respectfully ask that the court deny Ms. Heard's
20 motion in its entirety.

21 THE COURT: Thank you.

22 You can have a minute to reply.

1 MR. ROTTENBORN: Thank you, Your Honor.
2 Your Honor, I think you grasp the issue
3 fully, which is that Mr. Depp has put these claims
4 at issue in his complaint. His motivation for doing
5 that, whether it's to rehabilitate his image
6 publicly or because it's relevant to the lawsuit in
7 his mind, is irrelevant. He has made allegations in
8 the complaint that he is not a perpetrator of
9 domestic violence against Ms. Heard or any other
10 woman. He has made other allegations that go
11 straight to these discovery requests. And Ms. Heard
12 deserves the right to test those allegations,
13 particularly when the core of this case, plaintiff's
14 theory of this case is that statements that
15 Ms. Heard made in 2016 were, were false. And in
16 those statements she said that when he abused her he
17 was on drugs and alcohol and was destroying property
18 often as well.

19 Now, as for the medical records, this is
20 the last thing I will touch on, he put these at
21 issue. He references his finger, his medical
22 treatment of his finger in his complaint. He put it

1 at issue by saying that statements that she made
2 about his medical condition, his substance abuse,
3 were false.

4 And so, for all those reasons, as I think
5 Your Honor recognized in this case about domestic
6 abuse, which it's a matter of common sense, domestic
7 abuse and abuse of drugs and alcohol are often
8 intertwined, as numerous case law and cases have
9 side, Ms. Heard is entitled to the full discovery
10 that she seeks. Thank you.

11 THE COURT: Thank you.

12 The motion to compel is granted. I will
13 say that I probably would not grant it as to some of
14 the matters, such as the medical records that might
15 be protected under 8.01-399 of the code, but I think
16 that the complaint is broad enough to place these
17 things in issue, places his mental condition in,
18 issue, even though it may or may not really be an
19 issue in this case, nevertheless it's put in the
20 complaint for a purpose. I'm told by counsel that
21 now, perhaps, that purpose is merely so that the
22 press will get it and not really so much related to

1 the lawsuit. And that's a little troubling.

2 But nonetheless, the motion to compel is
3 granted as to all matters at this point.

4 Would you all do an order. Of course,
5 note your exceptions.

6 MR. ROTTENBORN: Yes, Your Honor. Thank
7 you very much.

8 THE COURT: And the time for production,
9 you all are able to come up with an agreement on
10 that?

11 MR. CHEW: We actually planned to discuss
12 that right after this hearing.

13 THE COURT: Okay. Thank you. Hope
14 everybody has a good weekend.

15 (The hearing was concluded at 11:11 a.m.)
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CERTIFICATE OF SHORTHAND REPORTER

I, Theresa R. Hollister, the court reporter before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Theresa R. Hollister
Court Reporter